



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated :20.09.2018

CORAM

WEB COPY

**THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

W.A.(MD)No.1259 of 2018 and
C.M.P(MD)No.8815 of 2018

P.Tamilarasi .. Appellant/4th respondent

vs.

1. The Registrar of Co-operative Societies(Housing),
Chennai.
2. The Deputy Registrar of Co-operative Societies(Housing),
Virudhunagar Region, Virudhunagar District.
3. The Special Officer,
MDAHSG - 45, Tamilnadu Government Employees
Co-operative Housing Society,
Karaikudi,
Sivagangai District.

.. 1st to 3rd respondents/
1st to 3rd respondents

4. N.Vijayalakshmi .. 4th respondent/petitioner

Prayer : Writ Appeal filed under Clause 15 of Letters Patent,
against the order dated 13.08.2014 passed in W.P(MD)No.2709 of 2013.

Prayer in WP(MD)No.2709/ 2013 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court to issue a Writ of
Mandamus, directing the 3rd Respondent to implement the orders
issued by the 2nd respondent tribunal vide its Judgment in case No.
6/2005-2006 dated 30.11.2006 in respect of House Site NO. C-264 to
an extent of 5.33 Cents situated in Survey No. 241/2, Kalanivasal,
Karaikudi in Sivagangai District.

For Appellant
For R-1 to R-3

: Mr.Jeyakarthik
: Mrs.J.Padmavathi Devi,
Special Government Pleader
: Mr.D.Sasikumar

**JUDGMENT**

**[Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA, J.]**

This writ appeal is filed challenging the order passed in W.P (MD) No. 2709 of 2013, dated 13.08.2014.

2. This is a peculiar case where the rival claimants are playing hide and seek.

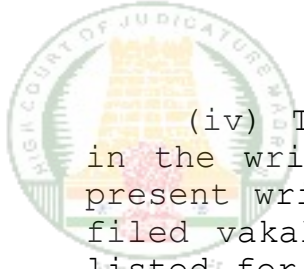
3. The fourth respondent in the writ petition is the appellant herein. The writ petition was filed to implement the orders issued by the second respondent on 30.11.2006.

4. The brief facts of the case are as follows:

(i) The writ petitioner one Vijayalakshmi was a Child Development Officer in the Social Welfare Department and retired from service on 31.05.2012. While she was in service, she was a member of the third respondent society and she was allotted with a house site measuring 5.33 cents on 25.11.1985. Pursuant to the said allotment, after payment of the sale consideration, the third respondent society also executed a sale deed in favour of the writ petitioner on 08.01.1986 and the writ petitioner had been in possession of the same from the date of sale. While so, the third respondent society unilaterally cancelled the sale deed dated 08.01.1986 and sold it again in favour of the fourth respondent, who is the appellant herein on 26.07.1994. Once the property is sold, there cannot be any unilateral cancellation and the third respondent could not have any right to sell the property. Therefore, the writ petitioner raised a dispute under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983 (in short 'the Act'). The second respondent allowed the petition filed by the writ petitioner on 30.11.2006 and upheld the sale deed dated 08.01.1986.

(ii) Aggrieved by the same, the appellant filed W.P(MD) No. 5238 of 2007 before this Court without resorting to the appeal remedy. Hence, the writ petition was dismissed on 15.11.2011. Aggrieved by the same, a writ appeal was preferred in W.A(MD) No. 101 of 2012. While disposing of the said writ appeal, the Division Bench had granted permission to the appellant herein to file a revision before the revisional authority under Section 152 of the Act.

(iii) In the present writ petition, it was stated before the learned single Judge that the fourth respondent in the writ petition, namely, the appellant herein did not prefer any revision before the authority under Section 152 of the Act. Based on such representation, this Court had directed the third respondent to implement the orders passed by the second respondent in case No. 6/2005-2006 dated 30.11.2006 in respect of house site no. C-264 to an extent of 5.33 cents situated in Survey No. 241/2 Kalanivasal, Karaikudi in Sivagangai District.



(iv) The writ appellant, who was arrayed as fourth respondent in the writ petition states that he had entered appearance in the present writ petition through her counsel and her counsel had also filed vakalat in USR.12228 of 2013. However, when the matter was listed for hearing, the name of the learned counsel for the fourth respondent was not printed in the cause-list. Hence, there was no appearance on behalf of the fourth respondent / appellant.

(v) As stated earlier, based on the representation made by the writ petitioner / fourth respondent that there was no revision preferred by the appellant herein as directed by the Division Bench in W.A(MD)No.101 of 2012, the writ petition was allowed.

5. Aggrieved by the said order, the appellant / fourth respondent has filed the present writ appeal.

6. The learned counsel appearing for the appellant / fourth respondent contended that pursuant to the order of the Division Bench and the direction to file a revision before the authorities, the appellant / fourth respondent had preferred a revision and an order dated 18.11.2012 was passed setting aside the order dated 30.11.2006 passed in dispute no.06/2005-06, which was directed to be implemented by this Court in the present writ petition.

7. However, the learned counsel appearing for the fourth respondent contended that though the fourth respondent herein, who was a writ petitioner was arrayed as a party in the revision petition as third respondent, there was no notice served on her in the revision and the reason is said to be that she had shifted from Sirkazhi to Kulithalai.

8. We have heard the submissions made on either side and perused the materials available on record.

9. Though the order in the revision was passed even as early as on 18.11.2012, the present writ petition was filed only in the year 2013. Before filing the said writ petition, the petitioner could have verified with the authorities as to whether any revision petition as directed by the Division Bench was filed. Even without such verification, the fourth respondent had rushed to this Court to get the order implemented. In the meanwhile, the revisional authority had set aside the order, which was directed to be implemented by this Court.

10. It is the contention of the appellant that she was not served with notice in the writ petition whereas it is the allegation of the fourth respondent herein that she was not issued with notice in the revision petition filed before the revisional authority.

11. The question that now arises for consideration is that whether the third respondent has the right to cancel the sale deed dated 08.11.1986 unilaterally. As both the appellant as well as the

fourth respondent have got an order each in their favour, we are of the considered view that the order passed in W.P(MD)No.2709 of 2013 dated 13.08.2014 and the order passed on 18.11.2012 in ப.க.நா.2129/2012/ச.ப.1, have to be set aside.

12. Accordingly, the above said two orders are set aside and the matter is remitted back to the Registrar of Co-operative Societies (Housing) Chennai, for fresh consideration of the claims of the appellant as well as the fourth respondent after giving them notice and opportunity of being heard personally before the orders could be passed. The appellant as well as the fourth respondent are directed to appear before the revisional authority and put forth their submissions. The said exercise should be completed within a period of six weeks from the date of receipt of a copy of this order.

13. With the above direction, the writ appeal is disposed of. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar (CS-IV)

To:

1. The Registrar of Co-operative Societies(Housing), Chennai.
2. The Deputy Registrar of Co-operative Societies(Housing), Virudhunagar Region, Virudhunagar District.
3. The Special Officer,
MDAHSG - 45, Tamilnadu Government Employees
Co-operative Housing Society,
Karaikudi, Sivagangai District.

- + 1 CC TO Mr.D.SASIKUMAR, ADVOCATE IN SR No. 85978
- + 1 CC TO Mr.M.S.JEYAKARTHIK, ADVOCATE IN SR No. 85857
- + 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 86220

PM

TE/RP/SAR-4 : 08/11/2018 : 4P/7C

Judgment made in
W.A.(MD)No.1259 of 2018
20.09.2018