
(2010) 10 AP CK 0054
In the Andhra Pradesh High Court
Case No : Writ Petition No. 3081 of 2008

V. Shravan Kumar

APPELLANT

Vs

Lt. Col. S.B. Sharma and Others

RESPONDENT

Date of Decision : 27-10-2010

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34(2)

Citation : (2011) 1 ALD 385

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : Kowturu Vinaya Kumar, for the Appellant; Shireen Sethna Baria and Govt. Pleader for Co-operation, for the Respondent

Final Decision : Dismissed

Judgement

G. Rohini, J.—This writ petition is filed seeking a Certiorari to call for the records relating to the order dated 26.11.2007 in CTA. No. 161 of 2004 on the file of the A.P. Co-operative Tribunal, Hyderabad and to quash the same being arbitrary and illegal.

2. The facts, in brief, are as under:

The 1st Respondent herein is a member of the Army Co-operative Housing Society Limited (hereinafter referred to as "the 2nd Respondent society"). The 1st Respondent, who was allotted Flat No. 73 in Sector-A, AWHO Colony, Secunderabad, by the 2nd Respondent society, entered into an Agreement dated 12.10.1997 to sell the said flat to the Petitioner. The Petitioner claims that substantial amounts were paid to the 1st Respondent towards sale consideration. However as the 1st Respondent did not come forward to complete the sale transaction, the Petitioner raised a dispute before the 4th Respondent - The Arbitrator/Divisional Co-operative Officer. By Award dated 19.5.2004 the 4th Respondent directed the Petitioner to pay the balance sale consideration of Rs. 6,50,000/- together with interest at 8% within 15 days and thereupon the 1st

Respondent shall transfer Flat No. 73 in favour of the Petitioner by executing a sale deed. Aggrieved by the direction in the Award for payment of interest at 8%, the Petitioner filed CTA. No. 161 of 2004 before the A.P. Co-operative Tribunal. The Tribunal by order dated 26.11.2007 set aside the award dated 19.5.2004 in toto holding that the Arbitrator had no jurisdiction to entertain a dispute relating to specific performance of contract in respect of an immovable property. The said order is under challenge in this writ petition. It is contended by the learned Counsel for the Petitioner that the relief sought by the Petitioner before the Arbitrator for a direction to the 1st Respondent to execute Registered Sale Deed, was part and parcel of the affairs of the 2nd Respondent society and therefore the arbitration proceedings were maintainable. It is further contended that having found that the Arbitrator failed to follow the procedure contemplated u/s 62(4) of the A.P. Co-operative Societies Act, 1964 and Rule 49(4) of the Rules made thereunder and having recorded the findings in favour of the Petitioner, the Tribunal committed a grave error in setting aside the award in toto on an erroneous assumption that the arbitrator had no jurisdiction.

3. On a careful consideration of the facts and circumstances of the case, I do not find substance in any of the contentions raised by the Petitioner.

4. Section 61 of the A.P. Co-operative Societies Act, 1964 which provides for reference of disputes to the Registrar reads as under:

61. Disputes which may be referred to the Registrar:

(1) Notwithstanding anything in any law for the time being in force, if any dispute touching the constitution, management or the business of a society, other than a dispute regarding disciplinary action taken by the society or its committee against a paid employee of the society, arises-

(a) among members, past members and persons claiming through members, past members and deceased members; or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society; or

(c) between the society or its committee, and any past committee, any officer, agent or employee, or any past officer, past agent, or past employee or the nominee, heir or legal representative of any deceased officer, deceased agent or deceased employee of the society; or

(d) between the society and any other society, such dispute shall be referred to the Registrar for decision.

Explanation: For the purposes of this sub-section a dispute shall include-

(i) a claim by a society for any debt or other amount due to it from a member, past member, the nominee, heir or legal representative of a deceased member, whether such debt or other amount be admitted or not;

(ii) a claim by surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or other amount due to it from the principal debtor as a result of the default of the principal debtor whether such debt or other amount due to be admitted or not;

(iii) a claim by a society against a member, past member, or the nominee, heir or legal representative of a deceased member for the delivery of possession to the society of land or other immovable property resumed by it for breach of the conditions of assignment or allotment of such land or other immovable property;

(2) If any question arises whether a dispute referred to the Registrar under this section is a dispute touching the constitution, management or the business of a society, such question shall be decided by the Registrar.

(3) Every dispute relating to, or in connection with, any election to a committee of a society shall be referred for decision to the Tribunal having jurisdiction over the place where the main office of the society is situated, whose decision thereon shall be final.

(4) Every dispute relating to, or in connection with any election shall be referred under Sub-section (3) only after the date of declaration of the result of such election.

5. A plain reading of the above provision shows that certain classes or types of disputes arising between certain classes of persons alone can be referred to the Registrar. It is also clear that only a dispute touching the constitution, management or business of a society can be referred to the Registrar. A dispute regarding the disciplinary action taken by the society or its committee against a paid employee of the society has been expressly excluded from the purview of Section 61.

6. The dispute raised by the writ Petitioner relates to specific performance of the Agreement of Sale, dated 12.10.1997 executed by the 1st Respondent. The question as to whether the Arbitrator had jurisdiction to entertain such a dispute relating to specific performance of an agreement of sale was not at all adverted to by the Arbitrator and by award dated 19.5.2004 it was ordered as under:

Since both the parties have failed in fulfilling the terms and conditions of the Agreement, the Petitioner is directed to pay the balance sale consideration of Rs. 6.50 lakhs with interest at 8% within 15 days of this order. The Respondent No. 1 is hereby directed to transfer the Flat No. 73 of Sector-A in AWHO Colony, Secunderabad in favour of the Petitioner by executing a Sale Deed by accepting the balance sale consideration of Rs. 6.50 lakhs with interest at 8%. The process of payment of balance of sale consideration and registration of suit property shall be completed within 6 weeks from the date of receipt of this order. The Respondent No. 2 and Respondent No. 3 shall consider the mutation of property in their records after completion of the process of registration of the Flat.

7. Contending that the interest awarded by the Arbitrator at the rate of 8% p.a.

was arbitrary and unjust, the writ Petitioner preferred C.T.A. No. 161 of 2004 before the A.P. Co-operative Tribunal. Having formulated a point whether the Arbitrator had jurisdiction to entertain the dispute relating to agreement of sale, the Tribunal below held as under:

The dispute raised by the Appellant relates to specific performance of contract relating to an agreement of sale dated 12.10.1997, in between the Appellant and Respondent No. 1 in respect of an immovable property and this dispute does not attract any provisions of the Act and Rules. The arbitrator (R.4) has no jurisdiction to entertain the suit relating to specific performance of agreement of sale dated 12.10.1997 in respect of an immovable property and as such the appeal is liable to be allowed and the award is liable to be set aside.

8. As rightly held by the Tribunal below, it is not a dispute touching the constitution, management or the business of the society. Admittedly it is not the complaint of the Petitioner that there was any irregularity in allotment of plot or any other activity/business of the 2nd Respondent society. His only grievance is that the 1st Respondent, having entered into an agreement of sale had backed out and failed to complete the sale transaction. May be that, the 1st Respondent acquired the Flat in question through the 2nd Respondent society, however the further alienation by the 1st Respondent did not form part of the business of the 2nd Respondent society. That being so, the dispute raised by the writ Petitioner cannot be termed as a dispute falling within the purview of Section 61(1) of the A.P. Co-operative Societies Act.

9. In identical circumstances, a Division Bench of this Court in *M. Venkata Ramana v. A.P. Co-Operative Tribunal* 2010 (4) ALT 34 (D.B.) held as under:

...the genuineness or otherwise of the sale deeds, the identity and nature of the land in dispute, whether the alienations are liable to be set aside and the sale deeds are liable for cancellation, and whether the constructions made by the Petitioners on the disputed land are liable to be demolished or not, are all matters, which are out side the scope of Section 61 of the Act, as they do not relate to "business of the society", which can be referred to and adjudicated upon by the Arbitrator. When once, the sale deeds are executed and registered, title in the property covered by the sale deeds gets legally transferred in favour of the vendees and even the vendor cannot unilaterally cancel the same. In case the transaction is found to be illegal and beyond the authority of the society, necessary recourse has to be taken to the provisions of the Specific Relief Act, which provides for cancellation of documents and decrees.

10. In the said case a dispute was raised before the Arbitrator regarding the sale of vacant sites earmarked for common purpose by the society. After considering the scope and object of Section 61 as well as Section 128 of the A.P. Co-operative Societies Act, the Division Bench held as under:

In the present case, alienation of the vacant site that too earmarked for common purpose in favour of strangers or doing any real estate business with the land

acquired for the avowed objective of providing dwelling houses to the members of the society cannot be considered to be an act arising directly out of "the business of the society" or even "touching the business of the society". As such the alleged unauthorized and illegal alienation of the vacant sites in favour of strangers has no relation to nor is in any way connected with the business of the society, namely, providing dwelling houses to the members of the society or any ancillary activity relatable to the conduct of the said business of the society. As observed by this Court in *L. Chandrasekhara Sarma Vs. Jayanthi Vimala Kumari and Another*, the finding that the alienations made by the society in favour of the Petitioners do not give rise to a dispute touching the business of the society, does not amount to approval of the impugned action of the society inducting third parties in possession of the vacant sites earmarked for common purpose as alleged and it is certainly open to the competent Civil Court having jurisdiction to decide the dispute, if raised before the civil Court, independently on its own merits.

The word "business" cannot be construed so as to include any illegal transaction of the society or its members purporting to act as members of the society violating any statutory provisions and entering into a transaction, when such transaction cannot be treated as part of business of the society.

11. The issue raised in this writ petition is squarely covered by the ratio laid down in the above decision and therefore the conclusion of the Tribunal below that the Arbitrator had no jurisdiction to entertain the dispute relating to specific performance of agreement of sale cannot be found fault with.

12. However the learned Counsel for the Petitioner while relying upon a decision of the Supreme Court in *Olympus Superstructures Pvt. Ltd. Vs. Meena Vijay Khetan and Others*, as well as a decision of the Division Bench of this Court in *Charminar Co-operative Urban Bank Ltd. Vs. Rohit and Associates (Building Material Division) and Others*, contended that the Registrar cannot be denuded of his jurisdiction u/s 61 of the A.P. Co-operative Societies Act to decide the dispute raised by the Petitioner.

13. In *Olympus Superstructures Pvt. Ltd. v. Meena Vijay Khetan* (2 supra) the court was considering the provisions of the Arbitration and Conciliation Act, 1996 and it was held that the disputes relating to specific performance of a contract can be referred to arbitration and Section 34(2)(b)(i) was not attracted. The said question has no relevance at all for the purpose of the present case.

14. Even the decision of the Division Bench of this Court in *Charminar Co-Op. Bank Ltd. v. Rohit and Associates* (3 supra) is clearly distinguishable on facts. In the said case, certain members of the Charminar Co-operative Urban Bank Limited borrowed huge amounts as loans and failed to repay the same. The Bank approached the Arbitrator with claims for passing awards u/s 61 of the A.P. Co-operative Societies Act. The said proceedings were challenged before this Court and a Writ of Prohibition was sought to prohibit the Arbitrator from proceeding

with arbitration proceedings contending that the members who had borrowed the amounts being companies or partnership firms were not eligible to be the members of the Bank and therefore they were not amenable to the jurisdiction of the arbitrator u/s 61 of the A.P. Co-operative Societies Act. A learned Single Judge of this Court held that the borrowers did not fall in any of three categories of persons who were eligible to become members of a society and therefore they fall outside the scope of Section 61 of the A.P. Cooperative Societies Act. On appeal, the Division Bench while observing that the companies had loans as members of the Bank, held that so long as they continued to be the members, they were amenable to the jurisdiction of the Registrar u/s 61 of the Act. The above decision rendered in the peculiar fact situation existing in the said case has no application at all to the present case.

15. For the aforesaid reasons and following the ratio laid down by the Division Bench in *M. Venkata Ramana v. A.P. Co-Operative Tribunal* (1 supra) the contentions of the Petitioner are rejected and accordingly the Writ Petition is hereby dismissed. No costs.