

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

WP(C).No. 16137 of 2010 (N)

PETITIONER(S):

1. M.P.PONNAPPAN, S/O. PADMANABHAN,
MANIYEZHATH HOUSE, VAYALAR P.O., CHERTHALA,
ALAPPUZHA DISTRICT.
2. R.PRASAD, S/O. RAGHAVAN,
KANDATHIPARAMBIL, MUTTATHUPARAMBU P.O., CHERTHALA,
ALAPPUZHA DISTRICT.
3. ROBIN A.G., S/O. A.S. GOPALAN,
KALOMKOVILAKAM, THIRUNELLUR P.O., ALAPPUZHA DISTRICT.
4. SRINIVASAN T.B. S/O. BAHULEYAN,
VADIKAT HOUSE, CHERTHALA SOUTH P.O.,
ALAPPUZHA DISTRICT.

**BY ADVS.SRI.M.SASINDRAN
SRI.V.VENUGOPAL**

RESPONDENT(S):

1. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT, DEPARTMENT OF CO-OPERATION,
SECRETARIAT, THIRUVANANTHAPURAM.
2. THE JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES (G), ALAPPUZHA.
3. THE CHERTHALA TALUK COCONUT
MARKETING CO-OPERATIVE SOCIETY LTD. NO.4218,
CHERTHALA P.O., ALAPPUZHA DISTRICT,
REPRESENTED BY ITS MANAGING DIRECTOR.

**R1 BY SENIOR GOVERNMENT PLEADER SRI.SOJAN JAMES
R3 BY ADVS. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
07-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P1: TRUE COPY OF THE RECEIPT DTD.23.7.1999 GIVEN BY THE
3RD RESPONDENT SOCIETY TO THE 1ST PETITIONER AT THE TIME OF
RECEIPT OF THE AMOUNT.**
- EXT.P1(a): A TRUE COPY OF THE RECEIPT DTD. 4.8.1999 GIVEN BY THE
3RD RESPONDENT SOCIETY TO THE FIRST PETITIONER AT THE TIME OF
RECEIPT OF THE AMOUNT.**
- EXT.P1(b): A TRUE COPY OF THE RECEIPT DTD.26.7.1999 GIVEN BY THE
3RD RESPONDENT SOCIETY TO THE 2ND PETITIONER AT THE TIME OF
RECEIPT OF THE AMOUNT.**
- EXT.P1(c): A TRUE COPY OF THE RECEIPT DTD.29.7.1999 GIVEN BY THE
3RD RESPONDENT SOCIETY TO THE 3RD PETITIONER AT THE TIME OF
RECEIPT OF THE AMOUNT.**
- EXT.P1(b): A TRUE COPY OF THE RECEIPT DTD.30.8.1999 GIVEN BY THE
3RD RESPONDENT SOCIETY TO THE 4TH PETITIONER AT THE TIME OF
RECEIPT OF THE AMOUNT.**
- EXT.P2: A TRUE COPY OF THE UNDERTAKINGS GIVEN BY THE 3RD RESPONDENT
SOCIETY TO THE 1ST PETITIONER.**
- EXT.P2(a): A TRUE COPY OF THE UNDERTAKINGS GIVEN BY THE 3RD RESPONDENT
SOCIETY TO THE 2ND PETITIONER.**
- EXT.P2(b): A TRUE COPY OF THE UNDERTAKINGS GIVEN BY THE 3RD RESPONDENT
SOCIETY TO THE 3RD PETITIONER.**
- EXT.P3: A TRUE COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT AS
ORDER NO.H2009/06 DTD.30.3.2007.**
- EXT.P4: A TRUE COPY OF THE ORDER NO.322/2008/CO-OP. DTD.16.5.2008 ISSUED BY
THE 1ST RESPONDENT.**
- EXT.P5: A TRUE COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT
DTD.4.3.2009 NO.HM.2009/06/L.DIS.**
- EXT.P6: A TRUE COPY OF THE ORDER NO.158/10 CO-OP. DTD.10.3.2010.**
- EXT.P7: A TRUE COPY OF THE APPLICATION SUBMITTED BY THE 3RD PETITIONER
UNDER RIGHT TO INFORMATION ACT.**
- EXT.P7(a): A TRUE COPY OF THE REPLY FURNISHED BY THE STATE INFORMATION
OFFICER OF THE CHERTHALA MUNICIPALITY.**

Msv/

WP(C).No. 16137 of 2010 (N)

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

C.K. ABDUL REHIM, J.

W.P.(c) No. 16137 OF 2010-N

DATED THIS THE 7th DAY OF APRIL, 2015.

J U D G M E N T

History of the case in brief is that, the petitioners have advanced different amounts to the 3rd respondent Co-operative Society during the year 1999 for construction of a shopping complex, allegedly on the promise that they will be provided with rooms in the complex, after completion of the construction. Exhibit P1 series are the receipts given with respect to payments of the advance amounts. Exhibit P2 series letters would indicate that the 3rd respondent society had undertaken to provide shop rooms in the shopping complex. Grievance of the petitioners is that a new managing committee which had taken over charge of the 3rd respondent society had backed out from the promise. When the society initiated steps to induct strangers in the rooms in question, the petitioners have approached the 2nd respondent by raising complaint. They have further approached this court in a writ petition filed as W.P (c)

No.19942/2006. Through judgment dated 19-02-2006 this court directed the 2nd respondent to consider the complaint and to take an appropriate decision. In Ext.P3 proceedings of the 2nd respondent found that the procedure adopted by the 3rd respondent Society with respect to acceptance of advance and the undertaking given to provide rooms in the shopping complex, is totally illegal and is violative of procedure contemplated under the Co-operative Societies Act and the Rules. The 2nd respondent took note of the fact that other rooms in the shopping complex were auctioned for various amounts ranging between Rs.3,70,000/- and Rs.5,12,101/-. Therefore the 2nd respondent took a decision directing the 3rd respondent society to allot rooms to the petitioners by taking deposit of a sum of Rs.3,70,000/- each, being the least amount for which other rooms were let out. It was further directed that the advance amounts received from the petitioner shall be refunded along with interest at the rate applicable to overdraft facility availed by the society from District Co-operative Bank.

2. Exhibit P3 decision was challenged by the petitioner in an appeal filed before the Government. In the appeal it was contended that the petitioners are not in a position to make deposit of Rs.3,70,000/- as ordered. It was pointed out that, other rooms in the shopping complex in question are being let out for various amounts less than Rs.3,70,000/- as security. The Government directed the 2nd respondent to re-consider the matter, noticing that the petitioners are not in a position to make payment of the security deposit of Rs.3,70,000/- as ordered. The matter was re-considered by the 2nd respondent based on Ext.P4. Exhibit Ext.P5 proceedings was issued on 04-03-2009. It is specifically found that the advance amounts were received by the 3rd respondent society based on a promise to allot the rooms, at the stage when the construction is going on. Therefore it is irregular and inappropriate. It is found that the petitioners have not accrued with any absolute right to claim assignment of the shop rooms based on such promise which is not having any sanctity under law. Having considered the fact that the 3rd respondent society had

taken a subsequent decision, not to allow any shop rooms to the petitioners, and to refund the amount of advance along with interest, it was ordered such decision is approved, subject to condition that the petitioner shall be given preference in the matter of allotment of rooms if the society takes any decision in future to let out the rooms in question.

3. Exhibit P5 decision was challenged further in an appeal filed before the Government. Exhibit P6 is the order passed by the Government on the appeal. After elaborate analysis of the reasoning mentioned by the 2nd respondent in the order impugned, the Government have rejected the appeal holding that grievance expressed by the petitioners have been considered and redressed through decision rendered by the 2nd respondent. In this writ petition the petitioners are challenging Ext.P6.

4. Contention raised on behalf of the petitioners is mainly on the aspect that the 2nd respondent had failed to re-consider the matter based on Ext.P4 order passed by the Government. It is pointed out that in Ext.P4 the 2nd respondent was specifically directed to re-consider the

matter based on the contention that the petitioners are not in a position to make payment of an amount of Rs.3,70,000/- as security deposit. But it is evident from Ext.P5 that the 2nd respondent had categorically found that the petitioners have no right to claim assignment of any shop rooms based on the undertakings made by the 3rd respondent at the time of receipt of the advance amounts, because the receipt of advance based on any such undertaking made by the society was totally illegal, irregular and improper. Therefore this court is of the opinion that the matter was considered by the 2nd respondent in its real perspective as directed by the appellate authority in Ext.P2 order. The petitioners are not in position to point out any authority vested on the 3rd respondent permitting acceptance of advance from the petitioners at the stage of construction of the building based an undertaking to allot rooms to them. On the other hand it is evident from the impugned proceedings that provisions contained in the Co-operative Societies Act and the Rules framed thereunder stipulated for conduct of public auction with respect to letting out of the rooms

contained in shopping complexes held by the Co-operative societies. It is noticed that interest of the petitioners have been protected by ordering repayment of the advance amount, along with maximum rate of interest applicable with respect to deposits made during relevant period. Hence this court is of the considered opinion that no interference is warranted with respect to the impugned decision.

5. Accordingly the writ petition fails and the same is hereby dismissed.

Sd/-
C.K. ABDUL REHIM
JUDGE

AMG

True copy

P.A. to Judge