A ALLWYN HOUSING COLONY WELFARE ASSOCIATION

v.

GOVT. OF A.P. & ORS.

(Civil Appeal No. 6136 of 2009)

B SEPTEMBER 8, 2009

[MARKANDEY KATJU AND ASOK KUMAR GANGULY, JJ.]

CONSTITUTION OF INDIA, 1950:

C

Article 226 – Writ petition challenging allotment of plots by Cooperative Housing Committee to its members - allottees not impleaded in the writ petition – Application for impleadment filed by allottees before Supreme Court allowed D *– Held: Natural justice required that the person in whose favour plots were allotted and to whom possession was handed over should have been impleaded in the writ petition and they should have been heard by the Supreme Court – Matter remanded to Division Bench of High Court for decision* E *afresh in accordance with law after hearing the persons in whose favour plots have been allotted including the impleaded persons – Delay in filing the writ petition condoned – Though application for impleadment allowed, yet, if any affected party is still there and wants to implead himself in the matter, he may file application for impleadment before the* F *High Court – Interim order maintaining the status quo to continue till the decision in the matter by the High Court – Natural justice.*

Fertilizers & Chemicals Travancore Ltd. Vs. Regional G *Director, ESI & Others* **2009(11) SCALE 766, relied on**

Case Law Reference:

2009(11) SCALE 766	**relied on**	**para 6**

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6136 of 2009. A

From the Judgment & Order dated 14.9.2007 of the High Court of Judicature of Andhra Pradesh at Hyderabad in Writ Appeal No. 740 of 2007. B

L.N. Rao, V. Sridhar Reddy, B. Venkatadri (for V.N. Raghupathy) for the Appellants.

M.N. Rao, I. Venkatanarayana, Satyajit A. Desai, Anagha S. Desai, L.D. Joshi, Manoj Saxena (for T.V. George), A.D.N. Rao, Sunder Khatri, M.V. Swamy (for Abhijit Sengupta) for the Respondents. C

The following Order of the Court was delivered b

ORDER D

Leave granted.

This Appeal has been filed against the impugned judgment of the Division Bench of the Andhra Pradesh High Court dated 14.09.2007 passed in Writ Appeal No.740 of 2007. E

The case pertains to allotment/alienation of 3 acres and 18 guntas of land comprised in Survey No.336, Balanagar Mandal, Kukatpally, Ranga Reddy District to Hyderabad Allwyn Employees Co-operative Housing committee, respondent No.5 herein, on 4.6.2005. Admittedly, respondent No.5 thereafter allotted and handed over plots in the said property to various persons who claimed to be members of the respondent No.5 society (although the appellant contended that they were not members). F G

Appellant herein filed a writ petition in the High Court of Andhra Pradesh at Hyderbad challenging the alienation/ allotment of the aforesaid land to respondent No.5 herein which was dismissed by the learned Single Judge on 21st August, H

2007, inter alia, on the ground that the persons to whom the respondent No.5 allotted plots were not impleaded.

Aggrieved against the order of the learned Single Judge, the appellant filed a Writ Appeal before the Division Bench of the High Court. The Division Bench of the High Court, by the impugned order, declined to entertain the appellant's challenge to the alienation made in favour of respondent No.5 on two grounds:

> "(1) the appellant did not offer any explanation for the delay of almost two years between the date of alienation made in favour of respondent No.5 i.e. 4.6.2005 and filing of the writ petition i.e. April, 2007, and
>
> (2) the persons to whom plots have been allotted by respondent No.5 and who are in possession of the individual plots have not been impleaded as parties to the writ petition and without hearing them, the allotment in question cannot be annulled. In our opinion, non-impleadment of the beneficiaries of allotment was fatal to the writ petition filed by the appellant."

Many of the persons in whose favour plots were allotted/ alienated by respondent No.5 have filed impleadment applications before us. The applications for impleadment are allowed and they have also been heard.

In our opinion, natural justice required that the persons in whose favour respondent No.5 allotted plots in the property and to whom possession had also been handed over should have been impleaded in the writ petition and they should have been heard by the High Court. We have recently held in *Fertilizers & Chemicals Travancore Ltd. vs. Regional Director, ESI & Others reported in 2009 (11) SCALE 766* that no order adverse to a party should be passed without hearing him. In the present case, if the writ petition was allowed the order will adversely affect the allottees. Hence, in the interest of justice, we are of

the opinion that the matter should be remanded to the Division Bench of the High Court for a fresh decision in accordance with law after hearing the persons in whose favour plots in the land have been allotted including the impleaded persons. Delay in filing the writ petition is condoned.

Accordingly, we accept this appeal, set aside the impugned order of the Division Bench and restore the Writ Appeal No.740 of 2007 on the roster of the High Court. The impleaded parties are directed to file their counter affidavit within three weeks from today before the Division Bench of the High Court. Rejoinder thereto, if any, may be filed within the next two weeks.

Though, we have allowed the applications for impleadment but if any affected party is still there and he wants to implead himself in this matter, he is at liberty to file an application for impleadment before the Division Bench of the High Court. The matter shall be listed for final disposal before the Division Bench immediately after the expiry of the aforesaid period.

We make it clear that we are not expressing any opinion on the merits of the dispute. All contentions are left open to the parties.

While issuing notice on 21st April, 2008, this Court directed the parties to maintain status quo. This order of status quo shall remain in force till the case is decided by the High Court.

The Appeal is allowed accordingly. No costs.

R.P. Appeal allowed.