

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.15322 of 2008

and

M.P.No.1 of 2008

1. R.Venkatachalam
2. D.Hussain Sheriff
3. V.Elangovan

... Petitioners

Vs.

1. The Registrar of Co-op. Societies (Housing),
Adyar, Chennai - 600 020.
2. The Deputy Registrar Co-op. Societies (Housing),
28, Ramanathan Street,
T. Nagar, Chennai - 600 017.
3. The President,
B & C Mills Co-operative Construction Society
Vyasarpadi, Chennai 600 039.

(R3 amended as per Court Order
dated 10.02.2015 in M.P.No.1 of 2015
in W.P.No.15322 of 2008)

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to take necessary action in pursuant to Judgment dated 27.11.2000 in RC.No.14828/95C2 passed by the first respondent.

For Petitioners : Mr.N.Jayabalan

For R1 & R2

: Mrs.Girija

Government Advocate

For Mr.L.P.Shanmugha Sundaram
Special government Pleader

For R3

: Mr.K.S.Raman

O R D E R

This Writ Petition has been filed, to direct the respondents for taking necessary action in pursuant to Judgment dated 27.11.2000 in R.C.No.14828/95C2 passed by the 1st respondent.

2. The petitioners herein, are the members of the B & C Mills Employees Co-operative House Construction Society and they have interested in proper management of the society and its properties.

3. The case of the petitioners is that the B & C Mills Employees Co-operative House Construction Society had allotted 8.41 acres of land in Kamaraj Nagar Perambur, Chennai, by the Tamilnadu Housing Board, for its members, which consisted of 143 plots. While so, some of the committee members of the said society had tried to dispose of the sites marked for shopping centers, roads, etc., to the persons who were not at all connected with the society, hence, the other committee members of the society had raised Arbitration Case in ARC No.175/86-87 before the Deputy Registrar of Co-operative Societies (Housing), the 2nd respondent herein and had sought for direction against the society not to dispose of the common lands which were marked for shopping sites and roads.

4. The 2nd respondent, by Judgment dated 30.06.1995, has held that since the plots earmarked for shopping sites, were already sold to 2 non members of the society under 4 different sale deeds dated 15.06.1984 and registered as Doc.Nos.1271 to 1274 of 1984 in the Office of Sub Registrar, Purasawalkam, even before initiation of the Arbitration proceedings, the same has become infructuous. Further, the 2nd respondent has held that there were irregularities in the sale of the shop and which would not come under the purview of the Arbitration Petition, hence, the Arbitrator has directed the Special Officer of the society to take action against the Secretary, who furnished false information deserved action under Section 157 of the Act and has also restrained the society from alienating the other available property.

5. Aggrieved by the Judgment of the Arbitration, B.Dawood Sheriff and K.Sivalingam, the petitioners in Arbitration proceedings, had filed Revision Petition against the said Judgment in R.C.No.14826/95C2 before the Registrar of Co-operative Societies (Housing), the first respondent herein. By Judgment dated 27.11.2000, the first respondent has held that as per the provisions of byelaw of the Society and various instructions of the Registrar (Housing), if any plot is allotted to anybody in contravention of the byelaws of the Society and instructions of Registrar (Housing), it should be resumed after

giving opportunities and reallocated to those who are available in the waiting list or to be sold in public auction. Hence, the first respondent has set aside the order of the Arbitrator and has remitted the matter back to the Arbitrator, to take action as per law.

6. The petitioners herein, would contend that in the 1st week of November 2007, some constructions were going on in the plots which were reserved for public places and the petitioners had caused a legal notice dated 29.10.2007 to the 1st and 2nd respondents herein, to take follow-up actions to resume Plot Nos.2,3,4,5,6 and 7, Kamaraj Nagar Layout Vyasarpadi, Chennai - 39, in pursuant to Judgment dated 27.11.2000 passed by the 1st respondent in RC.No.14826/95C2. Since there was no response from the respondents, the petitioners, with no other alternative, have filed this Writ Petition, to direct the respondents to take necessary action in pursuant to Judgment dated 27.11.2000 in RC.No.14828/95C2 passed by the 1st respondent.

7. It could be seen from the said Arbitration proceedings that the Secretary of the respondent society in its counter dated 08.12.1987, had stated that the respondent society has no intention to sell shopping centres or roads and the allegation in this respect, is unfounded and imaginary, hence, sought for dismissal of the petition filed by the members of the 3rd respondent society, with costs.

8. It could be further seen from the Arbitration proceedings that one of the petitioners in Arbitration, namely, B.Dawood Sheriff, had stated in his deposition dated 14.02.1991 that even before filing of the Arbitration Petition, the Plot Nos.2,3,4,5,6 and 7 earmarked for shopping sites, were sold during June 1984 itself, without the sanction of the General Body and the Department which was represented by the office bearers of the respondent society, hence, action would be taken by him against the office bearers of the respondent society to launch prosecution against them. Similarly, the Special Officer of the respondent society has also stated in his deposition dated 24.05.1995 that the plots earmarked for shopping sites in Kamaraj Nagar lay-out, had been sold during June 1984 itself i.e. before the Arbitration Petition was filed and they were sold as per the decision of the Board of Directors. The details of the said sale and the copies of the sale deeds were also furnished in the Arbitration proceedings by the members of the respondent society.

9. The Special Officer of the respondent society has further stated in the Arbitration proceedings that the said shop sites were sold even before the property was conveyed to the respondent society by Tamil Nadu Housing Board, and the

procedures were not followed in the sale and hence, action would be taken against the authorities concerned, who has committed such irregularities in the said sale. He had also given an undertaking that in future, the society shall sell the shop sites, only after getting approval from the General Body and the Department.

10. Finally, the Arbitrator has held that both the petitioners and the respondents have accepted the sale of the shop sites which is under dispute, hence, the prayer of the petitioners, to restrain the respondent society from selling the shop sites has become infructuous.

11. Even though the Arbitrator has found that there were irregularities in the sale of sites, he has held that the sale would not come under the purview of the Arbitration. Since the Secretary of the society had furnished false information in the Arbitration, by way of filing a counter statement dated 08.12.1987, the Arbitrator has directed the respondent society to take action against the said official for the said offence. Further, the respondent society was also restrained from alienating the other available property.

12. Aggrieved by the same, the petitioners, namely, Dawood Sheriff and K.Sivalingam, have filed a Revision Petition against the said Judgment in R.C.No.14826/95C2 dated 05.12.1995 before the first respondent herein. Since the first respondent has not considered the petition and disposed of the same. One A.Vedachalam, has filed a Writ Petition before this Court in W.P.No.3773 of 2000, to direct the 1st respondent to consider the Revision Petition filed in R.C.No.14826/95C2 and to dispose of the same. Accordingly, this Court, by an order dated 06.03.2000, has directed the 1st respondent to take up the said Revision Petition for consideration and to dispose of the same in accordance with law, after considering the objections raised by the petitioner in Paragraph No.10 of the affidavit filed in support of the said Writ Petition, within a period of two weeks from the date of receipt of a copy of the said order, and the petitioner was at liberty to produce a copy of that Writ Petition before the 1st respondent, to enable the authorities concerned to decide the issue.

13. As per the direction of this Court, the Registrar of Co-operative Societies (Housing), has passed an order on 27.11.2000, wherein, it has been observed that the Arbitrator is well aware of the procedures that if any property is allotted in contravention to the provisions of the byelaws and instructions of the 1st respondent, the society should resume the property and allot it to other qualified members in the waiting list or to dispose it by public auctions. While that

being the case, the Arbitrator, being a quasi Judicial Officer, cannot simply decide that the petition has become infructuous which results in affecting the proper functioning of the society. The learned Arbitrator has not followed the provisions of the byelaws of the respondent society.

14. It has been further observed in the order of the 1st respondent that the Arbitrator has found that the Ex-Secretary of the respondent society has furnished false statement by filing a counter statement dated 08.12.1997, stating that common purpose land has not been sold to anybody, and for which he deserves action under Section 157 of the Act and therefore, the 1st respondent has held that the order of the Arbitrator that the petition is infructuous cannot be hold good in law.

15. Furthermore, it could be seen that the 1st respondent has observed that the sale deeds were issued to the 8th and 9th respondents of the respondent society even before the execution of sale deeds by Tamil Nadu Housing Board in the year 1993, hence, the said sale deeds executed by the respondent society is null and void. The 2nd respondent should examine this issue with reference to the provisions of the byelaws of the society after getting the representation from the 8th and 9th respondents, since the same was not done, the 1st respondent has held that the Judgment passed by the learned Arbitrator without impleading the 8th and 9th respondents as parties to the dispute cannot be hold good.

16. Moreover, the 1st respondent has held that when the Revision Petitioners requested the Arbitrator, the Deputy Registrar (Housing), after having elected to the committee, the Arbitrator should take action to include the 8th and 9th respondents therein, in the Arbitration case and decide the issue according to the provisions of the byelaws of the society, Registrar (Housing)'s instructions and Tamil nadu Cooperation Societies Act and Rules. Amendment to the plaint can be entertained due to omissions and commissions of facts before passing final order. Hence, the orders of the Deputy Registrar (Housing), made in ARC.No.175/86-87 dated 30.06.1995 are liable to be dismissed.

17. In view of the above, the Arbitrator ought to have impleaded all the necessary parties including 8th and 9th respondents in the Arbitration Case and ought to have decided the issue as per the provisions of bylaw of the society and instructions of the Registrar of Cooperative Societies. Since the same was not done, the 1st respondent has quashed the order of the Arbitrator in the Revision Petition and remitted the matter back to the 2nd respondent, for reopening it to implead all the necessary parties concerned and to decide the issue as

per the provisions of byelaws of the society and as per the instructions of the Registrar (Housing). However, till now, no such proceedings have been commenced by the respondent, hence, the present Writ Petition has been filed, directing the 2nd respondent to take necessary action in pursuant to Judgment passed by the 1st respondent in RC.No.14828/95C2 dated 27.11.2000.

18. In view of the above facts, it could be seen that the 2nd respondent has not initiated the Arbitration proceedings and has not passed any orders till now, as directed by the 1st respondent. Since it is necessary to implead all the parties concerned for deciding the case, this Court, directs the 2nd respondent to issue notice to all the parties concerned within a period of 3 weeks from the date of receipt of a copy of this order, regarding initiation of fresh arbitration proceedings and pass orders, after affording opportunity to all the parties concerned, within 12 weeks thereafter.

19. With the above observation and direction, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

raja

To

1. The Registrar of Co-op. Societies (Housing),
Adyar, Chennai - 600 020.
2. The Deputy Registrar Co-op. Societies (Housing),
28, Ramanathan Street,
T. Nagar, Chennai - 600 017.
3. The President,
B & C Mills Co-operative Construction Society
Vyasarpadi, Chennai 600 039.

+1 cc to the Government Pleader, S.R.No.42749

W.P.No.15322 of 2008 and
M.P.No.1 of 2008

GJ(CO)
SSM(09/01/2019)