



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 16.11.2016

C O R A M

THE HONOURABLE DR.JUSTICE S.VIMALA

Writ Petition (MD) Nos.21706 to 21708 of 2016

and

W.M.P (MD) No.15516; 15517; 15518;
15519; 15520 & 15521 of 2016

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Selvi ... Petitioner in W.P.(MD)No.21706 of 2016
Vasuki ... Petitioner in W.P.(MD)No.21707 of 2016
S.Panchakalyani ... Petitioner in W.P.(MD)No.21708 of 2016

Vs.

1.The Registrar
Co-operative Societies (Housing)
Chennai.

2.The Regional Deputy Registrar,
(Housing) (I/C),
Virudhunagar Region.

3.The President
A-1321, Karaikudi Co-operative housing Society,
Church 6th Street,
Karaikudi, sivagangai District.

4.The Secretary,
A-1321, Karaikudi Co-operative housing Society,
Church 6th Street,
Karaikudi, sivagangai District.

... Respondents in all the writ petitions

Common Prayer: Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned proceedings in Na.Ka.No.6983/2003/A1 dated 31.03.2006 of the 1st respondent and quash the same and direct the respondents 2 and 3 to execute sale deed in favour of the petitioners in respect of plot No.182-D; 183-B and 183-C respectively.

For Petitioner in all
the writ petitions

... Mr.J.Anandkumar

For Respondents in

... Mr.V.R.Shanmuga nathan
Spl. Govt. Pleader.

**ORDER**

These writ petitions have been filed challenging the orders of the first respondent, dated 31.03.2006 and consequently, direct the respondents 2 and 3 to execute sale deed in favour of the petitioners in respect of plot No.182-D; 183-B and 183-C respectively.

2. Heard the learned counsel for the petitioners and the learned Special Government Pleader for the respondents.

3. The short facts leading to the filing of these writ petitions:

The petitioners are the members of the third respondent society and hence, the third respondent society allotted plots to its members, for which, the petitioners had paid necessary charges and after necessary charges were being paid, the third respondent society executed registered sale deeds dated 28.08.1995 in favour of the petitioners. Thereafter, the petitioners were in possession and enjoyment of the same. Subsequently, without issuing any notice and without giving opportunity of hearing to the petitioners, the Special Officer of the third respondent society cancelled the said sale deed, by proceedings dated 09.01.1996. Challenging the said cancellation, the petitioners had filed appeal before the second respondent. The second respondent by an order dated 21.02.2006 allowed the appeal and set aside the cancellation of the sale deed and directed the respondents therein to execute the sale deed in favour the petitioners.

3.1. Since the said order of the second respondent has not been complied with, the petitioners filed W.P.(MD) Nos.17474 to 17476 of 2016 respectively, for direction to the respondents therein to implement the order of the second respondent, dated 21.02.2006. When the above said writ petitions were taken up for hearing, the learned counsel for the respondents produced the impugned order dated 31.03.2006 stating that the first respondent had cancelled the allotments in entirety and also cancelled the order of the second respondent. But the impugned order has not been communicated to the petitioners.

3.2. The fact remains that already the third respondent's society has executed the sale deed, which was ordered to be cancelled, by the Special Officer. Thereafter, the second respondent has set-aside the cancellation. Thus, the sale deed conferring rights on the members of the society had been in force. Therefore, when it is clear that when the petitioners are fighting for their rights, by filing the Appeal before the second respondent as well as by filing writ petitions before this Court, the first respondent should have given an opportunity of hearing



3.3. Under normal circumstances, when the first respondent is exercising administrative powers, there cannot be any direction by the Court to issue notice to the petitioners herein, who are beneficiaries as Members of the Society. But when the petitioners have acquired rights, they have a right to hearing, especially when they have already moved the statutory authorities as well as the Courts, for enforcement of their rights. Without giving directions as to how to handle those issues, there cannot be any blanket order, directing the Special Officer to cancel the sale deed.

4. At this juncture, it will be useful to extract Section 181 of the Tamil Nadu Cooperative Societies Act, 1983, which reads thus:-

"181. Power of Registrar to give directions in the public interest, etc.- (1) Where the Registrar is satisfied that in the public interest or for the purpose of securing proper implementation of co-operative production and other development programmes approved or undertaken by the Government or to secure the proper management of the business of any registered societies generally, or for preventing the affairs of any registered society being conducted in manner detrimental to the interests of the members, or of the depositors or the creditors thereof, it is necessary to issue directions to any class of registered societies generally or to any registered society or registered societies in particular, he may, by order issue directions to them from time to time, and all registered societies, or the registered society concerned, as the case may be, shall be bound to comply with such directions.

(2) The Registrar may, by order, modify or cancel any directions issued under sub-section (1), and in modifying or cancelling such directions may impose such conditions as he may deem fit."

4.1. Having regard to the nature, extent and the purpose for which the power could be exercised by the Registrar, the conclusion is inevitable that the Registrar cannot pass such drastic orders, when the cases are pending various forums.

4.2. This view is supported by a decision of this Court, reported in MANU/TN/0845/1996 (E. Senthilkumar and Ors. Vs. The Registrar of Co-operative Societies and Anr.) where-under it has been held as follows:-

"16. A close reading of sections reveals that the power under Section 181 should be exercised in the public interest or for the purpose of securing proper implementation of the co-operative production and other development programme approved or undertaken by



the Government. It could also be exercised to secure the proper management of the business of any class of registered societies generally or for preventing the affairs of any registered society being conducted in a manner detrimental to the interests of the members or of the depositors or the creditors thereof. Even in such cases also, the Registrar must be satisfied that it is necessary to issue such directions to any class of registered societies generally or to any registered society or registered societies. Thus, it is clear that the present case does not fall under any of these categories. It is a case in which the order of the court has to be implemented...."

5. As the impugned orders have been passed violating the law and principles of natural justice, especially without furnishing opportunity of hearing, the same are set aside and the matters are remitted back to the first respondent. The first respondent shall consider the cases afresh after providing sufficient opportunity to the petitioners and to pass orders in accordance with Section 181 of the said Act.

6. In the result, the writ petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar

- 1.The Registrar
Co-operative Societies (Housing)
Chennai
- 2.The Regional Deputy Registrar,
(Housing) (I/C)
Virudhunagar Region.
- 3.The President
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- 4.The Secretary,
A-1321, Karaikudi Co-operative housing Society,
Church 6th Street, Karaikudi, sivagangai District.

+1cc to M/S.Special Govt. Pleader, SR.No:69785

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AE/MR VB/07.02.2017/4p/6c