

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.03.2017

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P. No.2639 of 2017
and WMP.No.2590 of 2017
and WMP.No. 2591 of 2017

S.Jayandran

... Petitioner

Vs

1. The Registrar of Co-operative Societies (Housing)
Chennai 600 035
2. The Arbitrator/Deputy Registrar of Co-operative Societies (Housing)
Chennai Region
Chennai
3. The President
Burma Indian Co-operative House Construction Society (RE No.XXCC 689)
No.87A Perambur High Road
Perambur
Chennai 600 011

.. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari Mandamus calling for records relating to the Order dated 26.12.2016 in Rc.No.5436/2016/SF1 of the 1st respondent herein confirming the order of the 2nd respondent herein dated 20.07.2016 in ARC No.3/2014-15/K and quash the same consequently, direct the 3rd respondent herein to issue Sale Deed in favour of the petitioner in respect of the property, viz. the plot with house situate at Old Door No.35, New Door No.102, Plot No.122, Burma Colony, Rajiv Gandhi Salai, Perundurai, Chennai 600 096 measuring an extent of 2,400 sq.ft.

For Petitioner : Mr.AR.L.Sundaresan, Sr.Counsel
for Mrs.AL.Ganthimathi

For Respondents: Mr.S.T.S.Moorthy,
Additional Advocate General,
assisted by
Mr.V.Selvaraj Addl.Govt.Pleader
for R1 and R2
Mr.B.Vivekavannan for R3

ORDER

According to the petitioner, he born in Burma and was adopted by Mrs.Dawohn Myient, who is also a member of Burma Indian Cooperating Housing Society. The said Society formed a layout in the name of Palavakkam Burma Indians Cooperative House Construction Society in which the third respondent allotted a house in Burma Colony, Rajiv Gandhi Salai, Perungudi, Chennai 92 by his letter RC No.5898/70 dated 06.07.1971 and the petitioner and his adopted mother were in possession and enjoyment of the said property. The said Mrs.Dawohn Myient entered into a hire purchase agreement with the respondent society and paid the entire dues to the third respondent society. But the society did not issue any sale deed in favour of the petitioner's adopted mother Mrs.Dawohn Myient. After the death of the aforesaid Dawohn Myient on 03.01.1990, the Will executed by Mrs. Dawohn Myient dated 09.09.1987 registered as document no.76/1987 at Kodambakkam Sub-Registrar Office, Chennai came into existence whereby the said property has been bequeathed in favour of the petitioner. As a owner of the property on the basis of the Will dated 09.09.1987, the petitioner requested the respondent society to execute the sale deed in his favour, but there was no response. While so, by a notice dated 22.04.2013 issued by the third respondent, the petitioner was called upon to vacate the property. Challenging the same, the petitioner has filed W.P.14874 of 2013 before this Court and by order dated 09.01.2015, this Court disposed of the aforesaid writ petition with liberty to the petitioner to file necessary petition under section 90 of the co-operative society Act before the competent authority. Till then the proceedings dated 22.04.2013 was ordered to be kept in abeyance. Pursuant to the said order, the petitioner filed petition under Section 90 before the second respondent in ARC No.3/2014-15/K inter alia challenging the notice dated 22.04.2013. The second respondent passed an award under Section 90 of the Act and dismissed the petition on 20.07.2016. Aggrieved by the said order passed by the second respondent, the petitioner has filed the revision before the first respondent in RC No.5436/2016/SF1 by raising various grounds. However, the first respondent has passed the impugned order without considering the grounds raised by the petitioner.

2. The learned Senior counsel for the petitioner would contend that the impugned order passed by the first respondent is a non-speaking order and no reason has been assigned for dismissing the appeal.

3. On contrary the learned Additional Advocate General would submit that the second respondent has passed a reasoned order by stating that the documents furnished by the petitioner were not genuine and therefore the petition filed by the petitioner has been rightly rejected. Based on such order, the first respondent has come to a subjective satisfaction to reject the appeal filed by the petitioner. In such circumstances, it cannot be said that the order passed by the first respondent is a non-speaking order. Though the first respondent has passed the order without giving any reason, the second respondent has passed a detail orders which was only confirmed by the first respondent in the appeal. Therefore the order passed by the first respondent does not warrant interference by this Court.

4. The learned counsel appearing for the the third respondent society would vehemently argue that the second respondent has gone into the documents and materials filed by the petitioner and found that they are not genuine and forged and therefore the documents relied on by the petitioner has been rightly not accepted by the second respondent.

5. Heard the learned counsel on either side. The issue arises for consideration is whether the order passed by the first respondent is a non-speaking order without assigning any reasons and therefore it has to be set aside by this Court.

6. The learned senior counsel for the petitioner would contend that the first respondent has passed the impugned order under section 152 of The Tamil Nadu Cooperative Societies Act without considering the various grounds raised by the petitioner in the appeal. The petitioner has relied upon documents to prove that he is entitled to get the sale deed executed in his favour. The petitioner has specifically contended that his adopted mother has executed a Will in his favour which was also registered as a document before the competent registering authority and therefore, it cannot be said that the documents relied on by the petitioner are not genuine. When the petitioner has filed documentary evidence, particularly the Will executed in his favour which was also registered before the competent registering authority, the first respondent ought not to have summarily rejected the appeal of the petitioner. Further, the first respondent has not considered the various grounds raised by the petitioner and also did not assign any reason for rejecting the appeal. Therefore according to the

learned Senior counsel for the petitioner, the impugned order passed by the appellate authority is liable to be set aside on the ground that the first respondent did not assign any reason for rejecting the appeal and the order was a non speaking order.

7. Before dealing with the submission of the learned Senior counsel for the petitioner, it is necessary to look into the order dated 26.12.2016 of the first respondent, which reads as follows:-

" Heard upon both sides perused the records presented by both side. Based on the available records and the arguments now in this case the petitioner has not produced any new evidence. Hence the order passed by the Deputy Registrar (Housing) Chennai in ARC No.3-2014-15/K dated 20.04.2016 is upheld. Hence the appeal of the petitioner is dismissed."

8. The respondent society has raised serious allegation against the materials produced by the petitioner before the appellate authority on the ground that they are fabricated, forged and not genuine. Such disputed questions of fact cannot be gone into by this Court. The original authority has passed an order rejecting the claim of the petitioner, against which the petitioner has preferred an appeal and such appeal was rejected by the appellate authority. As contended by the respondent society this Court in exercise of power under Article 226 of The Constitution of India, cannot go into the disputed questions of fact especially when serious allegations have been made to the documents produced by the petitioner as fabricated and forged. However, having regard to the fact that the impugned order has been passed by the first respondent without assigning any reason for rejection, this Court is inclined to set aside the impugned order passed by the first respondent and to remit the matter back to the appellate authority.

9. Accordingly, the impugned order is set aside on the ground that no reason has been assigned by the first respondent for rejecting the appeal preferred by the petitioner. Consequently, the matter is remanded back to the appellate authority who shall pass a reasoned and speaking order, after providing opportunity to the parties concerned. The petitioner is permitted to furnish additional documents, if any, within a period of two weeks from the date of receipt of a copy of this order and thereafter, the first respondent is directed to conduct an enquiry in the presence of the parties concerned within a period of four weeks and thereafter, pass final orders as expeditiously as possible, on merits and in accordance with law. Till the disposal of the appeal by the first respondent, the parties are directed to maintain status quo. The petitioner is also directed not to alter or modify the physical feature of the property in question.

10. With the above directions, the writ petition is allowed. Connected miscellaneous petitions are also closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

dpq

To

1. The Registrar of Co-operative Societies (Housing)
Chennai 600 035
2. The Arbitrator/Deputy Registrar of
Co-operative Societies (Housing)
Chennai Region
Chennai
3. The President
Burma Indian Co-operative House Construction
Society (RE No.XXCC 689)
No.87A Perambur High Road
Perambur, Chennai 600 011

+1cc to Mr.V. Selvaraj, Advocate, S.R.No.15768
+1cc to Mr.AL. Ganthimathi, Advocate, S.R.No.15723
+1cc to Mr.B. Vivekavannan, S.R.No.15669

MP(CO)
EU 22.3.17

W.P. No.2639 of 2017
and WMP.No.2590 of 2017
and WMP.No. 2591 of 2017

WEB COPY