
(2012) 11 AP CK 0100
In the Andhra Pradesh High Court
Case No : Writ Petition No. 6939 of 2006

N. Rama Manohar Rao and Another	APPELLANT
Vs	
Andhra Pradesh Housing Board and Another	RESPONDENT

Date of Decision : 26-11-2012

Acts Referred:

Andhra Pradesh Housing Board Act, 1956 — Section 21, 24, 25, 3, 3(f)
Constitution of India, 1950 — Article 21

Citation : (2013) 1 ALD 703 : (2013) 2 ALT 241

Hon'ble Judges : Noushad Ali, J

Bench : Single Bench

Advocate : Peri Prabhakar, for the Appellant; D. Raghunath Kumar S.C., for the Respondent

Final Decision : Dismissed

Judgement

Noushad Ali

1. Proceedings in Lr. No. 199 HIG/JTYL/E1/EE/WR/2005/ 338, dated 17/20.03.2006 of the Vice-Chairman and Housing Commissioner, A.P. Housing Board (hereinafter referred to as "the Board") allotting only one house instead of two houses, one each to the petitioners, is under challenge in this writ petition. Petitioners are husband and wife. Both of them separately filed applications for allotment of a house to each of them proposed by the Board under Group Housing Scheme at Jagtial, Karimnagar District. Both of them were allotted houses, one each, by proceedings dated 21.2.2003. The 1st petitioner was allotted house No. 34, whereas the 2nd petitioner was allotted house No. 199. The said houses were initially allotted under Hire Purchase Agreement and was later converted into self-finance 100% payment scheme. The 1st petitioner paid all the instalments by 18.12.2005 and deposited Rs. 25,000/- towards stamp duty and registration charges. The 2nd petitioner paid the 1st and 2nd instalments and the 3rd instalment alone was due. In the meanwhile, the impugned letter was served on them informing that the petitioners were not

entitled for allotment of two houses to both wife and husband. Hence, it was informed to them that they would be allotted any one of the two houses by conducting drawal of lots on 24.3.2006. It is against these proceedings, the petitioners have filed the present writ petition, claiming that they are entitled for allotment of both houses.

2. Heard Sri Peri Prabhakar, learned counsel appearing for the petitioners and Sri D. Raghunath Kumar, learned Standing Counsel appearing for the respondents-Board.

3. Learned counsel for the petitioners would submit that both the petitioners are entitled for allotment separately, one each, and there is no prohibition under the Regulations for such allotment. The learned counsel would submit that the petitioners did not own any house before making the applications and that they did not incur any disqualification for allotments. He would further submit that once the allotment is made, the respondents have no power to cancel the same unless the allotment was found to have been obtained by fraud or by misrepresentation of facts and the petitioners are not guilty of such lapses. Hence, according to the learned counsel, the impugned proceedings are not legal and are liable to be set aside.

4. On the other hand, the learned Standing Counsel for the respondents-Board would submit that the petitioners, being husband and wife, are members of the same family and hence they are entitled for allotment of only one house. Referring to Regulation 6(i) of the Regulations and the conditions appended to the application form, he would submit that any person applying for allotment has to give a declaration that the applicant is not owning any house in his/her name or in the name of his/her wife/husband or in the names of his/her children and enclose a certificate issued by the Gazetted Officer to that effect. Further, relying on Regulation No. 19, he would submit that no application shall be considered if the applicant owns a house anywhere in the urban areas and urban agglomerations in the State of Andhra Pradesh either in his or her name or in the name of his or her husband or wife or in the name of his or her minor children. The petitioners, having accepted the conditions, are not entitled to seek for two houses in favour of their family. According to the learned counsel, as per these Regulations, allotment of houses to both the husband and wife of the same family is not permissible. The learned counsel would further submit that the petitioners, who made separate applications, did not disclose the fact that both of them were making applications and hence the allotment is liable to be cancelled for non-disclosure of the same. He would, therefore, submit that the impugned proceedings do not warrant any interference.

5. In the light of the aforesaid contentions, the question that falls for consideration is whether both the petitioners, who are husband and wife, are entitled for allotment of two houses and, if so, whether the impugned proceedings proposing to allot only one house by cancelling the allotment of the other is legal and valid?

6. Before considering the question, the object of enacting the Regulations is to be noticed. The preamble of the Andhra Pradesh Housing Board Act, 1956 (for brevity "the Act") is as follows:

Where as it is expedient to take such measures, to make such schemes and to carry out such works as are necessary for the purpose of dealing with and satisfying the need of housing accommodation and with that object in view it is necessary to establish a Board and to make certain other provisions hereinafter appearing.

From the aforesaid preamble, it is evident that the Act has been enacted with the primary object of satisfying the need of housing accommodation. In order to achieve the said object, Housing Boards are incorporated u/s 3 of the Act and the Boards are constituted u/s 4 of the Act.

7. u/s 21 of the Act, a duty is cast upon the Boards to undertake works for the framing and execution of housing schemes and for the said purpose, undertake to acquire properties and various other works relating to layouts, improvement of the land by providing infrastructure and construction of accommodations.

8. Sections 24 and 25 of the Act empower the Housing Boards to prepare housing programmes and as per the programmes sanctioned by the State Government, the same shall be executed by the Boards u/s 30 of the Act. The Board is vested with powers of acquisition land etc., for achieving the said object.

9. Section 71 of the Act empowers the Board to make regulations: (a) for management and use of buildings constructed under any housing scheme; (b) the principles and procedure to be followed in allotment of tenements and premises; and (c) for regulating the Board's procedure and the disposal of its business.

10. Therefore, keeping in view the aforesaid object and the principles, A.P. Housing Board made regulations viz., Andhra Pradesh Board (Allotment, Management and Sale of HIG, MIG, LIG and EWS Houses or Flats) Regulations, 1997.

11. Section 3(f) defines "family" means a family of the allottee consisting of husband, wife, minor children and dependent parents, sisters, brothers and other children as are ordinarily living with the allottee as dependents.

Therefore, the petitioners, being wife and husband, constitute a family as per the aforesaid definition.

12. Regulation No. 7 of the Regulations provides that an application for allotment shall be presented in Form I-A for allotment of a house/flat on out-right sale constructed for High Income Group Housing Scheme; Form I-B for allotment a house/flat on Hire Purchase System (50%) constructed under High/Middle/Low Income Group Housing Scheme; and Form I-C for allotment in Hire Purchase System (20%) for allotment of house/flat constructed under HIG Income Housing

Scheme.

13. The said regulation provides that an application in appropriate form shall be accompanied by a statement containing the names of family members, aggregate annual income of the applicant, the present address where the applicant and the members of his family reside. The application shall be accompanied by a statement to the effect that he does not own a house or flat within the limits of the concerned Municipality in his name or in the name of his wife or minor children.

14. Regulation No. 12(b) of the Regulations provides for reservation in favour of the Defence personnel, Scheduled Castes, Scheduled Tribes, Members of Legislative Assembly, Members of Legislative Council Members of Parliament of Andhra Pradesh State, Backward Classes, Physically Handicapped and Freedom Fighters and Government Servants at the ratio of 5%, 18%, 5%, 9%, 1%, 1% and 10%, respectively.

15. Regulation 19 of the Regulations, inter alia provides that no allotment shall be made if the applicant owns a house within the Municipal limits of the Municipal Corporation of Hyderabad, the concerned Municipality in his/her own name or in the name of his/her husband/wife, as the case may be, or in the name of his/her minor children. The Regulation, however, provides that the Chairman of the Housing Board has discretion for sufficient reason to relax the said condition.

16. The aforesaid regulation when read along with the definition of "Family" makes it clear that an applicant who owns a house is not entitled for allotment. The prohibition applies even if the house is owned by any one of the members of the family, viz., wife, minor children, dependent parents, sisters, brothers and other children living with the allottee as dependents. There is no difficulty in construing the said provision in the case of an applicant who owns a house as on the date of notification/application. The difficulty arises only in the case of an applicant, who does not own a house as on the date of notification/application, but who would become the owner by virtue of allotment. It is true that Regulation 19 does not specifically provide a disqualification in that regard. The Regulation is silent as to whether an applicant is prohibited from being allotted more than one house simultaneously. It is therefore necessary to ascertain the true meaning and import of the Regulation and in doing so take the guidance from the object sought to be achieved by the Act.

17. Shelter is a basic requirement which springs under Article 21 of the Constitution. It is indisputable that universally there is scarcity for residential accommodation. Therefore there should be equitable distribution of accommodation and there should not be concentration in a few hands. Hence, Regulation 19 cannot be understood in a restricted manner. To contend that the allotments can be made to all those applicants, though all of them are members of the same family, would result in allotment of multiple accommodations to a single family. As an illustration, if the husband, wife, parents, sisters, brothers

and other children living with the applicant as dependents, though constitute the same family, are allotted houses to each of them, it will result in allotment of as many houses as there are members in the same family. Such a situation is not intended under Regulation 19.

18. Thus, though Regulation No. 19 does not specifically prohibit allotment to those who owned accommodation at the time when applications are made, there is no reason why the prohibition contained therein shall not be applicable to those applicants to whom more than one accommodation has been allotted simultaneously.

19. It may be true that the petitioners did not own a house in the name of either of them or their minor children and thus their family did not have a house when they submitted applications. It is also true that they did not suppress any information relating to their owning any house. The contention on behalf of the petitioners that they are not disqualified under Regulation No. 19 of the Regulations may appear reasonable, however, the said contention cannot be said to be tenable when examined in the light of the object of the Act and the purpose behind the prohibition contained in Regulation No. 19 of the Regulations.

20. For the foregoing reasons it must be held that the petitioners are not entitled for allotment of two houses, and consequently the impugned proceedings proposing to allot only one house cannot be said to be invalid.

21. The writ petition is devoid of merits and is accordingly dismissed. No costs. In view of disposal of writ petition, W.P.M.P. No. 8932 of 2006 is dismissed as unnecessary.