



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.A[MD].No.1142 of 2016

Mrs.Anbuthilagam : Appellant/ 5th Respondent

Vs.

1.S.Kamala : 1st Respondent/Petitioner

2. The Secretary to Government of Tamil Nadu,
Department of Housing,
Fort St.George, Chennai.

3. The Registrar of Co-operative Societies (Housing),
Adayar, Chennai.

4. A 1321 Karaikudi Co-operative House,
Building Society, Church 3rd street,
Near Singar Hotel,
Karaikudi, Sivagangai District.

5.The Deputy Registrar,
(Housing) Co-operative Societies,
Maninagaram,
Virudhunagar.

: Respondents 2 to 5/Respondents 1 to 4

PRAYER: Appeal is filed under Clause 15 of Letters Patent to set aside the order of the learned single Judge of this Court, dated 23.04.2010, in W.P.(MD)No.11851 of 2008.

Prayer in WP(MD). 11851/ 2008 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari, calling for the records of the impugned order of the 2nd Respondent in his proceedings in Na.Ka.No.1133/2008/SF1 dated 29.10.2008 and quash the same.

For Appellant

: Mr.T.Antony Arulraj

For R1

: Mr.G.Prabhu Rajadurai

<https://hcservices.ecourts.gov.in/hcservices/>
For R2 to R5

: Mr.VR.Shanmuganathan

Special Government Pleader

**JUDGEMENT**

[Judgement of the Court was delivered
by **K.RAVICHANDRABAABU, J**]

WEB COPY

This writ appeal is directed against the order of the learned single Judge, dated 23.04.2010

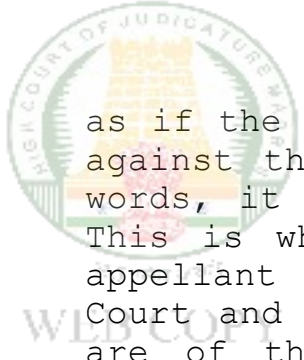
2.The appellant is the fifth respondent in the writ petition. The first respondent herein as the writ petitioner challenged the order of the Registrar of Co-operative Societies (Housing), Adayar, Chennai, dated 29.10.2008, wherein and where by, the said authority set aside the order dated 10.09.2003 of the Joint Registrar, Virudhunagar and the order passed in the revision by the very same authority dated 22.10.2007 and remitted the matter back to the fifth respondent herein. The learned single Judge allowed the writ petition and set aside the order of the third respondent herein. Now, the present writ appeal is filed before this Court by the fifth respondent in the writ petition, by raising very many contentions on merits.

3.Heard the learned counsel appearing for the appellant; the learned counsel appearing for the first respondent and the learned Special Government Pleader appearing for the respondents 2 to 5.

4.Before we deal with the merits of the contentions raised by the appellant, we would like to record a vital factor, which goes against the appellant with regard to his conduct before this Court.

5.Admittedly, the appellant herein was arrayed as fifth respondent in the writ petition. It is not in dispute that a notice was served on the appellant, as the fifth respondent in the said writ petition. However, the fact remains that he has not chosen to appear before the writ Court either in person or through counsel. Therefore, the learned single Judge, after recording the above said fact, has proceeded to decide the matter on merits based on the facts and circumstances placed before him by way of pleadings and documents filed in the typed set of papers.

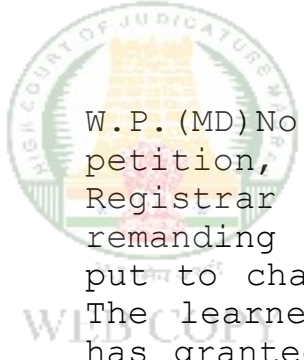
6.We have perused the grounds of appeal raised in this writ appeal. None of the grounds raised by the appellant deals with any reason for his non appearance before the learned single Judge. Therefore, it is evident that the appellant, as the fifth respondent even after receipt of a notice from the Court, has deliberately not chosen to appear before the writ Court and contest the matter. Needless to say that if a person, after receiving a notice from the Court, has not chosen to appear before the Court and contest the matter, such conduct has to be construed



as if the said person is not having anything to say in the matter against the prayer sought for in the said proceedings. In other words, it is to be construed that he is not opposing the prayer. This is what happened in this case, as it is evident that the appellant admittedly has not chosen to appear before the writ Court and made the objections as raised before us. Therefore, we are of the firm view that the appellant is not justified or entitled to raise the objections before us, as a first time, having not chosen to do the same before the writ Court.

7. Even otherwise, while considering the merits of the matter, it is evident that the appellant is making a futile attempt to get the allotment in his favour in respect of the property, which was already allotted in favour of the writ petitioner followed by the execution of the sale deed after receipt of the entire sale consideration by the fifth respondent Society herein. There is no dispute to the fact that the writ petitioner was allotted the subject-matter land followed by execution of the sale deed as early as on 15.07.1993. However, thereafter, a show cause notice was issued by the Society on 06.02.1998 to the writ petitioner as to why the sale deed executed in favour of her shall not be cancelled on an allegation as if the writ petitioner owns a house bearing Door No.24, Pillaiyarkovil North Street, Karaikudi. The writ petitioner sent a reply denying such allegation. However, the said reply was not considered and consequently, the sale deed in favour of the writ petitioner was cancelled on 12.06.1998. Followed by such cancellation, within three days, the Society allotted the said plot to the appellant herein. The writ petitioner preferred an arbitration proceedings before the Deputy Registrar of Co-operative Societies. The said official passed an order on 10.09.2003 and set aside the cancellation of the sale deed. The said official has specifically found that the allegation made against the writ petitioner, as though she was owning a house, was not proved. The said order passed by the Deputy Registrar, dated 10.09.2003 was challenged by way of revision before the Registrar of Co-operative Societies, that too, after a delay of nearly four years. It is an admitted fact that in the meantime, the appellant also filed a suit in O.S.No.121 of 2003 against the order of the Deputy Registrar, dated 10.09.2003 and the said suit was dismissed on 01.02.2005.

8. The revision filed before the Registrar of Co-operative Societies, was subsequently dismissed on 22.10.2007. Thereafter, the appellant filed a review application before the same authority, who dismissed the revision. Such review was filed on 01.02.2008 and when the said review was pending before the said authority, the writ petitioner herein, after smelling some foul play on the reason that the said authority namely, the Registrar of Co-operative Societies, who was due to retire soon, would pass some order in favour of the fifth respondent adversely against the interest of the writ petitioner, approached this Court and filed



W.P. (MD) No. 10544 of 2008. It is seen that in the said writ petition, an interim stay was granted on 20.11.2008. However, the Registrar of Co-operative Societies passed an order on 29.10.2008 remanding the matter for fresh adjudication. The said order was put to challenge before this Court in the present writ petition. The learned Judge specifically pointed out that when this Court has granted an interim order of stay on 20.11.2008 and a telegram was also sent to the Registrar of Co-operative Societies on the very same day informing about the stay granted by this Court, the second respondent on the verge of his retirement, seems to have passed the interim order with a malice.

9. We find no reason to take a different view. Further, it is to be noted that only allegation made against the writ petitioner was that he was owning another house while getting such allotment. The authority, who passed the order in the arbitration proceedings, has specifically found that such allegation was not established. When such being the factual finding rendered by the original authority and in the absence of any materials placed before us as well, even as on today, we do not find any justification on the part of the Registrar of Co-operative Societies for remitting the matter for fresh consideration. Moreover, when a sale deed was executed in favour of the writ petitioner, after receiving the entire sale consideration, we do not think such sale deed can be cancelled by the Society, that too, on an allegation, which is not established. Therefore, we find that the order of the learned single Judge in allowing the writ petition does not require any interference.

10. Accordingly, the writ appeal fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government of Tamil Nadu,
Department of Housing,
Fort St. George, Chennai.
2. The Registrar of Co-operative Societies (Housing),
Adayar, Chennai.
3. A 1321 Karaikudi Co-operative House,
Buddhisingh Society, Church 3rd street,
Near Singar Hotel,
Karaikudi, Sivagangai District.



4. The Deputy Registrar,
(Housing) Co-operative Societies,
Maninagaram, Virudhunagar.

WEB COPY

+ 1 cc TO Mr.G.Prabhu Rajadurai , Advocate in SR No. 61954
+ 1 cc TO Mr.T.Antony Arulraj , Advocate in SR No. 62023

raj2

AE/SV MMS/SAR3/15.05.2018/5P/7C

W.A[MD] .No.1142 of 2016
17.04.2018