

V. Seenaiiah Vs. Executive Engineer (Housing), Warangal Division and ors.

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Court : Andhra Pradesh

Decided On : Mar-04-2009

Reported in : 2009(4)ALT666

Judge : P.S. Narayana, J.

Acts : Andhra Pradesh Housing Board Act, 1956 - Sections 52 and 53;
[Constitution of India](#) - Articles 226 and 227

Appeal No. : C.R.P. No. 5368 of 2002

Appellant : V. Seenaiiah

Respondent : Executive Engineer (Housing), Warangal Division and ors.

Advocate for Def. : D. Ranganath Kumar, Adv. for Respondent No. 1 and ;G.P.
for Home for Respondent Nos. 2 and 3

Advocate for Pet/Ap. : K.V. Satyanarayana, Adv.

Disposition : Petition allowed

Judgement :

ORDER

P.S. Narayana, J.

1. On 19-11-2002, while admitting the Civil Revision Petition, in CM.P. No. 22235/2002 interim stay had been granted. C.M.P. No. 4377/2008 is filed by the 1st respondent in the Civil Revision Petition praying for vacation of the said interim stay.

2. Though the matter is coming under the caption 'Interlocutory', at the request of the Counsel on record, the Civil Revision Petition itself had been taken up for final hearing and thus the same is being disposed of finally.

3. Sri K.V. Satyanarayana, the learned Counsel representing the Revision Petitioner had pointed out to the relevant provisions of A.P. Housing Board Act 1956 (in short hereinafter referred to as 'Act' for the purpose of convenience) and would maintain that the order made by the Primary Authority being not in accordance with law, the mere fact that certain reasons had been recorded by the Appellate Authority may not cure this initial defect and hence the order which is being challenged cannot be sustained. The Counsel also pointed out relating to the discrepancy of the arrears, whether it may be Rs. 19,000/- and odd or Rs. 11,000/- only. The Counsel would maintain that the mere fact that the Revision Petitioner was set ex parte before the Primary Authority would not alter the situation in any way and even in such a case, the Primary Authority is expected to record reasons and the one line order made by the Primary Authority not being in accordance with law, since the Appellate Authority cannot cure the said initial defect of the Primary Authority though certain reasons had been recorded by the Appellate Authority, both the orders to be set aside and the matter to be remitted to the Primary Authority to make an order in accordance with law.

4. Sri Ranganath Kumar, the learned Counsel representing the 1st respondent/contesting respondent would maintain that the party had not chosen to contest the matter at all and hence to contend that no reasons had been recorded may not be a substantial ground. The Counsel also would further maintain that the Appeal being continuation of the original proceeding, the Appellate Authority had recorded reasons in detail and in the light of the same, the initial defect if any to be taken as cured by the Appellate Authority. The Counsel also would maintain that possession also had been taken and now such possession taken by the 1st

respondent cannot be disturbed at this distant point of time. The Counsel also pointed out that the Revision Petitioner had committed default for sufficiently long time and the Revision Petitioner is due more than Rs. 19,000/- and this aspect also may have to be taken into consideration.

5. Heard the Counsel.

6. The present Civil Revision Petition is filed under Article 227 of the [Constitution of India](#) by the Revision Petitioner being aggrieved of the order made in C.M.A. No. 66/98 on the file of the learned Principal District Judge, Warangal.

7. The unsuccessful appellant who is the respondent in Case No. 374/CA5/95 before the Primary Authority is the present Revision Petitioner. The Revision Petitioner being aggrieved of the order of eviction made in Case No. 374/CA5/95 by the Primary Authority, which had been confirmed by the Appellate Authority, the learned Principal District Judge, Warangal, in C.M.A. No. 66/98, had preferred the present C.R.P.

8. The Revision Petitioner is the respondent in Case No. 374/CA5/95 before the Competent Authority/Tribunal/Primary Authority under the Act. The 1st respondent filed a petition before the Primary Authority under Sections 52 and 53 of the Act mentioning that LIG-I Flat No. 72/9 at Warangal was allotted on hire purchase to the present Revision Petitioner under lease-cum-sale agreement dated 18-4-1991 and he had taken possession of the house on 30-6-1992. The instalment payable was Rs. 1142/-. The Revision Petitioner was due an amount of Rs. 8920/- for the period from 30-3-1992 to 30-12-1994. A demand notice was issued in this regard on 21-1-1995 for payment of dues with penal interest within 15 days from the date of receipt of the notice. The receipt of the notice was acknowledged by the Revision Petitioner on 26-1-1995 but the dues were not paid within the time specified till the date of filing of the petition before the Primary Authority and hence appropriate reliefs had been prayed for. Notice in Form 'A' for vacation and notice for payment of arrears and notice for damages dated 23-6-1995 had been served and the Revision Petitioner failed to comply with the orders made in the said notices given by the Primary Authority within the time. It is also pertinent to note that on 26-10-1995, the Revision Petitioner remained absent before the Primary

Authority and hence he was set exparte and the Primary Authority made a provisional order for eviction in Form 'A' on 23-6-1995 and further ordered for recovery of the arrears of an amount of Rs. 19,056/-. Aggrieved by the order made by the Primary Authority, the Revision Petitioner carried the matter by way of C.M.A. No. 66/98 on the file of Appellate Authority/Principal District Judge, Warangal. The Appellate Authority after referring to the respective stands taken by the parties, formulated the undernoted Point for consideration:

Whether the Tribunal below is justified in ordering for eviction of Flat No. 79/2 and for recovery of arrears as mentioned by it and to what relief?

The Appellate Authority/learned Principal District Judge, Warangal recorded reasons at paras 9, 10 and 11 and ultimately came to the conclusion that the Appeal is devoid of merit and accordingly dismissed the Appeal with costs. Aggrieved by the same, the present Civil Revision Petition had been preferred.

9. In the light of the submissions made by the Counsel on record, the following Points arise for consideration in this Civil Revision Petition:

1. Whether the order under challenge in the present Civil Revision Petition made by the Primary Authority and also the Appellate Authority/learned Principal District Judge, Warangal to be set aside or to be confirmed in the facts and circumstances of the case.?

2. If so to what relief the parties would be entitled to ?

10. Point No. 1: The respective stands taken by the parties in brief already had been referred to above. The A.P. Housing Board (hereinafter in short referred to as 'Board' for the purpose of convenience) filed a petition before the Primary Authority under Sections 52 and 53 of the Act for eviction and also the recovery of the amount. It is not in serious controversy that the Revision Petitioner had not chosen to contest the matter and remained exparte before the Primary Authority. Strong reliance was placed on Universal Oxygen Company v. A.P. Housing Board 1989 (1) ALT 638 wherein the learned Judge of this Court observed:

I find force in this contention. The appellate authority has clearly stated that no issues have been framed. An enquiry has got to be made by the competent authority (which is in the nature of a civil proceeding before the competent court but the power has been given under the statute to competent authority without delegating the power to the civil court) going into the allegations after framing necessary issues and giving reasonable opportunity and then record a finding. Against that there is a right of appeal provided and the appellate authority will go into that afresh, whether agreeing or disagreeing with the finding of the competent authority. Against the appellate order, again a right of review is provided under Article 226 of the Constitution. The competent authority has to necessarily frame issues, record reasons and a finding therein and then an order of eviction can be passed on this fact finding. In this case, that procedure has not been followed. Unfortunately, the appellate authority has not adverted to the point as regards the procedure to be followed by the competent authority. The appellate authority has also gone into the matter without framing any specific point. Thus there is manifest and clear error committed by both the authorities. The order is accordingly set aside. Sri Janardhan Rao, the learned Counsel has requested to remit the matter to the appellate authority so that the appellate authority can record the evidence. It is desirable that the primary authority should record the evidence where the parties can have a right of hearing. Against that there is a right of appeal. The appellate authority can go into the matter afresh. If the matter is remitted to the appellate authority, the parties will be deprived of their right. Accordingly, I find that it is just and proper to remit the matter to the primary authority for framing appropriate issues and give opportunity to both the parties and then pass appropriate orders as per Law. The matter is accordingly remitted to the primary authority.

11. The Revision Petitioner applied to the Board by application dated 24-5-1979 for allotment of LIG Flat at Warangal and he was successful in the draw of lots conducted on 28-6-1987 among eligible applicants and vide allotment letter dated 5-7-1989 he was allotted an LIG Flat at Wadepally, Warangal on hire-purchase basis in 30% down payment category at a tentative cost of Rs. 43,000/-. The petitioner paid the down payment, entered into agreement of sale of multi storeyed flats in Form 7 with the Board dated 18-4-1991 and took physical possession of

the house on 30-6-1992. As per the said agreement, the petitioner was to pay the balance of 70% cost of the house and the difference, if any on fixation of final cost along with interest and incidental charges in equated quarterly instalments starting from 30-9-1992. The instalment amount includes interest upto the due date. As per Clause 18 of the Agreement, delay in payment of the quarterly instalments will attract penal interest of 1 1/2 times the interest on outstanding instalments of principal and interest. Further, as per Clause 19, read with Clause 10 of the Agreement, in case of default in payment of dues, the petitioner is liable for eviction under the procedure laid down by Chapter VI of the Act and thereupon the agreement shall stand determined and the amounts paid by him shall stand forfeited to the Board. It is also the case of the 1st respondent that the petitioner was a chronic defaulter and he did not pay the instalments from March 1993 onwards in spite of issue of several demand notices. The final demand notice was issued on 25-1-1995 requesting the petitioner to pay the arrears of instalments of Rs. 8,920/- as on 30-12-1994 together with penal interest from the due dates till the date of payment within 15 days from the date of receipt of the same failing which his allotment will be cancelled and action will be taken for recovery of the dues and for eviction. As the Revision Petitioner failed to pay the dues even after receipt of the said notice, by order dated 3-4-1995 the allotment made to the Revision Petitioner was cancelled and the case was referred to the Primary Authority on 25-7-1995 under Sections 52 and 53 of the Act for recovery of dues and for eviction of the Revision Petitioner. The said provisions Sections 52 and 53 of the Act read as hereunder:

Section 52 : Power to evict certain persons from Board premises:

(1) If the Competent Authority is satisfied:

(a) that the person authorised to occupy any Board premises has whether before or after the commencement of this Act:

(i) not paid rent lawfully due from him in respect of such premises for a period of more than two months; or

(ii) sublet without the permission of the Board, the whole or any part of such premises; or

(iii) otherwise acted in contravention of the terms, express or implied, under which he is authorised to occupy such premises; or

(b) that any person is in unauthorised occupation of any Board premises, the competent authority may, notwithstanding anything contained in any law for the time being in force, by notice served (i) by post, or (ii) by affixing a copy of it on the outer door or some other conspicuous part of such premises, or (iii) in such other manner as may be prescribed, order that such person, as well as any other person, who may be in occupation of the whole or any part of the premises, shall vacate them within one month of the date of the service of the notice.

(2) If any person refuses or fails to comply with an order made under subsection (1), the Competent Authority may after giving such person a reasonable opportunity of being heard confirm such order and evict that person from, and take possession of the premises and may for that purpose use such force as may be necessary.

(2A) Where the Board premises are required by the Board for its use, the Competent Authority may, notwithstanding anything in any other law for the time being in force in this regard, by notice served in the manner laid down in Sub-section (1) order that every person who is in occupation of the said premises shall vacate the said premises and shall deliver possession thereof to the Board, within the time specified in the notice. If any person refuses or fails to comply with any such order of the competent authority, the person in occupation of the premises shall be deemed to be in unauthorised occupation thereof and thereupon the competent authority may, after giving the person who is in such unauthorised occupation an opportunity of making his representation confirm the said order and evict him from, and take possession of, the premises and may for that purpose use such force as may be necessary.

(3) If a person, who has been ordered to vacate any premises under sub Clause (i) or (iii) of Sub-clause (a) of Sub-section (1), within one month of the date of service

of the notice or such longer time as the competent authority may allow, pays to the Board the rent in arrears or carries out or otherwise complies with the terms contravened by him to the satisfaction of the competent authority as the case may be, the competent authority, shall, in lieu of evicting such person under Sub-section (2) cancel its order made under Sub-section (1) and thereupon such person shall hold the premises on the same terms on which he held them immediately before such notice was served on him.

Section 53 : Power to recover rent or damages:

(1) Subject to any rules made by the Government in this behalf and without prejudice to the provisions of Section 52, where any person is in arrears of rent payable in respect of any Board premises, the competent authority may, by notice served (i) by post, or (ii), by affixing a copy of it on the outer door or some other conspicuous part of such premises, or (iii) in such other manner as may be prescribed, order that person to pay the same together with such other amounts as may be due by him under the contract, agreement, lease, indemnity bond, damages or otherwise within such time not less than thirty days as may be specified in the notice.

(2) Where any person is in unauthorised occupation of any Board premises, the competent authority, may, in the prescribed manner, assess such damages on account of the use and occupation of the premises as it may deem fit, and may by notice served (i) by post, or (ii) by affixing a copy of it on the outer door or some other conspicuous part of such premises, or (iii) in such other manner as may be prescribed, order that person to pay the damages within such time as may be specified in the notice.

(3) If any person refuses or fails to pay the amount specified in subsection (1) or (2), as the case may be, within the time specified in the notice, the competent authority may, after giving such person a reasonable opportunity of being heard, recover the amount due by him on account of arrears of rent together with such other amounts as may be due by him under the contract agreement, lease, indemnity bond, damages or otherwise, by attachment, lease, indemnity bond, damages or otherwise, by attachment and sale of the movable property of such

person in the manner prescribed. Without prejudice to the aforesaid mode of recovery, such amount shall also be recoverable as if it were arrears of land revenue.

12. The Primary Authority issued notice-cum-provisional order under Sections 52 and 53 of the Act calling upon the Revision Petitioner to pay the arrears within one month and also fixing a date for appearance of the petitioner if he wanted to put forth his defence. Though several opportunities had been given to the Revision Petitioner, he had neither chosen to deposit the dues nor appeared before the Primary Authority and then the Primary Authority passed final order on 6-1-1996 for recovery of arrears of Rs. 19,056/-. The said order also was executed and possession of the flat was taken by Bailiff on 25-3-1996 and the same was handed over to the Board. Subsequently, the Revision Petitioner deposited Rs. 3,000/- on 10-7-1996 and Rs. 5,000/- on 12-7-1996 and Rs. 2,000/- on 3-9-1996 before the Primary Authority. Thus he failed to pay the entire arrears even after cancellation of the allotment and after making an order of eviction.

13. The order made by the Primary Authority no doubt had been challenged before the Appellate Authority/Principal District Judge, Warangal in C.M.A. No. 66/98 and on a careful perusal of the reasons which had been recorded by the Appellate Authority/learned Principal District Judge, Warangal, this Court is satisfied that the Appellate Authority/Principal District Judge, Warangal had taken into consideration all the facts and circumstances and ultimately came to the conclusion that the order of the Primary Authority to be confirmed and accordingly dismissed the aforesaid C.M.A.

14. It is no doubt true that as observed in the decision referred to supra, the Competent Authority has to necessarily frame issues, record reasons and a finding therein and then an order of eviction can be passed on this fact finding. The non-following of the procedure by the Primary Authority had been argued in elaboration. However, on a careful consideration of the facts and circumstances of the present case, the fact that the Revision Petitioner had not chosen to contest the matter and in fact was set exparte by the Primary Authority, this aspect is not in serious controversy. It is the contention of Sri Satyanarayana, the learned

Counsel representing the Revision Petitioner that even in such a case when a particular procedure is contemplated by the provisions of the Act referred to supra and if this Court is satisfied that the Primary Authority had not followed that procedure despite the fact that the Revision Petitioner had not chosen to contest the matter and he was set exparte, the same would not alter the situation and on this ground alone the order made by the Primary Authority and the order made by the Appellate Authority/learned Principal District Judge, Warangal to be set aside and the matter to be remitted to the Primary Authority so that the said matter can be decided and disposed of in accordance with law.

15. It is no doubt true that the Primary Authority had made a one-line order. It is also no doubt true that the Primary Authority in the peculiar facts and circumstances, especially in the light of the fact that the Revision Petitioner had not chosen to contest the matter at all, thought it fit to make such an order. Even while making such an order, the Primary Authority could have recorded reasons while making such an order, but however, a mechanical cryptic order had been made by the Primary Authority. Even if the Revision Petitioner had not chosen to contest the matter since the Primary Authority is duty bound to record at least certain reasons, in other words, to make a speaking order, when such order had not been made, definitely such order is vitiated and the same cannot be sustained. It is no doubt true that possession already had been taken by the Board. Be that as it may, in the light of the peculiar facts and circumstances, this Court is of the considered opinion that since the Primary Authority did not make an order in accordance with law and in the light of the provisions of the Act specified supra, this Court is inclined to give one more opportunity to the Revision Petitioner in this regard. In the light of the same, this Court is inclined to remit the matter to the Primary Authority to give opportunity to the Revision Petitioner to explain his stand if the Revision Petitioner chooses to do so and decide the matter afresh in accordance with law. Since the Board had already taken possession, this Court is not inclined to disturb the said possession of the Board at this distant point of time and hence status quo as on today to be maintained till an appropriate order is made in this regard by the Primary Authority. With the above observations, this Court is inclined to set aside the order made by the Primary Authority and also the Appellate Authority/learned Principal District Judge, Warangal and remit the matter

to the Primary Authority for the purpose specified supra.

16. Point No. 2: In the result, the order under challenge made in C.M.A. No. 66/98 on the file of the Appellate Authority/learned Principal District Judge, Warangal and also the order made in Case No. 374/CA5/95 by the Primary Authority are hereby set aside and the matter is remitted to the Primary Authority to give opportunity to the Revision Petitioner to explain the stand of the Revision Petitioner and decide the matter afresh in accordance with the procedure contemplated by the provisions of the Act specified supra. Till then, as already specified above, status quo as on today to be maintained.

17. Accordingly, the Civil Revision Petition is allowed to the extent indicated above. No costs.

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