

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2015

CORAM

The Hon'ble Mr. Justice T.S. Sivagnanam

W.P.No.23385 of 2014

and

M.P.No.1 of 2014

Madras Divisional Railway
Staff Co-operative Building Society
represented by the President
Adambakkam, Chennai-600 088

.. Petitioner

Vs

1. The State of Tamil Nadu
Rep. by the Secretary to Government
Housing and Urban Development Department
Fort St George, Chennai-9.

2. The Registrar of Co-operative Societies (Housing)
79, 4th Main Road, Gandhi Nagar
Chennai-20

3. The Deputy Registrar of Co-operative
Societies (Housing)
18, Ramanathan Street,
Chennai-17

4. C.K.Raghavalu

5. Mrs.Dilli Bai.

.. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 to 3 to take immediate steps to recover the plot in survey number 269/3 in Plot No.11, Railway Colony, Fifth Layout, Mahalakshmi Nagar, Chennai 600088 from the fifth respondent and hand it over to the petitioner based on the petitioner's representation dated 30.07.2013.

For Petitioner	:	Mrs.Hema Sampath, Senior Counsel for Ms.R.Meenal
For Respondents 1 to 3	:	Mr.Shanmuga Sundaram Special Government Pleader for (Co-operative Society)

For Respondent-4 : Notice returned
For Respondent-5 : Mr.R.Muthukumarasamy,
Senior Counsel
Assisted by Mr.S.P.Sudalaiyandi

ORDER

The prayer in the Writ Petition is for mandamus upon the respondents 1 to 3 to take immediate steps to recover the plot, comprised in S.No.269/3 bearing Plot No.11, situate at Railway Colony, Fifth Layout, Mahalakshmi Nagar, Chennai from the fifth respondent, and hand over the same to the petitioner based on the petitioner's representation dated 30.07.2013.

2. Heard Mrs.Hema Sampath, learned Senior Counsel, assisted by Mrs.R.Meenal, for the petitioner, Mr.L.P.Shanmuga Sundaram, learned Special Government Pleader for respondents 1 to 3, and Mr.R.Muthukumarasamy, learned Senior Counsel, assisted by Mr.S.P.Sudalaiyandi, learned counsel for the fifth respondent. Notice to the fourth respondent returned, as he has retired from service.

3. The petitioner is a Housing Society, registered on the file of the second respondent. The then Special Officer of the Society, viz., the fourth respondent committed certain illegalities, and transferred the lands reserved for public purpose in favour of the fifth respondent by executing a sale deed in her favour, registered as Document No.1382 of 2005. The petitioner/Society would state that the transfer is illegal, and the property could not have been sold, as it is reserved for community and recreation purposes. After the Elected Board of Directors assumed Office, they sent a detailed representation to the Officials, (which includes the second respondent herein) and requested that the allotment of the plot by the Society under the control of then Special Officer in favour of the fifth respondent should be rescinded. Since no action was initiated, the petitioner is before this Court by way of present Writ Petition seeking for the aforesaid relief.

4. Though it is the contention of the learned Senior Counsel for the petitioner that the land in respect of which sale deed was executed in favour of the fifth respondent, is meant for community and recreation purposes, and therefore, the sale deed executed in favour of the fifth respondent has to be annulled, the same cannot be done, as the Hon'ble Full Bench of this Court in the judgment reported in (2011) 2 C.T.C. 1 in re (Latif Estate Line India Ltd., rep.by Managing Director, and others, Vs. Hadeeja Ammal and others) held that, a registered instrument cannot be cancelled by issuance of Writ of Mandamus. However, it does not mean the petitioner-Society is left remedy less.

5. It is not in dispute that the petitioner-Society is registered on the file of the second respondent. Therefore, if the Elected members of the petitioner-Society have submitted any representation to the second respondent-Society, the second respondent-Society is bound to exercise its power under the provisions of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as 'the Act') and proceed in accordance with law. It is rather unfortunate that the second respondent has kept quite from 2013, which compelled the petitioner-Society to approach this Court by filing this Writ Petition, as already stated above.

6. Therefore, this Court is of the view that there can be no other option, except for the second respondent to take note of the representation given by the petitioner, and proceed with in accordance with law under the provisions of the Act. Insofar as the relief sought for by the petitioner to cancel the sale deed executed in favour of the fifth respondent is concerned, the same cannot be done in a Writ Petition, in the light of the judgment rendered by the Hon'ble Full Bench (referred supra), as opined in the preceding para.

6. Accordingly, the Writ Petition is disposed of, by directing the second respondent to consider the petitioner's representation dated 30.07.2013, and conduct an enquiry after affording an opportunity of personal hearing to the petitioner as well as the fifth respondent and also summon the fourth respondent and pass a reasoned order on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Asst.Registrar (CO)

/true copy/

सत्यमेव जयते

Sub Asst. Registrar

sd

To

1. The State of Tamil Nadu
Rep. by the Secretary to Government
Housing and Urban Development Department
Fort St George, Chennai-9.

2. The Registrar of Co-operative Societies (Housing)
79, 4th Main Road, Gandhi Nagar
Chennai-20

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3. The Deputy Registrar of Co-operative
Societies (Housing)
18, Ramanathan Street,
Chennai-17

+1 cc to M/s.S.P.Sudalaiyandi, Advocate, sr.60378
+1 cc to M/s.R.Meenal, Advocate, sr.60471
+1 cc to The Government Pleader, sr.60926

W.P.No.23385 of 2014

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