

(2010) 02 AP CK 0069
In the Andhra Pradesh High Court
Case No : Writ Petition No. 1863 of 2008

K. Laxmaiah

APPELLANT

Vs

Executive Engineer (Housing), Western Division, A.P. Housing
Board and Another

RESPONDENT

Date of Decision : 03-02-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 2 ALD 874 : (2010) 3 ALT 651

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

Bench : Single Bench

Advocate : A. Ramakrishna, for the Appellant; D. Ranganatha Kumar, for the Respondent

Judgement

P.S. Narayana, J.—This Court issued rule nisi on 9-4-2008.

2. Counter affidavit had been filed on behalf of respondents and reply affidavit also had been filed by the petitioner.

3. This writ petition is filed for a Writ of Mandamus directing the 1st respondent to register the Sale Deed in respect of house No. 1, Housing Board Colony, Rajampet, Sanga Reddy, Medak District in favour of the petitioner and pass such other suitable orders.

4. Sri A. Ramakrishna, the learned Counsel representing the writ petitioner had taken this Court through the contents of the affidavit filed in support of the Writ Petition, the stand taken in the counter affidavit and also the averments made in the reply affidavit and would maintain that the respondents are not calculating the amount properly and further the calculation of interest also is not in accordance with law. The learned Counsel placed reliance on certain decisions to substantiate his submissions.

5. Per contra, Sri D. Ranganath Kumar, the learned Counsel representing the respondents would maintain that the Writ Petition itself is not maintainable for

the reason that this is a matter concerned with the enforcement of contractual obligation. The Counsel also pointed out to the relevant portions of the counter affidavit and would maintain that the Andhra Pradesh Housing Board as such was not shown as a party and in the absence of necessary party, the Writ Petition is liable to be dismissed. While further elaborating his submissions, the learned Counsel also would point out that as per the Rules, the amount had been calculated in proper perspective and hence, there is no need to reconsider the same and if the petitioner is willing to pay the total amount of demand, the A.P. Housing Board is prepared to register the sale deed. The learned Counsel also would maintain that if for any reason, the writ petitioner is interested in disputing the amount, this being a factual controversy, the same cannot be gone into in the present Writ Petition and the remedy of the petitioner is to approach a competent Civil Court. The learned Counsel also relied on several decisions in this regard to substantiate his submissions.

6. Heard the Counsel.

7. It is the case of the petitioner that the petitioner had been allotted one house on hire purchase No. 1-A, Housing Board Colony, Sangareddy and given possession on 9-2-1977 on condition of payment of 12 annual installments of Rs. 5,899/- towards each installment which comes to Rs. 70,680/- by the time of expiry of installments on 8-2-1989 i.e., 12 years from the date of taking possession of the house.

8. It is also stated that the petitioner had paid the amounts towards installments as follows:

Rs. 10,040/- at the time of taking possession on 9-2-77.

Rs. 46,230 on different dates, total Rs. 56,270/-.

9. It is also averred in para 3 of the affidavit filed in support of the Writ Petition that during the said period, the 1st respondent filed a case No. 284/CA3/84 before the competent authority for nonpayment of some installments. It is stated that due to the work pressure, the petitioner could not remember to pay the installments. Immediately, after receiving the notice from the competent authority, the petitioner had paid all the arrears including the penal interest and also filed an application before the said competent authority for intimation of balance amount due to respondent-Housing Board to pay the same at one time. On the said application, the competent authority addressed a letter to the Regional Housing Engineer, Nizamabad, on 26-7-85 to intimate the further amount due by this petitioner on or before 20-8-85. From 20-8-85 to 9-10-85 the Regional Housing Engineer had not deputed any staff for giving evidence. However, the case is dismissed at the 1st respondent responsibility.

10. It is further averred in para 4 of the affidavit filed in support of the Writ Petition that no intimation is given by the respondents from 26-7-85 i.e., from the date of issuing the letter dt.26-7-85 by the competent authority to intimate

the due amounts payable by the petitioner. The petitioner had repeatedly requested them to intimate the amounts due to enable him to pay the entire due amount at one time, but the respondents had given a notice to the petitioner dt.13-12-1996 demanding him to pay a sum of Rs. 24,450/-. The installments period had been expire on 8-2-1989 itself. After receiving the said notice, the petitioner had approached the 1st respondent along with demand draft for the said amount to pay the same and requested for registration of the house but the same was refused to receive and register the house on the ground that no final cost price is fixed.

11. It is also the specific case of the writ petitioner that the writ petitioner had not committed any default from the date of the order of the competent authority i.e., 17-10-1985. Further it is stated that it appears after a long period though the final payment installment period is expire on 8-2-1989, the cost price is revised and final cost is fixed at Rs. 57,700/- as against tentative cost price of Rs. 50,200/-. The said fact was not intimate to the petitioner and fixed the revised installments at Rs. 7,275/- instead of Rs. 5,899/-and charged thereon interest, penal interest and other charges from the date of giving possession on 9-2-1977. It is also the case of the petitioner that the petitioner made different representations and finally the respondents are claiming Rs. 1,71,904/-, Again the petitioner had given representations for correct accounting and the dates of representations also had been given. Certain particulars also had been furnished in para 4 of the affidavit filed in support of the Writ Petition. In such circumstances, the relief as specified above had been prayed for.

12. In the counter affidavit filed by the respondents, strong reliance was placed on Shri Ranjeet Mal Vs. General Manager, Northern Railway, Baroda House, New Delhi and Another, ; Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, ; and M.V.B. Sarma and others Vs. Andhra Pradesh Housing Board, Specific stand was taken that the Writ Petition itself is not maintainable since the relationship between the A.P. Housing Board and the petitioner is governed by a legally binding contract entered into between them. It is also stated that the petitioner was allotted house No. 1/A, at Prashanthnagar Colony, Sangareddy, Medak District on Hire Purchase basis vide allotment letter dt.4-1-77 at a tentative cost of Rs. 50,200/-. The petitioner entered into the Hire Purchase Agreement, paid the down payment (Rs. 10,040/- i.e., 20%) and took possession of the house on 9-2-77. The petitioner had to pay the balance of the tentative cost along with interest and incidental charges in 12 equated annual installments of Rs. 5,889/- each. The period of installments ended by 8-2-89. However, the petitioner failed to pay the annual installments regularly and in fact out of the total amount of installments of Rs. 70,680/- (Rs. 5,890 x 12) to be paid by 8-2-89, the petitioner had paid only Rs. 41,230/-. Subsequently, the petitioner paid Rs. 5,000/-on 5-3-93. Thereafter, he did not pay any amount. Therefore, even as on today, the petitioner had not paid the total amount of installments of Rs. 70,680/- and had paid only Rs. 46,230/- and has to pay Rs. 24,450/-. This fact was admitted by the petitioner at paragraph No. 2 of his

affidavit. Further, as per Clause -18 of the Agreement, delay in payment of the annual installments will attract penal interest at one and a half times the normal rate for the period of delay. Therefore, up to the date of payment of the installments i.e., 8-2-89 the petitioner has to pay penal interest on the outstanding installments from the due dates till 8-2-89. From 8-2-89 the petitioner has to pay the total dues along with normal interest till the date of payment. Further, the petitioner has to pay the incidental charges, Bank Guarantee charges and tax on interest.

13. Further it is averred that apart from the above, the petitioner has to pay difference between the tentative cost and the final cost. It is also stated that the final cost was fixed @ Rs. 57,700/- which was intimated to the petitioner on 27-9-93. It is also stated that as per Clause 13 of the Agreement, "the installments ultimately fixed by the owner after the sale price has been finally determined by the Chairman shall be deemed to have become payable from the date of this indenture." Therefore, after fixation of the final cost, the annual installments were revised to Rs. 7,275/- per annum. In respect of installments paid by the petitioner at the old rate, the petitioner has to pay the difference along with interest from the due date. In respect of installments not paid by the petitioner, he has to pay the same at the revised rate along with interest.

14. It is also stated that vide letter dt.21-2-2005 the petitioner was informed that he is due to pay an amount of Rs. 1,71,908/- as on 8-2-2005 and the calculation for the same was also mentioned therein. In response to the same, the petitioner paid only Rs. 73,890/- vide DD dated 11-9-2006. After deducting the same, the balance due from the petitioner as on 11-9-2006 is Rs. 1,26,023/-. On payment of the same with subsequent interest upto the date of payment only the petitioner is entitled for registration.

15. It is also averred that MVB Sharma's case (3rd supra) the period of 2 years prescribed by Regulation 23 for fixation of final cost is only directory and not mandatory. The delay in fixation of the final cost was due to reasons beyond the control of the A.P. Housing Board due to delay in finalization of all the bills and amounts payable to various bodies such as Municipality, APSEB, Water Works etc.

16. Further specific stand had been taken that the amount of Rs. 24,450/- is only the principal of the unpaid annual installments on the tentative cost. Therefore, the claim of the petitioner that the respondents ought to have registered the house on receipt of the same is not correct. The petitioner has to pay penal interest on the same till 8-2-89 and normal interest thereafter, he has to pay the difference between the tentative and final costs with interest and other charges such as incidental charges, bank guarantee charges, tax on interest etc., to get registration.

17. Reply affidavit had been filed wherein V. Satyanarayana and Others Vs. Executive Engineer (Housing), A.P. Housing Board and Others, had been referred to. It is averred that the action of the respondent in fixing the final cost price and

intimation thereof given on 27-9-93 i.e., after almost 16 years from the date of delivery of possession and five years after the expiry of the completion of installment without obtaining the permission from the Government as required under the Regulation No. 23(3). Even assuming that the respondent is entitled for recovery of the difference of cost price of Rs. 75,000/- as per the agreement, the respondent is entitled to recover only difference amount of Rs. 7,500/-. But the respondent is illegally claiming interest, penal interest, taxes, incidental charges and BGC on FC etc., without any such stipulation under the agreement or under the regulations.

18. Further it is stated that the petitioner is not seeking any relief on disputed facts. It is also averred that the admitted facts are as follows:

(1) The petitioner was allotted 1/A house in Prasanth Nagar Colony, Sanga Reddy by a letter dt.4-1-77 at the tentative cost of Rs. 50,200/-.

(2) 20% down payment is made to take the possession of the house of Rs. 10,040/- on 9-2-77.

(3) The balance amount is to be paid in twelve equated installments which includes interest and incidental charges of Rs. 5,889/-per annum, the total Rs. 70,680/-.

(4) The admitted amount paid Rs. 46,230/- plus Rs. 10,040/-, total Rs. 56,270/-.

(5) The balance due as on 31-10-1996 is Rs. 24,450/-.

(6) A sum of Rs. 73,890/- through D.D. dt.11-9-2006 is paid.

(7) As per para 10 of the counter affidavit due amount is Rs. 24,450/-as on 31-10-1996 towards annual installments.

19. It is also stated that the petitioner is liable for payment of Rs. 24,450/- plus 10% normal lint and Rs. 7,500/- towards difference of tentative and final cost price only. The petitioner already paid Rs. 73,890/-on 11-9-2006. The normal interest is 10% on Rs. 24,450/- from 31-10-1996 to 31-10-2008 i.e., for 12 years is Rs. 29,340/- and a total sum of Rs. 57,790/-.

20. It is also further stated that the respondent is not entitled to fix the notional revised installment of Rs. 7,275/- from 1977 and claim interest, penal interest, incidental charges, tax on interest etc., on difference of final cost price of Rs. 7,500/-. The claims of the respondent are inconsistent and apparently incorrect.

21. Further specific stand had been taken that the calculations also are not correct. It is stated that the competent authority issued a letter on 26-7-85 to intimate the further amounts due by the petitioner to enable to the petitioner to pay the same, which is evident from the order dated 17-10-1985. Inspite of the said order, the respondent never intimated any amounts due till 31-10-1996. There is no default of the petitioner for payment of the any amount due to the respondent. The petitioner could not pay the same because of the fact that the

respondent did not intimate the entire due amount since 1985 payable by the petitioner.

22. It is also stated that there is no provision under the Act, Regulation or under the agreement to charge incidental charges, bank guarantee charges, tax on interest etc.

23. These are the respective stands taken by the writ petitioner and the respondents in the affidavit filed in support of the Writ Petition, in the counter affidavit and the reply affidavit as well.

24. Strong reliance was placed on Ranjeet Mal's case (referred 1 supra) wherein the Apex Court at paras 6 and 7 observed as hereunder:

It cannot be disputed that the appellant was a servant of the Union. It is equally indisputable that any order of removal is removal from service of the Union. The appellant challenged that order. Any order which can be passed by any Court would have to be enforced against the Union. The General Manager or any other Authority acting in the Railway Administration is as much a servant of the Union as the appellant was in the present case.

The Union of India represents the Railway Administration through different servants. These servants all represent the Union in regard to activities whether in the matter of appointment or in the matter of removal. It cannot be denied that any order which will be passed on an application under Article 226 which will have the effect of setting aside the removal will fasten liability on the Union of India, and not on any servant of the Union. Therefore, from all points of view, the Union of India was rightly held by the High Court to be a necessary party. The pt was rightly rejected by the High Court.

25. It is true that A.P. Housing Board as such is not shown as a party though the Executive Engineer (Housing), Western Division, A.P. Housing Board and the Vice Chairman, A.P. Housing Board, Gruhakalpa, Hyderabad had been shown as parties to the present Writ Petition. Further reliance was placed on the order made in W.P. No. 29366/97 dt.30-2005 wherein the learned Judge of this Court observed as hereunder:

Whether the cost of the subject quarter is Rs. 28,500/- or Rs. 38,800/-, and whether the petitioner is liable to pay interest on the difference amount between final cost and tentative cost of the quarter, and whether he is liable to pay penal interest, incidental charges and tax on interest, are all disputed questions of fact, which cannot be gone into by this Court under Article 226 of the Constitution of India, and the remedy of the petitioner, if any, is to approach the competent civil Court and get his claims adjudicated.

In that view of the matter, the Writ Petition has no merit and the same is accordingly dismissed. No costs.

26. Strong reliance also was placed on the decision of this Court in W.P. No.

15818/2002 dt.21-11-2007 wherein the similar view was expressed. Further reliance was placed on the order made by this Court in W.P. No. 8923/1992 dt.20-6-97 wherein it was observed as hereunder:

The instant Writ Petition is squarely covered by a decision of the Apex Court in Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, In such view of the matter, the relief as prayed for declaring the impugned demand of payment of revised cost made by the first respondent in pursuance of an alleged revision of the cost price by the second respondent cannot be granted. It is stated in categorical terms that it has become just and necessary for the Housing Board to revise the cost and arrive at a final decision in view of the termination of the Land Acquisition Proceedings subsequent to fixing of the preliminary costs. Even otherwise the relationship between the petitioner and the respondent - Housing Board is purely governed by the agreement entered by and between the parties as held by the Apex Court. This Court in exercise of its judicial review jurisdiction cannot issue a writ enforcing the terms of contract which determines the right and obligation for the parties. The Apex Court observed:

In view of the authoritative judicial pronouncement of this Court in the series of cases dealing with the scope of interference of a High Court while exercising its writ jurisdiction under Article 226 of the Constitution of India in cases of nonstatutory concluded contracts like the one in hand, we are constrained to hold that the High Court in the present case has gone wrong in its finding that there is arbitrariness and unreasonableness on the part of the appellants herein in increasing the cost of the houses/flats and the rate of monthly instalments and giving directions in the Writ Petitions as prayed for.

27. In the light of the aforesaid legal position, since the disputed questions of fact relating to quantum are being raised in the present Writ Petition, the said questions cannot be effectively dealt with in a Writ Petition of this nature filed under Article 226 of the Constitution of India. However, Sri Ramakrishna placed strong reliance on the decision of this Court in S. Muddu Krishna's case (referred 4 supra) wherein the learned Judge of this Court at par 11 observed as hereunder:

Much stress is laid upon the words "ex post facto", used in the impugned notices. On a close examination thereof, it becomes evident that the expression superfluous. Once the Government is conferred with the power to extend the time, to determine the final sale price, beyond two years, and when there does not exist any ceiling on that, the petitioner cannot raise any objection. At any rate, the restriction placed through Regulation 23(3), is only for internal administration and control, and it does not have any bearing on the rights and obligations of the allottees of houses, on the one hand, and the A.P. Housing Board on the other hand. This much, however, can be said that, the Housing Board cannot penalize the allottees for the delay, on its part, in determining the final sale price. Therefore, this Court is not inclined to interfere with the

impugned demand notices. The petitioners, however, cannot be burdened with interest, for the period, from the date of allotment, till the date of the notice.

28. Certain submissions had been made that the calculations made by the A.P. Housing Board is not in accordance with the law laid down by this Court. This Court is not inclined to express any further opinion relating to these factual controversies in the light of the legal position already specified supra. However, in the light of the decision of this Court in S. Muddu Krishna's case (referred 4 supra) liberty is given to the petitioner to make appropriate representation to the A.P. Housing Board represented by the Vice Chairman & Housing Commissioner within a period of two weeks from the date of receipt of this order and let the said representation of the petitioner be considered in accordance with law within a period of four weeks thereafter. Except granting this liberty, no other relief can be granted in the present Writ Petition.

29. The Writ Petition is accordingly disposed of. No order as to costs.