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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.06.2023

CORAM

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

W.P.(MD)Nos.7524 and 19847 of 2022

W.P.(MD)No.7524 of 2022:-

1.Vadasery Pothujana Kaitharer Nesavalar Kotturavu
Sangam Limited,
represented by its President,
M.Murugan, Kanyakumari District. ... Petitioner

vs.

1.The Inspector General of Registration,
Registration Department, Santhome, Chennai.

2.The District Collector,
O/o.The District Collector,
Kanyakumari, Kanyakumari District.

3.The Deputy Inspector General of Registration,
O/o.Deputy Inspector General of Registration,
Holy Markis Street,
Holy Jones Hr.Sec.School downwards,
Sankar Colony, Palaymkottai, Tirunelveli District.

4.The District Registrar of Societies,
District Registrar Office,
Kanyakumari District.



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5. The Sub Registrar,
Sub Registrar Office, Vadasery.

6. R. Ramesh

7. T. Paramasivam

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the respondent No.3 in Na.Ka.No.5407/Tha.Pi/2020, dated 06.10.2021 and to quash the same as illegal and consequently, for a direction to direct the respondent 1 to 5 to remove or cancel the illegal entries made in the encumbrance certificate of the society properties situated in D.No.128/70 in T.S.No.A-2-4-9/10B, A2/4-1, measuring 101.3 sq.ft., at Podhujana Nesavalur Kotturavu Sangam, Paramathalingampuram, Vettoornimadam, Nagercoil, Kanyakumari District in light of the circular made by the first respondent in No.41530/U1/2017 dated 31.07.2018 within time stipulated by this Court.

For Petitioner	:Mr.K.Dinesh
For R1, R3 to R5	:Mr.C.Satheesh
	Government Advocate
For R2	:Ms.D.Farjana Ghousia
	Special Government Pleader
For R6	:Mr.C.Anand
For R7	:No Appearance



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W.P.(MD)No.19847 of 2022:-

Vadasery Pothujana Kaitharer Nesavalur Kotturavu
Sangam Limited,
represented by its President,
M.Murugan, Kanyakumari District.

... Petitioner

vs.

1.The Inspector General of Registration,
Registration Department, Santhome, Chennai.

2.The District Collector,
O/o.The District Collector,
Kanyakumari, Kanyakumari District.

3.The Deputy Inspector General of Registration,
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Holy Markis Street,
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Sankar Colony, Palaymkottai, Tirunelveli District.

4.The District Registrar of Societies,
District Registrar Office,
Kanyakumari District.

5.The Sub Registrar,
Sub Registrar Office, Vadasery.
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus to direct the Respondent Nos.3 to 5 to implement the order of the Respondent No.2 and to make



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necessary entries in the index (ii) of the encumbrance certificate of the society properties situated in D.No.128/70 in T.S.No.A-2-4-9/10B, A2/4-1, measuring 101.3 sq.ft., at Podhujana Nesavalur Kotturavu Sangam, Paramathanalingapuram, Vettoornimadam, Nagerkovil, Kanyakumari District in light of the circular made by the first respondent in No.41530/U1/2017, dated 31.07.2018 within the time stipulated by this Court.

For Petitioner
For Respondents

:Mr.K.Dinesh
:Mr.C.Satheesh
Government Advocate

COMMON ORDER

Since the facts in both the Writ Petitions overlapped and the Writ Petitioner is also the same and arguments were also advanced in common, a common order is passed in both the Writ Petitions.

2.Heard the learned Counsel for the petitioner and the learned Government Counsels for the official respondents.

3.Both the Writ Petitions have been filed by the Vadasery Pothujana Kaithari Nesavalur Kootturavu Sangam represented by the



President, M.Murugan. The said Sangam is at Agastheeswaram Taluk in Kanyakumari District.

4.In the affidavit in which the facts overlapped, it had been stated that the said Petitioner Sangam had been started in the year 1940 for the welfare of employees of handloom weavers around Vadasery area to safeguard their livelihood. It had been stated that there was a scheme for giving houses to handloom weavers, who were below the poverty line. This was started in the year 1979-1980 as Thoguppu Veedu Thittam. 78 houses have been allotted to various members including to one Rajagopal, who has since died. The members of the Society will have to pay monthly subscriptions and thereafter, houses will be allotted them. There were many members who had struggled to pay the amount and to get their allotted house registered. It had been stated that three members, including Rajagopal, Chellappandian and S.Muthulakshmi had given their applications for registration of their houses.

5.On perusing the records, the second respondent here had refused to register the document presented for registration and it was seen from



the reasons given for such refusal that misappropriation had been done by the said Rajagopal on the house properties and on the said scheme.

6. Thereafter, another individual, Kaliappan had filed O.S.No.674 of 2004 before the Additional District Munsif Court at Nagercoil wherein, the Society was not impleaded as a party. The matter reached the portals of this Court in S.A.(MD)No.1079 of 2011 and by a judgment, dated 08.11.2011, a learned Single Judge of this Court had stated that relief cannot be granted against the Society by the Civil Court, since there was an express/implied bar under Section 9 of CPC and also stated that even under the Cooperative Societies Act, the Civil Court is not the proper forum and therefore, had directed that an appeal be filed under the Cooperative Societies Act itself to recover the properties.

7. The petitioner then began to run from pillar to post. They went from one official to another official for recovery of the house property, which had been allegedly taken away by the said Rajagopal.

8. The impugned order, which had been questioned in W.P(MD)No.



7524 of 2022 is dated 06.10.2021 and had been passed by the Deputy Inspector General of Registration at Tirunelveli on an appeal filed, wherein, without considering all these aspects, he had come a conclusion that no forgery or impersonation of person had occurred in the registration of various documents and therefore, had refused to consider the said appeal.

9.This finding is assailed by the learned Counsel for the petitioner and who placed reliance on the order of the second respondent, Assistant Director, Handlooms Department, Nagercoil, Kanyakumari District, dated 15.06.2022, wherein, the said official had finally come to a conclusion as follows:

“இந்நிலையில் உண்மையான உடமையாளரான வடசேரி பொதுஜன கைத்தறி நெசவாளர் கூட்டுறவு சங்கத்தின் பெயரிலேயே தற்போது வரைக்கும் பட்டா, சிட்டா, நிலவரி, குடிநீர்வரி, நகராட்சி வரி உள்பட அனைத்து ஆவணங்களும் உள்ளன என்பதை சுட்டிக்காட்டியும் மேற்படி சொத்து வடசேரி பொதுஜன கைத்தறி நெசவாளர் கூட்டுறவு சங்கத்திற்கு முழுமையாக பாத்தியப்பட்டது எனவும் மேலும் மேற்படி சொத்திலுள்ள வில்லங்கங்களை நீக்க இயலாது என்பதால் மேற்படி பார்வை 4-ல் கண்டுள்ள திரு.பதிவுத்துறை தலைவர் அவர்களின் சுற்றறிக்கையின் படி (எண்.41530-உ1.2017) வடசேரி பொதுஜன கைத்தறி நெசவாளர் கூட்டுறவு சங்கத்தின் சொத்துகளில் உள்ள வில்லங்க சான்றிதழில் அட்டவணை 11ல் குறிப்பை சேர்க்க நடவடிக்கை எடுக்கும்படியும் மேலும் ஷை சங்கத்தின்



சொத்துக்களை பாதுகாக்கும் வண்ணம்
எந்தவொரு இடற்பாடுமின்றி ஆவண செய்ய வழிவகை
செய்யுமாறு அன்புடன் கேட்டுக் கொள்கிறேன்.□

10.To put this order into effect, the petitioner had filed W.P.
(MD)No.19847 of 2022.

11.Taking into consideration all these facts, it is evident that the impugned order will necessarily have to be struck down by this Court and interfered by this Court and accordingly the impugned order is set aside. A further direction is issued that the respondents 3, 4 and 5, namely, Deputy Inspector General of Registration, District Registrar of Societies and Sub Registrar, Vadasery, at Kanyakumari, will have to implement the aforementioned order of the second respondent and a direction is given that necessary entries must be made in the encumbrance certificate of the properties of the society as stated in the Writ Petition.

12.The first respondent had also issued a circular in Circular No. 41530/21/2017 on 31.07.2018.



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13.The petitioner will necessarily have to get the benefit of the order of the second respondent and the respondents cannot be permitted to make the petitioner to run from pillar to post on the same issue from one official to another official.

14.On an overall appreciation of facts, a direction is given that the order of the second respondent must be implemented in letter and spirit within a period of eight weeks from the date of receipt of a copy of this order.

15.Both the Writ Petitions stand allowed. No order as to costs.

Index :Yes / No
Internet :Yes
NCC : Yes/No

06.06.2023

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C.V.KARTHIKEYAN, J.

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Order made in
W.P.(MD)Nos.7524 and 19847 of 2022

06.06.2023