

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 11.12.2019
CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.13377 of 2017
and WMP.Nos. 14407 & 14408 of 2017

The Nanganallur Coop. Building Society Ltd.,
Rep. by its President,
R.Periyanayagam,
No.12, 1st Main Road,
Nanganallur, Chennai - 600 061.

.. Petitioner

-vs-

1. The Registrar of Coop. Societies (Housing)
No.48, Ritherndon Road,
Veppery, Chennai - 600 007.
 2. The Deputy Registrar of Coop. Societies (Housing),
Chengalpattu Region,
No.7A, Varadhanar Street,
Vedachalam Nagar,
Chengalpattu.
 3. The President,
Ashok Leyland Employees Coop. House Construction Society,
No.2, Sasthri Nagar, 3rd Street,
Enoore, Chennai - 600 057.
- .. Respondents

Petition under Article 226 of the Constitution of India
praying for issuance of Writ of Certiorari, calling for the
entire records relating to the impugned order passed by the 1st
respondent in his proceedings No.Na.Ka.1866/2016/Sa.Pa.1 dated
22.12.2016 and consequential order passed by the 2nd respondent
in his proceedings No.C.E.P.No.2/2017-18 dated 27.03.2017 and
quash the same.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.L.P.Shanmugasundaram
Special Government Pleader [R1 & R2]

Mr.P.Anbarasan [R3]

ORDER

Heard Mr.C. Prakasam, learned counsel for the petitioner, Mr.L.P.Shanmugasundaram, learned Special Government Pleader appearing for the respondents 1 and 2 and Mr.P.Anbarasan, learned counsel for third respondent.

2. With consent of learned counsel on either side, the writ petition itself is taken up for final disposal.

3. The Petitioner is a Co-operative Society and they aggrieved by the order passed by the first respondent in exercise of Power under Section 133 of the Tamil Nadu Co-operative Societies Act, 1983(hereinafter referred to as 'the Act'). The petitioner society was required to pay substantial sum of money to the 3rd respondent. The 3rd respondent is also a Co-operative Society and they approached the second respondent by filing a petition under Section 90 of the Act and obtained a decree on 06.01.2016 by which the petitioner's Society is due and liable to pay a sum of Rs.57,00,000/-(Rupees Fifty Seven lakhs only) to the 3rd respondent and interest of Rs.30,98,408/-(Rupees Thirty lakh ninety eight thousand four hundred and eight only). The said order has become final in the sense that the petitioner has not filed any appeal as against the order and chose to file a revision petition. The first respondent in exercise of power under Section 153 of the Act cannot Act as a Appellate Authority over the order passed under Section 90 of the Act. However an observation was made that the petitioner society has to settle the amount as ordered by the second respondent in the order dated 06.01.2016. Consequent thereto, a demand notice has been issued. The petitioner contention is that sufficient time was not granted to the society to settle the amount and the petitioner society is already suffering huge financial loss on account of certain illegalities committed by the former Secretary of the Society and an amount of Rs.71,56,353/-(Rupees Seventy one lakh Fifty six thousand three hundred and fifty three only) is to be recovered and an order of surcharge can already be passed in the year 2010. However, in terms of the interim direction issued on 04.11.2019, the petitioner society has addressed the respondents 1 and 2 on 13.11.2019 requesting permission to sell the properties owned by the society by evicting the encroachers in the property. This request is now considered by the second respondent.

4. Considering the grounds raised before this Court, the only conclusion that can be arrived at is to reject the petition filed by the petitioner's society. The order passed by the second respondent under Section 90 of the Act on 06.01.2016 has

become final. Sufficient time has also been granted and on the contentions before this Court, the impugned order cannot be set aside.

5. Hence with the above direction, the writ petition stands dismissed with a direction to the second respondent to consider the petitioner's representation dated 13.11.2019 and take all steps to evict the encroacher's in the property and sell the property so that the entire arrears payable to the 3rd respondent in terms of the order dated 06.01.2016 will be fully complied with. The second respondent is directed to take appropriate action within two(2) months from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

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To

1. The Registrar of Coop. Societies (Housing)
No.48, Ritherndon Road,
Veppery, Chennai - 600 007.
2. The Deputy Registrar of Coop. Societies (Housing),
Chengalpattu Region,
No.7A, Varadhanar Street,
Vedachalam Nagar,
Chengalpattu.

+1cc to Mr.C.Prakassam, Advocate, SR.No.103710.
+1cc to Mr.P.Anbarasan, Advocate, SR.No.103204.
+1cc to Government Pleader, SR.No.103640.

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RSK(CO)
CSR:27/01/2020

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