

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2016

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THE HONOURABLE MR. JUSTICE T.RAJA

Writ Petition No.25697 of 2016

S.Jayandran

... Petitioner

vs.

1. Tamil Nadu Housing Board
rep. By its Chairman & Managing Director,
Anna Salai, Nandanam,
Chennai-35.
2. The Special Officer (Deputy Registrar),
Burma Indian Co-operative House Construction
Society, No.18, Ramanathan Street,
T.Nagar, Chennai-17.

3. A.Bose

... Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of mandamus, directing the 2nd respondent to consider and pass orders on the petitioner's representation dated 01.07.2015 in respect of the action to be taken against Mr.A.Bose, President of Burma India Home Construction Co-operative Society, Perambur, Chennai-11, the 3rd respondent herein for the irregularity committed by him in the society and conduct full fledged enquiry and take appropriate action.

For Petitioner : Mr.G.V.Sridharan

For Respondents : Mr.B.Vivekavan

1 and 3

For 2nd respondent : Mr.V.Selvaraj,
Additional Government Pleader
(Co-op.)

ORDER

This Writ Petition has been filed by Mr.S.Jayandran, seeking to issue a Writ of Mandamus, directing the 2nd respondent to consider and pass orders on the petitioner's representation dated 01.07.2015 in respect of the action to be taken against Mr.A.Bose, President of Burma India Home Construction Co-

operative Society, Perambur, Chennai-11, the 3rd respondent herein for the irregularity committed by him in the society and conduct full fledged enquiry and take appropriate action.

2. Mr.G.V.Sridharan, the learned Counsel appearing for the petitioner would submit that after the petitioner was born in Burma, his family came to India in the year 1963 and subsequently, he was adopted by Dawohn Myaing, wife of Musthafa as a son. Since Dawohn Myaing being a member of Burma-India Home Construction Co-operative Society, the Burma-India House Construction Co-operative Society has allotted a house No.35, Plot No.122 in Palavakkam Village, Saidapet Taluk by way of Hire Purchase Agreement. After such allotment, the petitioner and his mother were enjoying the peaceful possession without any interference. Further, he would submit that after the said Hire Purchase Agreement, the petitioner's mother Dawohn Myaing paid entire dues to Burma-India Home Construction Co-operative Society, but, no sale deed was issued in favour of his mother. Therefore, a Will was executed by his mother Dawohn Myaing on 09.09.1987 bequeathing the property-in-question in his favour and the said Will was also registered on the file of Kodambakkam Sub-Registrar Office vide document No.76/1987. Due to illness, his mother died on 03.01.1990. Subsequently, it was informed to Burma-India Home Construction Co-operative Society and also got the death certificate and thereafter, produced the same before the Tahsildar, Mambalam-Guindy Taluk to issue a Legal Heirship Certificate to him. Thereafter, the petitioner produced all the documents before the Burma-India Home Construction Co-operative Society to issue a Sale Deed and to register his name as a member in the Burma India Home Construction Co-operative Society. The said Society refused his request. Therefore, the petitioner gave another representation.

3. In the meanwhile, the petitioner was issued with a proceeding dated 22.04.2013 by the Collector, Burma India Home Construction Co-operative Society. Aggrieved by the said notice asking him to vacate and hand over the House-in-question, he was constrained to file W.P.No.14874 of 2013 before this Court. By Order dated 09.01.2015, without going into the merits of the matter, considering the objection raised by the other side that the petitioner has no locus standi to continue as lawful owner of the land, by keeping in abeyance the impugned proceeding, directed the petitioner to approach the competent authority under Section 90 of the Co-operative Societies Act, within a period of two weeks from the date of receipt of a copy of that order and accordingly, disposed of the Writ Petition. Pursuant thereto, he has filed an appeal before the Registrar of Co-operative Societies (Housing), Chennai-35, under Section 90 of the Act who has passed a speaking, cogent and convincing order holding that the petitioner has no locus standi to continue in

possession since he is not an adopted son of Dawohn Myaing. As against the same, the petitioner also preferred an appeal before the Registrar of Co-operative Societies (Housing) Chennai-35. In the meanwhile, he was harassed by the 3rd respondent. Therefore, he has come before this Court after giving complaint to take action against him.

4. The learned Counsel appearing for the Government opposing the above prayer has filed a detailed counter affidavit.

5. The learned Counsel appearing for the Society has also submitted that the 2nd respondent has also considered the case of the petitioner in his order in ARC.No.3/2014-15/K dated 20.07.2016 passed under Section 90 of the Co-operative Societies Act, 1983 making it clear that the relief sought for by the petitioner cannot be granted as the same is contrary to the By-Law of the Society. It goes without saying that the petitioner is a trespasser and he is not entitled to seek any remedy before this Court. Again drawing the attention of this Court to the penultimate paragraph of that order, it is submitted by the learned Counsel appearing for the Society that the petitioner is a rank trespasser. He has manipulated every document, namely, the Will dated 09.09.1987 and the legal heir Certificate said to have been issued by the Tahsildar, Mambalam-Guindy Taluk. I find merits on these submissions.

6. Further, the learned Additional Government Pleader appearing for the 2nd respondent placing on record the communication in Na.Ka.No.1747/2016/K dated 12.12.2016 received by him from the 2nd respondent would submit that the writ petition is liable to be dismissed.

7. The order passed by the Arbitrator-Deputy Registrar-Housing under Section 90 of the Act also becomes final. Therefore, this Court finds no merit in the Writ Petition. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

8. At this stage, the learned Counsel appearing for the Housing Board sought for liberty to proceed against the petitioner as he is a trespasser and also attempted to grab the House-in-question which belongs to the Housing Board.

9. It is open to the Housing Board to work out their remedy in the manner known to law.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman & Managing Director,
Tamil Nadu Housing Board,
Anna Salai, Nandanam,
Chennai-35.
2. The Special Officer (Deputy Registrar),
Burma Indian Co-operative House Construction
Society, No.18, Ramanathan Street,
T.Nagar, Chennai-17.

+1cc to Mr.G.V. Sridharan, Advocate, S.R.No.74030
+1cc to Mr.B. Vivekavanam, Advocate, S.R.No.74052
+1cc to Mr. V. Selvaraj, Advocate, Sr.No.74923
+1cc to the Government Pleader, S.R.No.74325

jm(CO)
md(06/01/2017)

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W.P.No.25697 of 2016

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