



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.06.2017

CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

WEB COPY

W.P.(MD) No.8437 of 2016

P.Palani

... Petitioner

Vs.

1. The Registrar,
Tamil Nadu Co-operative Housing Federation,
No.493, Annasalai,
Nandanam,
Chennai - 600 035.

2. The Deputy Registrar,
Tamil Nadu Co-Operative Housing Federation,
Vannarapettai,
Tirunelveli.

3. The Secretary,
Gandhi Nagar, Co-Operative Housing
Society Ltd., (0.2053),
Palayapettai,
Tirunelveli.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issue of a Writ of Mandamus, directing the Respondents to return back the petitioner's original document in respect of the petitioner's property in House Plot No.9, T.S.No.1772, Block No,16, Ward No.44, Tirunelveli Corporation and kept under the custody of the 3rd respondent.

For Petitioner : Mr.R.A.Ramachandran

For Respondents : Mr.M.Murugan
Government Advocate.

ORDER

This Writ Petition has been filed for issuance of a Writ of Mandamus, directing the respondents to return the original document in respect of the petitioner's property, which was handed over to the third respondent.

<https://hcservices.ecourts.gov.in/Hcservices> The brief facts that are necessary for the disposal of this Writ Petition are as follows:



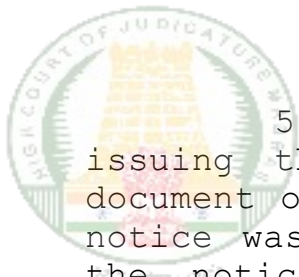
2.1.The petitioner is a member of the third respondent society. He availed a Housing Loan for a sum of Rs.1,50,000/- from the third respondent society on 13.09.2005. The title deed in respect of the petitioner's property was handed over to the third respondent as security for the loan, which was availed by the petitioner. An equitable mortgage was created in favour of the third respondent.

2.2.The petitioner submits that he has paid the entire loan amount with interest to the third respondent within two years from the date of availing loan. Despite receipt of entire loan amount from the petitioner with interest, the document which was handed over to the third respondent was not returned to the petitioner.

2.3.The petitioner also submits that the third respondent cancelled the equitable mortgage that was created by a document. In this circumstances, the petitioner submits that the petitioner has approached the third respondent for the past more than eight years. Though a representation dated 05.01.2016 was sent to the respondent, there was no response. In these facts and circumstances, narrated above, the petitioner was constrained to come before this Court.

3.The learned Counsel for petitioner produced the discharge receipt dated 20.04.2007, issued by the third respondent to the petitioner. The respondents particularly the third respondent has not filed any counter affidavit so far denying the allegations made in the affidavit filed in support of the Writ Petition. In the above circumstances, the petitioner is entitled to succeed in this Writ Petition.

4. The learned counsel for the petitioner submits that the document is now available with the first respondent. Whether the document is available with the first respondent or third respondent, the fact that the petitioner discharged the loan is not in dispute. The third respondent has no right to encumber the property, which was mortgaged to the third respondent by the petitioner for a particular loan. In such circumstances, even if the third respondent has handed over the document to first respondent, there is no privity of contract between the petitioner and the first respondent and the petitioner who is the lawful owner of the property is entitled to get the document even if there are dues that are outstanding and payable by the third respondent to the first respondent. That does not give the first respondent any right over the security, which was offered to the third respondent by creating a mortgage. Since the mortgage is discharged, the petitioner need not pay any further amount or wait for any other reason to get his document of title deed. The third respondent has no right to create any other encumbrance and the first respondent cannot derive any right from third respondent. There cannot be an agreement between third respondent and a stranger which would prevent the redemption of mortgage.



5. The third respondent, after the discharge of loan and issuing the discharge receipt, has no authority to keep the document of tiled deed. The Writ Petition was filed long back and notice was issued to the respondents. The failure to respond to the notice of this Court, makes this Court to believe the contentions of the petitioner. Though the relationship between the petitioner and the respondents is contractual, this Court has time and again indicated that a person aggrieved can approach this Court under Article 226 of the Constitution of India for appropriate relief, in case, any violation or infringement of his fundamental right. Detaining the document of title deed without any cause, would certainly infringe the fundamental right guaranteed under Article 14, 19 and 21 of our Constitution.

6. With the above observation, the Writ Petition is allowed and a direction is issued to the respondent 1 and 3 to return the title deed in respect of the petitioner's property namely Plot No.9, T.S.No.1772, Block No.16, Ward No.44, Tirunelveli Corporation, within a period of six weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To

1. The Registrar,
Tamil Nadu Co-operative Housing Federation,
No.493, Annasalai,
Nandanam, Chennai - 600 035.

2. The Deputy Registrar,
Tamil Nadu Co-Operative Housing Federation,
Vannarapettai, Tirunelveli.

3. The Secretary,
Gandhi Nagar, Co-Operative Housing
Society Ltd., (0.2053),
Palayapettai, Tirunelveli.

+1 cc to Mr.S.R.A.Ramachandran , Advocate in SR.No. 60714

Arul/cmr

AE/MR KKR/SAR2/07.07.2017/3P/5C