
(2009) 07 AP CK 0046
In the Andhra Pradesh High Court
Case No : C.C.C.A. No. 158 of 1998

Hafizunnisa Begum and Others

APPELLANT

Vs

A.P. Housing Board and Others

RESPONDENT

Date of Decision : 24-07-2009

Acts Referred:

Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 — Section 54A
Andhra Pradesh Housing Board Act, 1956 — Section 68

Citation : (2009) 6 ALD 31 : (2009) 5 ALT 631

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : R. Vijayanandan Reddy, for the Appellant; C.V. Rajeeva Reddy and Siva Prakash Sarma, for Pratap Narayan Sanghi, for Respondents 2 and 3, for the Respondent

Judgement

P.S. Narayana, J.—The unsuccessful plaintiffs in O.S. No. 509 of 1995 on the file of the IV Senior Civil Judge, City Civil Court at Hyderabad had preferred the present appeal.

2. The Andhra Pradesh Housing Board, represented by its Chairman 1st Respondent herein is the defendant in the said suit. Rajesh Kumar Agarwal and Ramanlal Agarwal who are Respondents 2 and 3 were impleaded as parties to this appeal by order dated 27-11-2008 in C.C.A.M.P. No. 772 of 2008. The said suit was filed for declaration of title of the appellants/plaintiffs herein relating to the plaint schedule property and for delivery of possession and for other appropriate reliefs.

3. The trial Court in the light of the respective pleadings of the parties having settled the issues recorded the evidence of P.W.1 and D.W.1 marked Exs.A-1 to A-32, Exs.B-1 to B-21 and ultimately came to the conclusion that the appellants/plaintiffs are not entitled to any of the reliefs prayed for and accordingly, dismissed the suit. Aggrieved by the same the unsuccessful plaintiffs had preferred the present C.C.C.A. No. 158 of 1998.

4. Contentions of Sri R. Vijayanandan Reddy.

Sri Vijayanandan Reddy learned Counsel representing the appellants had taken this Court through the respective pleadings of the parties, the issues settled and the findings recorded by the trial Court and would maintain that the said findings cannot be sustained both in law and also on the ground of equity. Learned Counsel also pointed out that the auction purchaser in this case is similarly placed as yet in another suit and the said property is the subject matter of O.S. No. 1563 of 1989 and the same was decided by the X Assistant Judge, Hyderabad in favour of the appellants/ plaintiffs. Learned Counsel also pointed out that the fact that the 1st plaintiff is a Pardanasheen lady, who had lost her husband in 1956 and was unable to take steps for proper and effective management of the properties and the litigations, this aspect had not been properly appreciated. Learned Counsel also pointed out to the relevant portion of the Standing Order No. 90(32) of the Board of Revenue and would maintain that since the Board Standing Order is made applicable the appellants/ plaintiffs are entitled to restoration of the possession of the suit schedule property on condition of the refund of the compensation, which they had received. The learned Counsel further pointed out to other oral and documentary evidence available on record and further would submit that in view of the Board Standing Order aforesaid and also in the light of the clear oral and documentary evidence available on record and further in view of the admitted fact that the purpose or the scheme for which the same had been acquired having been dropped as not practicable for implementing the same, the suit as prayed for to be decreed and the present appeal to be allowed.

5. Contentions of Sri Rajiv Reddy

Sri Rajiv Reddy, Learned Standing Counsel representing the A.P. Housing Board had pointed out that the fact that these properties were acquired by the erstwhile City Improvement Board for Development of the City and for widening of the small lanes at Rikabgunj area by virtue of a scheme Kokarwadi Development Scheme, this aspect is not in serious controversy. Learned Counsel also would maintain that it may be true that since the implementation of the scheme became impracticable the same was not carried on to its logical end. But, however, learned Counsel would maintain this could not in any way alter the situation. Learned Counsel would maintain that the City Improvement Board was abolished and the A.P. Housing Board had been constituted and the counsel would maintain that these properties became vested in A.P. Housing Board. Counsel would maintain that when the Land acquisition proceeding had been initiated and the properties were acquired on payment of due compensation, the A.P. Housing Board is at liberty to deal with these properties, as they like and no restrictions as such can be imposed in this regard. Learned Counsel also pointed that certain mulgies had been let out to certain tenants and certain mulgies had been disposed of and in fact one such mulgies had been purchased by the parties, who had chosen to come on record i.e. Respondents 2 and 3. Counsel

would also maintain that when law is very clear, equitable consideration cannot be applied by the Law Courts. Learned Counsel also placed strong reliance on Govt. of A.P. and Another Vs. Syed Akbar, . Further elaborating his submission, learned Counsel also had taken this Court through the findings recorded by the trial Court and would maintain that after recording convincing reasons the suit had been dismissed and hence the findings are to be confirmed.

6. Contentions of Sri Seva Prakash Sarma representing Pratap Narayan Sanghi.

Sri Siva Prakash Sarma representing Sri Pratap Narayan Sanghi the counsel for respondents 2 and 3 would maintain that inasmuch as these parties purchased the property in question in accordance with law, by virtue of an interim order made by this Court, since serious prejudice had been caused to them, they filed an application to come on record. The counsel also pointed out that an application in C.C.A.M.P. No. 842 of 2008 to vacate the interim order dated 15-6-1999 made in C.M.P. No. 8022 of 1999 had been filed and inasmuch as the appeal itself is being taken up for final hearing, in the light of the clear stand taken by them, the appeal to be dismissed.

7. Heard the counsel and perused the oral and documentary evidence available on record and the findings recorded by the trial Court.

8. This matter is coming under the caption Interlocutory, since respondents 2 and 3 in this appeal filed C.C.C.A.M.P. No. 842 of 2008 praying for vacation of interim order, dated 15-6-1999 made in C.M.P. No. 8022 of 1999. However, at this stage at the request of the counsel on record the appeal itself had been taken up for final hearing. This Court is of considered opinion that no separate order need be passed on this application, since this interim order already made would be subject to the result of the C.C.C.A., as such, in the light of the same, this application is hereby closed.

9. Before taking up further discussion on the points for determination, which may arise for consideration in this C.C.C.A. it may be appropriate to have a glance at respective pleadings of the parties, issues settled, evidence available on record and the findings recorded by the trial Court in nutshell.

10. For the purpose of convenience the parties hereinafter would be referred to as Plaintiffs and Defendant as shown in O.S. No. 509 of 1999 aforesaid.

11. It is needless to say that Respondents 2 and 3 are the purchasers who came on record at the appellate stage.

12. The averments made in the plaint:

It was averred in the plaint that the sit property originally belongs to late Sri Mohd. Sabith Ali Khan, suit the husband of first plaintiff and father of plaintiffs 2 to 4. The suit property consists of 102 square yards land with 5 mulgies H. Nos. 677 to 681 (New) which was acquired by City Improvement Board, which was later on transferred to A.P. Housing Board 1st defendant herein. The suit

property was acquired by the City Improvement Board for road widening in Rikab Gunj area under the scheme called "Khokarwadi Scheme". At the time of acquisition, the mulgies were in possession of the tenants and after the acquisition compensation was paid to them in suit 284/1358 F and possession was taken by City Improvement Board in the year 1949.

13. It was further averred that late Sabith Ali Khan died in the year 1956 and the City Improvement Board was abolished and the A.P. Housing Board was constituted by the Act of 1956. It was reliably learnt that the Khokarwadi Scheme was given up as impracticable and abandoned. Immediately, on coming to know that the scheme is given up the plaintiff No. 1 who is an illiterate and Parda Nasheen i.e. she observed parda had been requesting the defendant for restoration of the property and that she was willing to refund the compensation received. The suit property is in dilapidated condition. A notice was issued by the plaintiff to the defendant but the defendant did not give any reply for it. The plaintiff ultimately issued a statutory notice u/s 68 of A.P. Housing Board Act on 21-5-1993 and the same was received and acknowledged but failed to give reply. As the plaintiffs had a vested right under the provisions of Board Standing Orders to claim reconveyance of the property, the present suit is filed for reconveyance of the property by declaring their title and also for possession.

14. The averments made in the written statement

That the suit schedule property is situated at Rikab gunj consisting of 5 mulgies with Madras terrace. It is not in dispute that the suit schedule property was acquired by City Improvement Board on payment of compensation and the defendant admitted in written statement that the Khokarwadi Scheme was abandoned and as such certain properties which could not be utilized for the purposes of implementation of the scheme were let out by the City Improvement Board. He further submits that the mulgies were acquired after initiating Land Acquisition proceedings on payment of compensation to Sabith Ali Khan and after the acquisition of the mulgies on payment of compensation the defendant had taken possession and as such become owner and possessor of the property from the said date. It is further submitted that Khokarwadi Scheme could not be implemented in fully by the City Improvement Board, and that the assets and liabilities including the suit schedule property of the City Improvement Board were passed on to the A.P. Housing Board. It is further submitted that out of the five mulgies, three mulgies were leased out to Hari Prasad Memorial Hospital and Mulgi No. 681 was leased out to one Sadam Agarwal and later on sold to him vide sale deed dated 5-5-1993. Mulgi No. 680 is vacant and under the control of the defendant. He denied that the Khokarwadi scheme was completely given up and on the other hand it is stated that most of the area under the Khokarwadi Scheme which could not be developed were given on lease either to original owners from whom the properties were acquired or other persons. That the original owner received compensation and handed over possession to the City Improvement Board and the original owner had never made any representation.

He denied that the 1st plaintiff being an old lady and had been requesting for restoration of possession. It is further averred that the mulgies are in habitable condition; and that they have received notice from the plaintiffs requesting to restore the suit schedule property. The defendant states that the plaintiff's entitled to retain the suit schedule property after giving up the Khokarwadi Scheme is denied and baseless; that the plaintiff's claim as legal heirs is not justified since the original owner received compensation and delivered possession as such the plaintiffs have no right to claim the suit property under any circumstances.

15. Issues settled by the trial Court.

- (i) Whether the defendant has given up the implementation of Khokarwadi Scheme as impracticable in 1985 as claimed by the plaintiff?
- (ii) Whether one of the mulgies bearing No. 681 which was acquired by the City Improvement Board from plaintiffs was leased out and then sold under registered sale deed, dated 5-5-1993 to Sadam Agarwal?
- (iii) Whether the three mulgies bearing No. 677 to 679 acquired from plaintiff were leased out to Hari Prasad Memorial Hospital by the defendant?
- (iv) Whether the plaintiffs have a cause of action for filing this suit?
- (v) Whether the value of the suit for the purpose of Court fee is not correct?
- (vi) Whether the plaintiff is entitled for reconveyance of the suit property from defendant?
- (vii) To what relief?

16. Oral and Documentary Evidence available on record.

P.W.1 Mohiuddin Ali Khan D.W.1: K. Mahendra Khan

Documents marked on behalf of the Plaintiffs

Ex.A-1: Notification issued by City Improvement Board.

Ex.A-2: Statement of the claimant seeking compensation.

Ex. A-3: Copy of judgment prepared by CBI Court, in suit No. 284/58F.

Ex.A-4: Letter from CBI Court, dated 19-7-49.

Ex.A-5: Letter, dated 19-10-58F addressed to Superintending Engineer for payment of compensation.

Ex.A-6: Letter, dated 26-9-1950.

Ex.A-7: Letter dated 22-11-58F from the office of Dy. Chairman of HMC To Superintending Engineer.

Ex.A-8: Letter, dated 30-8-50 from the office of Dy. Chairman of HMC to

Superintending Engineer.

Ex.A-9: Letter, dated 9-11-1358F from the office of Dy. Chairman of HMC to Superintending Engineer.

Ex.A-10: Letter, dated 8-9-50 addressed to Superintending Engineer by its Executive Engineer.

Ex.A-11: Letter, dated 30-8-50F from Superintending Engineer, CIB, Dated 11-9-1358F.

Ex.A-12: Letter from Director CIB to Superintending Engineer, CIB, Dated 11-9-11358 F.

Ex.A-13: Letter from Chief Superintending CIB to Vice Chairman.

Ex.A-14: Draft letter addressed to Mir Majlis, MCH, dated 23-2-50F.

Ex.A-15: Letter addressed to M. Sabith Ali Khan from Raja Tirimbak Rao, Chairman, MCH.

Ex. A-16: Letter to Vice Chairman, MCH, dated 2-5-58.

Ex.A-17: Intimation notice from Collector, MCH to pay property Tax.

Ex.A-18: Letter, dated 22-11-1358 F from the office of Vice Chairman MCH.

Ex. A-19: Letter for payment of compensation submitted for approval.

Ex.A-20: C.C. of bill of passed compensation prepared by HEH Nizam Government.

Ex.A-21: C.C. of plan.

Ex.A-22: C.C. of judgment of High Court of A.P. in W.P. No. 9574/89.

Ex.A-23: Certificate of Sale Deed executed by A.P.H.B. in respect of Mulgi No. 701 of Rikabgunj.

Ex.A-24: C.C. of plan.

Ex.A-25: Notice for issuance of certified copies of rental deeds.

Ex.A-26: Office copy of notice, dated 2-5-96 for issue of rental deeds.

Ex.A-27: C.C. of Judgment in O.S. No. 1563/89 on the file of X Assistant Judge.

Ex.A-28: Marriage Certificate of first plaintiff issued by State Wakf Board.

Ex.A-29: Maintenance allowance payment order No. S/472 issued by HEH Nizam Charitable Trust.

Ex.A-30: Statutory notice addressed to Chairman.

Ex.A-31: Postal receipt.

Ex.A-32: Acknowledgement.

17. Documents marked on behalf of the defendant

Ex.B-1: Statement prepared by CIB, dated 25-9-58F.

Ex.B-2: Refund of rental deposit to Mahmood Ali Khan.

Ex.B-3: Application to allot the garages on rental basis.

Ex.B-4: Application of Sudershan dated 21-8-59F to CIB.

Ex.B-5: Letter from executive Engineer to CIB.

Ex.B-6: Letter of Agarwal Siksha Samithy to executive Engineer CIB.

Ex.B-7: Letter from Arifuddin to the Chairman Hyderabad Housing Board.

Ex.B-8: Letter dated 25-5-62 addressed by Syed Ahmed Moinuddin to the Chairman, Housing Board to allot garages.

Ex.B-9: Letter dated 25-5-62 addressed by Syed Ahmed Moinuddin to The Asst. Estate Officer, Housing Board.

Ex.B-10: Proceedings, dated 20-11-65 addressed to Sedhmall Agarwal By the Housing Board.

Ex.B-11: Letter, dated 9-12-65 from Sedmal Agarwal.

Ex.B-12: Rental Deed.

Ex.B-13: Statement prepared by Housing Engineer

Ex.B-14: Letter dated 4-3-77 addressed to M.A. Rasheed by the A.P.H.B. for payment of rent.

Ex.B-15: Another letter, dated 7-6-77 for payment of rent.

Ex.B-16: Letter from B. Kishanlal, Managing Trustee of Hariprasad Memorial Hospital at Rikabgunj, dated 17-4-1979.

Ex.B-17: Plan

Ex.B-18: Letter, dated 1-5-1993 addressed to Sub-Registrar to register The garage No. 681 in the name of Sedmal Agarwal.

Ex.B-19: Letter from Sri M.S. Narayancharyulu, Advocate to The Chairman, Housing Board, dated 21-5-1993.

Ex.B-20: Letter from Bahdur Saigal Advocate to the Chairman H.B.

Ex.B-21: Copy of G.O.Ms. No. 620, dated 19-5-1975.

18. The findings recorded by the trial Court in nutshell:

The trial Court after referring to the respective pleadings of the parties and also

the evidence available on record, the oral evidence of P.W.1 and D.W.1 and also the documentary evidence Exs.A-1 to A-32 and Ex.B-1 to B-21 answered issue No. 1 at para 14 in favour of the plaintiffs and while answering issue No. 2 at para 15, it was held it is evident that one of the mulgies bearing No. 681 which was acquired by the City Improvement Board was leased out to Sadmal Agarwal and later the same was sold to him under registered sale deed, dated 5-5-1993. While answering issue No. 3 at para 16, it was held that as seen from the pleadings the defendant also had not disputed that the mulgies 677 to 679 acquired from the plaintiffs, were not leased out to Hari Prasad Memorial Hospital by the defendant. The counsel on record had not seriously argued issues Nos. 4 and 5 and the same was recorded at para 17.

19. Learned Judge recorded elaborate findings while answering issue No. 6 at paras 18 to 26 and came to the conclusion that the plaintiffs are not entitled to the reliefs prayed for and accordingly while answering issue No. 7, dismissed the suit. Hence, the present appeal.

20. In the light of the submissions made by the counsel on record, the points that arise for consideration in this appeal are:

(i) Whether the findings recorded by the trial Court negating the reliefs prayed for by the appellants/plaintiffs to be confirmed or to be set aside in the facts and circumstances of the case?

(ii) If so, to what relief, the parties would be entitled to?

21. Point No. 1

As already aforesaid, the vacate stay petition filed by Respondents 2 and 3 - Rajesh Kumar Agarwal, and Ramanlal Agarwal in C.C.C.A.M.P. No. 842 of 2008 had been closed.

22. The respective pleadings of the parties, the issues settled, the evidence available on record and the findings recorded by the trial Court in brief already had been referred to above.

23. P.W.1 the 2nd plaintiff deposed in detail relating to the averments made in the plaint and also further deposed relating to Ex.A-1 to A-32 as well. As against this evidence, D.W.1-Assistant Engineer in A. P. Housing Board was examined and Exs.B-1 to B-21 had been marked. Though several documents had been relied upon, several of the facts appear to be not in serious controversy between the parties. The specific stand taken by the appellants-plaintiffs is that once for a particular purpose or for implementation of a particular scheme the property had been acquired and when the same could not be carried out, the procedure under the Board Standing Order to be followed and without following the procedure the further steps cannot be taken and in the alternative it is stated that the property to be restored to the original owners. The stand taken by the 1st defendant is that when once the property was acquired and the compensation was paid, since the property vested in the 1st defendant, the 1st defendant is entitled to deal

with such property in whatsoever manner, the 1st defendant likes and no such restrictions, as such, can be imposed. Even otherwise, after the property had been duly acquired, the plaintiffs cannot claim any right whatsoever since due compensation had been paid. Whether the property so acquired had been utilized for the purpose for which it had been acquired or not, it is immaterial.

24. D.W.1 deposed in detail relating to the averments made in the written statement and also about the statement, applications, letters, the plan and the other correspondence inclusive of the copy of G.O.Ms. No. 620. Exs.B-1 to B-21. P.W.1 in detail deposed about the averments made in the plaint and also deposed about the notification issued by the City Improvement Board, Ex.A-1, the statements to series of letters, to certified copy of the plan, the certified copy of the judgment in writ petition No. 95574/89, C.C. No. of judgment in O.S. No. 1563 of 1989, the marriage certificate and the maintenance allowance etc., notice, postal receipts and acknowledgement as well, marked as Ex.A-1 to A-32. This is all correspondence, addressing letters and nodoubt the orders made in Writ Petition No. 9574 of 1989-EX.A-22 and certified copy of judgment in O.S. No. 1563/89, Ex.A-27 had been relied upon.

25. It is stated that certain findings have been recorded in O.S. No. 1563 of 1989 on the file of X Additional Judge wherein some relief in similar fact situation had been granted. It is not clear whether the A. P. Housing Board carried the matter by way of an appeal or not. Be that as it may, the oral and documentary evidence, in fact, had been appreciated by the trial Court and findings in detail had been recorded. Whether Standing Order No. 90(32) of Board of Revenue be invoked in the present case at all also is a disputed question. However, this Court is not inclined to express any opinion relating to the said aspect. Strong reliance was placed on Syed Akbar's case cited supra, wherein the Apex Court referred to relevant portion of Standing Order No. 90(32) of Board of Revenue and also Section 54-A of Andhra Pradesh (Telangana Area) Land Revenue Act, 1317F and the Apex Court in the case of Land acquisition and requisition and the consequences thereof held that the land acquired vests in the Government absolutely free from all encumbrances, the land acquired for a public purpose could be utilized for any other public purpose, and the acquired land which is vested in the Government free from all encumbrances cannot be reassigned or reconveyed to the original owner merely on the basis of an executive order. The Apex Court in fact relied upon the following judgments:

1. Northern Indian Glass Industries Vs. Jaswant Singh and Others,
2. State of Kerala and others Vs. M. Bhaskaran Pillai and another,
3. C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others,
4. Chandragauda Ramgonda Patil and Another Vs. State of Maharashtra and Others, .
5. Gulam Mustafa and Others Vs. The State of Maharashtra and Others,

26. In the light of the aforesaid legal position, there cannot be any doubt whatsoever that A.P. Housing Board is at liberty to deal with these properties in whatever manner the A.P. Housing Board likes. In the light of the same, the other questions, which had been argued by the counsel need not be dealt with in elaboration.

27. In the result, the findings recorded by the trial Court are hereby confirmed. It is needless to say, that the interim order made by this Court would automatically come to end.

28. Issue No. 2

In the result, the C.C.C.A. No. 158 of 1998 being devoid of merits the same shall stand dismissed. But, however, in the peculiar facts and circumstances, let the parties bear their own costs.