

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2016

CORAM:

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.Nos.29301 & 29302 of 2014, 30673 to 30682 of 2014, 30683 to 30691 of 2014, 32387 to 32391 of 2014, 32392 to 32396 of 2014, 32571 to 32577 of 2014

S.MohanPetitioner in W.P.29301/14
S.BalamuruganPetitioner in W.P.29302/14
M.P.ChokkanathanPetitioner in W.P.30673/14
V.PadmaPetitioner in W.P.30674/14
S.Geetha RavichandranPetitioner in W.P.30675/14
T.VishalakshmiPetitioner in W.P.30676/14
S.A.VasudevanPetitioner in W.P.30677/14
C.B.BalasubramanianPetitioner in W.Ps.30678 & 30679/14
M.SudhaPetitioner in W.P.30680/14
Dr.S.GirisankarPetitioner in W.P.30681/14
K.K.AnantharamanPetitioner in W.P.30682/14
T.SundaravadivelPetitioner in W.P.30683/14
T.BalamaniPetitioner in W.P.30684/14
A.ThilagavathiPetitioner in W.P.30685/14
D.A.LawrencePetitioner in W.P.30686/14
P.VanithaPetitioner in W.P.30687/14
P.MeenakshiPetitioner in W.P.30688/14
T.VijayalakshmiPetitioner in W.P.30689/14
R.VivekPetitioner in W.P.30690/14
P.PremkumarPetitioner in W.P.30691/14
N.ThiyagarajanPetitioner in W.P.32387/14
P.ThamaraiselviPetitioner in W.P.32388/14
D.Saravan BabuPetitioner in W.P.32389/14
S.Reehana BegamPetitioner in W.P.32390/14
D.Saravana BabuPetitioner in W.P.32391/14
G.RamkumarPetitioner in W.P.32392/14
B.AnandPetitioner in W.P.32393/14
E.SudhakaranPetitioner in W.P.32394/14
P.LalithaPetitioner in W.P.32395/14
C.JayakanthamPetitioner in W.P.32396/14
D.A.LawrencePetitioner in W.P.32571/14
Kasi KrishnanPetitioner in W.P.32572/14
S.RajagopalanPetitioner in W.P.32573/14
S.LakshmiPetitioner in W.P.32574/14
R.PadmalathaPetitioner in W.P.32575/14

Geetha Rajagopal
P.Swarnalatha

...Petitioner in W.P.32576/14
...Petitioner in W.P.32577/14

Vs.

1.The Registrar of Co-operative Societies (Housing),
2nd Floor, Housing Board Building,
Nandanam, Chennai - 35.

2.The Deputy Registrar of Co-operative Societies (Housing),
Salem Region, East Garden Street,
Fair Lands, Salem - 16.

3.S1565 Palace Nagar Co-operative House Building Society,
rep. By its Secretary/President,
Palace Towers, Cherry Road, Salem - 1.

... Respondents in all WPs

PRAYERS :

W.P.No.29301 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus seeking a direction to the respondents to execute the sale deed in the petitioner's favour of Flat No.23, 'C' East Block, 2nd floor area to an extent of 606 sq. ft., Palace Tower, Cherry Road, Salem - 1.

W.P.No.29302 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the respondents to execute the Sale Deed in petitioner favour of Flat No.10, C East Block, 2nd Floor area to an extent of 606 sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.30673 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.31, Block C East in 2nd Floor having sale area of 1012 Sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.30674 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.32, Block C East in 2nd Floor having sale area of 907 Sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.30675 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to execute the sale deed in petitioner favour of Flat No.21, Block C East in 2nd Floor having sale area of 803 Sq.ft. Palace Tower, Cherry Road, Salem - 1.

W.P.No.30676 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.E-19, 2nd Floor having sale area of 613 Sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.30677 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.40, Block C East in 3rd Floor having sale area of 800 Sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.30678 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.39, Block C East in 3rd Floor having sale area of 800 Sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.30679 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.7, Block C East in 1st Floor having sale area of 848 Sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.30680 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.11, Block E in 1st Floor having sale area of 796 Sq.ft. Palace Tower, Cherry Road, Salem-1

W.P.No.30681 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.6, Block D in 1st Floor having sale area of 800 Sq.ft. Palace Tower, Cherry Road, Salem-1

W.P.No.30682 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of

mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.10, Block D in 1st Floor having sale area of 1013 Sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.30683 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.24, Block D 3rd Floor having sale area of 910 Sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.30684 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.11, Block D 1st Floor having sale area of 906 Sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.30685 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.25, Block E 3rd Floor having sale area of 861 Sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.30686 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.14, Block E in 1st Floor having sale area of 700 Sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.30687 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.33, Block C East in 3rd Floor having sale area of 848 Sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.30688 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.33, Block C East in 3rd Floor having sale area of 848 Sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.30689 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of

mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.22, Block C East in 2nd Floor having sale area of 771 Sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.30690 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.26, Block C East in 2nd Floor having sale area of 800 Sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.30691 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.19, Block D 2nd Floor having sale area of 1013 Sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.32387 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.13, Block C East in 1st Floor having sale area of 800 Sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.32388 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.30, Block C East in 2nd Floor having sale area of 823 Sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.32389 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.41, Block C East in 3rd Floor having sale area of 814 Sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.32390 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.4, Block C East in Ground Floor having sale area of 785 Sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.32391 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of

mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.28, Block C East in 2nd Floor having sale area of 814 Sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.32392 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.15, Block E in 2nd Floor having sale area of 782 Sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.32393 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.20, Block E in 2nd Floor having sale area of 796 Sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.32394 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.27, Block E in 3rd Floor having sale area of 971 Sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.32395 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.32, Block E in 3rd Floor having sale area of 700 Sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.32396 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.27, Block D in 3rd Floor having sale area of 933 Sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.32571 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.1, Block C East in Ground Floor having sale area of 765 Sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.32572 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of

mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.6, Block C East in Second Floor having sale area of 1142 Sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.32573 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.35, Block C East in 3rd Floor having sale area of 771 Sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.32574 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.9, Block C East in 3rd Floor having sale area of 1142 Sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.32575 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.37, Block C East in 3rd Floor having sale area of 1310 Sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.32576 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.3, Block C West in 1st Floor having sale area of 1142 Sq.ft. Palace Tower, Cherry Road, Salem-1.

W.P.No.32577 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to execute the sale deed in favour of the petitioner for Flat No.11, Block C East in 1st Floor having sale area of 1310 Sq.ft. Palace Tower, Cherry Road, Salem-1.

For Petitioner : Mr.M.S.Palanisamy, for
Mr.R.Ashrafkhan

For R1 & R2 : Mr.L.P.Shanmugasundaram,
Special Government Pleader

For R3 : Ms.T.P.Savitha

C O M M O N O R D E R

In all these Writ Petitions, the petitioners are members of the Palace Nagar Co-operative Housing Building Society at Salem.

2. All of the petitioners have purchased houses/flats, etc in the Scheme promoted by the House Building Society. It is not in dispute that all the petitioners have paid the entire sale consideration. However, they have waited patiently for the sale deed to be executed, which has not been done and the same urged the petitioners to approach this Court by way of these Writ Petitions.

3. After hearing the learned counsel for the parties and perusing the materials placed on record including the counter affidavit filed by the Deputy Registrar of Co-operative Societies (Housing), it is seen that there are three road blocks which has prevented the 3rd respondent House Building Society from executing the Sale Deeds.

4. Firstly, the Narasingapuram PACCS, Valapady PACCS, Mallur PACCS, Attur Mulluvadi PACCS and Vaiappamalai PACCS have deposited substantial funds in the House Building Society and those amounts have not been returned by the House Building Society together with the accrued interest, which has led to the filing of the petitions before the Deputy Registrar of Co-operative Societies and now the matters are pending before the Co-operative Tribunal at Salem. Furthermore, the property which has been sub-divided and sold to the petitioners herein have been attached in those proceedings.

5. The second road block is on account of the loan advanced by the Tamil Nadu Co-operative Housing Federation, Chennai to the House Building Society to the tune of Rs.13,30,30,109/- and as on date, the Federation demands a sum of Rs.59.67 crores, which is due from the Housing Building Society to the Federation, being the principal, interest and penal interest up to 31.08.2014.

6. The third problem faced by the House Building Society is on account of the Arbitration proceedings which are pending and due to the orders of attachment on the property in question.

7. Though the orders of attachment have been passed in the recovery proceedings, those attachments are subsequent to the dates on which, the petitioners have entered into the sale transaction with the House Building Society. In fact, all the petitioners have been issued allotment orders and by way of a

Resolution, the petitioner in W.P.No.29301 of 2014, S.Mohan was issued an order of allotment on 28.01.2002. It is roughly during the same period the other petitioners have also been issued the allotment orders. However, the fact remains that the order of attachment came to be passed in the year 2008.

8. From the counter affidavit filed by the Deputy Registrar of Co-operative Societies (Housing), Salem, it is seen that the House Building Society is an unencumbered property, which is stated to be of value of more than 13 crores. Those are properties in the form of commercial complexes and Flats which are not sold or allotted to any members. Therefore, those properties are technically free from any encumbrance, which, if sold by proper auction, would be sufficient to satisfy the dues payable to the PACCS as well as the dues to the Housing Federation. It is further stated that the members of the House Building Society have formed themselves into an Association called Palace Nagar Welfare Association and filed a petition under Section 90(2) of the Tamil Nadu Co-operative Societies Act for a direction to execute the Sale Deed in favour of its members. Since such petition was filed by the Association for want of locus standi, the application is yet to be numbered.

9. As rightly pointed out by the learned counsel for the PACCS, no useful purpose would be served in directing the Deputy Registrar (Housing) to number those applications, since already, he has passed an order against the House Building Society and there is no order of attachment of the property of the House Building Society, as some of the properties are in possession and enjoyment of the petitioners. Therefore, this Court is of the view that the matter should be resolved by an Officer of a Higher level preferably by the Registrar (Housing), the first respondent herein.

10. This Court is inclined to make such an observation in the light of the fact that on one side, the interest of the members/petitioners have to be protected and equally the dues payable to the other PACCS and the Federation have to be settled, since ultimately, the interest of the members/individuals would be in jeopardy. If the statement that the property restrained by the House Building Society free of encumbrance is worth more than 13 crores is true, then a workable solution can be made, so that all the stakeholders are benefitted.

11. In the light of the above factual scenario, at this stage of the matter, this Court would not be in a position to issue a direction to the respondents to execute the Sale Deed, since as on date, when an order of attachment is in force,

without raising the same, it would not be appropriate and it would not be legally tenable to direct execution of the Sale Deed. Therefore the following order would meet the ends of justice.

"The Writ Petitions are disposed of by directing the Registrar of Co-operative Societies (Housing) to take up the matter either by himself or by an Officer of sufficient seniority and jurisdiction to consider a one-time solution for the entire problem, bearing in mind the interest of the petitioners, PACCS, Housing Federation and also the interest of the petitioners, who are all senior citizens aged above 70 years, for which purpose, the 1st respondent has issued notice to the petitioners or their Association, the PACCS, the House Building Society and the Federation to collect the details and work out the value of the property, what are the dues payable and thereafter chart out the plan of action, whereby the petitioners get the benefit of the sale deed, the PACCS are able to release the deposit amount and the Federation to recover the loan amount."

12. The above direction should be completed within a period of three (3) months from the date of receipt of a copy of this order. If further extension of time is required, it is open to the 1st respondent to approach this Court. It is also open to the 1st respondent to seek any further clarification in the process of executing the order.

No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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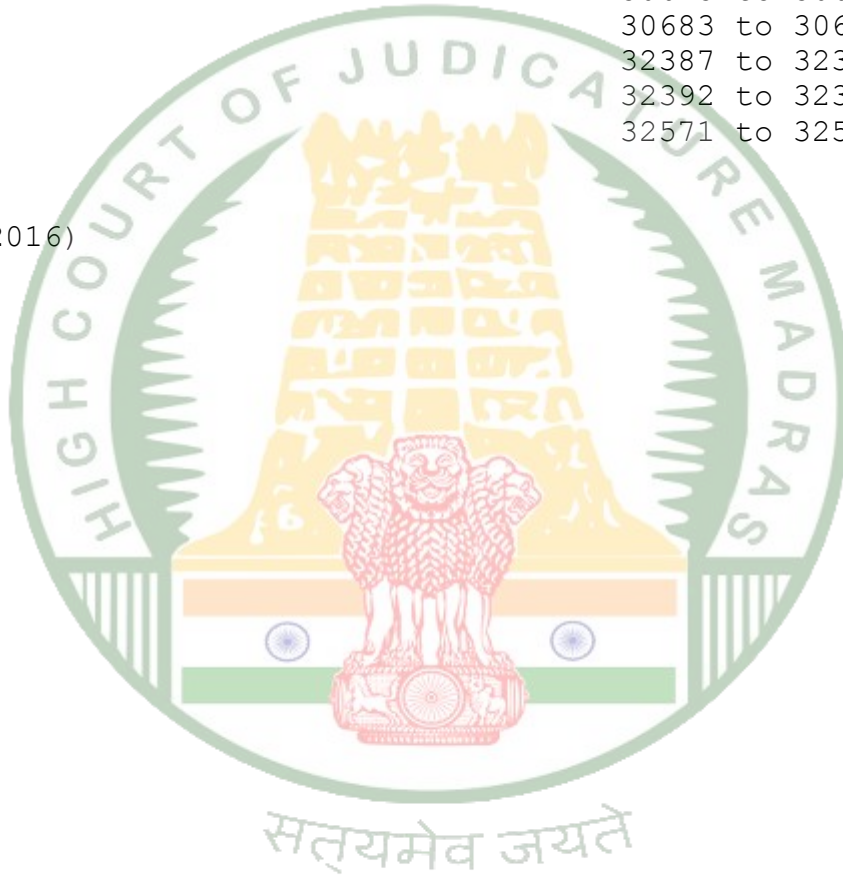
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- 2.The Deputy Registrar of Co-operative Societies (Housing),
Salem Region, East Garden Street,
Fair Lands, Salem - 16.

3.S1565 Palace Nagar Co-operative House Building Society,
rep. By its Secretary/President,
Palace Towers, Cherry Road, Salem - 1.

+1cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.1931
+5cc's to Mr.R.Ashrafkhan, Advocate, S.R.No.2025
+1cc to the Government Pleader, S.R.No.1782

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ALA (CO)
CA(10/02/2016)



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