

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2017

CORAM :

The Honourable Mr.JUSTICE M.SUNDAR

W.P.No.1623 of 2010

and

M.P.No.2 of 2010

E.Perumal

... Petitioner

Vs.

1. The Registrar of Societies (Housing),
Adyar, Chennai-600 020.
 2. The Deputy Registrar of Societies (Housing),
Salem Region, Salem.
 3. Gengavalli Cooperative Housing Society,
rep by its Cooperative Sub Registrar (Housing),
Athur, Salem.
 4. The Arbitrator / Cooperative
Sub Registrar (Housing),
Salem.
- ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari calling for the records relating to the order of the 4th respondent dated 13.11.2007 in ARC No.4518/04-05 and consequent notice of the second respondent dated 24.11.2009 in E.P.No.105/2009-2010 in ARC No.4518/04-05 and quash the same.

For Petitioner : Mr.K.Selvaraj

For Respondents : Mr.V.Selvaraj,
Additional Government Pleader
for RR1 and 2
No appearance for R-3 and R-4

ORDER

Learned counsel Mr.K.Selvaraj is present on behalf of the writ petitioner. Mr.V.Selvaraj, learned Additional Government Pleader, is present on behalf of respondent Nos.1 and 2. Though third respondent has entered appearance through a counsel, none appears on behalf of the third respondent. Respondent No.4 has been duly served, but no one appeared for fourth respondent. To be noted, fourth respondent is only a formal party.

2. By consent of the learned counsel for the writ petitioner and the learned Additional Government Pleader appearing for respondent Nos.1 and 2, the writ petition itself is taken up for final disposal.

3. Subject matter of the writ petition pertains to the Tamil Nadu Cooperative Societies Act, 1983.

4. Housing Society in question is respondent No.3 before me.

5. It is the case of the writ petitioner that in the year 2000, he applied to the third respondent for a housing loan of Rs.2,00,000/- and created a registered mortgage dated 21.3.2000, mortgaging a portion of his property in S.No.149/2 at Sentharapatti village, Gengavalli Taluk, Salem District, measuring 1406.5 square feet towards security for the proposed loan.

6. Writ petitioner would also submit that only a sum of Rs.60,000/- was sanctioned, but even in the said Rs.60,000/-, only a sum of Rs.30,000/- was disbursed.

7. However, I am not going into the facts more in detail, in the light of the order that I propose to pass.

8. It is the case of the writ petitioner that he received summons from the fourth respondent (alleging default in repayment) for a hearing on 27.10.2004 and immediately on receipt of the summons, he sent a detailed representation dated 23.10.2004 to the fourth respondent. When the petitioner appeared before the fourth respondent on 27.10.2004, he was informed that the Secretary of the third respondent housing society is under suspension and on that ground, the petitioner was informed that the enquiry is adjourned without giving any further date for enquiry. In other words, the enquiry was adjourned sine die on the ground that the Secretary of the third respondent housing society is under suspension.

9. While the writ petitioner was awaiting a communication about the next / rescheduled date of hearing, he was shocked and surprised to see the public notice dated 19.7.2007 published in a Tamil daily 'Dinakaran'. Thereafter, the petitioner came to know that an order dated 13.11.2007 has been passed by the fourth respondent purportedly under Section 90(2) of the Tamil Nadu Cooperative Societies Act, 1983 and Rule 107 of the Tamil Nadu Cooperative Societies Rules, 1988.

10. It also came to light that a consequential order dated 24.11.2009 has been made purportedly under Rules 116 and 126 of the Rules made under the Tamil Nadu Cooperative Societies Act, 1983.

11. The factual position alluded to in the preceding three paragraphs has not been disputed by the respondents. Further, it is not the case of the respondents that any enquiry was held at all post 27.10.2004 before the impugned order of the fourth respondent dated 13.11.2007 bearing reference ARC No.4518/04-05.

12. Therefore, as no opportunity has been given to the writ petitioner and as no enquiry has been held as mandated in the statute, it is not only appropriate, but imperative and fair that the petitioner should be given an opportunity of participating in the enquiry.

13. Therefore, without expressing any opinion whatsoever on the merits of the matter leaving all questions open, the impugned proceedings being proceedings of the fourth respondent dated 13.11.2007 in ARC No.4518/04-05 made purportedly under Section 90(2) of the Tamil Nadu Cooperative Societies Act, 1983 and Rule 107 of the Rules made thereunder, as well as the consequential notice dated 24.11.2009 made in E.P.No.105/2009-2010 in ARC No.4518/04-05 made purportedly under Rules 116 and 126 of the Tamil Nadu Cooperative Societies Rules, 1988 are set aside on the sole ground that the writ petitioner was not given an opportunity of participating in the enquiry.

14. It is open to the fourth respondent to initiate fresh enquiry, within a period of eight weeks from the date of receipt of a copy of this order, if so advised, but put the petitioner on notice and give ample adequate opportunity to the petitioner for participating in the enquiry.

15. When this writ petition was moved, this Court issued Rule NISI and granted an interim order on 22.02.2010, wherein an interim stay of the impugned proceedings was granted on condition that the petitioner should deposit 50% of the amount specified in the impugned notice within a period of four weeks. This has been duly done by the writ petitioner and the writ petitioner produces the deposit receipt.

16. If the fourth respondent chooses to initiate enquiry afresh qua the petitioner, credit for the said amount deposited pursuant to the interim order dated 22.2.2010 shall be given with interest from the date of deposit in deciding one way or the other and refund the same in part or whole if that becomes necessary. Otherwise said sum with interest from the date of deposit should be given credit to in final computation. It is also made clear that if the third or fourth respondent does not initiate any enquiry within a period of eight weeks from the date of receipt of copy of this order, it shall be deemed that the third respondent has treated the above said deposit with interest from the date of deposit as full and final settlement and full quit of all claims against the petitioner. In all cases interest shall be 6% per annum.

Second and third respondents shall return the documents that have been mortgaged in respect of the property in S.No.149/2 measuring 1406.5 square feet, situated in Sentharapatti village, Gengavalli Taluk, Salem District to the writ petitioner after discharge of the mortgage, within four weeks after expiry of eight weeks if fresh enquiry is not initiated.

17. In the light of all that have been stated supra, the writ petition is allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vvk

To

1. The Registrar of Societies (Housing),
Adyar,
Chennai-600 020.
2. The Deputy Registrar of Societies (Housing),
Salem Region, Salem.

+lcc to Mr.K.Selvaraj, Advocate, S.R.No.45157
+lcc to the Government Pleader, S.R.No.45876

W.P.No.1623 of 2010

PPA(CO)
CA(14/07/2017)

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