

Supreme Court of India

Chief Justice Of India N.V. Ramana, Justice A.S. Bopanna, Justice Hima Kohli

Velagacharla Jayaram Reddy v. M.Venkata Ramana

CIVIL APPEAL NOS.11015-11016 OF 2017

11.01.2022

Andhra Pradesh Cooperative Societies Act, 1964 – S.61, S.61(1)(b)

Petitioner Counsel: ANIL KUMAR TANDALE (Dead / Retired / Elevated) VENKAT PALWAI LAW ASSOCIATES

Respondent Counsel: ANNAM D. N. RAO GUNTUR PRABHAKAR Gaichangpou Gangmei Y. RAJA GOPALA RAO

JUDGEMENT

A.S. Bopanna, J.

1. The respondents No.4, 6 and 7 in W.P. No.6212/2006 are before this Court in this appeal. They claim to be aggrieved by the order dated 20.04.2010 passed by the High Court of Judicature, Andhra Pradesh at Hyderabad. By the said order, the learned Division Bench of the High Court has allowed the writ petition and quashed the award dated 28.01.2004 passed by the Divisional Cooperative Officer, Cuddapah acting as an Arbitrator in deciding the dispute raised under Section 61(1) (b) of the Andhra Pradesh Cooperative Societies Act, 1964 (“APCS Act” for short). The said award had been affirmed by the Andhra Pradesh Co-operative Tribunal at Hyderabad, through its judgment dated 27.02.2006.

2. The facts necessary to be noted for disposal of these appeals are as follows: The Government of Andhra Pradesh through its G.O. Ms. No.956, Revenue Department, dated 22.08.1970, allotted land situate in Sy.No.752/2 and 91/1, Kondayapalli Tank bund to the N.G.O. Cooperative Building Society Ltd. for the purpose of formation of Layout and to allot sites to its members. The area was within the jurisdiction of Chinnachowk, Gram Panchayat at that point in time. The said Panchayat was later on merged in the Municipal Corporation, Kadapa, which presently has jurisdiction over the area.

3. There is not much dispute to the fact that in the said land a layout was formed and 625 members were allotted plots. The layout also consisted of specific areas earmarked for parks, playground, school, religious place, shopping area and parking place. The instant appeal relates to the respective plots which were allotted to the respondents No.1 in C.A.No.11015 and 11016/2017. The respondent No.1 in C.A. No.11016/2017 who died subsequently, was deleted from the array of parties. As such, the entire consideration in this appeal is limited to the plot measuring 3.2 cents allotted to the respondent No.1 (Mr. M.V. Ramana) in C.A. No.11015/2017. Since there has been an amendment to the cause

title and certain parties who were parties to the original proceedings before the Divisional Cooperative Officer have been deleted, henceforth the parties will be referred to in the rank they were arrayed in the original proceedings for completeness and clarity.

4. The plaintiffs before the Divisional Cooperative Officer raised a grievance with regard to the allotment of plot to defendant No.2 therein (Mr. M.V. Ramana) alleging that the said plot was reserved as parking area in the layout plan. The plaintiffs were, a Welfare Association which was a part of the same layout, former President and VicePresident of the N.G.O Society which allotted the plot and a couple i.e. plaintiff Nos.4 and 5 who own shop premises in the layout which is situated opposite the plot in issue. The said plaintiffs No.4 and 5 are not members but were persons who were interested in purchasing the same plot that was allotted to defendant No.2, ostensibly to retain the same as parking area in front of their shops on plot Nos.27, 35 and 36.

5. The Divisional Cooperative Officer, on perusal of the material and evidence, noted the said plot to be a vacant commercial plot as denoted in the plan. However, on providing his own analysis, he has proceeded to term the plot in issue as a 'parking area' and has accordingly passed the award dated 28.01.2004 in favour of the plaintiffs. The defendants, more particularly, the respondent herein (Mr. M.V. Ramana) filed an appeal before the Andhra Pradesh Cooperative Tribunal at Hyderabad, which affirmed the award through its judgment dated 27.02.2006. The respondent filed a writ petition before the High Court assailing the order dated 24.04.2010 in W.P.No.212/2006. The High Court on a detailed consideration, more particularly with regard to maintainability of a proceeding of the present nature before the Cooperative Officer, held it against the appellants herein, allowed the writ petition and set aside the award of the Divisional Cooperative Officer as also the order of the Cooperative Tribunal. The appellants are therefore aggrieved by the order passed by the High Court.

6. We have heard Mr. B. Narayana Reddy, learned senior counsel for appellants, Mr. Annam D.N. Rao, learned counsel for the respondent No.1 and Mr. K. Ravindra Kumar, learned Senior Counsel appearing for respondent No.5 and perused the materials available on record.

7. From a perusal of the proceedings, it is noted that the appellant along with the others had raised the dispute before the Divisional Cooperative Officer invoking Section 61 of the APCS Act. The said provision reads as hereunder:

"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 subsection 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;

(xxx)

(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 2 [shall be referred under subsection (3) only after the date of declaration of the result of such election.]”

8. The Act has made a provision for members of a Co-operative Society to approach the co-operative Officer designated, when there is a dispute amongst the members of a society or the member/members against the Society etc.

9. In the instant case, at this stage before this Court, certain parties have been deleted as indicated supra and the appellant who was a former President of the Society is alone prosecuting these appeals. However, what will have to be noted is the frame of the dispute, the parties to the dispute at the point in time when it was raised and the context in which it was done. Defendant No.2, a member of the society who was allotted a plot in another layout formed by the N.G.O. Society, sought for an exchange of the plot. Accordingly, the earlier allotted plot was surrendered to the Society by the defendant No.2. In lieu thereof, the Society allotted the plot measuring 3.25 cents to defendant No.2 and a sale deed dated 07.04.2000 was also executed and registered. Former office bearers of the Society who

were members of the N.G.O society, were amongst the plaintiffs. Jayanagar Housing Welfare Society was a society in the larger layout plan and therefore seeking to sustain the facilities available in the layout by contending that the plot allotted to the defendant No.2 was a vacant area reserved as parking area. Plaintiffs No.4 and 5 were however not the members of the Society but were purchasers of commercial plots bearing No. 27, 35, 36 and had constructed shops thereon. The plot allotted to the defendant No.2 is located in front of the shops belonging to the plaintiffs No.4 and 5 in plots No.27, 35 and 36. Though they contend that it is a vacant plot retained in the layout as parking area and are seeking to espouse a cause, their conduct needs to be noted. They had earlier requested the NGO Society to allot the plot in their favour but are presently aggrieved when it is allotted to another claimant.

10. Plaintiffs No.4 and 5 however seek to explain their conduct by stating that they had sought to purchase the plot and retain it as a parking area. Such an explanation cannot be accepted on face value. If in fact a plot was earmarked in the layout plan as a parking area, it is the bounden duty of the authorities concerned to maintain the same as such. It is difficult to fathom that a private individual who owns shop premises in the layout would invest money and purchase the vacant plot to retain it as a parking area for the benefit of the general public. If that be so, plaintiffs No.4 and 5 apart from being non-members who could not have invoked the provisions of the APCS Act, were also rival claimants and competitors for allotment of the same plot which is the subject matter of dispute. The members i.e. former office bearers had made a common case with the nonmembers who were otherwise interested in allotment of the same plot. In furtherance of the same, the plaintiffs had sought for a declaratory relief to declare the registered sale deed dated 07.04.2000 as null and void. Hence, keeping in perspective the subject matter, the relief sought and the parties involved, the High Court was justified in its conclusion.

11. Be that as it may, whether it was before the authorities under the A.P.C.S Act or if the parties were relegated to the jurisdictional Court under the Civil Procedure Code, grant of relief would have arisen only if there was definite material to indicate that the plot in question was reserved as a parking area in the layout plan and that the same therefore being a civic amenity area, had on formation of the layout, vested in the Municipal Corporation along with the roads, drains and open areas for the purpose of retaining it as such and maintaining the same. There is no such document on record. Secondly, the person seeking relief from the Court should approach the Court with clean hands, as per well-established legal norms. In the instant case, plaintiffs No.4 and 5 had made attempts to secure allotment of the same plot allotted to the defendant No.2, in their favour though presently, it is sought to be explained that it was to be retained for parking, which, as already indicated above, is an explanation which cannot be accepted. Therefore, the challenge by the said plaintiffs to the allotment made in favour of the defendant and the same cause being supported by the other plaintiffs, cannot be considered to be bonafide.

12. That apart, as noted, there is no definite material to delineate from the layout plan that it was a parking area. As per the case set up and also the finding recorded by the original authority, the plot has been shown as commercial plot/vacant plot. Keeping in view the location of the property owned by the plaintiffs No.4 and 5, the original authority had

deemed it fit to keep the disputed plot vacant for being maintained as a parking area which is only an assumption based on the own analogy of the Divisional Cooperative Officer and amounts to modifying the approved layout plan. The consideration in that regard made by the original authority, based on the said assumption is as hereunder:

“(27) In order to conclude that the vacant site shown as the southern boundary was meant only to be a parking place although recited as vacant place the following points may well be appreciated.

a) On the southern side of the shop rooms, particularly for the plots 27, 36 and 35 there is no other place to connect with the road.

b) For visitors coming to the shopping complex by bicycles, scooters, or cars there must be some space for parking the vehicles, particularly because it is obviously a commercial area. Vacant site viewed in the proper context and from a correct perspective means necessarily a parking place because parking place is a ‘must’ in a commercial area.

c) The SubDivisional Cooperative officer who was the inspecting authority prepared a defect sheet which is worth perusal in this context. In para 5 of the said sheet the said officer had clearly made a note that the society sold away site for parking place to the Second defendant i.e., M. Venkata Ramana. The said Venkata Ramana is a member of the Society and had taken a plot in the satellite city of the NGO’s Cooperative House Building Society Ltd., Kadapa on dip system on 26.10.1996. The Society is also having surplus plots near Kondayapalli village. The present managing committee of the D1 Society has cancelled his plot in the satellite city and executed the impugned reg. sale deed in favour of M. Venkata Ramana for 3.2. cents which is the parking place in question.

d) What is important to note in this context is that the first defendant Society has not taken any prior permission from the Divisional Cooperative officer, Cuddapah/District Cooperative Officer, Cuddapah during the year 1998/1999 and 1999/2000 to effect sale in favour of the 2nd defendant. The society has regularized the several encroachments made by some members, taking permission duly from the Cooperative Dept. But the two cases relating to the plaintiffs 4 and 5 were not brought to the notice of the Divisional Cooperative Officer, Cuddapah /District. Cooperative Officer, Cuddapah, appropriate action was also recommended in the defect sheet to be taken against the managing committee.

e) One more important factor to be appreciated in this context is that the southern boundary is mentioned only as a vacant site but not as the vacant site of the 1st defendant Society. If really the 1st default Society retained its ownership on the vacant site on the southern side it would not have failed to mention that the said vacant side belonged to itself. It is significant to note that the boundaries on the other three sides show to whom the properties belonged.

f) It is therefore but reasonable to opine that plot No. 27, 35 & 36 were purchased only under the impression that the vacant site in question was meant for parking of vehicles. According to the principles of town planning there must be parking place in any commercial area. In this context the judgment of the learned IV ADJ, Cuddapah in O.S. No. 477 of 1996

and the Judgment of the learned 1st ADJ/Cuddapah in O.S. No. 44/98 deserve to be considered with great care.

(28) In the residential area, a site of two cents being part of a larger area earmarked for public. park and playground was sold by the 1st defendant building society to one of the members of the said society consequently Jayanagar Welfare association filed O.S No. 477 of 1996 in public interest and succeeded in getting a decree. The contention in the suit was that the extent of 2 cents being part of the area earmarked for play ground the sale was illegal. In the instant case, the extent of 3.2 cents is a vacant site left obviously for the purpose of parking of vehicles on the southern side of plots 27, 36, 35 in the commercial complex and so the analogy holds good.

(29) Plaintiffs 2 and 3 are no doubt expresidents of the 1st Defendant building society but they are now members of the welfare association, which is the 1st defendant in the arbitration reference. The 1st plaintiff Kotla Rama Subbaiah was the 1st president of the Society. The very fact that the plaintiffs 1 to 3 who are expresidents of D1 building Society have filed this dispute shows that 3.2 cents must be a parking place because they are well acquainted with all the relevant facts from the beginning. There is no selfish interest for them in questioning the sale in favour of the second defendant otherwise."

(Emphasis supplied)

13. Notwithstanding the above analogy based on an assumption which is unsustainable, in order to render a quietus to the issue, this Court through the order dated 29.10.2021, had sought for a report from the District Judge, Kadapa on the whole conspectus of the matter. An exhaustive Report dated 06.11.2021 has been submitted on all aspects of the matter which we have carefully perused. The said Report nowhere indicates that the plot in question was reserved or earmarked as a parking area. On the other hand, it has been referred to as the area earmarked for commercial purpose. It is stated that as per the given layout plan it is in one of the commercial areas out of three slots allotted for commercial purpose. Hence, the said report coupled with the discussion by the Divisional Cooperative Officer extracted supra, will disclose that it was not earmarked as a parking area in the layout plan but was only deduced so by the Divisional Cooperative Officer in the course of his discussion in the award.

14. Insofar as the allotment of the plot made to the defendant No.2 (Mr. M.V. Ramana) is concerned, the learned District Judge has noted that the defendant No.2 was a member of the Society and Rule 42 relating to the allotment procedure has been noted in detail. The procedure followed in that regard by seeking permission from the Divisional Cooperative Officer vide letter dated 07.05.1999 and the permission accorded to proceed in terms of Rule 42 (4) of the Society Rules is referred. Pursuant to the same, the Board of Directors held a meeting on 06.04.2000, wherein allotment was made by passing a resolution to that effect. The decision to allot was made after cancelling the allotment of plot No.3354 which had been made earlier in favour of the defendant. Since Rule 42 (4) required that Board Resolution be approved by General Body and the resolutions for the years 1995-2000 were not traced, it has been commented in the Report that the Board resolution is without

authorisation.

15. In our view, nonavailability of the General Body resolution at this juncture, as observed by the Learned District Judge, cannot be held to be fatal in the facts and circumstances of this case. That is for the reason that the competent authority in appropriate proceedings has not referred to this aspect. The undisputed position is also that the defendant No.2 (respondent herein M.V. Ramana) is a member of the Society and being entitled to allotment of a plot, had earlier been allotted plot No3354 at another location. It is on surrender of that plot that the present allotment was made in his favour, though the plot is of a slightly bigger dimension. The order of the Divisional Cooperative Officer indicates that the price for allotment was fixed keeping in view the market value. The allotment being of the year 2000, construction has also been raised. More than two decades have elapsed by now. Any intervention or action at this juncture will not be justified for all the aforesaid reasons.

16. Therefore, taking a holistic view of the matter, the appeals are dismissed with no order as to costs.