(2014) 02 KAR CK 0076

In the Karnataka High Court

Case No : Writ Petition No. 81795 of 2009 (KHB)

Manikrao (Since Deceased) by his L.Rs. APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Citation : (2014) 2 KarLJ 213

Hon'ble Judges : Mohan M. Shantana Goudar, J

Bench : Single Bench

Advocate : I.R. Biradar and G.G. Chagashetti, Advocate for the Appellant; Manvendra Reddy, Government Advocate, S.S. Kumman and Arunkumar C. Patil, Advocate for the Respondent

Judgement

Mohan M. Shantanagoudar, J.—Petitioners 1(a) to 1(c) are the legal representatives of Manikrao S/o. Channabasappa Boral. He made an application to the 4th respondent-Karnataka Housing Board for allotment of house on 23-6-1995. Petitioners were allotted house bearing No. 38/A MIG at Kotnoor, Gulbarga, on 16-8-1999 with certain terms and conditions. The lease-cum-sale agreement was entered into between the petitioners and the 4th respondent-Housing Board as per Annexure-C, dated 8-10-1999. By that time, petitioners had already deposited a sum of Rs. 73,625.25 paise. The total cost of the property provisionally fixed was Rs. 2,94,500/-. However, it is made clear that the cost is liable for variation on certain circumstances. The important clauses of lease-cum-sale agreement are as under: 9. The lessee/purchaser having already paid the lessor/vendor a sum of Rs. 73,652.25 paise towards the cost of the property excess over the loan amount admissible in accordance with the regulations framed under the Karnataka Housing Board Act, he/she shall pay the balance of cost of the property viz. Rs. 2,20,874.75 paise together with interest thereon. At 17.5% percent per annum or at such higher rate of interest as the Lessor/Vendor may fix from time to time in 144 monthly equated installment of Rs. 3,765/- p.m. The first installment being payable on or before date of possession.

9(a) The lessee/purchaser he/she shall pay the balance cost if any on the basis of completion report, before conveying property to him/her by executing sale deed, on expiry of the minimum period of (120 months)10 years from 8-10-1999 simple interest chargeable is at 17.5% percent per annum.

9(b) The lessee/purchaser shall pay concurrently the loan admissible of Rs. 2,20,874.75 paise together with interest thereon at 17.5% percent per annum or at such higher rate of interest as the Lessor/Vendor may fix from time to time in 144 monthly equated installment at Rs. 3,765/- p.m. The first monthly installment being payable on or before date of possession.

From the aforementioned, it is clear that the petitioners were to pay Rs. 3,765/- per month for 144 months. The said amount was fixed based on the principal amount i.e., balance of cost of the property i.e., Rs. 2,20,874.75 paise with interest at 17.5% thereon. Thus, the petitioners were required to pay 144 equated monthly installments of Rs. 3,765/- per month. Petitioners paid Rs. 45,000/- on 7-8-2001, Rs. 50,000/- on 7-8-2001 and Rs. 50,000/- on 9-8-2001. As aforementioned, the allotment was made and lease-cum-sale agreement was executed between the parties on 8-10-1999. Thus, amount paid by the petitioners to an extent of Rs. 45,000/-, Rs. 50,000/- and Rs. 50,000/- was almost equal to the money to be paid by the petitioners for monthly installments upto the year 2001 i.e., from the year 1999 i.e., for 3 years. Subsequently, petitioners did not pay the equated monthly installments as agreed and thereafter notices were issued by the Housing Board to the petitioners. Despite the same, petitioners did not pay the balance of consideration as agreed and consequently, the order came to be passed by the Housing Board as per Annexure-R4 (produced by the respondent-Housing Board alongwith statement objections) dated 8-2-2006. Pursuant thereto, deed of cancellation of lease-cum-sale agreement was executed by the Housing Board as per Annexure-R5 on 13-3-2006. Subsequently, the very house was allotted in favour of respondent 5 herein, who has paid the sale consideration and taken possession of the house. Petitioners by filing this writ petition seeks quashing of the order dated 8-2-2006 cancelling the allotment of house made in favour of the petitioners. They have also sought for cancellation of the allotment letter dated 13-3-2006 issued in favour of respondent 5 as per Annexure-G. 2. Sri I.R. Biradar, learned Counsel for the petitioners submits that the respondent-Housing Board is not justified in cancelling the house allotted in favour of the petitioners since the petitioners had made almost 80% of the sale consideration in the year 2001 itself; since the petitioners were required to pay only balance of Rs. 2,20,874.75 paise as on 8-10-1999 and as the petitioners were required to pay the said amount within the period of 144 months i.e., about 12 years, there is no reason as to why the Housing Board cancelled the allotment made in favour of the petitioners.

3. Sri S.S. Kumman, learned Counsel for the respondents 2 to 4-Housing Board by filing statement of objections contends that the petitioners have misread clause 9 of the lease-cum-sale agreement entered into between the parties;

since the balance amount of Rs. 2,20,874.75 paise was to be paid by the petitioners on monthly equated installments, they had agreed to pay interest at 17.5% per annum. 144 months were provide to the allottee for making entire payment. Based on the said facts and figures, Housing Board as well as the petitioners agreed that the petitioners would pay Rs. 3,765/- per month in 144 monthly equated installments.

4. Clauses 9, 9(a) and 9(b) of the lease-cum-sale agreement make amply clear that petitioners were required to pay Rs. 3,765/- per month for 144 equated monthly installments. Had the petitioner paid the entire sale consideration on the date of the allotment itself, the Housing Board would not have imposed interest at all. Since the allotment was made in favour of the petitioners on interest basis treating the balance amount as loan, petitioners were required to pay equated monthly installments of Rs. 3,765/- per month which included the part of the principal amount as well as interest at the rate of 17.5% interest per annum on Rs. 2,20,874.75 paise. Since the petitioners have agreed to the terms "and conditions of allotment, they are bound by it. Though the petitioners had paid the requisite sums of money for a period of three years from the date of allotment, they did not pay the remaining monthly installments after the year 2002. They were required to pay 144 equaled monthly installments form 8-10-1999 i.e., for 12 years. Thus, if is clear that the petitioners ought to have paid the equated monthly installments of Rs. 3,765/- per month upto the year 2011. On the other hand, petitioners stopped payment of money in the year 2001 itself. The balance of sums were not paid by them, in this view of the matter, the respondent-Housing Hoard started issuing notices to the petitioners repeatedly, despite the same, the amount was not paid. Ultimately, the final notice came to be issued as per Annexure-R3, dated 8-9-2005 calling upon the petitioners to pay the balance of dues within certain period. However, the petitioners failed to make use of leniency. Having no other alternative, Board proceeded to cancel the allotment of house made in favour of the petitioners as per the order dated 8-2-2006 vide Annexure-F and further proceeded to allot the very house in favour of respondent 5 as per Annexure-G on 13-3-2006. Since the petitioners are at fault in not paying the equated monthly installments as and when accrued due, it is but natural for the Housing Board to cancel the allotment after due notice to the petitioners. Since action of the Housing Board is just and proper, no interference is called for.

Accordingly, the petition fails and the same stands dismissed.

It is open for the petitioners to make representation to Housing Board praying for refund of the money already paid by the petitioners, if the said representation is made, the same shall be considered by the respondent-Housing Board in accordance with law.

