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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2019

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THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.10819 of 2011

Thiru F.X.Fernando

... Petitioner

Vs

1.The Registrar of Co-operative Societies (Housing),
Tamil Nadu State Housing Board Building,
1585, Anna Salai,
Nandanam, Chennai 600 035.

2.The Special Officer,
Tamil Nadu Area Defence Officer's
Cooperative Housing Society Ltd.,
Defence Colony,
Chennai 600 032.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, directing the respondents to admit as Associate member of the second respondent Society and re-allot Plot No.83-A, Defence Officers' Colony, Chennai-97.

For Petitioner : Mr.N.Poovanalingam for
Mrs.S.Hemalatha

For Respondents: Mr.L.P.Shanmuga Sundaram,
Special Government Pleader for R1

: Mr.T.Mohan for R2

O R D E R

The present writ petition has been filed to direct the respondents to admit the petitioner as Associate member of the second respondent Society and re-allot Plot No.83-A, Defence Officers' Colony, Chennai-97.

2. The petitioner was admitted as a member of the second respondent Society on 04.04.1995. After being admitted as a



member, he was allotted Plot No.88-A in the Defence Officers' Co-operative Housing Society Ltd., Chennai-97 and was directed to remit two lakhs towards the cost of the plot. It appears that the petitioner had remitted the amount in two installments on 15.12.1995 and 30.12.1995. Despite the payment in full, the second respondent did not come forward to execute the sale deed in favour of the petitioner.

3. In the above circumstances, the petitioner raised an arbitration dispute under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983, before the Deputy Registrar of Co-operative Societies (Housing), Chennai Region in ARC No.16/96-97 and an award was passed on 17.10.1996, directing the second respondent to permit construction of house by the petitioner and also grant conveyance. As against the above said order, a revision petition was filed by the second respondent before the Registrar of Co-operative Societies (Housing), Chennai, under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983.

4. The first respondent revisional authority upheld the order of the Arbitrator in R.C.No.479/97/C2 dated 15.10.1997. Against the order passed in the revision, the second respondent Society had filed a writ petition in W.P.No.16464 of 1997 and the writ petition was allowed by the learned Single Judge of this Court on 31.08.2006, stating that according to the Full Bench of this Court, the Special Officer did not have power to admit the petitioner as a member of the Society and much less being allotted housing plot. A writ appeal was preferred by the petitioner herein in W.A.No.18 of 2007 and it was dismissed by the Hon'ble Division Bench of this Court on 10.01.2007. Against which, a Special Leave Petition has been filed and the same was also dismissed on 12.07.2007.

5. In view of the above development, the second respondent Society cancelled the allotment and re-funded the sum of Rs.1,95,000/- by cheque dated 06.04.2009. It appears that the cheque had also been encashed by the petitioner. Now, the petitioner is before this Court for issue of writ of mandamus, in view of the subsequent clarification letter issued on 24.11.2006, wherein, the Government of Tamil Nadu, clarified that the Special Officer is empowered to enroll an associate member in a Cooperative Society or Cooperative Bank. When the petitioner was enrolled as a member of the Society in 1995, he was working as Assistant Registrar of the Co-operative Societies. Now, he is retired and seeking for re-allotment of the plot in his favour by admitting him as a member once again.

6. In response to the writ petition, a counter affidavit has been filed by the second respondent resisting the claim of the



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petitioner, stating that there are no plots available for re-allotment and in any case, now, the petitioner having retired from service, cannot seek for re-admission as a member of the second respondent Society. According to the counter affidavit, in the absence of plots for allotment, no one could be admitted as a member of the Co-operative Housing Society and for this purpose, there is no distinction between the regular membership and associate membership. It is also stated in the counter affidavit that when the original allotment granted in favour of the petitioner was held to be illegal by this Court, the petitioner cannot be allowed to claim for re-allotment at this distance of time. According to the second respondent, when the matter has attained finality, it is not open to the petitioner to re-open the same.

7. This Court is entirely in agreement with the submission made on behalf of the second respondent that once the original allotment was held to be illegal by this Court which was confirmed by the Hon'ble Supreme Court of India, it is not open to the petitioner to come back to this Court by filing a writ of mandamus, seeking direction to the second respondent to grant him housing plot once again. Even otherwise, as per the averments contained in the counter affidavit filed by the second respondent, there are no plots available and therefore, the question of admitting the petitioner as a member of the second respondent Society would not arise at present.

8. As contented by the learned counsel for the second respondent that once the matter in respect of the allotment of the plot to the petitioner has attained finality by the orders of the Court, the petitioner cannot be allowed to re-open the same by entertaining the present writ petition at this distance of time. Even at the time when the writ petition was filed, the petitioner was 69 years old and therefore, there cannot be any consideration of his claim for re-allotment after several years. Moreover, in the absence of availability of plots for allotment, the question of consideration of the petitioner's claim presently has no meaning at all.

9. For the above said reasons, this Court does not find any merit in the writ petition and hence, the same is dismissed. No costs.

gsk

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar



To

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2.The Special Officer,
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+1cc to the Govt.Pleader, Vide Sr.No.20986

W.P.No.10819 of 2011

Kak(23/04/2019)