

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.10.2019

PRONOUNCED ON : 31.10.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.12596 of 2019

Mr.Rajkumar Andrew

Rep. By his P.O.A Mr.Godfrey Rajkumar

... Petitioner

Vs

1.The Secretary to the Government
Housing and Urban Development Department,
Fort St. George,
Chennai - 600 009.

2.The Registrar Co-operative Society (Housing),
No.50, Ritherdon Road,
Vepery, Chennai - 600 007.

3.The Deputy Registrar Co-operative
Society (Housing),
No.18, Ramanathan Street,
T.Nagar, Chennai - 600 017.

4.The Co-operative Sub Registrar/
Liquidator,
No.18, Ramanathan Street,
T.Nagar, Chennai - 600 017.

5.Mr.P.Mahadevan

6.Mr.V.Guru Devan

... Respondents

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of mandamus to direct the respondents 1 to 4 to conduct enquiry on the last representation of the petitioner dated 29.10.2017 and submit its report in the matter of registration of Plot No.94 of Pallava Garden Layout, situated at S.No.80/4 & 80/5 of Zamin Pallavaram Village, Pallavaram Taluk, Kanchipuram District, in the name of the petitioner within the time period stipulated by this Court.

For Petitioner :Mr.C.Justeen
For 1st Respondent :Mr.L.P.Shanmugasundaram,
Special Government Pleader
For Respondents 2 to 4 : Ms.T.Girija, Government Advocate
For 5th Respondent : Mr.S.P.Sudalaiyandi
For 6th Respondent :Mr.S.Ramesh

ORDER

While the petitioner serving in the Highways Department as Assistant Engineer, was allotted a residential plot of 2200 sq.ft extent at Plot No. 9, Pallava Garden Layout promoted by The Highways and Rural Works Department Employee's Co-operative House Site Society Ltd. The cost of the plot Rs.4,400/- was paid by the petitioner during the years 1982-1993. As per the letter of allotment, sale agreement was signed between the petitioner and the Highways and Rural Works Department Employee's Co-operative House Site Society Ltd on 19/11/1993. Due to frequent transfers to different places, the petitioner could not construct house in the site till his retirement in the year 2005. Thereafter, he decided to construct house so, he contacted the office bearers of the society to get the deed registered. Then, he came to know that the society has become defunct and a liquidator has been appointed.

2.He gave a representation on 20/06/2016 to the Deputy Registrar of Co-operative Society (Housing) and on his direction, the petitioner met the 5th respondent (Mahadevan) and requested him to register the sale deed in his favour. The 5th respondent demanded bribe to register the sale deed, which the petitioner was not ready to give. Hence, the 5th respondent has issued a cancellation notice on 03/04/2017 along with a demand draft for Rs.4,400/- stating that the petitioner has failed to construct house within 3 years from the date of allotment. The sale agreement is valid only for 12 years, whereas, the agreement of allotment was 23 years ago, hence, the petitioner has no right to claim under the said agreement. The money paid by the petitioner was returned by way of a demand draft for Rs 4,400/- drawn in favour of the petitioner enclosed along with the cancellation order.

Aggrieved by the cancellation order and return of money paid, the petitioner brought to the notice of the Deputy Registrar of Co-operative Society (Housing) on 25/04/2017 about the illegal

cancellation of the allotment of plot No.94 also returned back the demand draft. The then Deputy Registrar of Co-operative (Housing) informed him that the 5th respondent Mahadevan was transferred to some other post on 01/02/2017 itself therefore, he is not the person competent to cancel the allotment. The 3rd respondent also informed the Sub-Registrar, Pallavaram through letter dated 25/04/2017 that Thiru.Muthu Kumarasamy has taken charge as Liquidator of the society from 01/02/2017 and only he can perform any registration on behalf of the Housing Society.

3.Then, the petitioner contacted Muthu Kumarasamy/Liquidator and as instructed by him, the petitioner applied for Encumbrance Certificate(EC) for the property to get the property registered in his name. In the EC, he found that the 5th respondent Mahadevan imposing himself as the Co-operative Sub-Registrar / Liquidator of the Society has executed a sale deed dated 11/07/2017 in favour of one V.Guru Devan s/o Valluvan (6th respondent herein). Knowing this illegal transfer, the petitioner gave a complaint to the Secretary to the Government of TamilNadu (Housing and Urban Development Department) on 14/09/2017 regarding the fraud committed by 5th respondent.

4.On 23/09/2017, the Deputy Registrar of Co-operative Society (Housing) has informed the Sub-Registrar, Pallavaram that while Muthu Kumarasamy was the liquidator of the society between 01/02/2017 and 26/07/2017, the sale deed No.7095/2017 dated 11/07/2017 was executed by one Mahadevan as Liquidator of the society in favour of V.Guru Devan, therefore, it is null and void. Hence, requested the Sub-Registrar to cancel the sale deed and stay further registrations of the Plot No. 94 at Pallava Garden.

5.The petitioner in his affidavit has averred that, the recital in the sale deed No.7095/2017 dated 11/07/2017 indicates that the vendee Guru Devan aged 30 years paid an advance amount of Rs.30,000/- on 14/09/2009 to the High ways and Rural works Department Employee's Co-operative Society Ltd . This means, Thiru.Guru Devan at the age of 22 years was an employee of High Ways Department. The society could not and should not have received advance from Thiru.Guru Devan on 14/09/2009 for the plot allotted to the petitioner when the allotment made to the petitioner was cancelled by Mahadevan only on 03/04/2017.

6.Alleging that there was no communication of cancelling the allotment prior to 03/04/2017 and the Society itself was

declared defunct and liquidated on 09/06/2010, the sale deed executed by Mahadevan in favour of Guru Devan with inconsistent recital is a fraudulent document created to grab the land of the petitioner. In this regard, the petitioner gave a complaint to the Inspector General of Registration on 28/09/2017. In spite of his complaint and direction of the Deputy Registrar of Co-operative Society (Housing) dated 23/09/2017 requesting the Sub Registrar, Pallavaram not to create any transfer in respect of plot No. 94, and the attachment order dated 26/09/2017, a power of attorney deed dated 11/10/2017 was executed by V.Guru Devan in favour of P.Gopal .

7.The petitioner therefore, has filed a suit before the Additional District Munsif Court, Alandur in O.S. No.494 of 2017 to set aside the sale deed Document No.7095/2017 dated 11/07/2017 and the POA deed dated 11/10/2017 as null and void. The 5th respondent has filed an Interlocutory Application under Order VII Rule 11 C.P.C., to reject the plaint and the same is pending.

8.Narrating the events, the petitioner has given a representation on 29/10/2017 to conduct enquiry regarding the above issue and take necessary action against the 5th respondent/ Mahadevan and others for the illegal act. On receipt of this complaint and follow up reminder, the first respondent vide his letter dated 04/01/2017 has directed the second respondent to take action immediately but, till date, no action has been taken. Hence, the petitioner seeks mandamus to direct the respondents 1 to 4 to conduct enquiry on his representation dated 29/10/2017 and submit report in the matter of registering the plot No.94, Pallavar Garden layout, Zamin Pallavaram Village in the name of the petitioner.

9.The 3rd respondent, in his counter has stated that the writ petition is not maintainable. The petitioner has resorted remedy before the Civil Court. If at all he want to pursue his grievance under the Tamil Nadu Co-operative Societies Act (hereinafter referred to as "the Act"), he has to file Revision Petition before the Registrar Co-Operative Society (Housing). However, the third respondent admits that the petitioner was Assistant Engineer in the Highways Department during the year 1972 and he was allotted plot No.94, Pallava Garden. A sum of Rs.4,400/- paid by the petitioner towards deposit and it was not the price of the plot. The sale agreement dated 19/11/1993 was entered with the petitioner on the following conditions:-

"(a) The party of the second para viz., Thiru.Rajkumar Andrew, the father of the writ petitioner shall commence construction of house within a period of 2 years from the date of allotment of the plot;

(b)The conveyance deed will be executed after a period of ten years as the exciting provision of the bylaws of the society;

(c)The party of the second para shall pay a nominal sent of twenty five ruppes per year to the socieyt, until the saele deed is executed in his favour;

(d)The final cost of the property will be arrived at the time of the execution of the conveyance deed and

(e)The Society undertakes to execute the conveyance deed in favour of the party of the second para after the completion of ten years from the date of allotment on payment of the entire amount due (as determined by the society) in respect of the plot, provided the allottee complete construction in the plot allotted in time."

10.Even after lapse of more than 10 years from the date of allotment, the petitioner did not construct house and didn't get the sale deed registered in his favour. While so, the society was liquidated on 09/06/2010 and the administration was took over by the Official liquidator. Regarding the illegal transfer of the plot No. 94 , Pallava Garden and for causing loss to the society, enquiry under Section 81 of the Act was initiated and based on the enquiry report dated 06/07/2018, surcharge proceedings under section 87 of the Act is taken against the said Mahadevan and Guru Devan for causing wrongful loss of Rs.42,76,800/- to the society. Notice dated 15/05/2019 issued to the parties to submit their explanations within 15 days.

11.The fifth responent (Mahadevan) in his counter, has stated that as a Liquidator, he has power under sections 138 and 139 of the Act, to exercise control over the whole of the assets of the registered society, in which, the order of winding up has been made. As per the power conferred on him, he discharged his duties.

12.As per the provisions of the allotment order, the petitioner ought to have commenced construction, in the site, allotted to him within two years which expired on 08/09/1995. Within 10 years from the date of allotment, he should have asked for conveyance which he failed to do. Hence, as per the provisions of the bye-laws of the society, the allotment was

cancelled and re-allotted to the 6th respondent.

13.The sale deed in favour of Guru Devan was executed by him on 11/07/2017. The document was presented for registration on 05/09/2017 when he was functioning as the Liquidator of the society. Hence, the sale deed is valid. There was no malpractice as alleged by the petitioner and the 3rd respondent. Even otherwise, it is the matter for the Department concerned to take action. The petitioner who is a third party whose allotment was cancelled for default cannot challenge the order of re-allotment without challenging the order of cancellation. For want of locus standi, the writ petition ought to be dismissed.

14.The sixth respondent who is the re-allottee of the plot No.94 in his counter affidavit has stated that, the allotment order issued to the petitioner in the year 1993 was cancelled for not complying the conditions of allotment. The petitioner has not provided the details of payment and there is inconsistency in his plea regarding the payment for the plot. The possession of the plot will be handed over only at the time of construction. Since the petitioner never attempted to put construction, he was not given possession.

According to the sixth respondent, he was allotted the plot No.94 Pallava Garden on 11/07/2017. He has paid the entire sale consideration to the society and got the sale deed registered. He has been given patta and planning permission to construct. While so, the petitioner has already filed suit for the relief, he cannot maintain suit. Only to harass and put him into difficulty, the petitioner has filed the present writ petition to create a false shadow over the property and make illegal gain.

15.Heard the learned counsel appearing for both parties. Documents furnished by way of typed sets perused.

16.Through the copy of the documents filed in the typed set of papers, this Court finds that on 15/04/1985, the petitioner on paying a sum of Rs.260/- has become a member of the Highways Employees Co-operative Society. The special officer of the society vide his letter dated 19/11/1993 has informed the petitioner about the allotment of plot No.94, Pallava Garden subject to certain conditions. One of the condition in the allotment order which is relevant to mention is that, the allottee has to remit the balance land cost, if any, after the assessment of final cost of plot. On the same day, the petitioner and the Special Officer of the Society has entered into an agreement for the allotment of house site. The recital of this document indicates that the petitioner has deposited Rs.4,000/- for getting allotment of the plot. 'Whether the final cost of the land paid or not' could not be ascertained. The 3rd respondent has stated in the counter that the petitioner has

paid only deposit and not the full costs of the plot within the stipulated time and not constructed the house within the time prescribed. This is a disputed question of fact which cannot be resolved in this writ petition.

17.Regarding the representation of the petitioner dated 29/10/2017 for which he seeks mandamus, this Court finds that after the enquiry conducted under section 81 of the Act, the Department has initiated surcharge proceedings under section 87 of the Act. The tanner of the enquiry notice dated 15.05.2019 indicates that through surcharge proceedings the Department try to ratify the illegal allotment of the plot No. 94 Pallava Garden by the 5th respondent in favour of 6th respondent on collecting Rs.42,76,800/-.

18.The third respondent admits in the counter that from the enquiry report dated 06/07/2018, it is revealed that Mahadevan , Co-operative Sub-Registrar when he is not holding the post of Official Liquidator of the society has issued letter dated 03/04/2017 in his name as the Co-operative Sub-Registrar/Liquidator, office of the Deputy Registrar of Co-operative Societies, (Housing) to Mr.Rajkumar Andrew (writ petitioner) cancelling the agreement for the allotment of plot No. 94. The subsequent execution of sale deed by Mahadevan in favour of Guru Devan on 11/04/2017 is illegal. Both the cancellation letter and execution of the sale deed are illegal and done without the knowledge of the Administrative Department. The enquiry report has also found fault in alleged receipt of Rs.30,000/- from Guru Devan on 14/05/2009 as advance for the plot No. 94, when the sale agreement with Rajkumar Andrew was in force and cancelled only on 03/04/2017.

19.Though, it is stated in the counter that based on the section 81 enquiry report criminal action, surcharge action and disciplinary action are taken, except the notice under section 87 of the Act dated 15/05/2019, no other details furnished or produced by the respondents to show criminal action and disciplinary actions taken against the persons who are cause of the illegal cancellation of allotment in favour of the petitioner and illegal transfer of the property to others.

20.The surcharge notice issued under section 87 of the Act dated 15/05/2019 by the Deputy Registrar of Co-operatives (Housing) indicates that the Housing society was liquidated on 09/06/2010 and came under the control of Official Liquidator. The 5th respondent was functioning as liquidator between 1.1.2016 and 24/11/2016. Thereafter from 25/11/2016 to 26/07/2017 one Muthu Kumarasamy Sub-Registrar of Co-operative society was functioning as Liquidator. The letter dt 03.04.2017 cancelling the allotment was issued by the 5th respondent when he was not

the Official Liquidator. That apart, the 5th respondent has also re-allotted the plot No.94 to the 6th respondent on 11/07/2017 and executed a sale deed in favour of 6th respondent on 05/09/2017 in the capacity of Official Liquidator when he was no more the Liquidator of the society. While so, the 3rd respondent action under section 87 of the Act initiating surcharge proceedings is not an adequate response to the representation of the petitioner dated 29/10/2017. Suppose the 5th and 6th respondents submit to the surcharge proceedings by paying the alleged loss, then, it will tantamount to ratifying the illegal execution of sale deed dated 11/07/2017, but the grievance of the petitioner will be left without redress.

21.Whereas, the petitioner has already resorted to Civil Court for declaring the sale deed executed in favour of the 6th respondent as null and void. The pendency of the civil suit shall not stand in the way of the 2nd respondent to consider the representation of the petitioner dated 29/10/2017 primarily regarding the cancellation of the petitioner allotment order by the 5th respondent when he was not the competent person to cancel.

22.Hence, the second respondent is hereby directed to appoint appropriate Officer to look into the grievance of the petitioner stated in his representation dated 29/10/2017 in proper perspective. Particularly, the enquiry and action shall be focused on the point, 'whether the allotment order dated 19/11/1993 in the name of the petitioner which was cancelled for breach of allotment conditions is valid or not'.

23.With the above direction, the writ petition is disposed of. No order as to costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Jbm

To

1.The Secretary to the Government
Housing and Urban Development Department,
Fort St. George,
Chennai - 600 009.

WEB COPY

2.The Registrar Co-operative Society (Housing),
No.50, Ritherdon Road,
Vepery, Chennai - 600 007.

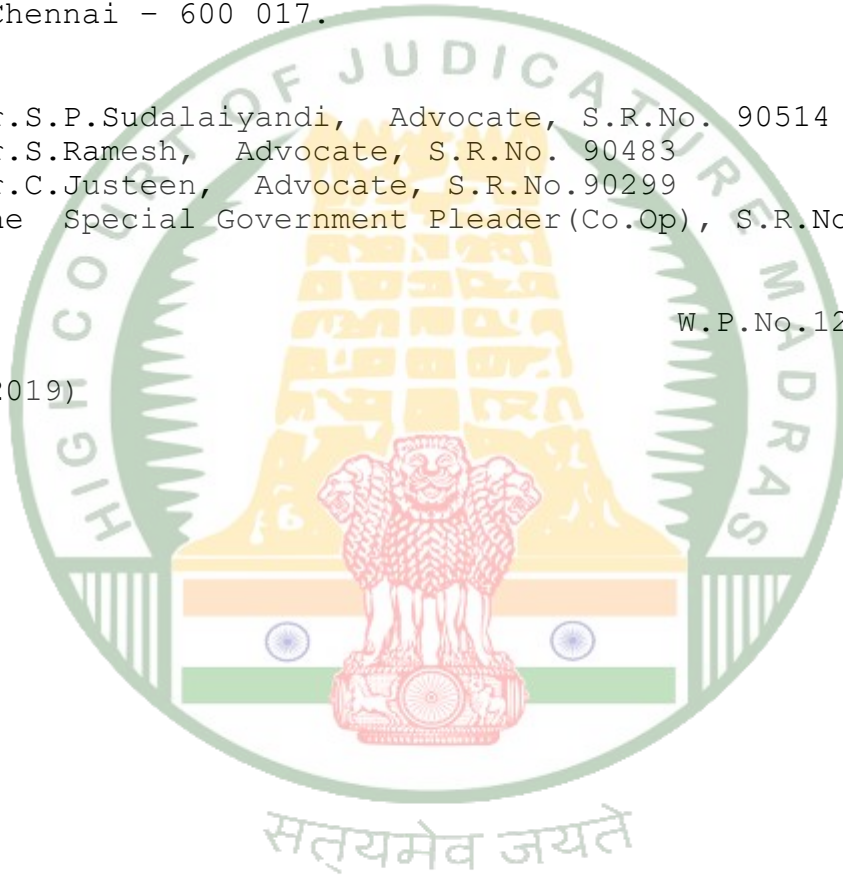
3.The Deputy Registrar Co-operative
Society (Housing),
No.18, Ramanathan Street,
T.Nagar, Chennai - 600 017.

4.The Co-operative Sub Registrar/
Liquidator,
No.18, Ramanathan Street,
T.Nagar, Chennai - 600 017.

+1cc to Mr.S.P.Sudalaiyandi, Advocate, S.R.No. 90514
+1cc to Mr.S.Ramesh, Advocate, S.R.No. 90483
+3cc to Mr.C.Justeen, Advocate, S.R.No.90299
+1cc to the Special Government Pleader(Co.Op), S.R.No. 90671

W.P.No.12596 of 2019

PM(CO)
GN(28/11/2019)



WEB COPY