

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SRI JUSTICE N.V. SHRAVAN KUMAR

WRIT PETITION No. 4990 of 2024

ORDER: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Mr. A. Raghuram, learned counsel for the petitioner.

2. Heard on the question of admission.
3. In this writ petition, the petitioner has assailed the validity of Section 21 of the Telangana Apartments (Promotion of Construction and Ownership) Act, 1987 (hereinafter referred to as "the 1987 Act").
4. Facts giving rise to filing of the writ petition briefly stated are that the petitioner is a company and is in possession of Flat Nos.601 to 607 situated at H.No.6-3-1099/1100, Babukhan Millennium Centre, Somajiguda, Hyderabad. Respondent No.4 is the owner and developer of the subject property. The grievance of the petitioner as set-forth in the writ petition is that respondent No.4 does not provide parking space to the petitioner. Therefore, the petitioner did not pay the dues to the 3rd respondent – M/s.

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Babukhan Millenium Centre Building Owner's Association (hereinafter referred to as "the Association"). The Association issued a demand notice dated 21.10.2023 by which the petitioner was asked to pay the arrears of maintenance and the petitioner submitted a reply on 08.11.2023. Thereafter, the Association sent a notice to the petitioner that it is undertaking the work of maintenance of the building and the petitioner was further apprised to pay the amount due to the Association, failing which action under Section 21 of the 1987 Act shall be taken up. The petitioner despite service of notice did not pay the amount. Thereupon, the water connection to the premises of the petitioner was disconnected. In the aforesaid factual background, instead of challenging the action taken by the Association before an appropriate forum, the petitioner has filed the writ petition challenging the validity of Section 21 of the 1987 Act.

5. Learned counsel for the petitioner submitted that Section 21 of the 1987 Act provides for extreme consequence of disconnection of essential services. Therefore, the same is arbitrary. It is further submitted that the provision infringes upon the fundamental rights

of the petitioner to receive water and electricity. It is also submitted that since Section 21 of the 1987 Act does not provide for a dispute resolution mechanism before taking any action, the same is arbitrary.

6. We have considered the submissions made by the learned counsel for the petitioner and have perused the record.

7. It is trite law that the validity of a statutory provision can be challenged on twin grounds. Firstly, that the enactment has no legislative competence. Secondly, it is either violative of the fundamental rights or any of the constitutional provisions. It is not the case of the petitioner that the State Legislature has no power to enact the Act.

8. It is trite law that there is a presumption that with regard to validity of a statutory provision, the burden is on the person who assails the same. The Government of India has suggested to the State Government to undertake the legislation similar to the one enacted in the State of Maharashtra in the Maharashtra Apartment Ownership Act, 1970 in order to meet the increasing pressure on

urban land resources due to rapid urbanization and to secure effective mortgageable title to individual buyers of flats. The erstwhile State of Andhra Pradesh referred the matter to the then Andhra Pradesh State Law Commission which recommended for undertaking legislation on the lines of the Maharashtra Apartment Ownership Act, 1970. Thereupon, the 1987 Act was enacted to regulate the promotion of construction and transfer of ownership of apartments.

9. Section 21 of the 1987 Act empowers the manager or board of managers of an association to cutoff, withhold, curtail or reduce any essential supply or service enjoyed by an apartment owner, which is extracted below for the facility of reference:

“21. Manager to cut off, withhold, curtail or reduce essential supply or service:- The manager or board of managers of an association of apartment owners may, after due notice of not less than seven days, for just and sufficient cause, cut off, withhold, or in any manner curtail or reduce, any essential supply or service enjoyed by an apartment owner.

Explanation:- In this section, essential supply or service includes the supply of water, electricity, lights in passages and on stair cases, and lifts, and conservancy or sanitary service.”

10. It may be noticed that an association is required to provide essential services to the apartment owners who reside in the building. At the time of purchasing of the flat, the apartment owner agrees to pay the charges due to association under the by-laws. Funds are required by the association to undertake the activity of maintenance of the building. In the absence of any power to recover the amount due to the association, the very object of providing maintenance charges would be like a toothless tiger. Therefore, the legislative wisdom has provided in Section 21 of the 1987 Act that the manager or board of managers of an association shall have power to cutoff, withhold, curtail or reduce any essential supply or service. The power conferred on the association is unbridled, as no blanket power has been conferred on the association by Section 21 of the 1987 Act, as the same provides that the manager shall have power to cutoff, withhold, curtail or reduce the essential supply or service. Merely, because in the case of the petitioner the essential supply or service has been cutoff, the provision of law enacted by the State Legislature would not render the same as arbitrary. No apartment owner has a right to stay in the apartment without making payment of maintenance charges. The

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contention that Section 21 of the 1987 Act violates the fundamental rights of the petitioner is misconceived, as the right can always be subjected to reasonable restriction and even the fundamental rights conferred under Article 19 of the Constitution of India are subjected to reasonable restrictions, as prescribed under Article 19(2) of the Constitution of India.

11. For the aforementioned reasons, we do not find any merit in the challenge to the validity of Section 21 of the 1987 Act. The same is misconceived. However, liberty is reserved to the petitioner to take recourse to such remedy as may be available to him in law with regard to his grievance.

12. With the aforesaid liberty, the writ petition is disposed of.

Miscellaneous petitions, pending if any, stand closed. There shall be no order as to costs.

ALOK ARADHE, CJ

N.V. SHRAVAN KUMAR, J

Date: 27.02.2024
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