(2012) 10 AP CK 0015

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12750 of 2006

N. Ashok Kumar APPELLANT

Vs

Andhra Pradesh Housing Board RESPONDENT

Date of Decision : 08-10-2012

Acts Referred:

Constitution of India, 1950 — Article 142, 226, 227

Citation : (2013) 2 ALD 671 : (2013) 3 ALT 691

Hon'ble Judges : Noushad Ali, J

Bench : Single Bench

Advocate : N. Bharat Babu, for the Appellant; C.V. Rajeeva Reddy, for the Respondent

Final Decision : Allowed

Judgement

Noushad Ali, J.—Proceedings of the A.P. Housing Board (hereinafter "Board"), the respondent herein, vide Notice No. 10258/23/E/J8/86, dated 19.5.2006 declining to allot land in favour of the petitioner, is under challenge in this writ petition as illegal and violative of the orders of this Court in WP No. 3865 of 1983, dated 5.9.1988, WP No. 17309 of 1994, dated 29.11.1994, confirmed in WA No. 848 of 1995, dated 14.9.1995 and consequently to direct the Board to provide alternative site to the petitioner. The petitioner was a lessee of the Board in respect of the premises bearing No. 23/E, Mojamjahi Market, Hyderabad. There were other lessees like M/s. Sulekha Brothers. The tenants were asked to vacate their respective premises as it was proposed to construct multistoried buildings. It appears that several writ petitions were filed in this Court to forbear the Board from evicting them without providing alternative sites. The writ petitions were disposed of with a direction to the Board to offer the lessees alternative sites. The orders were confirmed in Writ Appeal No. 1258 of 1986 dated 17.8.1986. The petitioner also filed a similar Writ Petition No. 3869 of 1983. The writ petition was disposed of on 5.9.1988, (later modified on 16.11.1988), basing upon the judgment in Writ Appeal No. 1258 of 1986, with a direction to the Board to offer the petitioner on lease an area of 500 square yards at Kukatpally. The Board was also given option to sell away the land at the same rate charged by it in respect of similarly situated persons. The petitioner was offered lease of 500 square yards of land at Kukatpally on a rent of Rs. 1,238/-per month. By a subsequent letter, dated 14.8.1992, the petitioner was offered sale of the land, which is situated adjacent to Telephone Department at Kukatpally at Rs. 400/- per square yard. The petitioner was accordingly directed to remit a sum of Rs. 2,00,000/- within a month. The petitioner thereupon submitted a representation dated 2.9.1992 stating that the land was not suitable for business and that it is an interior land, situated at 2 to 3 Kms., away from the National Highway. He, therefore, requested to allot an alternative land similar to M/s. Sulekha Brothers abutting the National Highway. He expressed his willingness to pay the same cost as was fixed in the case of M/s. Sulekha Brothers. In the meanwhile, the land adjacent to M/s. Sulekha Brothers was put up for auction. The petitioner, therefore, filed WP No. 17309 of 1994 questioning the auction notification and for a declaration that he is entitled to have 500 square yards of land.

2. The writ petition was opposed by the Board contending that the case of the petitioner was not similar to that of M/s. Sulekha Brothers and that M/s. Sulekha Brothers was offered site in the year 1986 at the rate of Rs. 100/- per square yard and the same offer could not be given to the petitioner. This Court, did not accept the said contention and held that M/s. Sulekha Brothers was also sought to be evicted like the petitioner and therefore an alternative site was given to it. It was observed that the price offered to M/s. Sulekha Brothers might not be the same as that offered to the petitioner but the site offered to the petitioner cannot be dissimilar to the one given to M/s. Sulekha Brothers, since both were in the same position, having suffered eviction for the purpose of fulfilling the need of the Board. The writ petition was disposed of on 29.11.1994 ultimately holding thus:

I, therefore, direct that if the Board does not wish to give the site presently occupied by the petitioner on sale at the market value before 31.1.1995, then the site at Kukatpally, which has been auctioned, shall be given to the petitioner at the market value prevailing in that area without regard to the price fetched in the auction. The sale for the auction shall be confirmed only after the representation of the petitioner is disposed of.

3. The Board challenged the aforesaid order in WA No. 848 of 1995. The writ appeal was disposed of on 14.9.1995, affirming the order in the writ petition with a modification. The learned Division Bench observed that there was no justification in directing the Board as has been done in the writ order to allot a particular plot or to settle a particular price of land. However, as the facts of the case revealed wherein the Board had made allotments of suitable business sites to similarly situated persons, found that the same treatment was not given to the petitioner. The learned Division Bench, therefore, directed that the Board must abide by its undertaking and allot a suitable piece of land where the petitioner

could shift his business from the present premises as it has been done in the cases of other similarly situated persons. Ultimately, the following order was passed:

For the reasons as above, it is ordered hereby that appellant-Board shall allot to the writ petitioner-respondent a site suitable for business similar to the site allotted to similarly situated persons who, we are informed, have already been allotted such sites. This however cannot entitle the writ petitioner-respondent to claim a particular plot and dictate his terms for the allotment of any site by the Board. Board is expected to act fairly and not to discriminate between person and person who are similarly situated.

4. The said order became final. Consequent upon the aforesaid order, the petitioner was informed by a letter, dated 3.10.2001 that four plots were available in Phases 5, 6 and 9 at Kukatpally and the petitioner was asked to contact the concerned Executive Engineers to locate the plots. The petitioner accordingly contacted the concerned Executive Engineers and requested for allotment of land abutting National Highway as was done in the case of others. There was no response from the concerned Engineers though the petitioner contacted them several times. The petitioner therefore addressed a letter dated 9.1.2006 expressing his readiness to accept either of the two offers viz., allotment of land at M.J. Road or the land offered in the letter dated 24.1.2005. After receiving the letter the Board passed the following order:

I invite your attention to the references cited and I am to inform that the entire issue has been examined and to settle the long pending issue, it is decided to offer the land measuring 214.00 Sq.yds., in Premises No. 23/East under your occupation at M.J. Road for sale at the rate offered to adjacent persons i.e., the basic value of Rs. 20,000/-per Sq.yd.

I, therefore, request you to submit your willingness to purchase the land measuring 214.00 Sq.yds., in Premises No. 23/East at M.J. Road @ Rs. 20,000/- per Sq.yd., subject to the following conditions.

(1) The sale consideration should be paid within a month from the date of issue of sale letter.

(2) The land should not be alienated to others for a period of 5 years from the date of registration of land.

The reply should reach by this office within a week from the date of receipt of this letter.

5. It is to be noted that all-through proposals were being made for 500 Sq.yds., of land, whereas for the first time only 214 Sq.yds., was proposed under the aforesaid letter, dated 15.2.2006 and at a cost of Rs. 20,000/- per Sq.yd. The petitioner, therefore, addressed a letter dated 1.3.2006 and sought for 500 Sq.yds., of land taking into consideration 1994 book value rate as per the orders of this Court in WA No. 848 of 1995. The Board instead of considering the same

cancelled all the proposals and accordingly passed the order dated 19.5.2006, which is under challenge in this writ petition.

6. Arguments were advanced by both the learned Counsel Sri P. Gangaiah Naidu, learned Senior Counsel instructed by Sri N. Bharat Babu, Counsel appearing on behalf of the petitioner and Sri C.V. Rajeev Reddy, learned Standing Counsel appearing on behalf of the Board.

7. The learned Senior Counsel would contend that the impugned order is violative of the orders of this Court in WP No. 3865 of 1983, dated 5.9.1988, WP No. 17309 of 1994, dated 29.11.1994, confirmed in WA No. 848 of 1995, dated 14.9.1995. The learned Counsel would submit that the petitioner, who faced the eviction similarly like others including M/s. Sulekha Brothers, is entitled for a suitable alternative land on par with other persons. The Board could not convince the Court that the case of the petitioner is different from others, is bound by the orders of this Court in the aforesaid cases. Rule of law, according to him, should be respected by the Board and fairness demands that the petitioner be allotted with 500 Sq.yds., of land at a price as it was offered to other similarly situated persons.

8. Learned Standing Counsel for the Board would endeavour to justify the order. He would contend that the Board has no intention to violate orders of this Court. The petitioner was offered alternative sites and the proposal was cancelled only when the petitioner was not inclined to accept the offers made. He would further contend that the petitioner was offered the land at the rate offered to adjacent persons i.e., @ Rs. 20,000/- per square yard as per the basic value and the same is reasonable.

9. I have considered the aforesaid contentions and perused the material on record.

10. The indisputable facts are that the case of the petitioner is similar to that of M/s. Sulekha Brothers. It was found to be so in WP No. 17309 of 1994, wherein the contention of the. Board that M/s. Sulekha Brothers'' case was different, was not accepted and was held that M/s. Sulekha Brothers was also sought to be evicted and an alternative site was given to it. In WA No. 848 of 1995 the Division Bench also observed that the Board made allotments of suitable business sites to other similarly situated persons and the same treatment should be given to the petitioner. It was categorically observed that the Board is expected to act fairly and not to discriminate between person and person and that Board must abide by its undertaking and allot to the petitioner a suitable piece of land.

11. From the aforesaid orders of this Court, it emerges that the petitioner is entitled for allotment of a site suitable for business and the site should be similar to the one allotted to the similarly situated persons, and that he is entitled for 500 Sq.yds., of land. It is admitted fact that M/s. Sulekha Brothers was allotted 500 Sq.yds., of land at the rate of Rs. 100/- per Sq.yard abutting to NH.9 at

Kukatpally. Therefore in all fairness it was the obligation of the Board to allot the same extent of land at a suitable place, though not adjacent to the land given to M/s. Sulekha Brothers. At the time when allotments were made, the land was available both adjacent to M/s. Sulekha Brothers and also at M.J. Road, which the Board could have allotted to the petitioner. The Board did not consider allotting either of the lands, instead, it offered some sites situated at interior, places at Kukatpally. It did not consider fit to allot the land at M.J. Road. The reason is not far to seek. At that time the land value at the proposed places of Kukatpally was less than the value at M.J. Road. Apparently, for this reason, land at Kukatpally was offered. The petitioner was justified in insisting for a suitable land either at Kukatpally or at M.J. Road. He is also justified in seeking the land at M.J. Road, which has been in his possession, if there was no alternative land abutting NH.9 at Kukatpally. His request in this regard is justified in the light of the orders of this Court. It appears that the land that was offered to the petitioner at Kukatpally was sold away in due course of time. Precisely, for this reason, the Board changed its stand and offered the land at M.J. Road in its letter dated 15.2.2006, this time restricting the extent to 214 Sq.yds., fixing the price at the rate of Rs. 20,000/- per Sq.yard. It is not difficult to draw inference as to why the land at M.J. Road was offered, because in course of time land values at Kukatpally became much higher because of its proximity to Hi-tech City, compared to the value of the lands at M.J. Road. Nonetheless, it was still permissible for the Board to allot land at M.J. Road, but then there is no reason why the extent should be reduced to 214 Sq.yards and at a cost of Rs. 20,000/- per Sq.yard. Both the elements, viz., the extent of land and the rate are not the same as was allotted to the similarly situated persons, more particularly, M/s. Sulekha Brothers, which was allotted 500 Sq.yards of land abutting NH.9 at Kukatpally at the rate of Rs. 100/-per square yard. Clearly the offer made to the petitioner is arbitrary and discriminatory besides being violative of the orders of this Court referred above.

12. Sri C.V. Rajeev Reddy, learned Standing Counsel would cite the judgment of this Court in Abdul Irfan Amoodi Vs. The A.P.Housing Board and Others, and would contend that the land cannot be allotted to the petitioner except by public auction.

13. I am unable to accept the contention. In the aforesaid case, the Court was dealing with an unauthorized occupant, who wanted sale of land otherwise by following the procedure, whereas in the instant case, the petitioner was not an unauthorized occupant. In the instant case, the Division Bench in the aforesaid writ appeal clearly directed that "the Board shall allot to the petitioner a site suitable to the business similar to the site allotted to similarly situated persons......" Admittedly, the petitioner was a lessee, who was promised an alternative site for vacating the premises under his occupation to facilitate execution of scheme of construction of a multistoried building. Further, there is no justification for the Board to raise this contention in this writ petition having lost the case earlier in the same matter against the petitioner. Furthermore,

there is no fairness on the part of the Board in seeking to avoid its obligation under the orders of this Court, which if permitted, would strike at the very roots of the rule of law. The Board is bound by the orders of this Court and the same cannot be seen to be given a go-by with impunity.

14. The apex Court in RBF Rig Corporation, Mumbai Vs. The Commissioner of Customs (Imports), Mumbai, after noticing the judgment in Bishnu Ram Borah and Another Vs. Parag Saikia and Others, held as follows:

This Court in Bishnu Ram Borah v. Parag Saikia (supra), has held:

11. It is regrettable that the Board of Revenue failed to realize that like any other subordinate Tribunal, it was subject to the writ jurisdiction of the High Court under Article 226 of the Constitution. Just as the judgments and orders of the Supreme Court have to be faithfully obeyed and carried out throughout the territory of India under Article 142 of the Constitution, so should be the judgments and orders of the High Court by all inferior Courts and Tribunals subject to their supervisory jurisdiction within the State under Articles 226 and 227 of the Constitution. We cannot but deprecate the action of the Board of Revenue in refusing to carry out the directions of the High Court. In The Bhopal Sugar Industries Ltd. Vs. The Income Tax Officer, Bhopal, the Income Tax Officer had, virtually refused to carry out the clear and unambiguous directions which a superior Tribunal like the Income Tax Appellate Tribunal had given to him by its final order in exercise of its appellate powers in respect of an order of assessment made by him. The Court held that such refusal was in effect a denial of justice and is furthermore destructive of one of the basic principles in the administration of justice based as it is in this country on the hierarchy of Courts. The facts of the present case are more or less similar and we would have allowed the matter to rest at that but unfortunately the judgment of the High Court directing the issue of a writ of mandamus for the grant of a liquor licence to respondents 1 and 2 cannot be sustained.

We hasten to add, if for any reason, the subordinate authority is of the view that the directions issued by the Court is contrary to statutory provision or well established principles of law, it can approach the same Court with necessary application/petition for clarification or modification or approach the superior forum for appropriate reliefs. In the present case, as we have already noticed, the respondents have not questioned the order passed by the High Court, which order has reached finality. In such circumstances, we cannot permit the adjudicating authority to circumvent the order passed by the High Court.

15. For the aforesaid reasons, it must be held that the impugned order restricting the allotment to only 214 Sq.yds., must be held to be arbitrary and unsustainable being violative of the orders of this Court. It must be held that the petitioner is entitled for allotment of 500 Sq.yards.

16. There was considerable debate insofar as the price of the land is concerned. The learned Senior Counsel would contend that Rs. 20,000/- per square yard is

unreasonable and discriminatory. He would submit that there is no valid reason why the petitioner should be charged the said price when M/s. Sulekha Brothers was charged only Rs. 100/- per square yard. The petitioner has been agitating his rights ever since 1988 and the Board itself had allotted land at Kukatpally at Rs. 400/- per square yard in the year 1992. Therefore according to the learned Counsel, at the most the value of the land at M.J. Road prevailing in the year 1992 should be fixed. On the other hand, the learned Standing Counsel would submit that the value prevailing in the year 1992 cannot be fixed in the case of the petitioner. He would insist that Rs. 20,000/- per square yard is reasonable and the Board has no objection to allot the land if the petitioner is willing to pay the said value.

17. It is true that M/s. Sulekha Brothers was allotted land at the rate of Rs. 100/- per square yard, but it cannot be in dispute that the said price'' is too low. Though the petitioner was agitating his rights since long, and the Board allotted land at Kukatpally at Rs. 400/- per square yard in the year 1992, there does not appear to be any rationale in adopting the value prevailing in the said year. This Court on a consideration of the facts gave a direction, while disposing of the Writ Petition No. 17309 of 1994 on 29.11.2004, to the Board to give to the petitioner a site at Kukatpally at the market value prevailing in that area without regard to the price fetched in the auction. If the Board had allotted the site as per the said orders, it would have adopted the rate as was prevailing in the year 1994 as per the orders. In any event, there does not appear to be any justification in fixing the rate prevailing in 2006. Considering the matter in this perspective, it is reasonable to hold that the price prevailing in the year 1994 be fixed.

18. For the above reasons, it must be held that the impugned Notice No. 10258/23/E/J8/86, dated 19.5.2006 is unsustainable and is accordingly set aside. In consequence, the Board shall provide 500 Sq.yards of land at M.J. Road in favour of the petitioner at the rate prevailing as on 1994. The Board shall ascertain the value from the Registration Department and shall communicate to the petitioner the amount payable, as early as possible preferably within a period of four weeks from the date of receipt of this order. On such communication the petitioner shall pay the amount within four weeks thereafter. The respondent shall thereupon complete the formalities by registering the site within two weeks from the date of depositing the amount. The writ petition is accordingly allowed. No costs.