

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.3894 of 2017
and
W.M.P.No.3964 of 2017

1 Padma Priya
D/o.Lae Rangavittal

2 Srikanth
S/o.Late Rangavittal both are residing at
Plot No.C60 Karthikeyan Salai Periyar
Nagar Chennai-82. Petitioners

Vs.

1 C.A.Gopalakrishnan
Plot No.C-59 Karthikeyan Salai Periyar
Nagar Chennai-82.

2 The Secretary
Government Servants House Sites Distribution
Society, Periyar Nagar Karthikeyan Salai
Chennai-82.

3 The Deputy Registrar of
Co-operative Societies (Housing) Ramanathan
Street T.Nagar Chennai-17

4 The Registrar
Court of Small Causes Chennai-104 ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to C.M.A.No.17/15 judgement and decree dated 20.12.2016 of the Special Tribunal for Co-op cases(Chief Judge Court of Small Causes) Chennai confirming the award dated 10.07.2015 in ARC 101/86-87 of the Dy. Registrar of Co-operative Societies(Housing) Ch-17 and to quash the same with costs.

For Petitioner : Mr.V.Srinivasan
For Respondent No.1 : Mr.P.Anbarasan
For Respondent No.2 to 4 : Mrs.T.Girija, G.A.

O R D E R

The writ petitioner was allotted plot No.60 for an extent of 2400 sq.ft. on 5.4.1979 by executing lease cum sale agreement between the petitioner and the second respondent society. The measurement of Plot No.60 as per the lease cum sale agreement are as follows:

On the North : 40 ft.
On the East : 60 ft.
On the West : 60 dr.
On the South : 40 ft.

According to the petitioners, originally petitioners' father viz., Rangavittal occupied the property situate in Plot No.60 and put up a compound wall. Petitioner had remitted the cost of the plot based on the extent specified in the lease cum sale agreement. Petitioner obtained no objection certificate from the second respondent society for construction of house on payment of cost of the plot. The petitioner also obtained plan approval from C.M.D.A. by showing the measurement of plot as 60 x 40 = 2400 sq.ft. The second respondent society also executed lease cum sale agreement for plot No.C59 in favour of the first respondent herein for an extent of 2288 sq.ft. and the measurement of the said plot as per the sale agreement is as follows:

On the North : 40 ft.
On the East : 60 ft.
On the West : 45 ft. + 15 Splay
On the South : 25 ft. + 15 Splay

The allotment was made as per the lay out plan prepared by the Department of Surveys, Government of Tamilnadu. Subsequent to the allotment made by the second respondent society, the writ petitioner has put up a construction and also compound wall. At this stage, the first respondent raised a dispute by stating that the length of the southern side of plot No.C-60 which was allotted to the writ petitioner is only 28 feet, whereas the writ petitioner occupied 40 feet by encroaching 12 feet into Plot No.C-59 of the first respondent. The first respondent approached the second respondent society to ensure that that the length of the southern side of his plot No.C-59 viz., 25 + 15 splay available to the first respondent and seeks removal of the compound wall put up by the petitioners. Thereafter, the matter

was referred to Arbitrator viz., Deputy Registrar of Co-operative Societies in A.R.C. No.101/86-87. The learned Arbitrator passed an award on 5.6.1987 by holding that lease cum sale agreement, dated 5.4.1979 executed in favour of the writ petitioner is void in so far as the length of the plot No.C-60 on the southern side is 40 feet and directed to deliver possession of the land to the first respondent. Challenging the order passed by the Arbitrator, dated 5.6.1987, the petitioner has preferred an appeal before the Co-operative tribunal in STCA No.100/87, dated 27.9.1989. On the basis of the report of the Advocate Commissioner, order dated 5.6.1987 of the Arbitrator was confirmed and the appeal was dismissed. Thereafter, the petitioner has filed W.P.No.1183 of 1990 challenging the aforesaid order. By an order, dated 28.10.1988, this Court set aside the order of the tribunal and the Arbitrator and remanded to the Arbitrator for fresh disposal of the matter on merit and in accordance with law. Pursuant to the order passed by this Court, an award was passed on 27.5.2002 that the measurement of plot No.C-59 on the southern side was confirmed as 25 feet with 15 feet splay and plot No.C-60 was confirmed as 28 feet on the southern side. Challenging the aforesaid order passed by the Arbitrator/Deputy Registrar, the petitioner has filed an appeal in Co-op Appeal No.14 of 2002 before the Co-operative Tribunal, Chennai. Now, the tribunal has remanded the matter to the Arbitrator/Deputy Registrar for fresh disposal. The Arbitrator/Deputy Registrar by an order, dated 5.8.2005 upheld the enjoyment of right of the petitioner. Challenging the said order, the first respondent has preferred an appeal in C.M.A.No.19 of 2005 before the tribunal. Again, the appeal was allowed and remanded to the Deputy Registrar. The Deputy Registrar by his order, dated 10.7.2015 considered the contention of the writ petitioner and the first respondent, passed an award directing the writ petitioner to remove all structures including the compound wall and hand over the vacant possession of the land within a period of one month of the award. Further, the second respondent society was also directed to refund difference of the cost of the plot collected from the first respondent and further held that the first respondent herein is entitled to 25 feet with 15 feet splay on the southern side of the plot. Challenging the aforesaid order, the writ petitioner has filed an appeal before the third respondent tribunal. The tribunal after hearing both sides, dismissed the appeal. Challenging the dismissal of the appeal, the petitioner has preferred the writ petition before this Court.

2 According to the learned counsel for the petitioner, the tribunal has not taken into account the contention raised by the writ petitioner by stating that the petitioner was allotted Plot No.C-60 for a total extent of 2400 sq.ft. (measuring 40 x 60 feet) by the second respondent society. Pursuant to the no objection certificate issued by the second respondent society,

the writ petitioner constructed a house after obtaining plan approval from C.M.D.A. After construction of compound wall, the first respondent raised a dispute that the petitioner has encroached his land to the extent of 12 feet. The litigation is pending from the year 1985. Without considering the fact that the petitioner was allotted 2400 sq.ft. in Plot No.60 in the lease cum sale agreement and the petitioner also paid cost towards the same extent of plot, the extent of plot No.60 allotted to the petitioner had been approved by the authority. Therefore, the impugned orders passed by the authority as well as tribunal are liable to be set aside.

3 The learned counsel for the first respondent would submit that the length of the southern side of plot No.C-59 and C-60 put together, found only 68 feet, not 80 feet. But the petitioner occupied 40 feet leaving the first respondent only 13 feet plus splay of 15 feet. Hence, the first respondent has approached the second respondent society and the second respondent society made arrangement for resurvey by its Surveyor and thereafter, lay out was revised. Accordingly, the petitioner was allotted 28 feet on the southern side of his plot and 25 feet for the first respondent with splay of 15 feet. But the petitioner has not challenged the revised measurement of the second respondent, dated 10.2.1985 restricting 28 feet on the southern side of his plot. The first respondent filed arbitration claim to remove the compound wall and to deliver possession of the encroached portion. The Tahsildar also notified in the Chennai District Gazette, dated 3.9.1988 stating that the boundaries of the plots in respect of block No.32A, 32B, 32C and 32D, Pervallur village shall be final unless revised by any judgment of the civil Court. Therefore, as against the award passed by the Arbitrator, the petitioner has preferred an appeal before the tribunal and the same was remanded back to the Deputy Registrar of Co-operative societies for three times for fresh disposal and the present order was passed by the Deputy Registrar by holding that the first respondent is entitled for 25 feet. plus 15 ft. splay on the southern side and directed to execute the sale deed in favour of the first respondent and also directed the writ petitioner to remove all the structures including the compound wall and hand over possession to the first respondent. The first respondent is also entitled to refund of difference cost of the plot. The said order was also confirmed by the tribunal. From the aforesaid order, it is clear that an extent of land allotted on the southern side by the society is contrary to the actual extent of the plot allotted to the parties. The said mistake has been rectified and rightly passed an order by allotting 25 feet to the first respondent on the southern side of plot No.C-59. Therefore, the writ petition is liable to be dismissed.

4 Heard the learned counsel for the petitioner, the learned counsel for the first respondent and the learned counsel for the respondents 2 to 4 and perused the materials on record.

5 At the stage of arguments, the dispute raised between the parties is that the extent of plot allotted by the second respondent society is while handing over the plots to the petitioner as well as the first respondent. But in order to find out the correct features and measurement of the plots, by consent of both parties, this Court appointed an Advocate Commissioner to inspect the disputed properties with the help of Taluk Surveyor and to submit a report before this Court. Copies of the report have also been served on the counsel for the parties and submitted the report before this Court. The plot No.C-60 measuring an extent of 2400 sq.ft. was allotted to the petitioner and the land cost was also paid by the petitioner. Thereafter, he approached the second respondent society to construct a building in the said plot. The second respondent society addressed to the Commissioner, Corporation of Chennai stating no objection for building plan submitted by the petitioner. After getting approval from C.M.D.A., the petitioner built a house in the said plot. Thereafter, the first respondent raised a dispute by stating that the petitioner has encroached portion of his land for an extent of 12 feet in plot No.C-59 allotted to him. In support of his contention, as per the Town survey report, southern side of plot No.C59 is 25 + 15 feet splay and the plot No.C-60 is 28 feet only. The second respondent society allotted Plot No.C-60 and C-59 admeasuring 2400 and 2288 sq.ft. to the petitioner and the first respondent respectively.

6 It is also useful to consider the report of the Advocate Commissioner wherein description of plot No.C-60 belongs to the petitioner is stated as under:

39-1/2 feet - East to West on the southern side
40.2 feet - East to west on the northern side
60 feet - North to South on the west and eastern side

description of Plot No.C-59 belongs to the first respondent is stated as under:

39.6 feet - East to West on the northern side
60 feet - North to South on the eastern side
25.3 feet - East to West on the southern side + 8.10 ft.
splay
57 feet - North to South on the western side

7 As per the lease cum sale agreement, 25 feet with 15 feet splay was allotted to the first respondent on the southern side of his plot No.C-59 and 45 feet with 15 feet splay was allotted on the western side. Now, as per the Advocate

Commissioner's report, the first respondent occupied 25.3 ft on the southern side with 8.10 feet as splay and 57 feet on the western side. Therefore, the Advocate Commissioner's report clearly shows that the first respondent has occupied more than 45 feet on the western side originally allotted to him in the lease cum sale agreement and 25.3 feet on the southern side as against 25 feet originally allotted with 8.10 feet as splay as against 15 feet splay as per the original allotment. Therefore, the first respondent occupied more than 2288 sq.ft. which was originally allotted to him under plot No.C-59 by way of lease cum sale agreement and the same has not been correctly placed before the tribunal or before the authorities concerned.

8 Before parting the order, the present dispute arose only because of the second respondent society. It is the responsibility of the second respondent society to allot plots to the members of the society with correct measurement and boundaries of the property and execute documents after physical verification of the properties. Both the parties purchased plots from the same vendor viz., the second respondent society. However, physical measurement of the plots are not in consonance with the lease cum sale agreement or lay out. Because of the carelessness, negligence of the second respondent society, both parties were dragged on from pillar to post by filing several litigations and spent considerable amount for the litigation. They also lost their peace and suffered mental agony for the past 30 years, only because of the reckless attitude of the second respondent society. This Court strongly condemn the second respondent society for their slackness which creates unnecessary problems and mental agony to the innocent purchasers by dragging them to courts.

9 In the facts and circumstances of the case, it is clear that the petitioner has obtained plan approval from the authorities concerned and constructed the house and compound wall. The said fact has not been considered by the tribunal as well as the Arbitrator. Further, plot No.C-59 is corner plot allotted to the first respondent. As per the lease cum sale agreement, in respect of plot No.C-59, the first respondent was allotted 2288 sq.ft. As per the Advocate Commissioner's report, the actual possession of the first respondent is more than 2288 sq.ft. Further, the first respondent nowhere placed any material to show that he obtained any approval from the competent authority for construction of house. Whereas the writ petitioner was allotted 2400 sq.ft. as per the lease cum sale agreement in respect of plot No.C-60 and he paid cost for 2400 sq.ft. and obtained plan approval from the competent authority. As per the Advocate Commissioner's report also, his actual possession is 2400 sq.ft. Therefore, the writ petitioner is entitled to the original extent of the property as allotted to him. Therefore, this Court has no hesitation to set aside the order passed by

the tribunal and the third respondent. If the first respondent is having any grievance or dispute regarding extent of plot allotted to him, he shall approach the authority within the reasonable time to claim market value for the difference extent of plot and for damages.

10. In the result, the order passed by the third respondent and the judgment of the Appellate Tribunal are set aside and consequently, the writ petition stands allowed to the above extent. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1 The Secretary
Government Servants House Sites Distribution
Society, Periyar Nagar Karthikeyan Salai
Chennai-82.
- 2 The Deputy Registrar of
Co-operative Societies (Housing) Ramanathan
Street T.Nagar Chennai-17
- 3 The Registrar
Court of Small Causes Chennai-104

+1 cc to M/s.P.Anbarasan Advocate sr92179

+1 cc to M/s.T.Girija Advocate sr 92163

+1 cc to Govt Pleader sr 307

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