

M.A. Rasheed and Others Vs. Commissioner, Nirmal Municipality, Adilabad District and Others

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SooperKanoon Citation : sooperkanoon.com/431752

Court : Andhra Pradesh

Decided On : Nov-11-1999

Reported in : 2000(2)ALD377; 2000(1)ALT720

Judge : B.S.A. Swamy, J.

Acts : [Constitution of India](#) - Article 226; Andhra Pradesh Buildings (Lease, Rent and Eviction) Act, 1960

Appeal No. : WP No. 9636 of 1996

Appellant : M.A. Rasheed and Others

Respondent : Commissioner, Nirmal Municipality, Adilabad District and Others

Advocate for Def. : Government Pleader for Municipal Administration and Mr. V. Viswanadham, Adv.

Advocate for Pet/Ap. : Mr. B. Sudhakar Reddy, Adv.

Judgement :

ORDER

1. The petitioners, eight in number, filed this writ petition seeking issuance of a writ of mandamus to the respondents to allot LIGH quarters at Ibrahimbagh, Nirmal, on

hire purchase basis immediately as per the proposals sent by the Commissioner, Nirmal Municipality, in his letter No.1647/92, dated 15-11-1994, and consequently allow them to pay the monthly instalments towards the sale consideration on hire purchase basis, and pass such other order or orders.

2. The respondents opposed the claim of the petitioners solely on the ground that if the quarters are allotted to the petitioners under hire purchase scheme, the financial position of the Municipality will be further worsened as the Municipality is now not even in a position to pay the salaries to its employees.

3. To consider the rival contentions, the factual background that led to the filing of this writ petition has to be looked into.

4. After the advent of independence, the State Government with the help of Central Government has taken up the work of construction of houses for allotment on hire purchase basis to certain categories of persons viz., those who did not own a house, and whose income was less than a particular amount. To regulate the allotment of the houses, constructed by the Municipalities, Allotment Advisory Committees, consisting of both officials and non-officials, were constituted. In Telangana region, the Government was empowered to make allotments, and in Andhra region, the Government was empowered to make allotment on the basis of the recommendations of the local bodies concerned. Under the above scheme, reservations were made for allotment of the LTGH houses for defence personnel, State Government employees, including local bodies, industrial workers and general public. But in practice, the Municipality allotted the houses to its own employees, and to others on rental basis in contravention of the scheme, approved by the Government.

5. For implementing the scheme, the then Government of Hyderabad in notification No.3120 dated 16-6-1956 framed Rules for regulating the allotment of houses, constructed under the LIGH scheme, on hire purchase basis. The Rules relevant to the issue are referred to hereunder:

Under Rule 3(1), the Government has to constitute Allotment Advisory Committees for the twin cities of Hyderabad and Secunderabad as well as for Districts,

Divisions and Taluk Head Quarters, where houses under the scheme have been constructed. Rule 3(2), specifies the constitution of the Committees. Under Rule 5(1), the authorities concerned are expected to give wide publicity with regard to the tenements that are being offered for allotment under the hire purchase scheme. Under Rule 5(2), applications for allotment of the houses shall be presented in Form No.1, and under Rule 5(3) a register in regard thereto shall be maintained under Form-II. Under Rule 6(1), the intending purchasers have to pay EMD of Rs.250/- in case of 'A' Class house, Rs.175/- in case of 'B' Class house, and Rs.125/- in case of 'C' Class house. The Allotment Advisory Committees, constituted for the purpose shall forward their report recording their opinion to the Government in respect of the applications registered under Rule 5(3), stating (a) as to whether a person owns a house in his or her name or in the name of the wife or husband, as the case may be, (b) the annual income of the person does not exceed Rs.6,000/-, and (c) the person has the requisite paying capacity, and shall recommend whether the application for allotment should be granted or not. Under Rule 8(1), the Government may after taking into consideration of the report of the Committee, allot the under Rule 8(2), the allotment of houses made by the Government shall be final. Under Rule 8(3), the applications that are not properly filled in or attested under the Rules shall be rejected.

6. It is not in dispute that the houses under reference were constructed pursuant to the above scheme framed in 1956, and instead of allotting the houses on hire purchase basis, the Municipality allotted the houses to the petitioners or their predecessors-in-interest on rental basis.

7. A perusal of G.O. Ms. No.56, Housing, dated 28-10-1989, discloses that all the Municipalities in the State are following the same procedure in order to ward off the financial loss to the Municipalities. In these circumstances, some allottees seemed to have made representations to the Government, and the Government initially issued G.O. Ms. No.110 Housing, dated 7-10-1967 for implementation of the scheme, by categorically recording a finding that it would not be fair, and it would cause hardship if after 20 years the rented allottees are thrown out of the houses allotted to them. In Memo No.462/1/D3/ 76-14, Housing, dated 6-1-1977, the Government directed that wherever the occupancy has been approved by the

Municipalities, the occupants may be given first option to purchase the houses on hire purchase basis, and in case of new comers, the allotment may be made by following the usual rules. The Government further went ahead by directing the Municipalities to allot the houses to the persons who are in occupation of these houses on rental basis for more than two years as per the procedure outlined in memo dated 6-1-1977 by issuing Memo No.483/D3/77-6 Housing, dated 28-10-1977. But the Government seemed to have reversed its policy by issuing Memo No.789/D1/86-4 Housing, dated 13-10-1986 and directing the Municipalities not to allot the houses on hire purchase basis and continue to allot the houses on rental basis. Aggrieved by the above decision of the Government, the allottees seemed to have made representations to the State Government stating that the decision of the Government would cause hardship to them as they have almost paid the sale consideration for the houses constructed under the scheme.

8. In these circumstances, the Government issued the above G.O. Ms. No.56, Housing, dated 28-10-1989, directing the Municipalities to allot the houses on hire purchase basis to all those persons who were in occupation prior to October, 1986 as a special case as per the prescribed guidelines. The Commissioners of all the Municipalities were directed to take action accordingly.

9. From the above narration of facts, it is seen that the petitioners who were allotted the houses way back in the year 1956 under the scheme framed by the then Government, are entitled to get the houses allotted in their favour on hire purchase basis. On the ground of warding off of their financial losses, the Municipalities seemed to have not completed the formalities in allotting the houses, constructed under the hire purchase scheme, and continued the petitioners in occupation in those houses on rental basis. Perhaps, having received orders dated 13-10-1986 from Government in Memo No.789/D 1/86-4 Hg., wherein the Government directed the Municipalities not to allot the houses on hire purchase scheme, the Municipality issued notices to the petitioners in Proc. No.1218/87, dated 10-12-1987. Questioning the said proceedings, the petitioners filed Writ Petition No.19004 of 1987, seeking issuance of writ of certiorari and to quash the above notice. This Court by order dated 10-7-1992 held that without giving any opportunity to the petitioners to file their objections or representation to

explain their rights and interest in the said quarters, the Municipality passed the order. It also observed that if notification has already been issued directing the allotment of the quarters to the persons who are residing in the quarters, the Municipality shall not take further action. If the respondents issued no such notification, it would be open for the petitioners to file petitions before the respondents, within three weeks from that date claiming their rights. On filing such applications, the respondents were directed to dispose of the same according to law and then proceed to take action for eviction of the petitioners. Pursuant to the above judgment, the petitioners filed individual representations before respondent No.1 seeking allotment of houses on 25-9-1992, by which time G.O. No.56, dated 28-10-1989 was in operation, wherein all the Municipal Commissioners were directed to take action to allot houses to the occupants who were in occupation of the houses prior to October, 1986. Pursuant to that, with a view to sell the houses, the Municipal Commissioner seemed to have requested the Sub-Registrar to fix the market value for the houses in question by his letter dated 21-1-1993, and the Sub-Registrar seemed to have fixed the value of tenements at Rs.19,000/-. Thereafter, the Municipal Council at its meeting held on 3-3-1993 passed a Resolution No.79 recommending allotment of houses to the occupants after obtaining approval of the Government. Pursuant to the said resolution, the Commissioner seemed to have sent proposals to the Director, Municipal Administration, who in turn sent back the proposals by proceedings dated 21-4-1993 to the Commissioner on the ground that the recommendations of the Allotment Advisory Committee was not obtained by the Municipal Council before passing the resolution. As no Allotment Advisory Committee was in existence by that time, the Government issued for the Municipality in question. G.O. Ms. No.59, Hg.I, dated 23-6-1994, constituting an Allotment Advisory Committee, by fixing the term of office of the Committee as three years from the date of issuance of the G.O. The Allotment Advisory Committee having considered the request of the petitioners on 4-11-1994 passed resolution No.1 recommending the case of the petitioners to the Government for allotment of tenements duly indicating the names of the persons under whose occupation the tenements were there by that time. Pursuant to the said resolution, the Special Officer-RDO, Nirmal, by proceedings dated 15-11-1994 resubmitted the proposals to the Government through the

Director, Municipal Administration, who again seemed to have returned the applications on 6-12-1994 on the ground that the applications of the petitioners were not attested by the Municipal Commissioner and the Income Certificates of the proposed allottees were not enclosed, and requested the Municipal Commissioner to send the proposals in full shape. By the time the proposals came back, elections to Municipalities seemed to have taken place, and the new Municipal Council, which came into office happened to be a different Municipal Council that was in office earlier. Instead of resubmitting the proposals, the Municipality did not take action in the matter. Thereafter, the Municipal Council at its meeting held on 28-6-1996 passed resolution No.34 increasing the rent of the tenements from Rs.50/- per month to Rs.300/- and by another resolution dated 29-10-1996, it has taken a decision not to sell the quarters under the hire purchase scheme on the ground that the Municipality was in financial doldrums and that it is not in a position even to pay the salaries of its staff.

10. I have no hesitation to hold that the reason given by the Municipal Council in not allotting the houses to the petitioners under the hire purchase scheme is only an after thought and intended to deprive the petitioners of their legitimate right in getting allotment of houses under the scheme, which was introduced way back in the year 1956. For ostensible reasons, the resolution passed by the Municipal Council is in bad faith. The stand taken by the respondents is not only contrary to the scheme framed by the then Government of Hyderabad but also G.O. Ms. No.56 Housing, dated 28-10-1989, and therefore, their action cannot be countenanced.

11. Now let us examine the issues raised by the Municipal Council in refusing to allot the houses to the petitioners. It has to be seen that these houses were constructed way back in the year 1956 and the tenements are governed by A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960. Had the petitioners approached the Rent Controller, questioning the arbitrary fixation of the rent, it is doubtful whether the action of the Municipal Council could have been sustained in law as at the time of enhancement of rent from Rs.50/- per month to Rs.300/-, the houses were of 30 years age. At this stage, the learned Counsel for the petitioners brought to my notice that till this date they have not received any orders from the

Municipality enhancing the rent per month from Rs.50 to Rs.300/-.

12. The next ground shown by the Municipal Council for not allotting the houses to the petitioners is to augment its worsening financial condition. Even assuming without admitting that the action of the respondents in increasing the rent from Rs.50/- to Rs.300/- is right, the Municipality will be getting only Rs.2,400/-per month, which is not equivalent to the pay drawn by a Class-IV employee, and it cannot be said that with Rs.2,400/-, the ills of the Municipal Council would be cured. Hence, I do not find any merit in this contention, and it is accordingly rejected.

13. Lastly the houses having been constructed by taking financial assistance from the Central Government, under hire purchase scheme, the Municipality cannot retain the possession of these houses to augment its financial resources.

14. The next question that falls for consideration is whether the annual income limit of Rs.6,000/- fixed by the then Government of Hyderabad for allotment of houses at the time of framing the scheme has to be taken into consideration or whether any other higher income has to be fixed. Admittedly, these houses were constructed for the purpose of allotting employees under hire purchase scheme, and it is not the case of the Municipality that the petitioners have not complied with the terms and conditions framed for allotment of the houses in their favour. The Municipality having enjoyed the rents from the petitioners all these years without implementing the scheme, and having availed the financial assistance from the Central Government for construction of houses under the scheme, cannot now turnaround and say that it will examine the financial capacity of the concerned allottee as on the date of allotment. Hence a direction is given to the respondents to consider the annual income of the persons that existed at the time when houses were allotted in their favour and not thereafter. In other words, if the petitioners were within the income limits prescribed by the then Government of Hyderabad for allotment of the houses under hire purchase scheme on the date of allotment, the question of considering their annual income as on today, now after 35 years does not arise. It is made clear that since the issue is pending since 1956, I doubt whether the original allottees are still alive. Hence respondent-authorities are

directed to consider the claim of the legal representatives of the allottees for conveying the title to the property under the hire purchase scheme. It is also made clear that as the Sub-Registrar estimated the value of the tenement, including the land at Rs.19,000/- on 21-1-1993. The allotment shall be made in favour of the petitioners at that consideration only as the respondents have illegally enjoyed the monies paid by the petitioners in the shape of rents for over 35 years.

15. The question that is now left to be answered is whether the petitioners are entitled for costs. If so, from whom they have to be recovered. As the petitioners are fighting for implementation of the scheme farmed by the respondents themselves for over a period of 35 years, they are entitled for costs in this case, and as the Municipal Council, has taken an unreasonable stand, as observed by me, for extraneous reasons, the costs have to be recovered from the members of the Municipal Council.

16. Accordingly, the writ petition is allowed. The respondents shall complete the entire exercise within four weeks, and if any defects are pointed out by any of the authorities at any stage, the officer concerned shall be summoned to rectify the mistakes then and there itself, and process the files without swinging the files from this end to that end like a pendulum of a clock. Advocate's fee is fixed at Rs.10,000/-.