

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.8100 of 2016

and

W.M.P.No.7225 of 2016

Madras Divisional Railway
Staff Co-operative Building Society
represented by the President

Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by the Secretary to the Government
Housing and Urban Development Department
Fort St. George, Chennai 9.
2. The Registrar of Co-operative
Societies (Housing),
T.N.H.B. Complex, Anna Salai,
Nandanam, Chennai 35.
3. The Deputy Registrar of Co-operative
Societies (Housing),
18, Ramanathan Street, T.Nagar,
Chennai 17.

4. Mrs. Dilli Bai.

.. Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the second respondent relating to his order R.5795/2014 S F 1 dated 18/1/2016, quash the same and direct him to take immediate steps to recover the plot in survey number 269/3 in Railway Colony, Fifth Layout, Mahalakshmi Nagar, Chennai 600 088 from the 4th respondent and hand it over to the petitioner and pass such further orders.

For Petitioner : Ms. Hema Sampath SC
for Ms. R. Meenal

For Respondents : Mr. L. P. Shanmugasundaram
Special Government Pleader for
R1 to R3

Mr. A.Jenasenan for R4

O R D E R

This Writ Petition has been filed seeking to quash the order passed by the second respondent in RC.5795/2014 S F 1 dated 18/1/2016 and direct him to take immediate steps to recover the plot in survey number 269/3 in Railway Colony, Fifth Layout, Mahalakshmi Nagar, Chennai-600 088, from 4th respondent and hand it over to the petitioner.

2. The learned counsel for the petitioner submitted that the petitioner society was formed in the year 1962. Certain layouts in Mahalakshmi Nagar were sanctioned, wherein some areas were reserved for public purposes like park, garden, children's playground etc. The 4th respondent, who is not a resident of the locality and who had no stake in the petitioner society, was made as a member of the Society on 02.05.2017 by Late C.K. Raghavelu, who was administering the petitioner's society as a Special Officer. Immediately, thereafter, on 16.05.2005, a plot measuring one ground and 1930 sq.ft. in S.No.269/3 in Railway Colony, V Layout, Mahalakshmi Nagar, Chennai, reserved for community and recreation purposes have been sold to the 4th respondent, by the then Special Officer, Alandur, without following the procedures. After the petitioner assumed office, as a President of the society, he made a representation to the respondents on 30.07.2013, requesting the authorities to enquire about the illegal sale on the properties. The petitioner also filed a Petition in W.P. No.23385 of 2014. This Court by order dated 03.11.2015, directed the second respondent to dispose of the petitioner's representation, after giving an opportunity to both the parties. Consequently, the 2nd respondent Registrar rejected the petitioner's representation on 18.01.2016. Challenging the said order, the petitioner has filed the present Writ Petition before this Court.

3. The learned counsel appearing for the petitioner would submit that the allegations raised by the petitioner has not been duly considered by the first respondent. According to the petitioner, the second respondent has misused his powers, violating Section 71 of the Tamil Nadu Cooperative Societies Act,

1983. As far as the other allegations made against the 4th respondent, the 4th respondent's husband being an employee of the Co-operative Societies Department, has influenced the Special Officer to sell two properties to his wife and son. The specific allegation made by the petitioner is that the said plot cannot be sold in favour of the 4th respondent, as the same has been reserved for public purposes. Without discussing the allegations, the impugned order has been passed by the first respondent.

4. The learned counsel appearing for the 4th respondent would submit that the plot has been purchased by the 4th respondent, by a registered sale deed No.1382/2005 dated 16.05.2005 on the file of the Sub Registrar, Alandur. The said sale deed cannot be cancelled by the Registrar or by the Deputy Registrar, in the light of the decision of the Full Bench, reported in the case of Latif Estate Line India Ltd., rep.by Managing Director, and others, Vs. Hadeeja Ammal and others, reported in (2011) 2 CTC Page 1. According to the learned counsel for the respondents, the other allegations made by the petitioner has been considered and the 2nd respondent has come to a right conclusion and so there is no warrant to interfere with the order of the 1st respondent.

5. The learned Special Government Pleader would submit that under Section 90 of the Tamil Nadu Co-operative Societies Act, any dispute arises between the members of the society, can be gone into by the Registrar. Therefore, the said aspect also has to be considered by the first respondent. Further, all the aforesaid allegations made by the petitioner have been considered and the same were summarily rejected by the 2nd respondent. Therefore, this writ petition is liable to be dismissed.

6. Considered the submissions made by the learned senior counsel for the petitioner, learned counsel for the respondents and the learned Special Government Pleader and perused the material available on record.

7. The material point of determination is, whether the 4th respondent, has violated the by-laws of the society as well as the Tamil Nadu Co-operative Societies Act and Rules, as alleged by the petitioner. It is the specific case of the petitioner that the Special Officer has sold the plot earmarked for public purposes viz., community and recreation purposes. Therefore, the petitioner has filed a representation to the Registrar, to conduct an enquiry and to cancel the allotment and the sale deed executed to the 4th respondent. These allegations has not been properly considered by the second respondent, at the time of passing of the orders. The Special Officer has already

violated the procedures as contemplated in the by-laws and the Acts and Rules and has sold the plots earmarked for public purposes. According to the learned counsel for the petitioner, in the light of the Full Bench judgment of the Hon'ble Supreme Court in Pt.Chet Ram Vashist vs Municipal Corporation Of Delhi, reported in 1995 (1) SCC 47, the land reserved for public purpose cannot be converted into saleable plots. Further, in the case of Latif Estate Line India Ltd., the Registrar of Co-operative Societies does not have any jurisdiction to cancel the sale deed and the petitioner has to approach the Civil Court for cancellation of the sale deed.

8. On the facts of the case on hand, it seems that the dispute is with regard to the allotment of the land reserved for public purposes, to the 4th respondent by the Special Officer, violating the procedures contemplated in the by-laws, Rules and Act as well as in the above cited decision of the Hon'ble Supreme Court in the case of Pt.Chet Ram Vashist. On perusal of the impugned order, it is seen that the order is cryptic and without giving any specific reasons, while rejecting the request of the petitioner. Therefore, the impugned order is liable to be quashed, by granting liberty to both the parties to raise all the grounds before the second respondent, to decide the issue for cancellation of the sale deed executed in favour of the 4th respondent.

9. Therefore, this Court has no hesitation to set aside the impugned order issued by the 2nd respondent, which is a non-speaking order. Hence, the case is remitted back to the second respondent and to decide afresh and pass orders on merits and in accordance with law, uninfluenced by any of the observations made by this Court, after providing an opportunity to the parties and to raise additional grounds, if any.

10. The Writ Petition is allowed, on the above terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

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To

1. The Secretary to the Government
Housing and Urban Development Department
Fort St. George, Chennai 9.

2. The Registrar of Co-operative
Societies (Housing),
T.N.H.B. Complex, Annal Salai,
Nandanam, Chennai 35.

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

+1 CC to Mr. A.Jenasenan, Advocate Sr.No.57330

+1 CC to Government Pleader, High Court, Chennai Sr.No.57914

+1 CC to Ms. R. Meenal , Advocate Sr.No.57751

W.P. No. 8100 of 2016
and
W.M.P No.7225 of 2016

SV(CO)
KP(13.11.2017)

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