
(1997) 07 MAD CK 0034
In the Madras High Court

Ramakrishna Nagar Flat Allottees/Owners' Co-operative
Housing Society

APPELLANT

Vs

Tamil Nadu Housing Board and Another

RESPONDENT

Date of Decision : 25-07-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 2 MLJ 613

Hon'ble Judges : AR. Lakshmanan, J;A.R. Lakshmanan, J

Bench : Division Bench

Judgement

AR. Lakshmanan, J.—This writ appeal is directed against the order of a learned single Judge of this Court in W.P. No. 919 of 1985 dated

1.7.1994 dismissing the writ petition. The writ petition was filed by the appellant herein which is a registered society under the Tamil Nadu Co-

operative Societies Act 53 of 1961. Its registered number being XNC. 723 and its members consist of owners/allottees of Ramakrishna Nagar,

L.I.G., and M.I.G. Flats numbering 78. The said society has an elected president, vice president, treasurer, secretary and four committee

Members. The first respondent Board framed a scheme under the Madras City Improvement Act, 1950 for acquiring building site and erecting

buildings thereon consisting of several flats and selling each such flat independently and separately and with that purpose constructed flats in R.K.

Nagar (Brodies) Road Scheme now known as Ramakrishna Nagar Flats. The Ramakrishna Nagar Scheme comprised of about 73 grounds and

775 square feet. The details of the entire scheme and the break-up figures of the total area are as given hereunder:

Final cost of and has been determined by the Board in its resolution No. 636

dated 28.12.73 at Rs. 7,700 per ground. The final cost of land for each L.I.G Flat works out to Rs. 54204 for 1,600 square feet as per T.N.H.B. letter dated B.II (2) 18127 s/54 dated 21.2.1975.

2. In the said area, 78 flats were constructed of which 60 were M.I.G. flats and 18 were L.I.G. Flats, and besides these flats, garages were

constructed and the Housing Board had its office building measuring about 3,325 sq.ft. According to the appellant, the entire area is treated as a

single and separate unit and block and is enclosed by compound wall on all four sides. The respondent board while calculating, fixing, arriving and

determining the price for each flat took into account and consideration not only built up area but also the entire open space of ground wherein there

was no construction or buildings and also the compound wall which was put up at the request of society but cost recovered from allottees with the

result that the entire area encompassed and surrounded by the compound walls belonged to the allottees/owners of these 78 flats. The first

respondent board entered into a lease-cum-sale agreement with each of the allottees in respect of each of the 78 flats and have put them in

possession and the allottees are admittedly in occupation and enjoyment of the same even today. Initially the board had retained possession of the

office building measuring about 3,325 square feet as caretakers office. Most of the allottees have paid the entire amount and have obtained sale

deeds also. The allottees formed themselves into a society and got it registered under the Madras Cooperative Societies Act with the idea of

maintaining and managing the flats and for the welfare of the allottees. After the formation of the said Society the writ petitioner society were

insisting on the handing over the office building also restrained by the 1st respondent herein as their caretakers office, so that they could have full,

complete and absolute control of the entire area for the proper and effective management and control of the entire area and ultimately succeeded in

getting possession of the said building. The records produced before us would show that the writ petitioner society took possession of the entire

area on 20.10.1975. According to the appellant, the first respondent ceased to have control and management with effect from 1.12.1975

onwards. In fact, it is seen from the letter dated 26.11.1975, that the first respondent board directed its allottees viz., the writ petitioner herein is in

full, absolute, complete and effective possession, control and management of the entire area unenclosed and encompassed by compound walls on all the sides and the entire area within and surrounded by the compound walls belong exclusively and jointly to the 78 flats owners who are all the members of the society and the 1st respondent had not retained any part or portion of it to itself. Therefore, the first respondent had no legal right to interfere with the control, possession and management of the said area and all that it would be entitled to, would be for the balance of consideration from the allottees who have not so far obtained final sale deeds in their favour. Apart from this, the first respondent board has no right to interfere with the writ petitioner's peaceful possession and enjoyment of the area. Further, the first respondent board has also by its letter dated 6.2.1976 intimated to the Madras Electricity System that the maintenance has been handed over to the society from 1.12.1975 onwards and that further Consumption from January, 1976 onwards may be sent to the society directly thereby, accepting, acknowledging and recognising writ petitioner's management and control of the entire area.

3. While so, the 2nd respondent Federation sought the permission of the appellant to instal milk booth inside the appellant's compound and the said request of the Federation was considered by the Annual General Body of the appellant society in its meeting on 8.8.1982 and the General Body by its unanimous resolution decided not to have any building in their premises for vending milk and this resolution was also communicated to the Federation on 10.8.1982.

4. That being so, on 4.2.1985, at about 2.30 p.m. some persons were found measuring the land inside their colony and when enquired they were informed that they were the surveyors of the respondent and were measuring the plot of land for allotment to Tamil Nadu Dairy Development Corporation for installing an automatic milk vending machine. The appellant's President apprised them that the entire area belonged to the 78 flat owners/members of the society and that the land cannot be leased or assigned to anyone without the consent and permission of the appellants. Thereafter when they contacted the authorities of the Tamil Nadu Housing Board, they were informed that the land measured by the surveyors will be allotted to the Tamil Nadu Dairy Development Corporation for installing an

automatic milk vending machine.

5. The appellants in view of the attitude of the first respondent board in permitting the 2nd respondent to instal an automatic milk vending machine, invoked the jurisdiction of this Court under Article 226 of the Constitution of India for a writ of mandamus restraining the first respondent herein from allotting any portion of the land in the petitioner/appellant's colony to the 2nd respondent for the purpose of installing automatic milk vending machine or to any other persons.

6. The writ petition was resisted by the Housing Board by filing its counter-affidavit. They refer to the agreement entered into between them and the flat owners. According to the Housing Board, the price of each flat has been fixed after taking into account only the land cost on which the flat is put up and not the entire open space around the flats surrounded by the compound wall, where there is no construction, and as per the rules, the Housing Board has right to allot the land in the R.K. Nagar Colony, to anyone, which belongs to the Board. The 2nd respondent Tamil nadu Dairy Development Corporation Limited also filed a separate counter affidavit contending that the first respondent by proceedings dated 4.2.1985 has allotted a land measuring 1,200 sq.ft. in the Ramakrishna Nagar to the second respondent society on an outright sale basis for a sum of Rs. 26,000 which had been paid by them by receipt dated 29.1.1985 on a specific condition that the land should be utilised for setting up of an Automatic Milk Vending Machine. It is also stated that the writ petition filed by the appellant society is not maintainable under Article 226 of the Constitution of India and therefore, the appellant has to work out their remedy which is totally covered under the terms and conditions of the agreement entered into between the Housing Board and the individual members of the writ petitioner society.

7. The writ petition was dismissed on 1.7.1994 by Gulab C. Gupta, J., on the ground that no sale deed has been placed on record from which it could be inferred that not only the constructed area but also the open area has been sold to any of the fiat owners and as long as the petitioner-society members do not become the owner of open land within the colony, they would have no legal right to object to the allotment of the same by the 1st respondent. It was also held that in the considered opinion of the court

the first respondent is under legal obligation not to reduce the existing conveniences available to the flat owners, and allotting the area for the purpose of installing an automatic milk vending machine within the area will provide facility of obtaining milk at the door-steps and at a reasonable cost. Therefore, the learned Judge was of the view that there is no justification on facts to object to the putting up of milk vending machine. Learned single Judge dismissed the writ petition by concluding that the appellant society members do not have property right over the available vacant land within the colony. Therefore, in the opinion of the court, the appellant is disentitled from claiming any right in the matter. The learned single Judge in the concluding portion of his order has also held that the first respondent should not interfere with the conveniences and available open area to the detriment of the interest of the occupants of the flats in the colony.

8. Aggrieved by the judgment of the learned single Judge, the appellant society has filed the above writ appeal. When the matter was listed before this Court at an earlier occasion, this Court directed the Housing Board to produce the entire records Files and also directed the members of the appellant society to produce the original sale deeds. When the matter came up for the hearing on the last occasion, all the original sale deeds which have been executed by the first respondent Housing Board in favour of the individuals were produced and our attention was drawn to the recitals mentioned in the schedule to the original sale deeds. Under the sale deeds, the Housing Board has sold all that piece of land portion of the flat in question erected on land in R.S. No. 4236/5 part of Mylapore village at R.K. Nagar in Madras. The extent of the flat is also mentioned in the sale deed (plinth area) with the boundaries on four sides. We have perused all the original sale deeds. In fact in the sale deeds all the above particulars have been clearly mentioned. We have also perused the original plans which are registered along with the sale deeds. We have perused the original plan in the presence of the learned Counsel for the appellants and the respondents. All the boundaries have been demarcated in red line and the common area to be utilised by all the flat owners has been marked in yellow. On a perusal of all the original sale deeds and the registered plan, we are satisfied that the Housing Board has not retained any land with them and the

entire area which has been demarcated by red-ink has been sold to all the flat owners. Mr. S.V. Jayaraman, learned senior, counsel for the appellants, at our request placed before us all the original sale deeds. In the sale deeds the extent of the flat and the land sold in the R.S. No. 4236/5 part of Block-91, Mylapore Village, Madras has been clearly mentioned. Thus, it is seen that the members of the appellant society have become owners of the respective flats and also the land in question. As already noticed, the Housing Board has already written to the Electricity Board authorities and the other authorities concerned to collect the bills and other charges from the society directly from 1.12.1975 onwards, and also instructed the members of the society to pay such charges directly to the concerned departments. As rightly pointed out by Mr. S.V. Jayaraman, learned senior counsel, the entire area belongs to the 78 allottees and the first respondent had no right to interfere with the control, possession and management of the said area and all that the Housing Board would be entitled to, would be for the balance of consideration from the allottees who have not so far obtained sale deeds in their favour.

9. Learned Counsel for the Housing Board and the 2nd respondent however have urged that the Housing Board has got right to retain a portion of the land and also to allot the same to whomsoever it likes. This argument was made on the basis of the order of the learned single Judge. Now that in view of the production and perusal of the sale deeds and the registered plan etc., the position has completely changed and the fact remains that the Housing Board has parted with possession in respect of the entire area in favour of the appellant society. The Housing Board having parted with the possession in respect of the entire area and having determined and calculated the value of the entire area and collected the amount from the respective allottees on that basis, has no right, interest or title in the said area to allot to anyone and thereby in effect, disposes the society and its members and such an act is highly illegal and without jurisdiction. We have therefore no hesitation to hold that the appellant society is entitled to the entire area and the first respondent has not retained or reserved to itself any portion of the land and therefore they have no right to allot it to anyone much less to the 2nd respondent. When the first respondent himself is having no right over any portion of the property, the 2nd respondent

claiming right under the first respondent cannot claim any legal right for allotment of the land in its favour. As could be seen from the records

produced, the entire management, administration and control has been vested with the appellants as early as 1.10.1975 and the attempt on the part

of the first respondent Housing Board amounts to deprivation of property and such deprivation has no legal sanction or authority and it is illegal.

10. Though the question of maintainability of the writ petition was raised in the affidavit filed in support of the writ petition, the same was not argued

at all before the learned single Judge or even raised before us.

11. The order of the learned single Judge has been passed without reference to the original sale deeds, plan and other documents. Now that the

entire documents have been placed before us, we are satisfied that the Housing Board has no right over any portion of the land in the entire area in

question. Therefore, for all the reasons aforesaid, the writ appeal succeeds and is allowed. However, there will be no order as to costs.

Consequently, C.M.P. No. 8986 of 1995 is dismissed.