

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2017

CORAM :

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.15703 of 2016

and

W.M.P.Nos.13632 to 13634 of 2016

D. Kirthiraj
rep. By his Power Agent
Mr. R. Durai Narayanan ...Petitioner

Vs.

1. The Deputy Registrar Of
Co-operative Societies (Housing)
No.18, Ramanathan Street
T. Nagar, Chennai - 17.
2. The President
Tamil Nadu Secretariat Staff
Co-operative Housing
Society Ltd., (MDS/HSG/179)
Plot No.105, Secretariat Colony
Okkiyam Thoraipakkam
Chennai - 600 097.Respondents

PRAYER: This Writ Petition is filed under Article 226 of Constitution Of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 1st respondent issued in his proceedings Rc. No. 1/2015-16 dated 3.2.2016 and quash the same and consequently direct the 2nd respondent to issue the documents related to the plot No. XVIII to the petitioner on payment of the balance amount due to the society, within a reasonable period as may be fixed by this Hon'ble Court and to pass further orders.

For petitioner : Mr. T. Ranganathan
For respondents : Mr.V.Selvaraj
Additional Government Pleader for R1
Mr.S. Namasivayam for R2

ORDER

This Writ Petition has been filed to quash the impugned order of the 1st respondent issued in his proceedings Rc. No.1/2015-16 dated 3.2.2016 and consequently direct the 2nd respondent to issue the documents related to plot No. XVIII, to the petitioner on payment of the balance amount due to the society, within a reasonable period.

2. According to the petitioner, the plot in question is only a commercial plot, which cannot be allotted to the members, who are Government employees. Subsequently, the 2nd respondent resolved to increase the rate of the said plots. Whiles, some of the members and non-members of the Society, filed W.P. No.24649 of 2007 challenging the impugned allotment made to the petitioner and others. By an order dated 11.03.2015, this Court directed the Registrar of Cooperative Societies (Housing) to decide the issue, under Section 90 of the Tamil Nadu Cooperative Societies Act, 1983, after issuing notice to all the concerned parties. According to the petitioner, no fair opportunity was given to the petitioner to defend the case in the enquiry and the 1st respondent has passed a non-speaking order, rejecting the claim of the petitioner and thereby cancelling the allotment of plot. Aggrieved by the said order, the petitioner has filed the present writ petition.

3. The learned counsel appearing for the 1st respondent would submit that there is an alternative efficacious remedy available to the petitioner, under Section 152 of the Tamil Nadu Cooperative Societies Act, 1983, to file an appeal before the Tribunal. However, it is stated that the petitioner has preferred the present writ petition, without exhausting the alternate remedy. So the present writ petition is not maintainable and the same is liable to be dismissed.

4. The learned counsel for the 2nd respondent would submit that the petitioner has filed the present writ petition without exhausting the appeal remedy, with an intention to drag on the proceedings. Therefore, in the event of this Court coming to a conclusion to direct the petitioner to file an appeal under the provisions of the Act, this Court may consider to direct the Appellate authority to dispose of the appeal within a stipulated time.

5. In view of the submissions made by the learned counsel for the parties, as both the parties have accepted that there is an appeal provision under Section 152 of the Act, the petitioner has to avail the appeal remedy before the Tribunal. When there is an efficacious remedy, the petitioner has to approach the Appellate Court, in the light of the principles

laid down by this Court in the case of M/s. HIL Limited vs. The Assistant Commissioner, Madhavaram Assessment Circle & 2 Ors., in W.A. No. 258 of 2016, wherein paragraph 17 and 19, it is held as follows :

" 17. It has been clear from the aforesaid judgments of the Honourable Supreme Court that some exceptions to the Rule of alternative remedy i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of principles of natural justice, the High Court will not entertain a petition under 226 of the Constitution of India, if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field.

18.

19. In the result, the Writ Appeal fails and the same is dismissed. Liberty is granted to the appellant to file an appeal if so advised within a period of four weeks from today. In the event of filing an appeal by the assessee, the appellate authority shall consider the same only on merits and independently without being influenced by any observations of this Court. No order as to costs. The connected Civil Miscellaneous Petition is closed."

The Hon'ble Supreme Court, in the case of A. Balaraman & Ors. vs. The Deputy Registrar of Co-operative Societies, Cheyyar and 2 Ors., in W.A. No.1101 of 2008, in paragraphs 5, 6 and 7 has held as follows :-

" 5. Therefore, the remedy of the writ petitioners/appellants was to file an appeal before the said high powered Tribunal, which has the trappings of a civil Court. Bypassing the said Tribunal, this writ petition has been filed, which, in our view is totally mis-conceived. It is not only the question of availing the statutory remedy. Here, what is in issue is where

the statute is specific and creates a special right which creates a remedy whether for enforcing the said rights, such remedy has to be invoked. Here, the rights and remedies have been granted unto flato.

6. Such principles have been explained by the Hon'ble Supreme Court in the case of Titaghur Paper Mills Co. Ltd. Vs. State of Orissa (AIR 1983 SC 603) and it is held as follows:-

- It is now well recognized that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in Wolverhampton New Waterworks Co. V. Hawkesford (1859) 6 CBNS 336 at p.356 in the following passage:

- There are three classes of cases in which a liability may be established founded upon statute ##.. But there is a third class, viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it ## the remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to. #

The rule laid down in this passage was approved by the House of Lords in Neville V. London Express Newspapers Ltd., 1919 AC 368 and has been reaffirmed by the Privy Council in Attorney-General of Trinidad and Tobago V. Gordon Grant & Co., 1935 AC 532 and Secretary of State V. Mask & Co., AIR 1940 PC 105. It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine.#

7. In view of the well-settled legal principle, it is not possible for this Court to take a different view and go against the order passed by the learned Judge of the writ Court. We do not find any error in the judgment of the learned Judge of the writ Court. We make

it clear that it is open to the petitioners to file an appeal before the Appellate Tribunal. Since, the Tribunal also has power to consider the prayer for interim protection; it is open to the petitioners to ask for such protection. However, we do not say anything on the merits of the case of the petitioners. We also make it clear that if the Appellate Authority is approached within ten days from the receipt of a copy of this order, the Appellate Authority shall entertain the appeal on file without insisting on the question of limitation since the matter was kept pending in this Court. With these observations, the writ appeal is disposed of. We have not decided anything on merit. All questions are kept open. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs."

6. In the light of the aforesaid decisions of this Court and the Hon'ble Apex Court, this Court is not inclined to entertain this writ petition. Since there is an alternative remedy available for the petitioner, to file an appropriate application, under Section 152 of the Act, this writ petition is not maintainable and the same is liable to be dismissed as not maintainable. However, liberty is granted to the petitioner to file an appeal under the aforesaid provisions of the Act, if so advised, within a period of four weeks from the date of receipt of a copy of this order. Failing which, the 2nd respondent is permitted to proceed with, in accordance with law. In the event of the appeal being filed within the said period, on request by both the parties, the Tribunal is directed to dispose of the said appeal on merits and in accordance with law, as expeditiously as possible, preferably within a period of six months, thereof.

7. The writ petition is dismissed, with the above direction. Consequently, the connected Miscellaneous petitions are closed. No costs. Registry is directed to return the original impugned order, after obtaining a copy of the same.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

avr

To

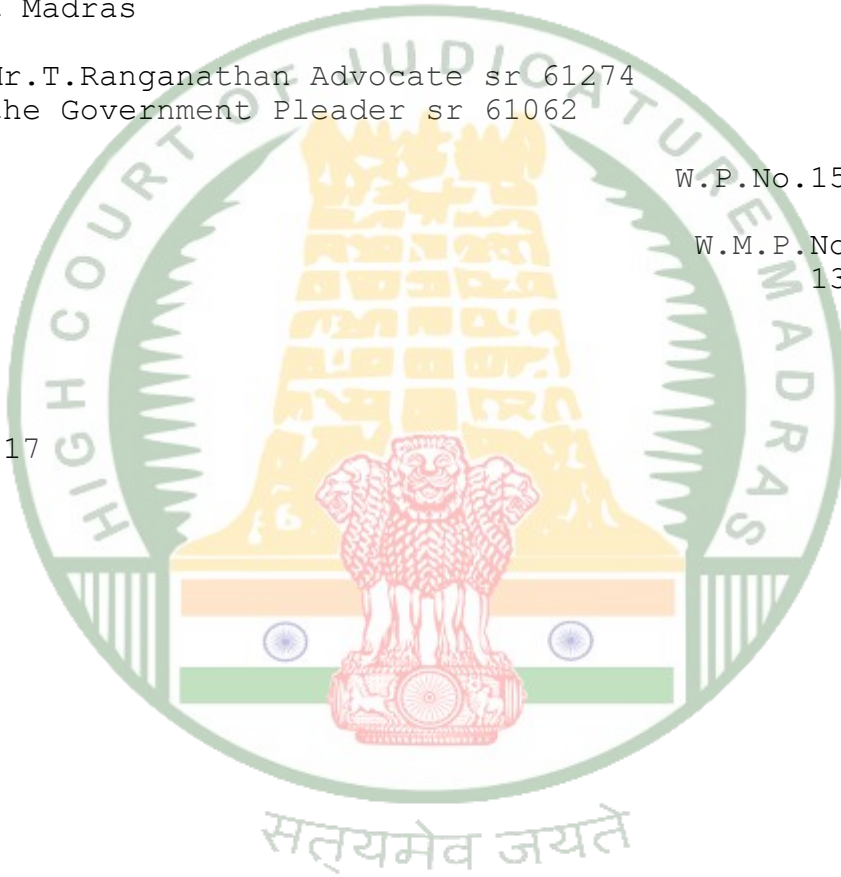
1. The Deputy Registrar Of
Co-operative Societies (Housing)
No.18, Ramanathan Street
T. Nagar, Chennai - 17.

2. The Section Officer
Current Section /ER Section
High Court Madras

+1 cc to Mr.T.Ranganathan Advocate sr 61274
+1 cc to the Government Pleader sr 61062

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