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A. VENUGOPAL

v.

TELANGANA HOUSING BOARD & ANR.

(Civil Appeal No. 2703 of 2022)

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APRIL 4, 2022

[HEMANT GUPTA AND V. RAMASUBRAMANIAN, JJ.]

Telangana Housing Board Act, 1956 – Allotment of House – Rental basis – Discrepancy in Name – Appellant’s grandfather was allotted a house by the then Andhra Pradesh Housing Board in 1968 on rental basis – After his death, father of appellant gave a representation seeking transfer of the allotment in his name – At the time when the allotment was transferred, a small discrepancy happened that his father wrote his grandfather’s name – After his father’s death, the appellant applied for the transfer of the house in his name – It was rejected, on account of the discrepancies in the name of the appellant’s grandfather – Writ petition – The Single Judge while allowing the writ petition found that after having entered into a hire purchase agreement with the appellant’s father way back in October, 1978 and after having received all the instalments due from him fully, it was not proper on the part of the Housing Board to take advantage of the illiteracy of the father and grandfather of the appellant – The Division Bench reversed the judgment on the ground that the discrepancy was sufficient justification for the Housing Board to conclude that a fraud was being played upon them – On appeal, held: Right from the year 1968, the house was in the possession and enjoyment of the appellant’s family – In the year 1968, there was a discrepancy regarding the initial in name – After his grandfather’s death in 1969, the Housing Board accepted appellant’s father as his son and entered into a tenancy agreement – Appellant’s father completed all his obligations under the lease-cum-sale agreement and also died in 1992 – No dispute was raised by the Housing Board for a more than 2 decades – Therefore, to take advantage of the discrepancies with which the Housing Board and the original allottee and his legal heirs having co-existed for 5 decades, is completely unfair – Unfortunately, the Division Bench treated even a man who was dead 30 years ago as having

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perpetrated fraud, by a skewed logic – The judgment of the Division Bench is set aside and the judgment of the Single Judge of the High Court is restored. A

CIVIL APPELLATE JURISDICTION: Civil Appeal No.2703 of 2022.

From the Judgment and Order dated 07.08.2019 of the High Court for State of Telangana in Writ Appeal No.654 of 2019. B

G. Sivabalamurugan, Selvaraj Mahendran, P. Shankar, Advs. for the Appellant.

V. Sridhar Reddy, Abhijit Sengupta, Advs. for the Respondents. C

The Judgment of the Court was delivered by

V. RAMASUBRAMANIAN

Leave granted.

2. Aggrieved by the judgment of the Division Bench of the High Court for the State of Telangana, reversing the judgment of the learned Single Judge and thereby rejecting his prayer for the transfer and registration of a house allotted by the first respondent herein in favour of his grandfather, the original writ petitioner has come up with the above appeal. D

3. The appellant herein filed a writ petition contending *inter alia* (i) that his grandfather by name A. Venkaiah @ Hanumaiah, S/o Balaiah was allotted a house by the then Andhra Pradesh Housing Board on 17.05.1968, on rental basis; (ii) that his grandfather died on 16.09.1969, leaving behind him surviving, his father A. Shankaraiah; (iii) that his father Shankaraiah gave a representation on 16.12.1969 seeking transfer of the allotment in his name; (iv) that after demanding certain certificates from his father, the Housing Board transferred the allotment in favour of his father by the proceeding dated 14.04.1970; (v) that at the time when the allotment was transferred, a small discrepancy happened when his father wrote his grandfather's name; (vi) that in October, 1977 the Housing Board offered the house for outright sale or hire purchase; (vii) that his father opted for hire purchase; (viii) that thereafter his father started paying the EMI regularly; (ix) that all the instalments payable by his father, were duly and promptly paid and the entire payment schedule was completed by March, 1992; (x) that unfortunately his father died on E

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- A 20.04.1992; **(xi)** that thereafter the appellant applied for the transfer of the house in his name, but a dispute arose between the appellant and his sisters; **(xii)** that the suit for partition filed by his sisters in O.S. No.4359 of 2004 was eventually settled before the Lok Adalat on 25.06.2014; **(xiii)** that as per the Lok Adalat award, the appellant paid money to his sisters, as the house site was just 120 sq. yards and was incapable of
- B being divided into six shares; **(xiv)** that in view of the settlement, his sisters gave ‘No Objection’ for the registration of the house in favour of the appellant, on 16.07.2016; **(xv)** that when the appellant applied along with those documents for the transfer of the house in his name, it was rejected by Order dated 3.12.2014, on account of the discrepancies in
- C the name of the appellant’s grandfather; **(xvi)** that though the appellant signed an affidavit before the Metropolitan Magistrate on 6.07.2015 and got it attested, the second respondent again rejected the request of the appellant by subsequent orders dated 18.05.2017 and 31.05.2018; and **(xvii)** that, therefore, he was constrained to file the writ petition.
- D 4. The writ petition was contested by the respondents on the ground *inter alia* **(i)** that the name mentioned by the original applicant in the application dated 17.05.1968 was M. Venkaiah @ Balaiah; **(ii)** that in the rental agreement executed by him, he had written his initial as “A” in one place and as “M” at another place; **(iii)** that after the demise of the
- E original allottee, a representation dated 16.12.1969 was received from A. Shankaraiah, claiming to be the son and only legal heir of the original allottee; **(iv)** that, however, the claimant A. Shankaraiah gave his father’s name as A. Yenkaiah; **(v)** that the death certificate accompanying the application was that of A. Venkaiah; **(vi)** that believing his representation to be true, the Housing Board transferred the tenancy in favour of A.
- F Shankaraiah by proceedings dated 14.04.1970; **(vii)** that the tenancy was later converted into hire purchase and a lease-cum-sale agreement was entered into in October, 1978; **(viii)** that while entering into the rental agreement, A. Shankaraiah gave his father’s name as A. Yenkaiah, but while executing the lease-cum-sale agreement he gave his father’s name as Venkaiah; **(ix)** that when the appellant applied as the son of A.
- G Shankaraiah for transfer and registration by letter dated 19.06.2013, the Board found out the discrepancies; **(x)** that though the appellant produced the Lok Adalat award, the respondents found the claim to be untenable and they decided to take action under Sections 52 and 53 of the Telangana Housing Board Act, 1956 for unauthorized occupation and that, therefore,
- H the writ petition deserved to be dismissed.

5. On the basis of the pleadings on record and also on admitted facts, the learned Single Judge found that the discrepancy regarding the initial of the original allottee and the discrepancy regarding the way in which the original allottee's name was written by the appellant's father appeared consistently from the beginning. The learned Judge further found that from the year of allotment namely, 1968, the name of the original allottee was written in English with different spellings and that after having entered into a hire purchase agreement with the appellant's father way back in October, 1978 and after having received all the instalments due from him fully and completely, it was not proper on the part of the Housing Board to take advantage of the illiteracy of the father and grandfather of the appellant. The learned Judge also found that there was no other claimant for the house and that admittedly the appellant had been in occupation of the same for decades. Therefore, the learned Judge allowed the writ petition.

6. But unfortunately the Division Bench reversed the judgment of the learned Single Judge on the ground that the discrepancies in the manner in which the name of the original allottee was written was sufficient justification for the Housing Board to conclude that a fraud was being played upon them. Interestingly, the Division Bench went to the extent of holding that even the appellant's father who passed away in 1992 was guilty of fraud.

7. We do not know how the Division Bench reached the above conclusions. Right from the year 1968, the house has been in the possession and enjoyment of the appellant's family. Even in the original application made by Venkaiah in the year 1968, there was a discrepancy regarding the initial. After his death in 1969, the Housing Board accepted A. Shankaraiah as his son and entered into a tenancy agreement on 14.04.1970 and a lease-cum-sale agreement on 6.10.1978. Shankaraiah completed all his obligations under the lease-cum-sale agreement and also died in 1992. It is not as though at the time of transferring the tenancy in the year 1970 or at the time of entering into a lease-cum-sale agreement on 6.10.1978 with Shankaraiah, such discrepancies did not exist. No dispute was raised by the Housing Board about the so called unauthorized occupation of the house by the appellant herein even after 1992 for a more than 2 decades. Therefore, to take advantage of the discrepancies with which the Housing Board and the original allottee and his legal heirs having co-existed for 5 decades, is completely unfair.

- A Unfortunately, the Division Bench treated even a man who was dead 30 years ago and who had entered into two agreements (*a tenancy agreement in the first instance and a lease- cum-sale agreement in the second instance*) as having perpetrated fraud, by a skewed logic. Courts cannot be oblivious to the realities of life and we say no more.
- B 8. In fine, the appeal is allowed, the judgment of the Division Bench is set aside and the judgment of the learned Single Judge is restored. The Housing Board shall execute a deed of transfer and register the same in favour of the appellant within a period of two months from the date of receipt of this order, subject to the completion of the necessary formalities. There will be no order as to costs.

Ankit Gyan
(Assisted by : Rahul Rathi, LCRA)

Appeal allowed