

SUPREME COURT OF INDIA

Salvation Army

Vs.

A. Subbian

C.A.No.848 of 2011

(R.V.Raveendran and A.K.Patnaik, JJ.,)

21.01.2011

ORDER

1. Leave granted. We will refer to the facts and rank of the parties with reference to the first matter.

2. The appellant is an international charitable organization helping the poor. It came forward to construct 44 houses for the tsunami victims of 26th December 2004, and entered into a memorandum of understanding dated 3.3.2006 with the Collector, Nagapattinam, in that behalf. Out of 44 houses financed by the appellant, 15 houses were constructed by the local villagers and the remaining 29 houses by a contractor under the supervision of the support group constituted by the District Collector. All the houses were constructed at Uzhavar Street, North Poigainallur, Nagapattinam District, and were duly inspected and approved for occupation. Almost all the houses have been occupied. The fifteen appellants in the two connected appeals are the allottees of some of those houses who have been issued occupancy certificates and residing therein.

3. A public interest litigation was filed by the first respondent alleging that the houses constructed by the appellant were sub-standard, unsafe and unfit for human habitation, posing a threat to the occupants. He therefore sought a direction to the State of Tamil Nadu and District Collector to take action against the appellant and a further direction to monitor the construction by the appellant.

4. The High Court appointed a two-member Expert Committee to inspect the quality of construction. The Committee submitted a report dated 4.1.2008 recommending demolition of all the houses constructed by the appellant as not fit for occupation, opining that they were likely to collapse in the event of an earthquake or a tsunami. Acting on the said report, the High Court passed the impugned order dated 10.1.2008 allowing the writ petition and directed the appellant to demolish all the houses and remove the debris at its cost. The High Court also directed the state government and the District Collector to take possession of the land where the houses were constructed and construct proper quality houses or allot other suitable houses to each of the 44 families within two months. The said order is challenged in

these appeals by special leave by the appellant. The order is also challenged by fifteen of the occupants of the houses, in the connected two appeals.

5. Learned counsel for the appellant submitted that it had only charity in mind when it constructed the houses and had financed the construction in terms of the Memorandum of Understanding; that the actual construction was carried out under the supervision of a committee appointed by the District Collector; and that if any of the occupants point out any defect in construction or any defect which is likely to affect the safety of the houses, it is willing to rectify the same at its own cost. It is submitted that the direction for demolition was unwarranted.

6. Most of the houses are occupied by allottees and none of the allottees were impleaded as parties or heard in the matter. As the houses were already under occupation of the allottees, any direction for demolition thereof or any direction for shifting them to any other place would prejudicially affect them and therefore, the occupants ought to have been heard in the matter. They were not heard as they were not made parties to the writ petition. The occupants (appellants in the two other appeals) have stated that they have no grievance with the construction and do not want their houses to be demolished. Secondly when the court received the Report dated 4.1.2008 of the Expert Committee appointed by it to examine the condition of the houses, it ought to have made it available to the appellant so that it could have responded to it, before acting upon the said report. The High Court allowed the writ petition immediately after the report was received without giving an opportunity to the appellant to make its submissions on it. A careful reading of the report shows that there is no danger of the houses collapsing in the normal course and the opinion is that they are likely to collapse only in the event of earthquake or tsunami. On the other hand, the Shelter Advisory Group consisting of four experts while agreeing that the construction is defective, has differed with the opinion of the Expert Committee that the houses should be demolished. The Advisory Group has suggested that the houses could be retro-fitted with specialized interventions and made safe as per the requirements. It has pointed out that retro-fitting will be more advantageous as it can make the houses safe as per the guidelines and requirements; and can be faster to implement, apart from being cost effective. It is stated anything inferior or defective does not call for demolition automatically, if other effective alternatives are available.

7. Under the guidelines issued by the state government, each house had to be constructed at a cost of only Rs.50,000/-, though the appellant was in fact ready to offer even more for the construction. The houses had to be constructed with a sense of urgency, to provide accommodation. Some of the constructions were carried out by the affected villagers themselves and some through a contractor. In these circumstances, some defects are inevitable. In the circumstances, the suggestion of the Shelter Advisory Group that the houses should be repaired and retro-fitted to make them compliant with the safety requirements and to remove the defects, appears to be more reasonable and a better course than demolition. On a careful consideration, we are of the view that the direction to the appellant to demolish the 44 houses constructed by it for the benefit of tsunami victims, was inappropriate and unwarranted.

8. We therefore allow these appeals, set aside the order of the High Court and dispose of the first respondent's PIL with the following directions:

“(i) The appellant is permitted to carry out repairs and retrofitting in the 44 houses at its own cost, within a period of six months, as agreed by it.

(ii) The District Collector shall have the 44 houses inspected after repairs/retrofitting, by an expert team, to find out whether they are safe and compliant with the guidelines/requirements. (iii) If any of the houses is found to be unsafe or unfit for human occupation, even after such repairs and retrofitting, the District Collector may take such steps, including demolition, if necessary.