

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2017

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.Nos.786, 1556 & 1557 of 2017
and
C.M.P.Nos.10850, 20398 & 20399 of 2017

Adyar Venkatrathnam Nagar
Residents Welfare Association
Rep. by its Secretary M.Anand ...Appellant in all W.A's

Vs.

1.The Secretary to Government
Tamilnadu Cooperative Societies Department
Fort St. George
Chennai 600 009

2.The Secretary to Government of Tamilnadu
Housing and Urban Development Department
Fort St. George
Chennai 600 009

3.The Registrar of Societies (Housing)
Nandanam
Chennai 600 035.

4.The Deputy Registrar of Societies (Housing)
No.12, HD Raja Street, Eldams Road
Chennai 600 018.

5.The President
City Cooperative Housing Society
No.13, Sastri Nagar Shopping Complex
Adyar, Chennai 600 020 ..Respondents in W.As.786 of
2017

1.The Secretary to Government of Tamilnadu
Housing and Urban Development Department
Fort St. George
Chennai 600 009

2.The Registrar of Societies (Housing)
Gandhi Nagar, Adyar, Chennai-20.

3.The President
City Cooperative Housing Society,
Adyar, Chennai X422
No.13, Sastri Nagar Shopping Complex
Adyar, Chennai 600 020

4.The Secretary
City Cooperative Housing Society,
Adyar, Chennai X422
No.13, Sastri Nagar Shopping Complex
Adyar, Chennai 600 020

5.Ali Naser

6.The Sub Registrar
Office of the Sub Registrar
Adyar, Chennai 600 020 ..Respondents in W.As.1556 of 2017

1.The Secretary to Government of Tamilnadu
Housing and Urban Development Department
Fort St. George
Chennai 600 009

2.The Registrar of Cooperative Societies
170, EVR Periyar High Road
Kilpauk, Chennai 600 010.

3.The Registrar of Cooperative
Societies (Housing)
Tamil Nadu Housing Board Building
I Floor, Nandanam, Chennai 600 035

4.The Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natrajan Building
No.1, Ground Floor Gandhi Irwin Road
Egmore, Chennai 600 008.

5.The Commissioner
Corporation of Chennai
Ripon Buildings
Poonamallee High Road, Chennai.

6.The Director

Office of the Director of Town
and Country Planning
Opposite to LIC, Chengalvarayan Building
Fourth Floor, 807, Anna Salai
Chennai 600 002.

7.The President

City Cooperative Housing Society,
Adyar, Chennai X422
No.13, Sastri Nagar Shopping Complex
Adyar, Chennai 600 020

8.The Secretary

City Cooperative Housing Society,
Adyar, Chennai X422
No.13, Sastri Nagar Shopping Complex
Adyar, Chennai 600 020

...Respondents in W.As.1557 of 2017

Common Prayer: The Writ Appeals have been filed under Clause 15 of the Letters Patent to set aside the order passed in W.P.No.21880 of 2014, W.P.No.25839 of 2016 W.P.No.30225 of 2016 respectively dated 03.04.2017.

WP.No.30225 of 2016: Writ Petition is filed praying for issuance of a writ of Mandamus, directing the respondents 1 to 6 to preserve the lands in Plot Nos.1C 2E and 6E comprised in Old Survey No.18/3 and New Survey No.38/1 of Pallipattu Village at Venkatrathnam Nagar Adyar for public purpose

W.P.No.21880 of 2014: Writ petition filed under Article 226 of the constitution of India praying for issuance of a writ of Mandamus, directing the respondents herein to pass orders on both the representations of the petitioner dated 28.11.2013 at the earliest point of time

W.P.No.25839 of 2016: Writ petition filed under Article 226 of the constitution of India praying for issuance of a writ of Mandamus, Forbearing the respondents 3 and 4 from in any way alienating or encumbering the property viz. Plot No.1C 2E and 6E comprised in Old Survey No.18/3 New Survey No.38/1 of Pallipattu Village in Venkatrathnam Nagar Adyar Chennai-20 to any third parties including the 5th respondent herein

For Appellant : Mr.J.Pothiraj in all WAs.

For Respondents : Mr.S.T.S.Moorthy, AAG V
in W.A.786/2017 by Ms.T.Girija, for 1 to 4

Mr.K.V.Subramanian, SC for
Mr.S.P.Sudalaiyandi for R5

For Respondents: Mr.S.T.S.Moorthy, AAG V
in W.A.1556/2017 Assisted by Ms.T.Girija, G.A for R1,2 &4

Mr.K.V.Subramanian, SC for
Mr.S.P.Sudalaiyandi for R3

Ms.A.Srijayanthi, Spl. G.P. For R6

R5 - No Appearance

For Respondents: Mr.S.T.S.Moorthy, AAG V
in W.A.1557/2017 Assisted by Ms.T.Girija, G.A for R1 to 3
Not ready notice to R4 to 6
Mr.K.V.Subramanian, SC for
Mr.S.P.Sudalaiyandi for R7 & 8

COMMON JUDGMENT

(Judgment of the Court was made by P.VELMURUGAN,J.)

The Appellant Association is registered under the Registrar of Societies and is functioning for the benefits of the residents of the Association. The 5th respondent Society started earlier at the vacant space in the Appellant's Residents' Welfare Association filed the writ petition in W.P.No.14569 of 1996. The 5th respondent Society in W.A.No.786 of 2017 filed counter in those writ petitions admitting the vacant space which has been earmarked for public purposes.

2.Subsequently, the 5th respondent Society in W.A.No.786 of 2017 has been admitting new members and also removing certain members of the Association, illegally, for which, the Appellant/Residents Welfare Association, gave a representation on 28.11.2013, the same was not properly considered. Therefore, the writ petition was filed in W.P.No.21880 of 2014, to consider the representation.

3.Since the 5th respondent Society in W.A.No.786 of 2017 had tried to alienate the property. Once again, during 2016, the appellant association filed petitions in W.P.No.25839 of 2016 and W.P.No.30225 of 2016. This Court heard all the writ petitions and passed the common order on 03.04.2017, against

the said common order passed by the learned single judge, the present writ appeals are filed by the appellant association.

4. Heard the rival submissions made by the counsel on either side and also perused the available materials on record.

5. It is admitted that at the time of laying of plots in Old Survey No.18/3 and New Survey No.38/1, Pallipattu Village, Venkatrathnam Nagar, Chennai was reserved for public purpose. As per the sanction plan, the space comprised in Plot No.1-C, 2-E and 6-E, measuring about four grounds was earmarked for public purposes. The encroachment has been made upon a portion of the said property and the society ratified the construction and sold that extent of land to the said encroacher.

6. The appellant association, filed writ petition in W.P.No.14569 of 1996 before this Court and this Court by its order dated 14.10.2013, directed the 5th respondent Society in W.A.No.786 of 2017, not to prevent the members of the appellant association from cleaning the bushes in the vacant space and the association was finally permitted to clean the bushes. The operative portion of the order dated 14.10.2013 passed in the above mentioned W.P.No.14569 of 1996 reads as under:

"Para 7: Coming to the grievance of the petitioner - association that the office bearers of the petitioner - association are not allowed to remove the bushes in the vacant site and when they attempted to clear the bushes, a complaint was lodged by the 4th respondent. Since the place in question is earmarked for public purpose, the 4th respondent society is not entitled to prevent the members of the petitioner association even to clean the bushes in the vacant space and that the 4th respondent is entitled to put up a Community Hall for the use of the public only. The question as to whether the 4th respondent society is entitled to sell the land which is meant for public purpose to the 6th respondent, can be decided in the suit filed by the Special Officer and it is always open to the members of the petitioner association to question the same before the appropriate forum. With the above observations, the Writ Petition is disposed of. No costs. Consequently, W.M.P. No.2619/1887 is closed."

7. The learned counsel for the appellant would submit that the enquiry may be conducted by the independent agency. Since, the allegations has been attributed against the 3rd and 4th respondents in W.A.No.786 of 2017. The learned single judge

has given direction to consider the earlier order passed by this Court, dated 14.10.2013, wherein a liberty was granted to the appellant association to file a fresh representation to the 3rd respondent in W.A.No.786 of 2017 within a period of two weeks from the date of receipt of a copy of the order.

8.On receipt of the said representation, the 3rd respondent in W.A.No.786 of 2017 was directed to forward the said representation to the Registrar of the Cooperative Society (Housing), Vepery, within a period of two weeks, thereafter, on receipt of the same, the said authority shall consider the said representation on merits and in accordance with law, after providing due opportunity to the parties concerned and pass orders within a period of twelve weeks. With the above direction, the W.P.No.21880 of 2014 was disposed of, against the same, the appellant association is before this Court.

9.The learned counsel for the respondents would submit that they have not alienated the space allotted for the public purpose. They want to construct community hall and also office for the 5th respondent society. The 3rd respondent in W.A.No.786 of 2017 has given an undertaking that the space allotted for Plot No.1-C, 2-E and 6-E, measuring about 9,875 sq. ft. remained with the Society and neither allotted to any individual members nor sold to private person.

10.The learned counsel for the appellant would submit that the action of the respondents is against the by-law as well as the original layout plan, therefore, the respondents should not allow to release that space for construction of community hall and also office. Further, the counsel for the appellant would submit that the construction of community hall and office not comes under the terms of public purpose.

11.The learned counsel for the respondents would vehemently contend that the construction of community hall is well within the terms of the public purposes. The 3rd respondent in W.A.No.786 of 2017 has filed additional undertaking, wherein, the 3rd respondent clearly stated as follows:

"I further undertake before this Hon'ble Court that the total area of the Plot No.1C, 2E & 6E is 9,875 sq. ft. Out of total 9,875 sq. ft. a major portion of land measuring 9,000 sq. ft. will be utilised for construction of Community Hall for public purpose and the remaining 875 sq. ft. will be utilised for the construction of Office Building for the City Co-operative Housing Society, Adyar, Chennai-20."

12.Out of the comprising extent of 9,875 sq. ft. plot Nos.1C, 2E & 6E, the major portion of 9,000 sq. ft. will be

utilised for the construction of Community Hall and the remaining 875 sq. ft. will be utilised for the construction of office for the Cooperative Housing Society. Therefore, on seeing the original plan, it is clearly seen that the subject lands were reserved for public purpose.

13. According to the appellant, the construction of community hall and office for the society is not well within the terms of public purpose. According to the respondents, the construction of community hall, is purely for the interest of the members of the society and therefore it is well within the terms of the public purpose. Accordingly, they have also given an undertaking that they will not use the said plots for any other purposes, by way of constructing a building. The major portion of the land will be utilised for the construction of community hall and given undertaking that they will not utilise the plot other than the purposes mentioned in the affidavit.

14. Originally, this land was approved and reserved for the public purposes which was not disputed by the 5th respondent Society in W.A.No.786 of 2017. Considering the undertaking given by the respondents that they will not utilise the land for other than the purposes mentioned in the affidavit, the appellant insisted that the land was earmarked and reserved for public purpose, it should not be alienated or encumbered and the land should not be utilised for other than the purposes for which it was specified.

15. The respondents' contention is that, they are not going to alienate the land and they are going to construct only community hall in 9000 sq. ft. and for the remaining 875 sq. ft. they will construct office, which is well within the terms of public purposes and the land will not be utilised for any other purposes other than the purposes mentioned in the affidavit (public purpose).

16. The affidavit filed by the Registrar of Co-operative Societies (Housing) dated 12.12.2017 is taken on record. The intra court appeal is disposed of in terms of the undertaking. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To.

- 1.The Secretary to Government
Tamilnadu Cooperative Societies Department
Fort St. George
Chennai 600 009
- 2.The Secretary to Government of Tamilnadu
Housing and Urban Development Department
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- 10.The Member Secretary
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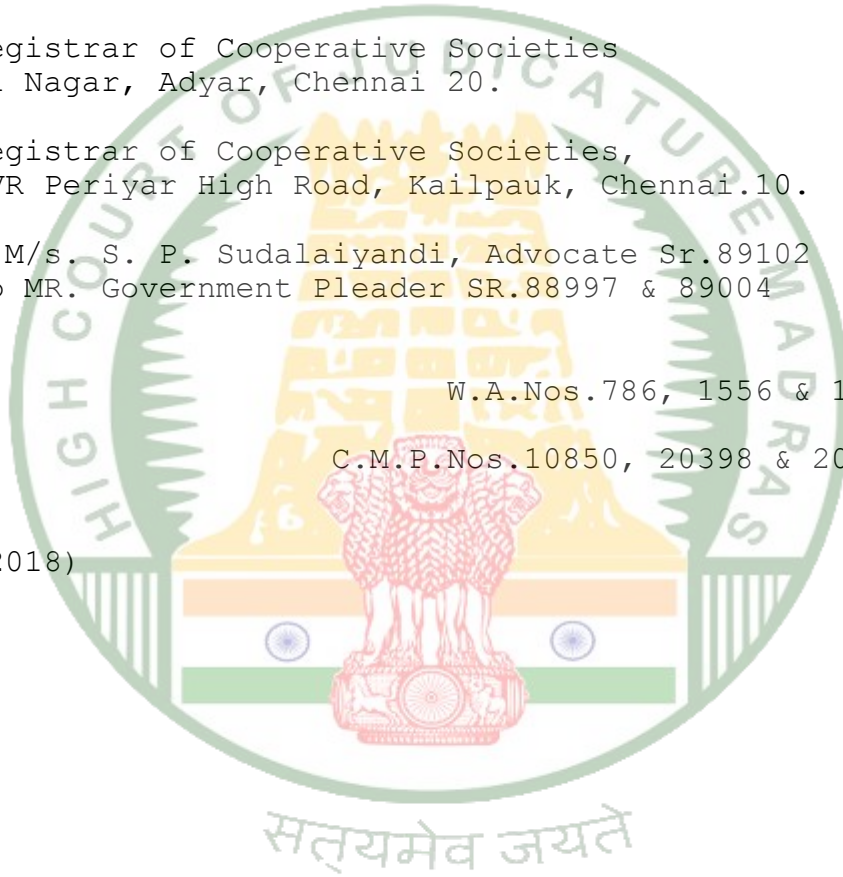
13. The Registrar of Cooperative Societies
Gandhi Nagar, Adyar, Chennai 20.

14. The Registrar of Cooperative Societies,
170 EVR Periyar High Road, Kailpauk, Chennai.10.

+ 1 cc to M/s. S. P. Sudalaiyandi, Advocate Sr.89102
+ 2 ccs to MR. Government Pleader SR.88997 & 89004

W.A.Nos.786, 1556 & 1557 of 2017
and
C.M.P.Nos.10850, 20398 & 20399 of 2017

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EU(22/01/2018)



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