

(2013) 07 AP CK 0109

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 31157, 34294 of 2011, 25524, 35326, 37295, 38396 of 2012, 1623, 1692, 4254, 4279, 6202, 6547, 6563, 6568, 6593, 6618, 6634 and 6673 of 2013 and WPMP No's. 38664, 42676 of 2011, 1240, 32520, 44891 of 2012

M/s. Sri Kiran Auto Service and Others

APPELLANT

Vs

The Andhra Pradesh Industrial Infrastructure Corp. Ltd. and Others

RESPONDENT

Date of Decision : 16-07-2013

Acts Referred:

Constitution of India, 1950 — Article 226
Transfer of Property Act, 1882 — Section 53A

Citation : (2013) 5 ALD 510 : (2013) 6 ALT 56

Hon'ble Judges : Sanjay Kumar, J

Bench : Single Bench

Advocate : V.V. N. Narayana Rao in WPMP No. 31157 of 2011, Sri P. Bhaskar in WPMP No. 1240 of 2012, Sri K.V. Bhanu Prasad in WPMP Nos. 25520, 25524 of 2012, Sri P. Ravi Kiran in WPMP No 35326 of 2012, Sri E.V.V.S. Ravi Kumar in W.P. No. 37295 of 2012 and 1276 of 2013, Sri. Sivalenka Ramachandra Prasad in WP MP Nos. 1253, 38396 of 2012, 1623, 1692 of 2013, Sri. Sai Gangadhar Chamarty in WPMP Nos. 5317, 5345 of 2013, Sri G.V.S. Mehar Kumar in WPMP Nos. 4254, 4279, 5317, 5345 of 2013 and Sri Arvapalli Suryanarayana in WVMP Nos. 1248, 1244, 1242, 1247, 1245, 1246, 1243, 6547, 6563, 6568, 6593, 6618, 6634 and 6673 of 2013, for the Appellant; P. Roy Reddy, for the Respondent

Judgement

Sanjay Kumar, J.—Involving the same issue, these writ petitions are amenable to a conjoined disposal. Hence, this common order. The petitioners in this batch of cases were allotted plots of land by the Andhra Pradesh Industrial Infrastructure Corporation Limited (APIIC) in the industrial parks/zones developed by it. On payment of the sale consideration, registered agreements of sale were entered into by the APIIC with the petitioners individually. As the petitioners failed to implement the projects within the stipulated time frame, the APIIC cancelled the allotment orders/agreements of sale by separate proceedings passed in each of

the cases. In some of them, the APIIC also issued resumption proceedings to recover possession of the allotted plots. The cancellation of the allotment orders/agreements of sale was assailed in most of the cases. However, in W.P. Nos. 6563, 6568, 6593, 6618 and 6634 of 2013, only the resumption proceedings were challenged and not the cancellation of the allotment, which therefore attained finality. In W.P. No. 1692 of 2013, the petitioner challenged both the cancellation and the resumption proceedings.

2. This Court directed status-quo to be maintained in all the cases, except in W.P. Nos. 35326 of 2012, 4254 and 4279 of 2013. The APIIC filed counter-affidavits along with petitions to vacate the status-quo orders wherever passed. No counters were however filed by the APIIC in W.P. Nos. 25524, 35326 of 2012 and 1623 of 2013. It is the case of the APIIC that as the petitioners failed to adhere to the time stipulation with regard to project implementation; it was justified in cancelling the allotment.

3. The issue raised is no longer *res Integra*. Validity of the cancellation of allotment of a plot on the ground of non-implementation of the project and the consequential nullification of the allotment order/agreement of sale by the APIIC fell for consideration before this Court in *M/s. ECI Engineering and Construction Company Limited Chikoti Gardens, Begumpet, Hyderabad Vs. Andhra Pradesh Industrial Infrastructure Corporation Limited and Others*, . Upon a detailed consideration of all the issues, a learned Judge of this Court held that the action of the APIIC in canceling the allotment of land was perfectly in order and could not be interfered with. The question as to whether an allottee was entitled to any refund of the sale consideration and if so, to what extent, was left open to be considered by the APIIC in accordance with the terms and conditions of the agreement of sale. This Court finds no reason to take a different view in the matter. However, as some of the learned counsel appearing for the petitioners in this batch of cases argued that certain aspects were not considered in *M/s. ECI Engineering and Construction Company Limited Chikoti Gardens, Begumpet, Hyderabad Vs. Andhra Pradesh Industrial Infrastructure Corporation Limited and Others*, this Court deems it proper to deal with the same.

4. It is not in dispute that the registered agreements of sale entered into by the APIIC with each of the petitioners in these cases are in *pari materia* with the agreement of sale which was considered in *M/s. ECI Engineering and Construction Company Limited Chikoti Gardens, Begumpet, Hyderabad Vs. Andhra Pradesh Industrial Infrastructure Corporation Limited and Others*, In so far as the time stipulation for implementation of the project by the allottee is concerned, the clause in the agreement of sale, which is in a prescribed format, reads as under:

... THE PARTY TO THE SECOND PART shall within six months of being put in possession of the said plot/land commence construction of factory buildings after securing necessary clearances from the competent authorities like building plan approvals, filing application with APTRANSCO, other permissions/clearances etc.

The party of the Second Part shall go into commercial production duly erecting machinery and obtaining regular power supply connection within two years of being put in possession of the allotted plot/land.

Any extension of time, if considered, will be subject to levying of penalty at 10% or as fixed by the Corporation from time to time on the land cost at the prevailing rates. No extension of more than 2 Years can be entertained....

5. It is not in dispute that none of the petitioners in these cases completed their projects within the initial period of two years after being put in possession of the allotted plot/land.

6. In so far as W.P. No. 4254 of 2013 is concerned, the registered agreement of sale was dated 09.10.2007 and the petitioner was placed in possession of the allotted plot on the same day. The allotment was cancelled by the APIIC on 16.10.2010 on the ground of non-implementation of the project. However, upon the representation dated 21.07.2010 made by the petitioner, the APIIC extended the time for implementation of the project by a period of six months vide its letter dated 26.10.2010. This extension was subject to payment of penalty. However, as the petitioner failed to implement the project within the extended time, the APIIC issued show-cause notice dated 05.07.2012 to the petitioner, considered the explanation dated 20.07.2012 and thereafter cancelled the allotment by its order dated 07.08.2012. Resumption proceedings were issued on 22.12.2012 whereby the APIIC recovered the possession of the allotted plot/land.

7. Similar is the fact situation in W.P. No. 4279 of 2013.

8. In W.P. No. 6202 of 2013, the APIIC delivered the possession of the plot to the petitioner therein on 17.07.2009. The petitioner claimed that it had commenced manufacture of cement well rings from 16.01.2010, but the unit fell sick thereafter on 31.05.2010. In response to the APIIC's show-cause notice dated 12.09.2012, the petitioner submitted representation dated 20.10.2012 seeking extension of time. Thereupon, the APIIC issued letter dated 31.12.2012 calling upon the petitioner to comply with the conditions stipulated as a condition precedent for considering its request for extension of time to implement the project. Admittedly, the petitioner failed to fulfill the conditions and the APIIC cancelled the allotment/agreement of sale by its order dated 13.02.2013.

9. In W.P. No. 25524 of 2012, the petitioner claimed that the possession of the allotted land was delivered to it by the APIIC only on 08.10.2009. However, the notice dated 30.06.2008 issued by the APIIC reflects that the possession of the plot was actually delivered to the petitioner on 30.08.2006. There is no indication from the material placed on record that possession of the plot was handed over to the petitioner only on 08.10.2009 as claimed by it. In any event, the petitioner appears to have been allowed to undertake leveling of the allotted land even prior thereto. Notice dated 30.06.2008 was addressed to the petitioner by the APIIC as to the delay in the implementation of the project. By reply dated 23.09.2008, the petitioner explained that a lot of time and expenditure was

incurred by it in leveling operations and it therefore sought extension of time. By order dated 28.04.2009, the APIIC granted extension of time by one year, subject to the petitioner paying 10% towards penalty. The petitioner thereupon submitted representation dated 12.05.2009 seeking waiver of the penalty imposed. According to the petitioner, this representation is still pending consideration. The APIIC thereafter issued show-cause notice dated 07.07.2012 to which the petitioner responded under reply dated 14.07.2012, again raising the issue as to whether it was liable to pay 10% or 2% towards the penalty. The APIIC issued the order of cancellation dated 07.08.2012 thereafter.

10. In W.P. No. 35326 of 2012, the petitioner's agreement of sale with the APIIC was dated 01.06.1992. Cancellation of the allotment in favour of the petitioner was effected as long back as on 30.11.2004. The petitioner admits that allotment was then made in respect of this plot in favour of the third respondent. This writ petition, filed in the year 2012, would therefore be liable to be dismissed at the threshold on the ground of delay and laches. Even on merits, it beseeches the same fate.

11. In W.P. No. 37295 of 2012, allotment of the plot in favour of the petitioner was made by the APIIC under order dated 06.04.2006. As the petitioner thereafter failed to come forward to enter into an agreement of sale, the APIIC cancelled the allotment by proceedings dated 16.03.2007. However, upon the petitioner's representation for restoration, the APIIC permitted restoration of the allotment on payment of 10% towards penalty and entered into a registered agreement of sale on 22.01.2008. Possession of the plot was delivered to the petitioner on the same day. However, as the petitioner failed to implement the project within the stipulated time, the APIIC issued show-cause notice dated 29.08.2012 and after receiving the petitioner's response under letter dated 10.09.2012, it cancelled the allotment/agreement of sale by its order dated 08.11.2012.

12. The factual milieu in the other cases falls in a similar mould.

13. In the above fact situation, learned counsel for the petitioners sought to distinguish the judgment of this Court in M/s. ECI Engineering and Construction Company Limited Chikoti Gardens, Begumpet, Hyderabad Vs. Andhra Pradesh Industrial Infrastructure Corporation Limited and Others, as under:

Sri EWS Ravi Kumar, learned counsel for the petitioner in W.P. No. 37295 of 2012, contended that by its reply dated 10.09.2012, the petitioner had sought extension of time by two years for setting up the project and that the APIIC failed to consider the same despite the contractual clause which empowered it to do so. On similar lines, Sri Sai Gangadhar Chamarty, learned counsel for the petitioner in W.P. No. 4279 of 2013, stated that the earlier cancellation proceedings dated 16.07.2010 had been withdrawn by the APIIC upon the petitioner's representation and by letter dated 26.10.2010, extension of time was granted by six months upon payment of penalty. He contended that the

stipulation with regard to completion of the project within two years therefore paled into insignificance and that it was not open to the APIIC to thereafter resort to cancellation of the allotment/agreement of sale on the said ground. Sri WN Narayana Rao, learned counsel for the petitioner in W.P. No. 31157 of 2011, contended that the allotment of land to his client by the APIIC under a registered agreement of sale could not thereafter be unilaterally nullified by it. He submitted that the same would be in violation of Rule 26(i)(k) of the Rules framed by the State of Andhra Pradesh under the Registration Act, 1908. He also contended that once an agreement of sale was executed in favour of his client and it was put in possession of the land, it would be entitled to the protection afforded by Section 53-A of the Transfer of Property Act, 1882.

14. Learned counsel placed reliance on case law in support of their contentions.

15. Per contra, Sri P. Roy Reddy, learned standing counsel for the APIIC, argued that all the issues raised by learned counsel for the petitioners were considered by this Court in M/s. ECI Engineering and Construction Company Limited Chikoti Gardens, Begumpet, Hyderabad Vs. Andhra Pradesh Industrial Infrastructure Corporation Limited and Others, Learned standing counsel also placed reliance on precedents in support of his contentions.

16. Though some of the petitioners in these cases urged in their affidavits that time was not of essence in terms of the stipulations made in the agreements of sale, this Court finds that the agreement conditions specifically stated to the contrary. One of the agreed terms of the contract was that the date and time are the essence of the contract. Further, the clause extracted supra with regard to the temporal restriction for completing the project fortifies this aspect. In this regard, it may be noticed that the initial two year period stipulated for completion of the project was extendable, if favourably considered by the APIIC, by a further period of two years and no more. The contention of the learned counsel for the petitioners that this extension could be considered by the APIIC at any point of time as and when a request was made by the allottee cannot be accepted. The tone and tenor of the language used in the clause make it explicit that the initial two year period was to be reckoned from the date of delivery of the plot/land to the allottee and the extension, if considered on payment of penalty, was not to exceed more than two years. This extension of two years would therefore be relatable to the date of expiry of the initial two years. In effect, if the allottee failed to complete the project within four years, in the event an extension of two years was granted, from the date of taking possession of the allotted plot, no further extension could be granted.

17. This aspect of the matter was made clear by this Court in M/s. ECI Engineering and Construction Company Limited Chikoti Gardens, Begumpet, Hyderabad Vs. Andhra Pradesh Industrial Infrastructure Corporation Limited and Others, of the judgment. Merely because the APIIC was generous enough not to initiate action immediately after the expiry of the time granted/extended, it is not open to the petitioners to claim that the time stipulation stood diluted or paled

into insignificance. The fortitude and patience shown by the APIIC in this regard cannot be taken advantage of by the allottees. The allotment of industrial plots by the APIIC, being a distribution of State largesse, is intended for achieving industrial development which would not only lead to economic growth but would also generate manifold employment opportunities. This would require allottees of the plots to utilize the opportunity provided and make operational their proposed industrial units as soon as possible. That is the reason why the APIIC, in its wisdom, included a time stipulation in the prescribed format of the allotment orders/agreements of sale, stipulating that the project should be implemented in two years.

18. It is not disputed that the APIIC put the petitioners on notice in all the cases prior to cancellation of the allotments/agreements of sale. Violation of the principle of *audi alteram partem*, therefore does not arise.

19. Some of the learned counsel for the petitioners contended that the ratio in *M/s. ECI Engineering and Construction Company Limited Chikoti Gardens, Begumpet, Hyderabad Vs. Andhra Pradesh Industrial Infrastructure Corporation Limited and Others*, would not be applicable presently as the only contention urged by the petitioner therein was as to the forfeiture of the sale consideration paid by it to the APIIC. According to them, as the learned Judge was only considering the issue of forfeiture of the sale consideration, the observations made as to the validity of the cancellation of the allotment would be mere *obiter dicta*. In this regard, learned counsel placed reliance on *Union of India (UOI) and Others Vs. Dhanwanti Devi and Others*, wherein the Supreme Court affirmed that everything said by a Judge while giving a judgment would not constitute a precedent and only the principle upon which a case is decided would be the *ratio decidendi*. The Supreme Court reiterated that a decision was only an authority for what it actually decides. Applying the above principle also, the contention of the learned counsel has to fail. The prayer in *M/s. ECI Engineering and Construction Company Limited Chikoti Gardens, Begumpet, Hyderabad Vs. Andhra Pradesh Industrial Infrastructure Corporation Limited and Others*, as set out in the writ petition, was for a declaration that the letter cancelling the allotment of the plot and forfeiting the sale consideration paid therefor was arbitrary and illegal. Thus, not only the forfeiture of the sale consideration but the very cancellation of the allotment was in issue before the learned Judge. The learned Judge, upon a thorough analysis of the contract terms, held in para 13 of the judgment that the impugned letter of the APIIC canceling the allotment of land in favour of the petitioner therein was perfectly in order and could not be interfered with. The question as to whether an allottee was entitled to refund of the sale consideration and if so, to what extent, was left open to be considered by the APIIC in accordance with the terms and conditions of the agreement of sale. The observations made as to the validity of the cancellation of the allotment therefore cannot be categorized as mere *obiter dicta* and necessarily constitute the *ratio decidendi*.

20. Sri WN Narayana Rao, learned counsel, argued that the APIIC could not have unilaterally cancelled the registered agreements of sale. Reliance in this regard was placed on Rule 26(i)(k) of the Andhra Pradesh Rules under the Registration Act, 1908. However, this Rule applies to registration of a cancellation deed of a previous registered deed of conveyance on sale. In the present case, the APIIC never executed registered sale deeds in favour of the petitioners in these cases and their rights vis-a-vis the allotted plots were still inchoate. Further, the APIIC did not register any documents canceling the agreements of sale but merely cancelled its obligations thereunder and under the allotment orders. Rule 26 (i) [k] of the aforesaid Rules therefore has no application.

21. In so far as the issue of applicability of Section 53-A of the Transfer of Property Act, 1882 is concerned, it is relevant to note that protection of possession is afforded thereunder to a transferee only when he has performed or is willing to perform his part of the contract. In the present cases, the contractual terms explicitly stipulated the time for implementation of the project. Once the petitioners failed to abide by this contractual condition, it is not open to them to seek protection under the above provision of law.

22. In so far as W.P. No. 25524 of 2012 is concerned, Sri K.V. Bhanu Prasad, learned counsel for the petitioner, stated that his client had commenced operations during the pendency of the writ petition and would therefore be entitled to restoration of the allotment. Sri P. Roy Reddy, learned standing counsel, contested this claim though no counter affidavit has been filed to that effect. Sri K.V. Bhanu Prasad, learned counsel, however concedes that the petitioner did not complete the project within the extended time flowing from the order dated 28.04.2009 of the APIIC. As possession of the allotted land was delivered to the petitioner on 30.08.2006 going by the material placed on record, completion of the project by the petitioner, even if true, beyond the period of four years from that date would not entitle the petitioner to seek protection of the allotment. That apart, the petitioner cannot claim the extended period of time under the APIIC's letter dated 28.04.2009, as it failed to pay the penalty stipulated therein. Thus, viewed from any angle, the belated completion of the project, even if accepted, does not help the petitioner.

23. Though the APIIC raised an objection as to the maintainability of these cases on the ground that they arose from non-statutory contracts, this Court is of the opinion that in the light of the law laid down by the Supreme Court in *ABL International Ltd. V/s. Export Credit Guarantee Corporation of India Ltd.* (2004) 3 SCC 553, it is no longer open to the State or its instrumentalities to hide behind the cloak of contractual relations in every such case to ward off scrutiny by this Court in exercise of its power of judicial review under Article 226 of the Constitution. The contention of the APIIC on this count is therefore rejected.

24. Coming to the case law relied upon by the learned counsel for the petitioners, the judgments in *A.B.C. India Limited and Others Vs. The A.P. Industrial Infrastructure Corporation Limited and Others*, and *K.V. Sudha Rani*

and Others Vs. The Vijayawada-Guntur-Tenali-Mangalagiri Urban Development Authority (VGTM-UDA) and Others, , have no application to the present issue as those judgments related to concluded sale transactions and not agreements of sale as in this batch of cases. Similarly, the ratio in Property Association of Property Association of Baptist Churches Vs. Sub-Registrar and Others, does not further the case of the petitioners. It was held therein that the registration authorities have no power to cancel a sale deed unless a document for cancellation is presented with proper stamp duty and registration charges. As nullification of the agreements of sale in these cases was effected by the APIIC without resorting to registered cancellation deeds and the registration authorities had no role to play in the matter, it is incomprehensible as to how this judgment aids the petitioners.

25. Per contra, Sri P. Roy Reddy, learned standing counsel, placed reliance on the recent judgment of the Supreme Court in The Rajasthan State Industrial Development and Investment Corporation and Another Vs. Diamond and Gem Development Corporation Ltd. and Another, and more particularly, the observations made in paras 15, 16, 23 and 24 thereof. The Supreme Court observed therein that where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. The Supreme Court further observed that a party could not be permitted to "blow hot-blow cold", "fast and loose" or "approbate and reprobate" and stated that this Rule was applied to ensure equity whereby a person may be precluded by way of his actions, or conduct, or silence when it is his duty to speak, from asserting a right which he would have otherwise had. Dealing with interpretation of a contract, the Supreme Court stated in para 23 of the judgment that a party cannot claim anything more than what is covered by the terms of the contract, for the reason that the contract is a transaction between two parties and has been entered into with open eyes and understanding the nature thereof. The Supreme Court therefore stated that a contract, being a creature of an agreement between two or more parties, has to be interpreted giving literal meaning unless there is some ambiguity therein and observed that it is not permissible for the Court to make a new contract, however reasonable, if the parties had not made it themselves. It was also observed that a contract has to be interpreted without any outside aid and in such a way that its terms may not be varied. Reference in this regard was made to the judgment in DLF Universal Ltd. and Another Vs. Director, T. and C. Planning Haryana and Others, In the light of the edicts enunciated supra, contentions to the contrary must necessarily fail. It is however to be noticed that all the petitioners in these cases paid the full consideration due and payable by them in respect of the allotted lands/plots. In case such payment was made fully by the allottee, the agreement conditions provide for refund of the amounts at the discretion of the APIIC depending on the period of occupation. This aspect was also considered by this Court in ECI Engineering and Construction Co. Ltd, and it was left open to the APIIC to

consider that aspect of the matter in accordance with the terms and conditions of the agreement of sale. The petitioners in this batch of cases would also be entitled to apply to the APIIC for refund of the sale consideration paid by them and it shall be open to the APIIC to exercise its discretion under the contractual clauses with regard to refund of the sale consideration paid by the petitioners on individual case basis depending upon the facts and circumstances obtaining therein. Subject to the above, no other relief can be granted to the petitioners. The writ petitions, in so far as they assail the cancellation of the allotment/ agreements of sale, are accordingly dismissed. All the status-quo orders granted by this Court shall stand vacated. Pending WPMPs and WVMPs in the cases shall stand closed in the light of this final order. No order as to costs.