Manikrao and Others Vs. the State of Karnataka by Its Secretary Department of Housing and Urban Development and Others

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Court : Karnataka Gulbarga

Decided On : Feb-14-2014

Judge : Mohan M. Shantanagoudar

Appeal No. : Writ Petition No. 81795 of 2009 (KHB)

Appellant : Manikrao and Others

Respondent : The State of Karnataka by Its Secretary Department of Housing and Urban Development and Others

Advocate for Def. : Sri. S.S.Kumman

Advocate for Pet/Ap. : Sri. I.R.Biradar

Judgement :

(Prayer: This Writ Petition Is Filed Under Articles 226 And 227 Of The Constitution Of India Praying To Quash The Impugned Order Dated 08.02.2006 Passed By The 4th Respondent Vide Annexure-F And Also The Allotment Letter Daetd 13.03.2006 Made In Favour Of The 5th Respondent Vide Annexure-G And ETC.)

1. Petitioners 1(a) to 1(c) are the legal representatives of Manikrao S/o Channabasappa Boral. He made an application to the 4th respondent - Karnataka Housing Board for allotment of house on 23.06.1995. Petitioners were allotted

house bearing No.38/A MIG at Kotnoor, Gulbarga, on 16.08.1999 with certain terms and conditions. The lease cum sale agreement was entered into between the petitioners and the 4th respondent - Housing Board as per Annexure-C dated 08.10.1999. By that time, petitioners had already deposited a sum of Rs.73,625.25 paise. The total cost of the property provisionally fixed was Rs.2,94,500.00 paise. However, it is made clear that the cost is liable for variation on certain circumstances. The important clauses of lease cum sale agreement are as under:

"9. The lessee/purchaser having already paid the lessor/vendor a sum of Rs.73,625.25 towards the cost of the property excess over the loan amount admissible in accordance with the regulations framed under the Karnataka Housing Board Act he/she shall pay the balance of cost of the property viz. Rs.2,20,874.75 together with interest thereon. At 17.5% Percent per annum or at such higher rate of interest as the Lessor/Vendor may fix from time to time in 144 monthly equated installment of Rs.3765.00 P.M. The first installment being payable on or before date of possession.

9a. The lessee/purchaser he/she shall pay the balance cost if any on the basis of completion report, before conveying property to him/her by executing sale deed, on expiry of the minimum period of (120 months) 10 years from 8.10.99 simple interest chargeable is at 17.5% percent per annum.

9.b. The Lessee/Purchaser shall pay concurrently the loan admissible of Rs.2,20,874.75 together with interest thereon at 17.5% Percent per annum or at such higher rate of interest as the Lessor/Vendor may fix from time to time in 144 monthly equated installment at Rs.3765.00 P.M. The first monthly installment being payable on or before date of possession."

2. From the aforementioned, it is clear that the petitioners were to pay Rs.3,765.00 paise per month for 144 months. The said amount was fixed based on the principal amount i.e., balance of cost of the property i.e., Rs.2,20,874.75 paise with interest at 17.5% thereon. Thus, the petitioners were required to pay 144 equated monthly installments of Rs.3,765.00 paise per month. Petitioners paid Rs.45,000/- on 07.08.2001, Rs.50,000/- on 07.08.2001 and Rs.50,000/- on 09.08.2001. As aforementioned, the allotment was made and lease cum sale

agreement was executed between the parties on 08.10.1999. Thus, amount paid by the petitioners to an extent of Rs.45,000/-, Rs.50,000/- and Rs.50,000/- was almost equal to the money to be paid by the petitioners for monthly installments up to the year 2001 i.e., from the year 1999 i.e., for 3 years. Subsequently, petitioners did not pay the equated monthly installments as agreed and thereafter notices were issued by the Housing Board to the petitioners. Despite the same, petitioners did not pay the balance of consideration as agreed and consequently, the order came to be passed by the Housing Board as per Annexure-R4 (produced by the respondent - housing Board along with statement objections) dated 08.02.2006. Pursuant thereto, deed of cancellation of lease cum sale agreement was executed by the Housing Board as per Annexure-R5 on 13.03.2006. Subsequently, the very house was allotted in favour of respondent No.5 herein, who has paid the sale consideration and taken possession of the house.

Petitioners by filing this writ petition seeks quashing of the order dated 08.02.2006 cancelling the allotment of house made in favour of the petitioners. They have also sought for cancellation of the allotment letter dated 13.03.2006 issued in favour of respondent No.5 as per Annexure-G.

3. Sri I.R.Biradar, learned counsel for the petitioners submits that the respondent - Housing Board is not justified in cancelling the house allotted in favour of the petitioners since the petitioners had made almost 80% of the sale consideration in the year 2001 itself; since the petitioners were required to pay only balance of Rs.2,20,874.75 paise as on 08.10.1999 and as the petitioners were required to pay the said amount within the period of 144 months i.e., about 12 years, there is no reason as to why the Housing Board cancelled the allotment made in favour of the petitioners.

4. Sri S.S.Kumman, learned counsel for the respondent Nos.2 to 4 - Housing Board by filing statement of objections contends that the petitioners have misread clause No.9 of the lease cum sale agreement entered into between the parties; since the balance amount of Rs.2,20,874.75 paise was to be paid by the petitioners on monthly equated installments, they had agreed to pay interest at 17.5% per annum. 144 months were provided to the allottee for making entire

payment. Based on the said facts and figures, Housing Board as well as the petitioners agreed that the petitioners would pay Rs.3765.00 paise per month in 144 monthly equated installments.

5. Clauses 9, 9(a) and 9(b) of the lease cum sale agreement make amply clear that petitioners were required to pay Rs.3,765.00 paise per month for 144 equated monthly installments. Had the petitioners paid the entire sale consideration on the date of the allotment itself, the Housing Board would not have imposed interest at all. Since the allotment was made in favour of the petitioners on interest basis treating the balance amount as loan, petitioners were required to pay equated monthly installments of Rs.3,765.00 paise per month which included the part of the principal amount as well as interest at the rate of 17.5% interest per annum on Rs.2,20,874.75 paise. Since the petitioners have agreed to the terms and conditions of allotment, they are bound by it. Though the petitioners had paid the requisite sums of money for a period of three years from the date of allotment, they did not pay the remaining monthly installments after the year 2002. They were required to pay 144 equated monthly installments form 08.10.1999 i.e., for 12 years. Thus, it is clear that the petitioners ought to have paid the equated monthly installments of Rs.3,765.00 paise per month up to the year 2011. On the other hand, petitioners stopped payment of money in the year 2001 itself. The balance of sums were not paid by them, in this view of the matter, the respondent - Housing Board started issuing notices to the petitioners repeatedly, despite the same, the amount was not paid. Ultimately, the final notice came to be issued as per Annexure-R3 dated 08.09.2005 calling upon the petitioners to pay the balance of dues within certain period. However, the petitioners failed to make use of leniency. Having no other alternative, Board proceeded to cancel the allotment of house made in favour of the petitioners as per the order dated 08.02.2006 vide Annexure-F and further proceeded to allot the very house in favour of respondent No.5 as per Annexure-G on 13.03.2006.

6. Since the petitioners are at fault in not paying the equated monthly installments as and when accrued due, it is but natural for the Housing Board to cancel the allotment after due notice to the petitioners. Since action of the Housing Board is just and proper, no interference is called for.

Accordingly, the petition fails and the same stands dismissed.

It is open for the petitioners to make representation to Housing Board praying for refund of the money already paid by the petitioners. If the said representation is made, the same shall be considered by the respondent - Housing Board in accordance with law.