

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.23817 of 2010

K.Somasundaram

.. Petitioner

vs.

1.M.Chidambaram

2.The Special Officer,
M.D.A./H.S.G.45, Tamil Nadu Government
Officials Co-operative Housing Society Limited,
25, Police Colony Main Road,
Sekkalai, Karaikudi.

3. The Deputy Registrar (Housing),
Virudhunagar Region,
Virudhunagar.

4. The Registrar,
Co-operative Societies (Housing),
4th Main Road, Gandhi Nagar,
Adyar, Chennai-600 020.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records relating to the order R.C.No.7820/2007 SFI dated 20th September, 2010 passed by the 4th respondent and quash the same and consequently, direct the 2nd respondent Society to cancel the Sale Deed dated 02 September, 1996 executed in favour of the 1st respondent and all other deeds executed subsequent to Sale Deed dated 18 December 1985 executed in favour of the petitioner and further, direct the 1st respondent to hand over the physical possession of the Plot A.13 in Kalanivasal Village, Karaikudi to the petitioner after removing the superstructure put up by the 1st respondent.

For Petitioner : Mr.S.J.Jagadev

For 1st respondent : Mr.K.Balajee

For Respondents : Mrs.T.Girija,
2 to 4 Government Advocate

ORDER

Challenging the order in R.C.No.7820/2007 SFI dated 20th September, 2010 passed by the 4th respondent and quash the same and for consequential direction, directing the 2nd respondent Society to cancel the Sale Deed dated 02 September, 1996 executed in favour of the 1st respondent and all other deeds executed subsequent to Sale Deed dated 18 December 1985 in favour of the petitioner with a further direction, directing the 1st respondent to hand over the physical possession of the Plot A.13 in Kalanivasal Village, Karaikudi to the petitioner after removing the superstructure put up by him, the present Writ Petition has been filed.

2. Learned Counsel appearing for the petitioner submitted that the petitioner was allotted a House site bearing Plot No.A-13 measuring an extent of 4304 sq.ft. in Survey No.241/4, Kalanivasal Village, Karaikudi by the 2nd respondent which has been liquidated in the year 2010, taken over by the 3rd respondent herein, namely, the Deputy Registrar (Housing), Virudhunagar Region, Virudhunagar, subject to the following conditions:

- (a) Allottee should not sell the house site to anybody else;
- (b) House should be built within two years;
- (c) If the allottee does not require the house site, he should return the House site to the Society; and
- (d) The allottee should abide by the rules of the Society.

After the Allotment order dated 02.09.1996, a Sale Deed in respect of the allotted plot was also executed by the 2nd respondent in favour of the petitioner on 18.12.1985 for a sale consideration of Rs.988/- and the same was registered as Document No.2135 of 1985 before the Joint Sub-Registrar II, Karaikudi. Since the petitioner has not commenced the construction and completed the same within two years and even after ten years, indefinitely, the petitioner has kept the plot vacant without commencing construction of a building as agreed in the sale deed, a notice was sent by the 2nd respondent by Registered Post to the petitioner insisting the construction of the house in the plot allotted to him. But the said registered post was returned with a postal remark that 'no such addressee'.

3. The learned Counsel for the petitioner further submitted that again, the 2nd respondent issued a Notification in the Dhina Thanthi Daily on 07.04.1983, cautioning the allottee to complete the construction of the house within a month from the date of the issuance of the said notice. Finding no

response, the 2nd respondent has cancelled the Sale Deed vide his Resolution dated 22.04.1994 and subsequently, the 2nd respondent has reallocated the said plot to some other eligible member. Aggrieved by the re-allotment, the petitioner has filed an appeal under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983 before the 3rd respondent. The 3rd respondent finding that there was no any reason cited and no notice was given to the petitioner before cancellation of the allotment order allowed the appeal on 21.08.2007. As against that, when the 1st respondent filed Review Petition No.7820/2007 before the 4th respondent, the same was allowed, setting aside the order passed by the 3rd respondent herein. Aggrieved thereby the petitioner has come to this Court by filing the present Writ Petition taking a stand that when the Special Officer/the 2nd respondent herein has filed a detailed counter before the 3rd respondent in the appeal proceedings, accepting the case of the petitioner that the order of cancellation of the plot No.A13 was not properly passed, the revision petition ought not to have been allowed by the Registrar of Co-operative Societies, the 4th respondent herein.

4. Continuing his argument, the learned Counsel for the petitioner also submitted that the petitioner is a Government Servant. Therefore, after the order of allotment allotting the Plot A-13 was made in the year 1985 with the condition that he should not keep the said plot vacant indefinitely and he should also commence the construction within two years, he was unable to continue the same in view of the official transfer orders transferring the petitioner from one place to another place. Therefore, for not complying with one of the conditions that he should commence the construction within two years cannot be found fault with. Further, the learned Counsel contended that when the Special Officer/2nd respondent also in his counter affidavit filed before the 3rd respondent in the appeal proceedings has supported the case of the petitioner that the order of allotment was cancelled without giving any opportunity of hearing to the petitioner, the stand given by the Special Officer cannot be overlooked by the Registrar, the 4th respondent herein. In support of his submission, the learned Counsel for the petitioner has also placed reliance on a Full Bench Decision of this Court in *Latif Estate Line India Limited rep. by its Managing Director Mr.Habib Abdul Latif, No.14, Temple Road, Secretariat Colony, Kilpauk, Chennai-10 vs. Hadeeja Ammal and 3 others* reported in 2011(2) CTC 1 wherein it has been held that no sale deed can be unilaterally cancelled. He has also referred to Article 59 of the Limitation Act and stated that the order of cancellation taking place after 3 years is also not legally maintainable. For all these reasons, according to the

learned Counsel for the petitioner, the Writ Petition is liable to be allowed.

5. A detailed counter affidavit has been filed by both the 1st and the 2nd respondent.

6. Learned Counsel appearing for the 1st respondent submitted that the petitioner got the allotment of the site as well as the Sale Deed only on the basis of the conditions imposed therein. When the conditions have been imposed in the Sale Deed/Allotment Order, it is for the allottee to carry out such conditions, failing which the allottee has to face the consequences which being the cancellation of the sale deed/allotment. In support of his contention, he has also relied on a decision of a Division Bench of this Court in W.A. (MD) No.1342 of 2018 dated 27.03.2019 (S.Maruthan vs. The Registrar of Co-operative Societies (Housing), No.22, 4th Main Road, Gandhi Nagar, Adyar, Chennai-20 and 3 others).

7. Learned Government Advocate appearing for the respondents 2 to 4 supporting the impugned order stated that when the petitioner was indeed allotted a plot bearing No.13-A by the 2nd respondent vide Order dated 23.6.1985, a Sale Deed in respect of the allotted plot was also executed by the 2nd respondent in favour of the petitioner on 18.12.1985 for a sale consideration of Rs.988/- and the same was registered as Document No.2135 of 1985 on the file of the Joint Sub-Registrar II, Karaikudi. The said Sale Deed was executed subject to the following conditions:

a. The purchaser shall not be entitled to sell, assign or mortgage or in any way charge, encumber or part with the possession of the said plot without the previous approval in writing of the vendor for a period of ten years from the date of the sale deed;

b. The purchaser shall not keep the said plot vacant indefinitely and the purchaser shall commence construction of a building for which purpose the said plot is allotted within two years from the date of execution of the sale deed; and

c. The said plot shall not be put to any use except as residential quarters for bonafide residential use except with the consent in writing of the Vendor.

While so, the petitioner being the allottee of the said plot had deliberately failed to comply with the above conditions and no construction was raised by him within the stipulated period of two years as agreed in the sale deed. Therefore, the 2nd respondent was empowered to cancel the sale deed since the allottee had failed to comply with the conditions stipulated.

Accordingly, the 2nd respondent sent a notice to the petitioner by Registered Post insisting the construction of the house in the plot allotted to him. But the said registered post was returned with the postal remark that 'no such addressee'. Therefore, the 2nd respondent has also issued a Notification in the Thina Thanthi Daily on 07.04.1983 cautioning the petitioner to complete the construction of the houses within a month from the date of issuance of the notice indicating clearly that if the petitioner failed to comply with the notice, then, the allotment of the plot would stand cancelled. Even after the notice, the petitioner has not come forward to comply with the directions of the 2nd respondent Society. Therefore, the 2nd respondent was constrained to cancel the sale deed vide his Resolution dated 22.04.1994.

8. The learned Government Advocate appearing for the respondents further stated that the sole ground taken by the petitioner that after the petitioner was issued with the allotment order by the Special Officer on 23.06.1985, the said allotment order and also the sale deed executed in his favour on 18.12.1985 cannot be cancelled without notice is untenable and unacceptable for the simple reason that several notices have been issued to the petitioner before cancellation. A notice was issued by the 2nd respondent to the petitioner by insisting upon him to construct the house in the plot allotted to him, but there was no response. Of course the notice sent through Registered Post was returned with a Postal endorsement that 'no such addressee'. Therefore, the 2nd respondent has issued the Paper Publication in Thina Thanthi Daily on 07.04.1983. After that also, the petitioner has kept quite. Hence, the 2nd respondent has rightly cancelled the sale deed by passing a Resolution dated 22.04.1994 and it was further resolved by the 2nd respondent to reallocate the plot to some other eligible member. Accordingly, the same plot was reallocated to one Mr.B.Sangaralingam, another member of the Society by passing another resolution. Since the said Mr.B.Sangaralingam had expressively admitted that he could not construct a house in the allotted plot, pursuant to his request, the same plot No.A-13 which was originally allotted to the petitioner was reallocated to one Mr.M.Chidambaram, the 1st respondent herein by a Resolution dated 02.09.1996 and a Sale Deed was also executed on the same day. Therefore, the present Writ Petition is liable to be dismissed.

9. I fully agree with the submissions made by the learned Government Advocate appearing for the respondents 2 to 4. The reason being that when the petitioner has come to this Court taking a stand that he was not put on notice before the sale

deed was cancelled, it has been demonstrated by the 2nd respondent in the counter affidavit that not only once, twice the petitioner was informed to comply with one of the conditions mentioned in the sale deed. That apart, when a notice was sent to the petitioner by registered post calling upon him to commence the construction as per the conditions mentioned in the sale deed, the said notice was returned with a postal remark that 'no such addressee'. Therefore, the 2nd respondent had issued a Paper Publication in Daily Thanthi on 07.04.1983, cautioning the petitioner to complete the construction of the houses within a month from the date of the issuance of the notice. But the petitioner has not come forward to carry on the instructions received, as a result, one of the conditions, namely to commence the construction within two years from the date of execution of the sale deed has not been complied with.

10. That apart, as per the order passed by the Division Bench of this Court in W.A. (MD) No.1342 of 2018 dated 27.03.2019 (S.Maruthan vs. The Registrar of Co-operative Societies (Housing), No.22, 4th Main Road, Gandhi Nagar, Adyar, Chennai-20 and 3 others) placed by the learned Counsel for the 1st respondent, when no construction was put up by the petitioner as per the condition of allotment order and the bye law of the Society, even if the petitioner is not issued with any notice before cancellation, no purpose is going to be served, as it is only an empty formality. Therefore, while following the order passed by the Division Bench of this Court, accepting the case of the 2nd respondent that before cancellation of the sale deed, the petitioner was issued with notice for which there was no any response, this Court is of the view that the cancellation of the sale deed has been rightly done. Hence, this Court finds no merit in the writ petition.

11. In the result, the Writ Petition fails and the same is accordingly dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

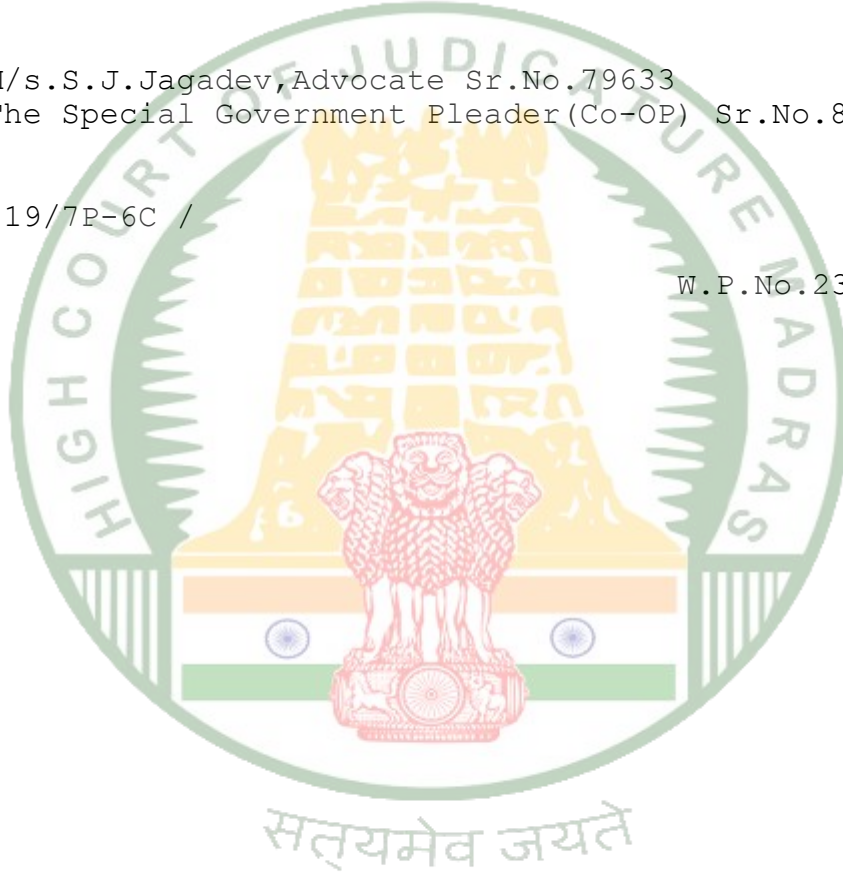
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+1 cc to M/s.S.J.Jagadev, Advocate Sr.No.79633
+1 cc to The Special Government Pleader (Co-OP) Sr.No.80773

AKM/12.11.19/7P-6C /

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