

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2017

CORAM

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR
W.P. No.17836 of 2004

Prathabasimmapuram Co-operative
House Building Society Ltd.,
Represented by its Special Officer,
Prathabasimmapuram,
Thanjavur 613 001. .. Petitioner

Vs

1.Rajagopal
2.The Deputy Registrar (Housing),
Tanjore Region,
Thanjavur.
3.Principal District Judge,
Thanjavur. .. Respondents

PRAYER : This Writ Petition is filed under Article 226 of the
Constitution
of India for issuance of a Writ of Certiorari, to call for the
records of the learned Principal District Judge, Thanjavur
pertaining to the award passed in C.M.A. No.4 of 2003 dated
14.10.2003 and quash the same and pass such further or other
orders.

For Petitioner :Mr.S.T.S.Murthi,
Additional Advocate General.

For Respondents :Mr.P.Anbarasan for R1.
Mr.L.P.S. Shanmugasundaram
Special Government Pleader for R2.
Court for R3.

O R D E R

This Writ Petition has been filed, seeking to quash the
award passed in C.M.A. No.4 of 2003 dated 14.10.2003 by the
learned Principal District Judge, Thanjavur.

2. The Brief case of the facts as follows:

During the year 1995-96, when the 1st respondent was the Secretary of the petitioner society, committed various irregularities, colluding with two others. Hence, enquiry was conducted and based on the enquiry report, a show cause notice under Section 87(1) of the Tamil Nadu Co-operative Societies Act, 1983 was issued. After giving reasonable opportunity and considering the explanations, surcharge order was passed against the 1st respondent and two others, holding them liable to pay a sum of Rs.4,95,446/- with 17% interest, jointly and severally. Aggrieved by the same, the 1st respondent preferred an appeal in C.M.A. No. 4/2003. Without appreciating the evidences, on erroneous ground the appeal has been allowed by the Principal District Judge, Thanjavur. Challenging the same, the present writ petition has been filed. Challenging the Judgment and decree passed by the third respondent Tribunal, the petitioner society has filed the present Writ Petition before this Court.

3. The learned senior counsel appearing for the petitioner society would submit that the first respondent has committed irregularities in purchase of land for the members of the society and thereby caused loss to the society. The first respondent had violated the byelaws of the petitioner society and had failed to follow the instructions and the circular issued by the Registrar of the Societies (Housing), as per which the general fund of the society should not be utilised for purchase of land. As per Rules, the General Body Meeting should have been convened, to determine the sale price of the land, the proposed expenditure and the other subject matter should have been placed before the beneficiaries of the Society. Since byelaws of the society have been violated by the then Special Officer and the first respondent as stated above, proceedings were initiated under Section 81 of the Act against the 1st respondent & others and the surcharge award was passed under section 87 (1) of the Act.

4. Heard the submissions of the learned counsel for the respondents and perused the material available on records. Counter affidavit has been filed by the 1st respondent.

5. Challenging the said award passed by the second respondent, the first respondent and one P.Anandham have filed appeals in CMA. No.04 of 2003 and No.15 of 2002 . The then Special Officer Jothi Kumar has not preferred any appeal before the third respondent. The appeal filed by the first respondent has been considered and the Tribunal has allowed the appeal, on the ground that the Appellate Court, Registrar of Housing, Chennai has granted permission in Na.Ka. No.5139/95 C1 dated 19.05.1995 for the purchase of the land as per the proposal forwarded by the Regional Deputy Registrar Housing, Cuddalore in Na.Ka. No.2250/95 Na.VI.Thi dated 31.03.1995. The then Special

Officer and the Secretary of the Society has paid Rs.30,04,000/-. Subsequently, an extent of 2.81 acres land has been purchased by the first respondent, on the interest of the society and that the purchase of the aforesaid land has been placed before the meeting and based on the resolution, obtaining permission from the Registrar (Housing), Chennai, vide his proceedings Na.Ka. No.13729 of 1999 C1 dated 02.11.1999 and thereafter sold the entire land purchased by the society to a tune of Rs.29,90,626/-. Therefore, the allegations of the society that the balance amount, to the tune of Rs.4,95,446/-, is loss to the society has been rejected by the Tribunal. Hence, allowed the appeal, filed by the first respondent.

6. It is clear from the above, the Tribunal has gone into the merits of the case and has held that there is no violation of the terms and conditions and the Rules of the Society and due permission has been obtained from the Registrar of Housing Central in his Na.Ka. No.5139/95 C1 dated 19.05.1995 and Na.Ka. No.2250/95 Na.VI.Thi dated 31.03.1995. Therefore, the Tribunal has rightly held that there is no violation found against the first respondent. However, one Jothikumar, the then Special Officer of the society, who is the instrumentality to purchase the land of an extent of 11.09 acres and another land to an extent of 2.81 acre, has not preferred any appeal before the third respondent. Therefore, there is no warrant to interfere with the order passed by the Tribunal and the writ petition filed by the petitioner's society is liable to be dismissed.

7. In fine, the Writ Petition is dismissed. No order as to costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

rkp

To

1.The Deputy Registrar (Housing),
Tanjore Region,
Tanjavur.

2.Principal District Judge,
Thanjavur.

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