

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.15852 of 2010

E.Chandrasekaran

.. Petitioner

-vs-

1. The Sale Officer
Registrar of the District &
Regional Deputy Registrar Housing
Vellore Region, Vellore

2. The Special Officer
Vaniyambadi Co-operative Housing Society
Vaniyambadi, Vellore District

..Respondents

Petition under Article 226 of the Constitution of India, praying to issue a Writ of Declaration, declaring that the sale conducted on 29.08.2002 by the first respondent and the consequential sale certificate in form 10 in CEP No.110/99-2000 dated 28.4.2004 issued in favour of the second respondent in respect of the property is non est in law and not binding on the petitioner.

For Petitioner :: Mr.V.Balaji

For Respondents :: Mr.L.P.Shanmugasundaram

Special Government Pleader
for R1

Mr.L.S.M.Hasan Fizal for R2

ORDER

Mr.E.Chandrasekaran, S/o late Ethiraj has come to this Court with a peculiar prayer for issuance of a writ of declaration, declaring that the sale conducted eight years prior to the filing of the writ petition, namely, on 29.08.2002 by the Sale Officer, Registrar of the District & Regional Deputy Registrar (Housing), Vellore Region, the first respondent herein and the consequential sale certificate in form 10 in CEP No.110/99-2000 dated 28.4.2004 issued in favour of the Special Officer, Vaniyambadi Cooperative Housing Society, Vaniyambadi, the second respondent herein in respect of the property is non est in law and not binding on the petitioner.

2. It has been averred in the affidavit that the petitioner's father Ethiraj (late) was a member of the second respondent society. Since his father availed financial assistance from the second respondent in loan account no.205 for constructing a house, due to unforeseen circumstances, his late father defaulted in the repayment of the installments due in respect of the loan. Therefore, arbitration proceedings were initiated in ARC No.527 of 1994/95 and an ex parte award dated 23.10.98 for recovery of a sum of Rs.1,25,436.30p against the late father was passed. As the copy of the award was not communicated, the petitioner had remitted a sum of Rs.80,000/- towards the loan account no.205. Thereafter, the second respondent initiated execution proceedings in CEP No.110/99-2000 before the first respondent seeking to sell the property that stood in the name of the petitioner's late father in a public auction. Although no bidder took part in the auction held on 18.4.2000, one another auction was conducted on 10.4.2002. Again no bidder took part in the auction. Finally, by way of set off, the second respondent society paid the debt of Rs.96,850/-. The C-2613 Vaniyambadi Cooperative Housing Society Limited also passed a resolution dated 27.1.2003 ratifying the action by the Secretary of the society seeking to confirm the auction in favour of the second respondent society. Thereafter, the society paid the bondage cost of Rs.4843/- in the revenue deposit account in State Bank of India, Vaniyambadi branch on 12.9.2002 and the sale was also confirmed in favour of the second respondent society. The certificate of sale dated 28.4.2004 was issued under Rule 129(3) of the Tamil Nadu Cooperative Societies Rules, 1988, which was also registered as Document No.3900 of 2004 on the file of the Sub Registrar, Vaniyambadi. But the learned counsel for the petitioner submitted that there was no proclamation of sale published in the locality as required under the rules. Therefore, the first respondent, without ascertaining whether the mandatory requirements under the Act and the Rules had been complied with, ought not to have proceeded to sell the property of a dead person.

3. In the meanwhile, a family arrangement was arrived at, whereby the property bearing Door No.930-931, Bajanai Koil Street, Amburpettai, Vaniyambadi Taluk comprised in T.S.No.568 Ward C, Block 24, Survey Nos.97 & 115 having an extent of 1536 sq.ft., together with the superstructure, had been settled in favour of the petitioner by a registered document bearing No.788 of 2009 on the file of the Sub Registrar, Vaniyambadi and this petitioner has become the absolute owner of the property by virtue of the settlement deed. Thereafter, when the petitioner applied for encumbrance certificate, to his shock and surprise, he found that the sale certificate dated 28.4.2004 in favour of the second respondent was made in the encumbrance certificate.

Accordingly, he submitted a representation to the Registrar (Housing), Chennai bringing to his notice the various lapses that had taken place while conducting the sale of his father's property. Thereafter, he had also applied under the Right to Information Act and a reply was also furnished on 4.6.2010 giving the particulars of the sale transaction. As per the reply given to the petitioner under the Right to Information Act, the petitioner was able to see that the sale conducted by the first respondent was highly irregular and illegal. Therefore, a detailed representation has been made on 15.6.2010 to the respondents bringing to their notice the various lapses and irregularities in the conduct of the sale. But, till date, the representation given by the petitioner has not been answered. Hence, the petitioner has come to this Court with a prayer to hold the sale conducted on 29.8.2002 and the sale certificate issued on 28.4.2004 in favour of the second respondent are non est in the eye of law and liable to be set aside.

4. A detailed counter affidavit has been filed by the respondents. Mr.L.S.M.Hasan Fizal, learned counsel for the second respondent submitted that when the petitioner's father late Ethiraj Naidu availed a housing loan of Rs.35,000/- in A/c No.205 on 30.6.83 for construction of house in the plot bearing Door Nos.930 & 931, Bajanai Koil Street, Amburpettai, Vaniyambadi Town with a condition that the said loan account should be repaid in equated monthly installments of Rs.532.96 together with interest at the rate of 13.75% per annum in 15 years and on his failure to pay the EMIs within the stipulated period, he also executed a supplementary equitable mortgage deed dated 16.8.93, which has been registered as Document No.1871 of 1983 on the file of the Sub Registrar, Vaniyambadi in favour of the society. Therefore, the second respondent demanded the repayment of the entire loan together with the accrued interest thereon. But the petitioner's father, being a debtor, had not even bothered to repay the outstanding debt. Surprisingly, he filed O.S.No.617 of 1985 on the file of the District Munsif Court, Tirupattur against the President of the second respondent society and against Mr.Jayaraman, Cooperative Sub Registrar, Vaniyambadi praying for a mandatory injunction against the defendants. But the suit was dismissed on 19.11.90. Aggrieved thereby, A.S.No.45 of 1990 was also filed by the petitioner's father late M.Ethiraj on the file of the Sub Court, Tirupattur. That was also dismissed by the fair and decretal order dated 19.9.96 with costs. Thereafter, no further appeal was filed.

5. In the meanwhile, the society was constrained to initiate arbitration proceedings before the Arbitrator/Cooperative Sub Registrar in A.R.C.No.527/94-95 and in spite of notice issued, the borrowers did not appear, as a result the Arbitrator passed an award on 23.10.98 in A.R.C.No.527/94-95 for recovery of

Rs.1,25,436.30p together with interest at the rate of 15.6% per annum from 24.10.98 till the date of repayment in full and thereafter, the petitioner representing his father late M.Ethiraj as power agent, filed C.T.A.No.2 of 1999 on the file of the Cooperative Tribunal cum Principal District Court, Vellore challenging the correctness of the arbitration award dated 23.10.98 made in A.R.C.No.527/94-95 and the petitioner also filed I.A.No.1 of 1999 in C.T.A.No.2 of 1999 seeking leave of the Court to represent his father, as his power agent and the society also filed their counter affidavit denying the allegations of the petitioner. Finally, the Cooperative Tribunal cum Principal District Court, Vellore dismissed the appeal as not pressed by the petitioner herein. Therefore, when the award passed in A.R.C.No.527/94-95 dated 23.10.98 has become final, as the petitioner withdrew the appeal after questioning the correctness of the award, he has no locus standi to come to this Court.

6. I also agree with the submissions made by the learned counsel for the second respondent. When the arbitration proceedings were initiated in A.R.C.No.527/94-95 for recovery of Rs.1,25,436.30p together with interest at the rate of 15.6% per annum from 24.10.98 till the date of repayment in full, the petitioner has filed C.T.A.No.2 of 1999 on the file of the Cooperative Tribunal cum Principal District Court, Vellore. He has also moved I.A.No.2 of 1999 seeking the leave of the Court to represent his father, as his power agent. However, as the appeal was sought to be not pressed by the petitioner himself, the Cooperative Tribunal cum Principal District Court, Vellore dismissed the appeal by order dated 28.6.99. Therefore, when the petitioner, having chosen to challenge the correctness of the award passed in A.R.C.No.527/94-95, for the reasons best known to him, has not even pursued the matter and on his own withdrew from the challenge, he has no locus standi to come to this Court seeking a wide prayer for issuance of a writ of declaration declaring the sale conducted on 29.8.2002 and the sale certificate dated 28.4.2004 issued in favour of the second respondent as non est in the eye of law, that too, after six years from the date of issuance of the sale certificate. Therefore, the writ petition fails and it is dismissed. Consequently, M.P.No.1 of 2010 is also dismissed. No costs.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

SS

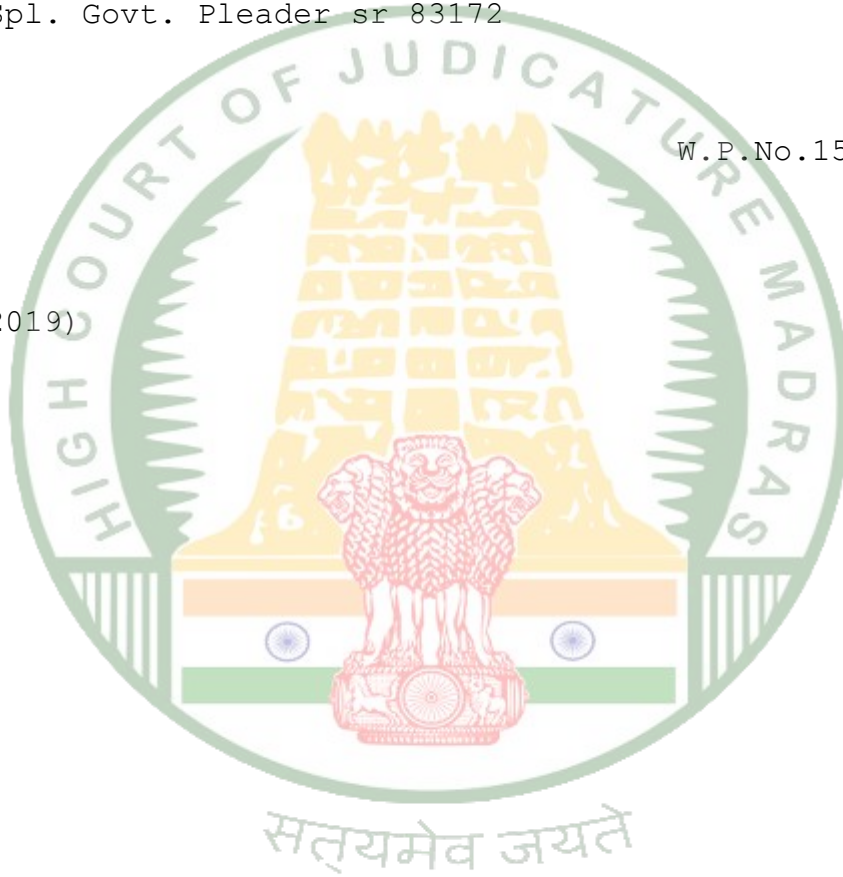
To

1. The Sale Officer
Registrar of the District &
Regional Deputy Registrar Housing
Vellore Region, Vellore
2. The Special Officer
Vaniyambadi Co-operative Housing Society
Vaniyambadi, Vellore District

+1 CC to Spl. Govt. Pleader sr 83172

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RJI (CO)
SP(06/11/2019)



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