

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4088 OF 2010

SMT. LAKSHMAMMAAPPELLANT(s)
VERSUS
THE COMMISSIONER, BANGALORE
DEVELOPMENT AUTHORITY AND ANR.RESPONDENT(s)

JUDGMENT

NAVIN SINHA, J.

The appellant assails the orders of the Bangalore Development Authority (hereinafter called as the “Authority”) dated 15.11.2006 and 17.09.2003, as affirmed by the High Court. The former declines to restore “khata” in the name of the appellant, and the latter cancels the “khata” standing earlier in the name of the appellant’s vendor.

2. The Scheduled Caste (Harijan) House Building Co-operative Society Limited (hereinafter called as the “Society”), respondent no.2, was allotted 4 acres 23 guntas of land in Survey No.32 of Marenahalli for development of residential layout for its members. Bye law No.5(iii) restricted membership of the Society to Scheduled Caste persons only. The Society allotted and sold site no.10 to the appellant’s vendor on 24.12.1985. The appellant purchased the same on 29.08.2005 by a registered sale deed. Subsequently, one P. Venugopal, who was the Secretary of the Society from 1983 to 1988, after expiry of his term, allotted and registered sites to persons who were not members of the Society in 1997, and which included one S. Vasanth Raj, and to whom the appellant’s plot was resold.

3. The allotments so made in 1997 came to be cancelled by the Assistant Registrar, Co-operative Societies on 25.03.1998. The appeal preferred by S. Vasanth Raj before the Karnataka

Appellate Tribunal was dismissed as withdrawn on 03.08.2006.

4. The Registrar of Co-operative Societies, by his order dated 02.01.1997, on a challenge by the Society, while holding that membership had to be restricted to persons belonging to the scheduled caste only, directed that the existing members of the Society irrespective of caste, and which included persons like the appellant, shall continue to enjoy all rights and privileges available to the members of the Society. The High Court declined interference by order dated 10.02.2006 and inter alia directed that all cancellation deeds stood cancelled, with directions to the Sub-Registrar to delete the cancellation deeds from the register.

5. The appellant then represented to the Authority for restoration of the “khata” in her name. The impugned order dated 15.11.2006 declined her request on the ground that she

did not belong to the scheduled caste, and therefore, her membership had been cancelled.

6. The facts of the case, as noticed above, have not been disputed by the learned counsel appearing for the Authority. If that be so, the allotments made by the Society to persons not belonging to scheduled caste stood saved by order of the Registrar of Co-operative Societies dated 02.01.1997 as affirmed by the High Court on 10.02.2006. It hardly needs further elucidation that the grounds mentioned in the impugned order are completely *nonest*. The order therefore stands vitiated by complete non-application of mind. The allotments by the then Secretary P. Venugopal having been held to be illegal and without authority, the order dated 17.09.2003 is also unsustainable, additionally in view of the withdrawal of his appeal by Vasanth Raj on 03.08.2006.

7. The order of the High Court is, therefore, held to be unsustainable, and is set aside. The Authority shall restore “Khata” in the name of the appellant.

8. The appeal is allowed.

.....**J.**
(Aurn Mishra)

.....**J.**
(Navin Sinha)

New Delhi,

March 28, 2018