

IN THE HIGH COURT OF JUDICATUARE AT MADRAS
DATED: 27-06-2016
CORAM
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
W.P.No.6570 of 2016
and
W.M.P Nos.5850 & 11023 of 2016

Mrs.G.Devika Lakshmi

...Petitioner

Vs.

1.The Registrar of Co-operative Societies (Housing)
O/o The Registrar of Co-operative Societies (Housing)
Housing Board Complex,
Nandanam, Chennai - 600 035.

2.The Dy. Registrar of Co-operative Societies (Housing)
Chennai Region, Ramanathan Street,
T.Nagar, Chennai - 17.

3.The President,
Periyar Nagar Govt. Servants Co-operative
House-site Distribution Society Ltd.,
Thiruvalluvar Co-operative Thirumana Maaligai
29, Karthikeyan Salai, Periyar Nagar,
Chennai - 600 082.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of certiorarified Mandamus calling for the records in the connection with the eviction notice dated 28.01.2016 issued by the 3rd respondents to execute the sale deed in favour of the petitioner in respect of the property situated at Plot No.E-270, 18th Second Cross Street, Periyar Nagar, Chennai - 600 082.

For Petitioner : Mr.Dr.R.Sampath Kumar
For R-1 & R-2 : Mr.T.P.Savitha,
Govt. Advocate
For R-3 : Mr.P.Anbarasan

O R D E R

The petitioner's husband had purchased the property from one Mr.K.Thirunavukkarasu who was a Government Servant and allottee of the property bearing Plot No.E-270, 18th Second Cross Street, Periyar Nagar, Chennai - 600 082. The third respondent was allotted the land by the Government for the purpose of allotting the same to the Government Servants who were all the members of the third respondent society. Mr.K.Thirunavukkarasu

was assigned the above said plot vide assignment order dated 18.12.1972 and the intimation of allotment of house site by the third respondent was made on 30.03.1974. The House Building Advance (HBA) was sanctioned to the members of the society including Mr.K.Thirunavukkarasu by virtue of G.O.Ms.No.644 (Housing and Urban Development Department) dated 16.04.1979. The sale consideration in respect of the property was made by way of loan by the Government by virtue of G.O.Ms.No.759 (Finance (OP-I) Department dated 11.08.1980. The property was handed over by virtue of lease cum sale agreement dated 29.09.1980.

2. The building plan in respect of the property was approved by the third respondent vide letter dated 21.12.1980 giving no objection to the Corporation and subsequently building permission was granted by the Corporation on 18.10.1983. Thereafter, on 23.11.1983, a sale agreement was executed by the said Thirunavukkarasu in favour of the petitioner's husband Mr.Gopalakrishnan and sale deed was also executed on 23.11.1984 in favour of the petitioner's husband. Subsequent to the sale, the petitioner's husband raised a superstructure and the property tax as well as the water tax was assessed in the name of the petitioner's husband as early as on 13.02.1986 and 21.06.1986 respectively. Subsequently, on 07.03.2008, the said Gopalakrishnan executed settlement deed in favour of his wife namely the petitioner herein and the name transfer was made in the records of the Corporation of Chennai and the property tax was paid in the name of the petitioner. Thereafter only, the third respondent issued eviction notice to the petitioner as well as to her husband and the said Thirunavukkarasu on 28.01.2016, stating that, in contravention to the lease cum sale agreement dated 29.09.1980, the property was sold to the petitioner's husband and thereafter to the petitioner herein. A reply notice dated 12.02.2016 was sent to the third respondent on behalf of the petitioner and her husband. Thereafter, they have approached this Court by way of this writ petition.

3. The learned counsel for the third respondent would submit that the sale deed executed by the allottee namely Thirunavukkarasu is in contravention of Clause x (b) and xvi of the lease cum sale agreement dated 29.09.1980 as the said Thirunavukkarasu, had sold the property to the petitioner's husband within a period of five years from the date of conveyance.

4. No doubt, there is a clause in the lease cum sale agreement with regard to prohibition of alienation by the allottee with respect to sale of allotted plot within a period of five years from the date of conveyance. Though the lease cum sale agreement was entered into on 29.09.1980, the allotment was made in favour of Thirunavukkarasu as early as on 30.03.1974

and the entire sale consideration regarding the plot was made by the said Thirunavukkarasu by availing House Building Advance, as evident from handing over certificate given by the third respondent. Therefore, it is clear that Thirunavukkarasu has become the absolute owner as early as on 14.06.1978, as the entire sale consideration was made on that date. Even if any condition is levied subsequently, it cannot bind the owner of the plot, as the said Thirunavukkarasu has become the absolute owner of the property on 14.06.1978 itself and the allotment preceded by order dated 30.03.1974. Therefore, it is too late for the third respondent to rely upon the lease cum sale agreement dated 29.09.1980, that there is a five year prohibition period for the allottee to sell the property. No owner can be prohibited from selling the property by virtue of an agreement for which there cannot be any sanction in law.

5. No doubt, there was no execution of sale deed. It is admitted by the third respondent themselves that the said Thirunavukkarasu paid the entire sale consideration on 14.06.1978 and coupled with handing over possession. When the possession was handed over to the said Thirunavukkarasu and in view of payment of entire sale consideration, there cannot be any prohibition against the said Thirunavukkarasu in selling the property. Moreover, the building approval plan was obtained by Thirunavukkarasu on 18.10.1983 and the third respondent has also given no objection by virtue of NOC dated 21.12.1980 to the Commissioner, Corporation of Chennai.

6. After entering into sale agreement and sale deed, the petitioner's husband raised construction and the property tax and other statutory payments were made in the name of the petitioner's husband and thereafter in the name of the petitioner. If there is any violation, the third respondent should have taken action immediately whereas, after having slept over the matter for more than 33 years, a belated notice was issued by the third respondent on 28.01.2016 asking the petitioner to vacate the premises.

7. The third respondent is not a stranger to the place and their office is located in the same area, i.e Periyar Nagar itself, where the petitioner is living by putting up construction, for the past thirty years. Even by virtue of adverse possession, the petitioner would have been prevented directly because the third respondent is having office in the same area. Therefore, it is too late for the third respondent to deny the benefit of sale deed to the petitioner. Technicality cannot be employed to defeat the rights of the petitioner who has been continuously enjoying the property right from the year 1983. Therefore, it is the duty of the third respondent to execute the sale deed in favour of the petitioner. The third respondent is directed to execute the sale deed in

favour of the petitioner as the entire sale consideration was paid as early as on 14.06.1978 and it is only a formality which has to be complied with.

8. The Co-operative Society has been formed in the interest of the Government officials and the petitioner who rightly discharged the obligation by payment of entire sale consideration, has got every right to sell the property. After sale of the property, the said Thirunavukkarasu also died and therefore interest of justice requires a direction. Hence, the third respondent is directed to execute the sale deed in favour of the petitioner within a period of four (4) weeks from the date of receipt of a copy of this order. The learned counsel for the respondent would submit that the petitioner should co-operate with the Society for execution of sale deed and therefore, the petitioner is directed to co-operate with the third respondent to get the sale deed executed.

9. The writ petition is disposed of with the above observation and direction. No costs. Consequently, connected miscellaneous petitions are closed.

rgr

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

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O/o The Registrar of Co-operative Societies (Housing)
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+ 1 cc to Mr.P.Anbarasan, Advocate Sr 35841

+ 1 cc to Mr.Dr.R.Sampath Kumar, Advocate Sr 35966

KR/6/7/16

W.P.No.6570 of 2016