IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2017

CORAM

THE HONOURABLE Mr. JUSTICE D.KRISHNAKUMAR

W.P.No.39079 of 2016

D.Chinnaponnu ...Petitioner

-vs-

1.The Co-operative Registrar
Co-operative Housing Society Department
29, 4th Main Road, Adyar,
Chennai - 600 020.

2.The Special Officer,
Tamil Nadu Co-operative Housing Federation,
Ritherton Road, Veppery,
Chennai - 600 007.

3.The Deputy Registrar,
Co-operative Housing Society, Salem Region,
Alagapuram, Salem - 600 004.

4.The Secretary,
No.SLM HSG 89, Gengavalli,
Taluk Co-operative Housing Association Ltd.,
Gengavalli Post and Taluk,
Salem District. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the 4th respondent to return the petitioner's son's original title deed to the petitioner.

For Petitioner : Mr.P.Nethaji

For Respondents: Mrs.T.Girija
Government Advocate [R1 to R3]
Mr.L.P.Shanmugasundaram
Spl. Government Pleader [R4]

ORDER

The petitioner has filed this Writ Petition seeking a direction to the fourth respondent to return the original title deed to the petitioner.

2. Heard the learned counsel appearing for the petitioner and Mrs.T.Girija, learned Government Advocate appearing for the respondents 1 to 3 and Mr.L.P.Shanmuga Sundaram, learned Special Government Pleader for the fourth respondent.

3. The case of the petitioner is that she is the mother of the deceased Chinnadurai, who availed loans from the fourth respondent in the year of 1999 and 2000 respectively, totalling to Rs.70,000/- by pledging the title deed of his ancestral property in S.F.No.276/4D & 281/E and 281/1C to a total extent of 57.50 acres situated at Na Pallakadu, Naduvalur Village, Gengavalli Taluk, Salem District. The period of recovery of loan amount is 15 years and his deceased son has been paying the loan amount regularly. Suddenly on 28.07.2002, his son died and thereafter, the petitioner and his elder son has been paying the loan amount dues and in total they have paid a loan amount of Rs.78,000/-. She further added that the wife of his deceased son also died in the year 2004 and therefore, the petitioner alone is the sole legal heir. Hence, the petitioner made representations to the fourth respondent to cancel the loan account and to return the documents pledged by his son.

4. It is submitted by the petitioner that even after a lapse of 11 years of borrowal, the fourth respondent did not initiate any steps to recover the loan amount from the borrower's family, which proves it is a barred debt. It is also contended by the petitioner that it is mandatory that all Co-operative Societies have insured their debts with the insurance companies as per the policy terms, and in case of death of any of the borrower pending due of the loan amount, the same can be claimed and recovered from the insurance company. Hence, the petitioner's is also entitled to the group debt insurance policy of the society and the balance debt amount of the petitioner's son was compensated through the group insurance policy.

5. It is further submitted that despite receipt and acknowledgment of the representation made by the petitioner, it was not considered by the fourth respondent, and thereafter, a legal notice dated 26.08.2016 was sent to the fourth respondent by the petitioner.

6. On the contrary, the learned Special Government Pleader appearing for the fourth respondent on instructions filed a counter and submitted that as on 07.8.2016, the total amount due from Chinnadurai vide his loan account No.1537 is Rs.2,03,154/-. In the counter affidavit filed by the fourth respondent, it is stated that the said Chinnadurai had died only on 28.07.2005 and not on 28.07.2002 as stated by the petitioner herein. Furthermore, the loan period was for 15 years and since the petitioner's son had availed the loan in the year 2000, it is not a time barred debt.

7. The learned counsel appearing for the petitioner has relied on the waiver of loan scheme announced by the Government with regard to the loans pending with the Co-operative Societies.

8. The learned Special Government Pleader would submit that the petitioner shall make a fresh representation to the fourth respondent, and the same shall be considered in accordance with law, if the petitioner's representation is in line with the Government Order issued in connection with waiver of loan amount availed from the Co-operative Societies.

9. Considering the submissions made by both sides, the petitioner is permitted to make a fresh representation to the fourth respondent within a period of two weeks from the date of receipt of a copy of this order, and on receipt of the said representation, the fourth respondent-Society is directed to consider her representation and proceed in accordance with law, as expeditiously as possible within a period of two weeks thereafter.

10. With the above directions, this Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ds

To:

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29, 4th Main Road, Adyar,
Chennai - 600 020.

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4.The Secretary,
No.SLM HSG 89, Gengavalli,
Taluk Co-operative Housing Association Ltd.,
Gengavalli Post and Taluk,
Salem District.

+2cc to Mr.P.Nethaji, Advocate Sr.19742, 19580
+1cc to the Government Pleader Sr.20099

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ks[co]
srg 04/05/2017