



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 30.08.2017

CORAM:

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**THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

W.A.[MD].No.764 of 2015
and
W.M.P.(MD) No.3 of 2015
in
W.P(MD).No.11085 of 2014

The Secretary,
R.786, Thiruchirappalli Co-Operative House
Constructions Society Ltd.,
Thillai Nagar,Trichy - 620 018.

... Appellant

Vs.

1. A.Ponnusamy(Died)

2. The Registrar,
Co-Operative Housing Society,
Tamil Nadu Housing Board Office Annexure,
Nandanam, Chennai - 600 035.

3. The Deputy Registrar of Co-Operative
Societies (Housing),
Thiruchirappalli.

4.Dhanapackiam

5.Annalakshmi

6.Mageswari

7.Mohandass

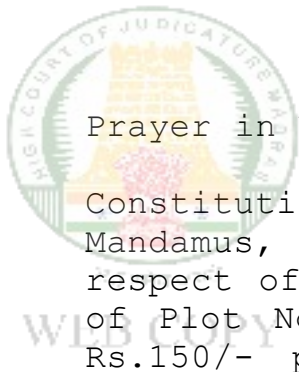
8.Gnanasekar

9.Yogalakshmi

... Respondents

[Respondents 4 to 9 are brought on record
as LRS of the deceased R1 vide order dated
22.06.2015 made in M.P.2 of 2015 in
W.A.SR.49376 of 2014]

PRAYER: Writ Appeal is filed under Clause 15 of the Letters
Patent, to set aside the order passed by this Court in W.P(MD).
No.11085 of 2014 dated 10.09.2014.



Prayer in WP(MD). 11085/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the 3rd Respondent to execute the sale deed in respect of property of an extent of 1320 sq.ft. lying on the east of Plot No. D-412, Anna Nagar, Thennur, Trichy, at the rate of Rs.150/- per sq. ft., as fixed by the resolution of the 3rd respondent dated 25.04.1998 by receiving the balance of sale consideration within a time fixed by this Honourable Court.

For Appellant : Mr.K.C.Ramalingam

For R4 to R9 : M/s.J.Anandhavalli

JUDGMENT

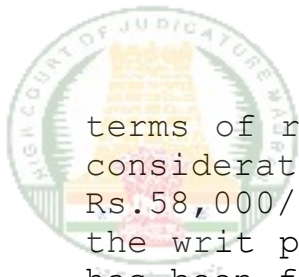
[Judgment of the Court was delivered by **G.R.SWAMINATHAN, J.**]

This writ appeal is directed against the order dated 10.09.2014 made in W.P.(MD)No.11085 of 2014 filed by A.Ponnusamy, the original first respondent in this writ appeal.

2.The case of the first respondent was that he was a member in the appellant society. He was allotted Plot bearing No.D-412 in Annangar, Thennur, Trichy. He later put up a house in the lay out permitted by the appellant society. There were irregular plots in the lay-out. That were allotted to the adjacent land owners. One such irregular Plot was allotted to the first respondent also. Dispute arose with regard to the valuation.

3.Originally the first respondent was informed that the irregular Plot adjacent to D-412 can be purchased by him at the rate of Rs.101/- per sq. ft. The first respondent wanted the same to be sold at Rs.10/- per sq. ft. He later expressed his willingness and agreed to the rate stipulated by the appellant society. He submitted a letter dated 05.02.1997 in this regard. He in fact paid a sum of Rs.50,000/- towards sale consideration on 17.03.1998 and further a sum of Rs.50,000/- on 19.07.1999 and another sum of Rs.40,000/- on 29.09.1999. Thus, a total sum of Rs.1,40,000/- was paid by the first respondent towards sale consideration. But the appellant society passed a resolution on 25.04.1998 fixing the rate at Rs.150/- per sq. ft.

4.Questioning the same, the said first respondent initiated the suit proceedings. But the same ended against the allottee. Thereafter, the said allottee/original first respondent initiated arbitration proceedings also. At that stage, the first respondent filed W.P.(MD)No11085 of 2014, seeking a direction for directing the appellant society to execute the sale deed in respect of the said irregular Plot measuring 132 sq. ft adjacent to D-412, Anna nagar, Thennur, Trichy, at the rate of Rs.150 per sq. ft. in



terms of resolution dated 24.04.1998 by receiving the balance sale consideration. The balance sale consideration came to Rs.58,000/-. The learned Judge by order dated 10.09.2014 allowed the writ petition. Aggrieved by the same, this intra Court Appeal has been filed.

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5. Heard the learned counsel for the appellant as well as the learned counsel appearing for the legal heirs of the deceased first respondent.

6. The appellant society offered to sell the plot in question at the rate of Rs.150/- per sq. fit. Now the said offer is being accepted. It is not open to the appellant to propose refund at this point of time. Because a sum of Rs.1,40,000/- i.e 75% of sale consideration was received as early as in the year 1999.

7. If the appellant society has refunded the same to the allottee than itself, there would be some equity on the side of the appellant. The appellant having retained a sum of Rs. 1,40,000/- remitted 18 years back by the deceased first respondent now cannot refuse to sell the plot at Rs.150 per sq. ft. Therefore, we see no grounds to interfere with the direction of the learned Judge for execution of the sale deed.

8. However, the matter was dragged on at the instance of the original allottee. Admittedly the original allottee lost in the civil suit. Thereafter, the arbitration application came to be filed. In any event, the legal representatives of the deceased first respondent undertook to abide by the resolution dated 24.09.1998. It means that the appellant society is entitled to interest for the balance amount a sum of Rs.58,000/- from 1999. We quantify the interest payable by the legal heirs of the first respondent at Rs.1,50,000/-.

9. The learned counsel appearing for the legal heirs of the first respondent submits that the balance amount of Rs.58,000/- was already remitted in the account of the appellant society. However, the learned counsel appearing for the appellant disputes the same. The appellant society is directed to verify, if the said sum of Rs.58,000/- was received and credited to the account of the appellant society. The legal heirs of the first respondent are directed to pay a sum of Rs. 1,50,000/- towards interest within a period of four weeks from the date of receipt of a copy of this order. Thereupon, the appellant shall prepare and execute and register the sale deed as directed in the order made in W.P. (MD) No.11085 of 2014 in favour of the legal representatives of the deceased first respondent within a period of three weeks thereafter.

<https://hcservices.ecourts.gov.in/hcservices/>

10. If the sum of Rs.58,000/- being the balance sale consideration has not been remitted in the account of the



appellant society, the legal heirs of the first respondent shall pay the same along with the interest amount of Rs.1,50,000/-.

11. This writ appeal is disposed of on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Registrar,
Co-Operative Housing Society,
Tamil Nadu Housing Board Office Annexure,
Nandanam, Chennai - 600 035.

2. The Deputy Registrar of Co-Operative
Societies (Housing),
Thiruchirappalli.

+ 1 cc TO M/s.J.Anandhavalli , Advocate in SR No. 75678

+ 1 cc TO Mr.K.C.Ramalingam , Advocate in SR No. 75657

gsp/mm

AE/SKN RSK/SAR1/06.12.2017/4P/5C

W.A. [MD] .No.764 of 2015
and

W.M.P. (MD) No.3 of 2015
30.08.2017