

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2017

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

WP.No.30188 of 2006

R.P.Senddhil Kumar

..Petitioner

Vs.

- 1.The Anna Transport Corporation
Cooperative House Building Society Ltd.,
No.HSG.46 Salem
Rep. by its Secretary.
- 2.The Tamil Nadu State Transport Corporation,
Salem Division - I at Salem,
Rep. by its Managing Director
3. The Registrar,
Cooperative Societies (Housing),
Chennai
4. The Deputy Registrar(Housing),
Salem Division, Salem

...Respondents

PRAYER:

The Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for records of third respondent relating to order bearing Na.Ka.No.13149/99/E2 21.06.2004 and quash the same insofar as the same is contrary to the claim of the petitioner and direct the first respondent to cancel if any allotment is made in respect of the plot intended for the petitioner to any third party member while pending proceeding or otherwise, direct the first respondent to pay the compensation to the market value prevailing at the time of payment of compensation.

For petitioner : Mr.U.Karunakaran

For respondents : Mr.L.P.Shanmugasundaram,
Special Government Pleader for R1
: Mr.Rajnish Pathiyil for R2

: Mrs.T.Girija,
Government Advocate for R3 & 4

ORDER:

According to the learned counsel for the petitioner, after joining service in Anna Transport Corporation, the petitioner joined as a member of the first respondent society. The objective of the society is to add new member to the society and collect money from the members and purchase lands from and out of the money collected from the members and allot plots to the members and to construct building by the society. The first respondent society identified a land at Kumarasampatti village in Survey No. 150/2, 153/2, 156/3B, 4B to an extent of 3.58 hectares to purchase for providing housing plot. According to the petitioner, the entire land cost was collected from its members and the petitioner also paid the entire amount for 'A' type plot before relieving from Anna Transport Corporation. Subsequently, the petitioner had not received any communication from the first respondent. Therefore, the petitioner sent a letter dated 27.09.1997 to the first respondent requesting to inform the details regarding construction of house and the allotment of vacant site. In response to the petitioner's communication, the first respondent has sent a reply by its letter No.4/C/thi/ATCHS/97 dated 18.10.1997 stating that the petitioner is ceased to be a member of the society, in view of the Clauses 6 (1) and 6 (3) (g) of the bye-laws of the society, since the petitioner has obtained Government Service and shifted his residence to Nagapattinam. Challenging the said rejection for allotment of the plot to the petitioner, the petitioner has raised the dispute under Section 90 of the Tamil Nadu Cooperative Societies Act, 1983 before the Deputy Registrar of Housing Society / the fourth respondent. The fourth respondent has passed an order by directing the first respondent society to allot the vacant site to the petitioner and if there is no vacant plot is available, the society has to compensate to the Petitioner by payment of interest for the deposit amount. Challenging the aforesaid order, the Society has filed a revision before the third respondent. After considering the contention of both parties, the third respondent namely the Registrar of Cooperative Societies (Housing), rejected the contention of the Society that the petitioner is not eligible under Clauses 6 (1) and 6 (3) (g) of the bye-laws of the society. However, modified the order passed by the fourth

respondent and held the petitioner is entitled for allotment of plot in case of payment is made, if the plot is allotted to any other member, the petitioner should be allotted some other available plot, when there is no vacant site the first respondent as compensation for the said plot shall repay for the amount paid by him with interest prevailing as on today. Challenging the clause three of the order, the writ petitioner has filed the present writ petition before this Court for the aforesaid relief.

2. The learned Special Government Pleader would submit that the third respondent has elaborately considered and modified the order passed by the fourth respondent by directing the first respondent society to pay the interest as compensation which is reasonable. Therefore, there is no warrants to interfere with the orders passed by the third respondent.

3. In view of the above said submissions made by the learned counsel for the parties, it is not a disputed fact that the writ petitioner has paid the entire cost amount to the first respondent society for allotting the house sites. Subsequently, there is no communication has been received from the first respondent society. The petitioner made a representation on 27.09.1997, by requesting to furnish details of allotment of vacant site. On receipt of that, it has been replied that the petitioner was not eligible under Clauses 6 (1) and 6 (3) (g) of the bye-laws of the society. The fourth respondent has considered the contention of the first respondent society and held that the petitioner is eligible for allotment of house site as per the bye laws. Being aggrieved by the said order, the first respondent society filed a revision before the third respondent. The third respondent also held that the petitioner is entitled for allotment of house site as per the bye-laws. However, modified the order of the fourth respondent stating that if there is no plots are available, the first respondent has to pay the amount with interest at the present rate of interest. The learned counsel for the petitioner would submit that both the authorities have admitted that the petitioner is entitled for allotment of house site as per the bye-laws, but they failed to consider that the petitioner is also entitled for compensation to the market value prevailing at the time of allotment of plot. The first respondent society has breached the contract. Further, both the authorities held that there is no provision under the bye-laws regarding such rejection. It is seen from the findings of the both authorities, the said eligibility of the writ petitioner has been considered and the same was accepted by both the authorities. Therefore, there is no dispute regarding eligibility for the allotment and the said order has become final. But the issue involved in the writ petition is whether the petitioner is entitled for the compensation to the market

value prevailing at the time of payment of compensation. The petitioner has admitted that he has left the second respondent corporation from service and shifted his residence. But he has not violated any of the terms and conditions of the bye-laws under Clauses 6 (1) and 6 (3) (g) of the bye-laws. The said fact has been considered by the both authorities. But, the appellate authority has modified the order passed by the fourth respondent by awarding the compensation with interest. Awarding the said interest alone can be compensated for the writ petitioner. Therefore, there is some force on the contention of the learned counsel for the petitioner that the petitioner is entitled for the compensation, when the first respondent society has not allotted house site to the petitioner as directed by the third respondent. The learned counsel for the first respondent would submit that already interest has been awarded by the third respondent. Therefore, the said compensation already granted is sufficient for the petitioner for breach of terms and conditions of the bye-laws. It is seen that the petitioner has paid the money for purchase of the plot. Thereafter, the petitioner has not received any communication. Only on representation, the petitioner was informed that he is not eligible as per the bye-laws. Both the authorities has held that the petitioner is entitled for allotment of plot. If the first respondent has promptly allotted house site to the petitioner, the petitioner would have been constructed house in the said plot. But, it is more than two decades, the petitioner could not build or invest such deposit amount in any other alternative plot or site. The allotment orders were issued to other members of the first respondent society on 20.08.1998. By fixing the aforesaid date, the Registrar has considered the relevant documents and to determine the market value of the property for payment for compensation to the petitioner. Insofar as the other portion of the order, the petitioner is also entitled for the reasonable interest as per the rules. In view of the interest of justice and in the light of the above discussion, this Court is inclined to quash the impugned order insofar as the third clause of the order passed by the third respondent and the same is remitted back to the third respondent to determine market value of the land as on 20.08.1998 as compensation to the writ petitioner with interest as per the rules, after providing an opportunity to the petitioner. The aforesaid exercise shall be completed by the third respondent as early as possible, preferably within a period of six weeks' time.

4. In the result, the writ petition is allowed insofar as Clause 3 of the impugned order with above observations. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary,
The Anna Transport Corporation
Cooperative House Building Society Ltd.,
No.HSG.46 Salem
- 2.The Managing Director,
The Tamil Nadu State Transport Corporation,
Salem Division - I at Salem,
3. The Registrar,
Cooperative Societies (Housing),
Chennai
4. The Deputy Registrar(Housing),
Salem Division, Salem

+1 cc to Govt Pleader sr 69528
+1 cc to M/s.U.Karunakaran Advocate sr 68754
+1 cc to M/s.L.P.Shanmugasundaram Advocate sr 68437

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