

(2004) 02 AP CK 0033
In the Andhra Pradesh High Court
Case No : Writ Petition No. 5995 of 2001

K. Gopal Reddy

APPELLANT

Vs

Secretary and Others

RESPONDENT

Date of Decision : 19-02-2004

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Specific Relief Act, 1963 — Section 39
Transfer of Property Act, 1882 — Section 54

Citation : (2004) 2 ALD 317 : (2004) 2 ALT 538

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : V. Venkata Ramaiah, for the Appellant; Ch. Dhananjaya, Advocate for Respondent No. 1 and Govt. Pleader for Respondent Nos. 4 and 5, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioner seeks a writ of mandamus restraining the respondents from alienating, transferring and conveying plot Nos. 15A and 15B of Sy.Nos.125 and 126 of Yousufguda Village, Golconda Mandal, respectively, registered in the names of Respondents 2 and 3 admeasuring 300 sq.yards each, and for other ancillary reliefs.

2. The petitioner was in employment of the Government of Andhra Pradesh. The 1st respondent is a House Building Society, constituted for the benefit of Members of Parliament and Legislative Assembly hailing from the State. In April 1994, the Government of Andhra Pradesh issued orders transferring an extent of 77 Acres 35 guntas in Sy.Nos. 125 and 126 of Yousufguda Village, at a nominal cost in favour of the 1st respondent. The land was divided into plots after providing roads and open places. Layout was approved by the competent authority.

3. Petitioner was enrolled as one of the members of the society. He was allotted

plot No. 15 and a sale deed was executed in his favour on 31-10-1994. He was delivered possession of the said plot. He intended to construct a house on the plot and requested the 1st respondent to issue a "No Objection Certificate", so as to secure permission for construction from the Municipal Corporation of Hyderabad. Such a certificate is said to have been issued on 5-3-2001. He, however, noticed that his plot number was mentioned as 15B, whereas the one mentioned in the sale deed is 15.

4. On verification from the office of the 1st respondent, he came to know that the 1st respondent had executed a Deed of Cancellation on 31-12-1997, cancelling the sale deed executed in his favour on 31-10-1994 and the entire plot No. 15 was conveyed to the 2nd respondent, through a document dated 9-10-2000 for a consideration of Rs. 5000/-. Within 2 years, the 1st respondent cancelled the sale deed dated 9-10-1998 through a Deed of Cancellation dated 19-10-2000. Thereafter, plot No. 5 was divided into two parts and through sale deed dated 18-10-2001, plot No. 15A was transferred in favour of the 2nd respondent; and through another sale deed, plot No. 15B was transferred in favour of the petitioner.

5. Petitioner contends that the 1st respondent is a "State" within the meaning of Article 12 of the Constitution of India since the entire land was made over to it by the Government on a nominal consideration and that its members, with few exceptions, are sitting and former legislators. He contends that the whole action of the 1st respondent smacks of arbitrariness and suffers from illegalities. It is his case that at no point of time, he was put on notice and the present state of affairs is the result of unilateral decisions taken from time to time.

6. The 1st respondent filed a counter-affidavit. It is stated that the petitioner was not eligible to be admitted as member. The Deputy Registrar of Co-operative Societies is said to have issued direction to it to cancel the transfer in favour of the members who are not former or present legislators; with a threat of initiation of supersession of the Committee. It claims that it is not a "State" within the meaning of Article 12 of the Constitution. It contends that the plots were to be allotted only to the elected representatives and not to others; in terms of G.O.Ms.No.694 dated 5-12-1995. Cancellation of sale deed and subsequent actions are sought to be justified on the ground that the petitioner was not eligible to be admitted to be the member of the society. Reference is made to the proceedings dated 22-1-2001 issued by the Deputy Registrar of Co-operative Societies directing the 1st respondent to cancel the 8 allotments made to the ineligible members.

7. Notices were ordered to all the respondents while admitting the writ petition, By the time the writ petition came up for hearing, notices sent to Respondents 2 and 3 were returned unserved. Therefore, this Court has directed service of notice once again through orders dated 29-10-2002. In the notices sent to the Respondents 2 and 3 an endorsement was made to the effect that they have not claimed the same. Hence, this Court treats them as having been served with the

notices.

8. Respondents 4 and 5 are Sub-Registrar, Banjara Hills and the Joint Sub-Registrar, Registration and Stamps, District Registrar's office, Hyderabad respectively. On their behalf, a counter affidavit is filed stating that with a view to discourage unilateral cancellation of sale deeds the Government has issued instructions in Memo dated 12-8-1994 prohibiting such cancellations, in the absence of consent of parties to the documents. It is stated that basing on the said Memo, they issued Memo dated 16-9-1994 and that it was challenged in W.P. No. 18313/94. Respondents 4 and 5 contend that since this Court has suspended this Memo through interim order dated 20-10-1994; there is no illegality in cancellation of the sale deed in favour of the petitioner.

9. Sri V. Venkataramanaiah, learned Senior Counsel appearing for the petitioner, submits that the Government had allotted and conveyed the entire land of Ac.77.35 guntas in favour of the 1st respondent at a nominal cost. He asserts that its members comprised mostly of sitting and former legislators and in that view of the matter it is "State" within the meaning of Article 12 of the Constitution. He relies upon several judgments rendered by the Supreme Court, in support of his contention. He submits that the petitioner had rendered valuable service to the 1st respondent in the matter of obtaining layout and attending to other requirements and in that view of the matter, he was admitted as member in terms of G.O. Ms. No. 694 dated 5-12-1995. It is his case that once the petitioner was conveyed and transferred plot No. 15, on payment of consideration and through a valid sale deed, the 1st respondent did not have the competence, power or jurisdiction to cancel it unilaterally. According to him, such a cancellation is of no consequence in law.

10. Shri Challa Dhananjaya, learned Counsel for the 1st respondent, raises an objection as to the maintainability of the writ petition. According to him, the 1st respondent is not a "State" and the relief claimed in this writ petition cannot be granted under Article 226 of the Constitution of India. He submits that there is no illegality in the various steps taken by the 1st respondent and that if the petitioner feels aggrieved; he has to file a suit for necessary relief.

11. Respondents 2 and 3 have chosen not to claim notices when they were sent and they have not appeared either in person or through an Advocate.

12. Learned Government Pleader for Respondents 4 and 5 submits that it is for the 1ST respondent to justify the various acts and the registering authority cannot be made answerable to any transactions that are undertaken by the parties to the documents,

13. Before dealing with the matter on merits, the objection raised by the 1st respondent as to maintainability of the writ petition needs to be dealt with. The 1st respondent is a Co-operative House Building Society, registered under the provisions of the A.P. Co-operative Societies Act. If it is an ordinary society, comprising of ordinary citizens, has not derived any benefits from the State and

is not subject to regulation by the Government, it cannot be treated, as "State" and the writ petition cannot be maintained against it.

14. The question as to whether a particular entity can be treated as a "State" has been the subject-matter of adjudication by the Supreme Court in several cases. The gist of the judgments therein is to the effect that where an agency receives substantial aid and finance from the Government and where there exists deep and pervasive control of the Government over the affairs of such agency, it can be treated as a "State" within the meaning of Article 12 of the Constitution. See for example, *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, . Reference to other cases and subsidiary issues is avoided to save this judgment from becoming prolix. It needs to be seen as to whether the 1st respondent answers the description of the "State" in the light of the parameters prescribed by the Supreme Court.

15. It is a matter of record that the Government issued G.O. Ms. No. 1077 Revenue (Assignment-III) Department dated 29-11-1991 allotting an extent of Ac.77-14 guntas in Sy.Nos.125 and 126 of Yousufguda Village, Golconda Mandal, for housing purpose of the then sitting members of legislative Assembly and members of Parliament, subject to certain conditions. The G.O., stipulated conditions of allotment and prohibited alienation of the plots allotted out of the land within 15 years. The land so allotted was divided into plots and layout was approved.

16. The 1st respondent felt it necessary to admit members who are not legislators subject to their not exceeding 10% of the membership and addressed letter dated 4-8-1994 to the Government. In response to this, the Government issued G.O.Ms.No.694 dated 5-12-1995, relaxing the conditions of membership. These measures disclose that not only the 1st respondent secured vast extent of Ac.77.14 guntas of land, in a prominent locality of the city, but also its working was subjected to restrictions and regulations by the Government from time to time. Further, the membership of the society is restricted to legislators, sitting or former, except for a small fraction. This Court, therefore, finds that these factors are sufficient to bring the 1st respondent within the definition of "State" under Article 12 of the Constitution of India.

17. The petitioner claims that he has rendered useful service to the 1st respondent during the formative stage in the matter of developing the land, division of the same into plots, securing layout, etc., and in recognition of his services, he was admitted as member of the 1st respondent Society. The fact that the petitioner was admitted as member and that his membership subsists even as on today, is not denied by the 1st respondent. Petitioner was allotted plot No. 15 admeasuring 600 sq. yards through sale deed dated 31-10-1994, for a sale consideration of Rs. 1,12,000/-. It was only when he was issued a No Objection Certificate dated 5-3-2001 in respect of plot No. 15B that he verified and found to his utter surprise that several transactions referred to above, such as, cancellation of sale deed, division of plots, etc., have taken place. Petitioner

contends that none "of the transactions undertaken by the 1st respondent in respect of Plot No. 15 subsequent to the execution of the sale deed in his favour can have any effect on his title and right to enjoy the property. Learned Counsel for the 1st respondent submits that the relief claimed by the petitioner is in the form of a declaration of title and the same cannot constitute the subject-matter of a writ petition.

18. The reluctance to entertain writ petitions, which involve determination of questions of fact, is more of convenience than the rule of thumb. Article 226 of the Constitution empowers the High Courts to entertain writs for enforcement of rights conferred by Part III of the Constitution and for "any other purpose". It is only where the determination of facts involves recording and appreciation of evidence that the parties would be required to choose the remedy of suit. Where the questions can be determined on the basis of material available on record, the refusal to entertain the writ petition was treated as an act of shirking of responsibility by the Courts. In *L.G. Chaudhari Vs. Secretary, L.S.G. Department, Government of Bihar and Others*, , *Chinna Reddy, J.*, speaking of the Bench, held as under:

"We are also unable to find any force in the submission of learned Attorney General that the High Court was quite right in refusing to decide the question whether the appellant has been confirmed or whether he continued as probation till 15-9-1967 on the ground that it was disputed question of fact...to refuse to decide the question, the entire material was before the Court.... it is not suggested that there was any other material ...and to direct the appellant to go to the Civil Court is only to shirk our responsibility."

19. In this regard, it needs to be noted that the petitioner does not seek a declaration of title as such. The purport of the relief claimed by him is that he be galvanized from the effect of the various steps that are taken by the 1st respondent subsequent to the sale in his favour on 31-10-1994. The 1st ground pleaded by him is that in none of the said transactions he was made a party and that those steps are violative of principles of natural justice. The 2nd ground is that it is not competent for the 1st respondent to cancel the sale deed in favour of the petitioner unilaterally.

20. Application of principles of natural justice cannot be restricted to a particular set of instances. In a way, they are all pervasive and have their flavour and effect in every sphere of law. If one examines the provisions of enactments on civil, criminal and administrative law, it emerges that observance of principles of natural justice constitutes the sheet anchor of procedure. In this regard, it is relevant to refer to the understanding of these principles by the administrative agencies, in the matter of registration of documents also. In the counter-affidavit filed by Respondents 4 and 5, the Memo dated 12-8-1994 issued by the Government in relation to the procedure to be followed, in the matter of cancellation of documents is extracted extensively. After indicating the various measures, the memo proceeds as under: -

"The impugned stipulations are just reasonable and good in law, as they seek to protect a claimant (purchaser) from unlawful harassment and avoidable litigation for no fault of him. These instructions aim at meeting out the principles of natural justice and provide a say to purchaser against unilateral deprivation of property by execution of cancellation deed by the very same vendor who executed the original sale deed after receiving agreed consideration and voluntarily divesting himself of all right, title and interest in the property."

If this is the prominence ascribed to principles of natural justice by an administrative agency, which, more often than not, is accused of violating it; the obligation of the Courts to enforce them in such matters, hardly needs any emphasis. On a close scrutiny, one would find that the principles of natural justice pass through all forms of working of law, as does a thread in a garland. More often, they manifest themselves in their operations, than appear in the form of an enacted provision, pure and simple.

21. If the cancellation of sale deed is by a private individual, it hardly needs any emphasis that the necessary forum to adjudicate upon it is a Civil Court. However, where such action is resorted to by a State or its agency, the exercise partakes an administrative character. An administrative or state agency is not accorded the same latitude as a private individual in its functioning., Its acts and omissions are required to be in accordance with law, reasonable and not arbitrary.

22. The 1st respondent was dealing with nothing but public largesse. The very fact that the Government have stipulated the parameters of its functioning, is sufficient to circumscribe its activities with contours of reasonableness and legality. If the 1st respondent did nothing more than to allot the plot to the petitioner, it was always open to it to cancel the same by issuing a show-cause notice indicating the reasons therefore, and after considering the explanation that may have been offered in response to such notice. However, if the plot is conveyed through a sale deed in accordance with law, the question of the 1st respondent setting at naught such a transaction does not arise. The law is settled beyond any pale of doubt in this regard. Way back in 1930, a full bench of the Allahabad High Court held in *Dip Narain Singh v Nageswar Prasad*, AIR 1940 All. 1, held that once a document transferring the immovable property has been registered, the transaction passes out of the domain of mere contract and into the one of conveyance, and that once the property is conveyed under a document, it continues to be governed by the provisions of the Transfer of Property Act. These observations were referred with approval by the Supreme Court in *State of Kerala Vs. Cochin Chemical Refineries Ltd.*, . Recently this Court in *Badugu Venkata Durga Rao and another Vs. Surneni Lakshmi*, , had an occasion to apply the same principle.

23. It hardly needs any emphasis that wherever a transaction of sale, mortgage or other transfer takes place in accordance with law, it can be annulled only with the participation of parties to such transaction. If one of the parties does not co-operate for such annulment or cancellation, the only course open to the party

intending such cancellation is to have recourse to an action u/s 39 of the Specific Relief Act. If unilateral cancellation of sale deeds or other instruments is permitted, there is every danger of a party to a transaction becoming an ultimate Judge in his own cause. In such cases, the sales or other transactions brought about in accordance with law, lose their significance and have to depend for their efficacy or enforceability on the mercy of the persons who transferred the rights under the documents.

24. There is another reason why such a course of action is impermissible in law. Sale deeds invariably result in delivery of possession of the subject property. Even where the vendor has executed a Deed of Cancellation unilaterally, it hardly tells upon the possession, which stood delivered to the purchaser. To recover possession, one has invariably, to have recourse to suit, once again, under the provisions of the Specific Relief Act. No individual or agency is vested with the power to resume to himself, the possession of a property conveyed by him or it under a sale deed. Nothing is said about the consideration received from the petitioner. It is not stated as to whether it was forfeited or refunded.

25. Reverting to the facts of the case, after executing the sale deed on 31-10-1994 in favour of the petitioner for a consideration of Rs. 1,11,000/-, the 1st respondent has chosen to cancel it through a deed of cancellation dated 31-12-1997. The petitioner was not put on notice, much less; he was informed of the reasons for such cancellation. The 1st respondent felt that with the execution of Deed of cancellation, plot No. 15 has reverted to it. Not a word is said in any correspondence or the documents, much less in the counter-affidavit as to whether it has retained possession of the plot from the petitioner, if so, the manner in which. The respondent proceeded to alienate plot No. 15 in favour of the 2nd respondent through a sale deed dated 19-10-1998 for a consideration of Rs. 5,000/-. Even this was short-lived. Within 2 years, it executed another deed of cancellation on 18-10-2000 canceling the sale deed dated 19-10-1998 in favour of the 2nd respondent. Reasons for this are not known. Thereafter the 1st respondent had divided the plot No. 15 into two and assigned numbers as 15A and 15B. Plot No. 15A was conveyed to the 2nd respondent through a sale deed dated 18-10-2000. The play enacted by the 1st respondent reached its climax when it executed a sale deed in favour of the 2nd respondent without his knowledge.

26. These facts are borne out by record. The concerned documents, which are registered, bear testimony for the respective transactions. One hardly needs any evidence to decide the matter. This Court has only to examine the legal effect and implications of the said acts and omissions, and nothing more. The ratio laid down by the Supreme Court in L.G. Chaudari case (supra) squarely applies to the facts of this case.

27. The whole exercise undertaken by the 1st respondent smacks of arbitrariness, at its height. The 1st respondent appears to have taken the view that it has no necessity to follow the principles of law or to approach the Courts.

It assumed to itself the power of interpreter, adjudicator and the ultimate enjoyer. Such a course of action is totally impermissible in a country governed by Rule of Law. One hardly needs the support of any decided cases to declare that the various steps taken by the 1st respondent in relation to plot No. 15 subsequent to the execution of sale deed in favour of petitioner on 31-10-1994 are illegal and inoperative in law.

28, The writ petition is accordingly allowed and the respondents herein are directed not to interfere with the possession and enjoyment of Plot No. 15 by the petitioner, in any manner. No costs.