



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.A(MD)No.1275 of 2015
and
M.P(MD)No.1 of 2015

The Sivakasi Co-operative Housing Society,
(MDA, HSG-1), 103-A, Ammankoilpatti,
Sivakasi,
Virudhunagar District.

: Appellant

Vs.

1. A.L.Muthukumari

2. The Special Officer,
Tamil Nadu Co-operative Housing Federation,
Chennai.

3. The Assistant Registrar (Housing),
Virudhunagar Zone,
Virudhunagar District.

: Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent, to set aside the order dated 06.02.2014 made in W.P(MD) No.1938 of 2014.

Prayer in WP(MD). 1938/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the Respondents herein to return the original documents given in deposit by the Petitioner s mother Mrs.N. Meenakshi Achi towards Loan No.347, with the 3rd respondent.

For Appellant : Mr.C.K.M.Appaji

For Respondent No.1 : Mrs.Lakshmi Gopinathan

For Respondent No.2 : No appearance

For Respondent No.3 : A.Muthukaruppan

Additional Government Pleader

**JUDGMENT**

[Judgment of the Court was delivered by **M. SATHYANARAYANAN, J.**]

The mother of the writ petitioner namely, N.Meenakshi Achi, had availed a housing loan of Rs.55,000/- from the third respondent / appellant on 26.05.1988 and final payment of Rs.44,000/- was also made by her on 31.03.1993.

2.The mother of the writ petitioner had gifted the property bearing Door No.6/424B in Anaiyur Village, through the registered gift settlement deed bearing Document No.2697 of 1992, in favour of the writ petitioner / first respondent. It is the case of the first respondent / writ petitioner that her mother died on 27.01.1999 and though she is in possession and enjoyment of the said property, she is not in possession of title deeds and when she sought for return of the title deeds, the respondents in the writ petition has said that the Secretary of the Society has been proceeded in the form of criminal prosecution with regard to misappropriation of funds and a case in Crime No.5 of 2000, is pending investigation.

3.It is the specific case of the first respondent / writ petitioner that the title deeds relating to the property gifted in her favour are very much essential as she is facing great financial crisis and she wants to dispose of the property to get rid of the said position. Despite representations made for return of the original documents, the documents which are in possession of the Tamil Nadu Cooperative Housing Federation, Chennai, have not been returned and hence, came forward to file the writ petition.

4.The writ petition was entertained and a Single Bench of this Court vide order dated 06.02.2014, has taken note of the fact that the loan was closed down on 31.03.2013 and "No Due Certificate" was also issued by the third respondent and in the light of the said fact, it is obligatory on the part of the respondents to return the title deeds and accordingly, directed the first respondent in the writ petition to consider the request made by the petitioner as well as the recommendation letter given by the Registrar, for return of the original documents within a stipulated time and challenging the same, the third respondent has filed the present writ appeal.

5.The learned Additional Government Pleader appearing for the third respondent would submit that the Secretary of the respondent Society had misappropriated the amount received towards repayment of loan and it is not correct to say that the mother of the petitioner has cleared the entire loan and she is still due an amount of Rs.1,85,000/- and as and when the said amount is paid, the documents can be returned to the petitioner.



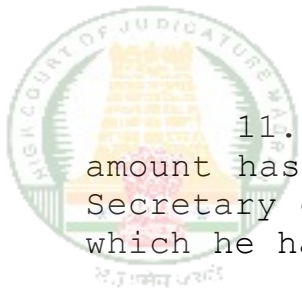
6. Per contra, the learned Counsel appearing for the first respondent / writ petitioner would submit that it is not in dispute that the amount has been remitted to the Society and the Secretary of the Society has misappropriated the same and against him, a criminal prosecution was also launched and hence, the petitioner cannot be saddled with such a kind of responsibility. The learned Judge after taking note of the relevant facts has rightly ordered the return of the original documents and prays for dismissal of this writ appeal.

7. This Court has considered the rival submissions and also perused the materials placed before it.

8. It is also brought to the knowledge of this Court that the criminal prosecution launched against the Secretary of the respondent Society, namely, Kovindasamy in C.C.Nos.132 to 141 of 2002, has ended in conviction and he was imposed with a simple imprisonment of one month and fine with default clause for each case and C.C.Nos.132 to 141 of 2002, came to be disposed of accordingly by the learned Judicial Magistrate II, Virudhunagar. This Court, upon going through the relevant records, found that the mode of disposal of the said cases is not proper and therefore, called for the report from the Court of Judicial Magistrate II, Virudhunagar, and accordingly, report dated 21.03.2018 has been submitted and a perusal of the same would disclose that the accused, namely Kovindasamy was absconding and therefore, non-bailable warrant was issued on 29.01.2004 to secure him and he was arrested on 25.02.2004 and produced before the Court and remanded to judicial custody on 10.03.2004 and he was also produced before the Court on the same day and charges were framed and he was questioned for the commission of the offences under Sections 408, 477(A) IPC and he denied the charges.

9. Thereafter, the prosecution started examining the witnesses and also marked documents and the accused has filed a petition for admission of his guilt on 23.03.2004, and on that day, the evidence of the prosecution was closed and the accused was examined under Section 313(1)(b) of Cr.P.C. Thereafter, he was questioned under Section 313 Cr.P.C. On 25.03.2004 and on the same day, the accused has admitted the guilt and judgments in C.C.Nos.132 to 141 of 2002, were pronounced awarding the said sentence.

10. In the considered opinion of this Court, the way in which the cases have been dealt with and disposed of by the then Judicial Magistrate II, Virudhunagar, is highly unsatisfactory and if he remains in service, the Registry is directed to take appropriate action against the said Presiding Officer in



11. This Court is of the considered view that the loan amount has been discharged by the mother of the respondent to the Secretary of the Society, who in turn misappropriated the same for which he has also been convicted and sentenced.

12. The learned counsel appearing for the respondent has also produced a letter of the appellant dated 16.07.2010, wherein it is stated that the Secretary of the Society was mulcted with the surcharge proceedings for recovery of Rs.6,32,167.60/- and he has absconded also.

13. It is to be noted at this juncture that there is an international audit mechanism as well as statutory audit in respect of the affairs of the Co-operative Societies and if the said mechanism has been properly implemented or put in place, these kind of things would not have happened and this Court is of the opinion that for the misdeeds on the part of the Secretary of the appellant Society, the petitioner cannot be saddled with any liability and responsibility. In the considered opinion of this Court, the learned Judge has correctly taken note of the factual aspects and correctly reached the conclusion to order the return of the documents.

14. This Court, on an independent application of mind, is of the considered view that there is no error apparent or infirmity in the reasons assigned by the learned Single Judge in ordering the writ petition and finds no merit in this writ appeal.

15. In the result, the writ appeal stands dismissed confirming the order dated 06.02.2014 made in W.P.(MD)No.1938 of 2014 and the Tamil Nadu Cooperative Housing Federation, Chennai, is directed to return the documents to the petitioner pertaining to discharge of loan account No.347, on the file of the appellant / third respondent in the writ petition within a period of four weeks from the date of receipt of a copy of this order. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Registrar General,
High Court, Madras.

<https://hcservices.hcma.gov.in/secure/> Registrar (Housing),
Virudhunagar Zone,
Virudhunagar District.



3. The Special Officer,
Tamil Nadu Co-operative Housing Federation,
Chennai.

+1cc to Mr.C.K.M.Appaji, Advocate Sr.No.58058

+1cc to Mrs.Lakshmi Gopinathan, Advocate Sr.No.57686

MR

VB/SKN/RSK/SAR4/12.04.2018/5P/6C

JUDGMENT MADE IN
W.A (MD) No.1275 of 2015
23.03.2018