

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.02.2018

C O R A M

THE HON'BLE Mr.JUSTICE K. RAVICHANDRABAABU

W.P.No.33415 of 2017

Sulochana

...Petitioner

vs

- 1.The Registrar of Cooperative Societies (Housing),
O/o. the Registrar of Cooperative Societies (Housing),
Housing Board Complex, Nandhanam, Chennai-35.
 - 2.The Deputy Registrar of Cooperative Societies (Housing),
Chennai Region, Ramanathan Street, T.Nagar,
Chennai-17.
 - 3.The Administrative Officer,
Periyar Nagar Government Servants Cooperative House-
site Distribution Society Ltd.,
Thiruvalluvar Co-operative Thirumana Maaligai,
29, Karthikeyan Salai, Periyar Nagar,
Chennai 600 082.
- ...Respondents

Prayer:Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of mandamus to direct the third respondent to execute the sale deed in favour of the petitioner in respect of the property situated at Plot No.D-72, 18th 1st Cross Street, Periyar Nagar, Chennai-82.

For petitioner : Dr.R.Sampathkumar
For Respondents : Mr.L.P.Shanmugasundaram
Special Government Pleader
For R1 & R2
Ms.T.Girija for R3

WEB COPY
O R D E R

The petitioner seeks for a mandamus directing the third respondent to execute the sale deed in favour of the petitioner in respect of the property situated at Plot No.D-72, 18th 1st Cross Street, Periyar Nagar, Chennai-82.

2. Heard both sides.

3. One P.Sundarrajan got an allotment of a house site from the third respondent society by way of lease cum sale agreement dated 30.03.1983. He paid the entire cost of the said house site to the third respondent Society. An allotment order was also issued in favour of the said person. He took possession of the said property and was in enjoyment of the same for six years from the date of allotment and thereafter, executed a sale deed on 22.03.1989 under Registration No.1173/89 in favour of the petitioner. Thereafter, the petitioner is in possession and enjoyment of the property all these years. Though the allotment order was issued in favour of the said Sundararajan, no sale deed was executed by the third respondent and therefore, the subsequent purchaser viz., the petitioner herein seeks for execution of such sale deed in her favour. Therefore, the present writ petition is filed seeking for the relief as stated supra.

4. A counter affidavit is filed by the respondent by contending that the very sale made by the said Sundarrajan in favour of the petitioner was without obtaining permission from the third respondent and also without obtaining the sale deed in his favour. It is also stated in the counter affidavit that a lessee shall not be entitled to sell mortgage or in any way create charge or encumbrance of the property allotted to him/her for a period of five years from the date of conveyance of the sale agreement. It is also admitted in the counter affidavit that though the cost of the plot was remitted to the Society by the petitioner and a house was built thereupon by availing the housing loan from the Tamilnadu Government, no sale deed was executed by the third respondent society to the writ petitioner.

5.Learned counsel appearing for the petitioner submitted that the very sale made in favour of the petitioner was after the ban period of five years and therefore, there cannot be any impediment for the third respondent to execute the sale deed in favour of the petitioner.

6.The learned counsel appearing for the third respondent, on the other hand, submitted that the said Sundarrajan has executed the sale deed in favour of the petitioner without obtaining any sale deed from the third respondent. However, she fairly admitted that the entire cost of the plot was already paid to the third respondent Society.

7.Considering the respective pleadings of the parties and their submissions made through their counsels, it is seen that the third respondent received the entire cost of the plot and therefore, there is no due payable by the said Sundararajan or by the petitioner towards the same. There is no dispute to the

fact that the lease cum sale agreement was executed on 30.03.1983 and the sale deed in favour of the petitioner by the said Sundararajan was executed on 22.03.1989, evidently after a period of six years from the date of such lease cum sale agreement. Therefore, even according to the respondents, as stated in their counter affidavit, the sale made in favour of the petitioner was after the ban period of five years and therefore, the said Sundararajan cannot be faulted in selling the property in favour of the petitioner. Therefore, I am of the considered view that there cannot be any legal impediment for the third respondent to consider the request of the petitioner for executing the sale deed in her favour, since the entire sale consideration was already paid by the party to the third respondent Society. Thus, this writ petition is allowed and the third respondent is directed to execute the sale deed in favour of the petitioner in respect of the property situated at Plot No.D-72, 18th 1st Cross Street, Periyar Nagar, Chennai-82, within a period of six weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vri
To

- 1.The Registrar of Cooperative Societies (Housing),
O/o. the Registrar of Cooperative Societies (Housing),
Housing Board Complex, Nandhanam, Chennai-35.
- 2.The Deputy Registrar of Cooperative Societies (Housing),
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29, Karthikeyan Salai, Periyar Nagar,
Chennai 600 082.

+1cc to Mr.T.GIRIJA, Advocate, S.R.No. 12127
+1cc to Dr.R.SAMPATHKUMR, Advocate, S.R.No. 12252
+1cc to the Government Pleader, S.R.No. 13232
+1cc to Dr.R.SAMPATHKUMR,
Advocate, S.R.No. 12252(27.02.2017)

W.P.No.33415 of 2017

RSY(CO)
TR(27/02/2018)