

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE TWENTY EIGHTH DAY OF NOVEMBER
TWO THOUSAND AND EIGHT

PRESENT
THE HON'BLE MR JUSTICE VILAS V. AFZULPURKAR
WRIT PETITION NO : 19697 of 1998

Between:

Defence Civilian Employees Co-operative Housing Society Ltd.,
Regd.No. TAB-229, Rep.by its Secretary, J.D.Manohar Si
R/o. Defence Nagar Colony, Langer House,
Hyderabad.

..... PETITIONER

AND

- 1 The Chairman, Co-Operative Tribunal, Chandra Vihar, Nampally, Hyderabad.
- 2 The Deputy Registrar/Arbitrator, Office of the Deputy Registrar of Co-operative Societies, 5-9-34/A, Basheerbagh, Hyderabad- 500 001.
- 3 K. Balaiah, S/o. K Rajaiah, R/o. H.No. 14-9-1082, Jinsi Chowarai, Begumbazar, Hyderabad.
- 4 Smt. A. Dhanalakshmi, W/o. Sri A. Yadaiah, GPA Holder of Y.Rayanna, 9-1-1-B/105. defence Colony, Langer House, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to pass an appropriate order, direction or a Writ more particularly one in the nature of Writ of Certiorari quashing the judgment of the 1st Respondent Tribunal herein passed in C.T.A.No.141 of 1996 Consequent to declaring the same as arbitrary, illegal, unconstitutional and against the principles of natural justice and pass.

Counsel for the Petitioner: MRSYED SHAREEF AHMED

Counsel for the Respondents 1 & 2.: GP FOR SOCIAL WELFARE

The Court made the following :

ORDER:

The petitioner-Cooperative Society has challenged the award passed by the second respondent under Section 62 of the Andhra Pradesh Cooperative Societies Act, 1964, which was confirmed by the Appellate Tribunal-first respondent.

The facts in brief are that the petitioner-society is a Cooperative Housing Society. The third respondent herein has invoked the jurisdiction of the second respondent by filing A.R.C.No.17 of 1995. The allegation of the third respondent in the said dispute was that he was a member of the writ petitioner society. On 24.04.1984, the writ petitioner-society had allotted Plot No.105, admeasuring 220 sq. yards in Sy.No.71, situated at behind the Central School, Langarhouse, Defence Nagar Colony Hyderabad, to the third respondent herein after receiving 75% of the cost of the plot, i.e., Rs.4615/-. It is alleged that the third respondent was put in possession of the plot and he was always willing and ready to pay the balance 25% of the cost. It is alleged that the office bearers of the writ petitioner-society clandestinely allotted the said plot to one Rayanna overlooking the claim of the third respondent herein. On the said allegation he raised a dispute, which was adjudicated by the second respondent. On evidence produced before the second respondent, the said Arbitrator came to the conclusion that the third respondent herein is already a member of another cooperative society, namely, R.T.C. Union Cooperative Society and the said fact was suppressed by him while taking the membership as well as allotment of the plot in the petitioner society. The said A.R.C.No.17 of 1995 was

accordingly dismissed.

Questioning the same, the third respondent herein filed an appeal in C.T.A.No.141 of 1996 before the Cooperative Appellate Tribunal, Hyderabad, and impleaded in this writ petition as first respondent. The cause title in the writ petition shows the Chairman of the said appellate Tribunal as the first respondent, which is clearly untenable. The Cooperative appellate Tribunal should have been impleaded but not its Chairman. However, overlooking the said technical mistake on the part of the petitioner the substance of the claim of the writ petitioner is that the said appeal was allowed by the appellate Tribunal vide order dated 12.01.1998 and questioning the said order, the present writ petition is filed.

I have heard Sri Syed Shareef Ahmed, the learned counsel for the petitioner, Mr. P. Venugopal, learned counsel appearing for the contesting third respondent, as well as Mr. Bokka Satyanarayana, learned counsel appearing for the fourth respondent (subsequent allottee).

It appears that the fourth respondent was impleaded as per the orders of this Court in WPMP No.32793 of 2001, dated 26.12.2001.

The main grievance of the learned counsel for the petitioner is that the term of the petitioner-society was superceded and a Person In-charge was appointed. The society is under the control of the said Person In-charge. It is also on record that neither before the learned Arbitrator nor before the lower appellate Tribunal, the said Person In-charge appeared nor records of the society were produced. He further submits that on account of the same, the petitioner-society was unable to produce the documents and records to satisfy the learned Arbitrator as well as the Appellate Authority justifying their action. It is therefore, contended that the petitioner-society has suffered serious prejudice and an award against them was passed by the learned appellate Tribunal in

the absence of any information forthcoming from the society.

The learned counsel for the third respondent has made submissions with respect to merits, and submits that the order of the lower appellate Tribunal does not warrant any interference.

I have seen the record and in fact the award of the learned Arbitrar, specifically states at paragraph 3 that –

“----- Even though notices have been served in advance on the first defendant represented by P.I.C/C.S.R did not attend the proceedings any time.”

Before the appellate Tribunal also it is recorded by the Tribunal at paragraph No.14 as follows.

“At the out set, it is need to be emphasized that respondent No.1-society, which can alone bring out the correct facts with regard to the allotment of the plot in question, did not participate in the proceedings either in the lower Court or at the appellate stage, despite the fact that it is under the Management of a official Cooperative Sub-Registrar/Person In-charge, respondent No.2 who was the then Secretary of the society also did not choose to participate in the proceedings either here or before the lower Court, except filing a written statement along with respondent No.3 before the commencement of the trial. He died in January, 1997. Virtually respondent No.3 alone remained in the field and contested the case through out.”

It is therefore, evident that in the absence of any appearance for production of records on behalf of the petitioner-society, the learned Arbitrator as well as the appellate Tribunal could not be apprised of the case of the writ petitioner. According to the learned counsel for the petitioner, the society is deprived of reasonable opportunity to submit their case and present the documents. In the circumstances, the request made on behalf of the petitioner-society seeking an opportunity appears

to me, to be justified and keeping with the principal of natural justice.

Accordingly, the impugned order of the appellate Tribunal is set aside and the appeal is remitted for fresh consideration to the appellate Tribunal. The lower appellate Tribunal shall issue notices to all the parties and give an opportunity to them to produce such documents or records as that are necessary, and shall decide the appeal afresh uninfluenced by any of the observations made in the impugned order or in the present order. The appellate Tribunal also shall hear and dispose of the appeal as early as possible, in any case, before the end of April 2009.

The Writ Petition is allowed accordingly. No costs.

(VILAS V. AFZULPURKAR,J)

28th November, 2008
Js.