



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.09.2020

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.4031 of 2018 and

W.M.P. (MD)Nos.4172 & 4173 of 2018 & 9459 of 2019

L.P.Shankar

... Petitioner

Vs.

1. The Deputy Registrar of
Co-operative Societies (Housing),
Madurai Zone, Madurai.
2. The Joint Registrar of Co-operative Societies (Housing),
Enquiry Officer,
A,2248, Pandian Nagar,
Co-operative Building Society Ltd.,
Harvey Nagar 1st Street,
Madurai District.
3. The Sub-Registrar,
Office of the Sub-Registrar,
Thirupparankundram,
Madurai District.
4. L.R.Gopinath
5. G.Sarala
6. A.Thambidurai

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the first respondent in E.P.No.36/2015-16 dated 16.10.2015 and consequential letter given by the second respondent in Na.Ka.No.2147/2015/sapa dated 16.11.2015 and quash the same as arbitrary and illegal and consequently direct the third respondent to cancel the attachment made in the petitioner's property in Re-survey No.17/6B part, Plot No.2, 'Sri Shakthi Nagar', Nilaiyur, 1st Bit Village, Thirupparankundram, Madurai District, by ensuring the said property as encumbrance free.

For Petitioner : Mr.G.Ganesh Kumar

For R-1 to R-3 : Mr.P.Mahendran,
Additional Government Pleader.

O R D E R

Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for

<https://hcservices.mca.gov.in/hcservices/> 3.

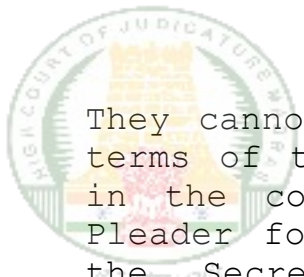


2. The writ petitioner had purchased the petition mentioned property from respondents 4 and 5 herein through their power agent Thambidurai/sixth respondent herein. The property was originally owned by one Velusamy. He had sold the property in favour of respondents 4 and 5 way back on 21.09.1999. The property was mortgaged in favour of Pandian Nagar Co-operative Building Society Ltd.. It is a registered mortgage. The Secretary of the society issued a letter to the registering authority/third respondent on 01.02.2013 and based on the same, the encumbrance was deleted. Thereafter, the property was sold to the petitioner herein. The co-operative society on coming to know that the release of the encumbrance was an act of fraud initiated recovery proceedings against respondents 4 and 5. It is stated that the award was also passed pursuant thereto. The property in question came under attachment. Challenging the same, this writ petition came to be filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of this writ petition. His contention is that the petitioner is a *bona fide* purchaser for valuable consideration. There is no dispute that respondents 4 and 5 are title holders. When the registration of encumbrances revealed that the encumbrance has since been removed, the petitioner is entitled to purchase the property. If an act of fraud was committed by the office bearers of the society, the petitioner cannot be fastened with the consequences. He submitted that beyond inspecting the register of encumbrances, the petitioner cannot do anything more. He wanted this Court to quash the impugned attachment and allow this writ petition.

4. Though the contentions of the petitioner's counsel are very persuasive, the issue turns on the letter dated 01.02.2013 addressed by the Secretary was issued to the registering authority. As rightly pointed out by the learned Additional Government Pleader appearing for respondents 1 to 3, the said letter makes a shocking reading. It is not in dispute that the property was mortgaged in favour of the society and a registered document was also executed. But this letter reads that even though the mortgage was registered and the title document was with the society, there was no disbursement of the loan amount by the society to respondents 4 and 5 herein/mortgagers. Since there was no loan disbursement, the registering authority was called upon to cancel the encumbrance.

5. This on the face of it is not acceptable. Respondents 4 and 5 as mortgagers at no point of time had complained that they had been cheated or that no loan amount was received by them.



They cannot be allowed to take a stand contrary to the express terms of the registered document and there is considerable force in the contentions urged by the learned Additional Government Pleader for respondents 1 to 3 that there was collusion between the Secretary of the society on the one hand and the mortgagers/respondents 4 and 5 on the other. That is why the release of encumbrance was treated as nonexistent and the authority proceeded to effect attachment of the property in question. Since an act of fraud will vitiate everything, the petitioner cannot reap the benefits based on the transactions anchored on fraud. It is quite possible that the petitioner is wholly innocent and that he had been taken for a ride by respondents 4 to 6. But then, the society cannot take consequences.

6. Exercise of writ jurisdiction is essentially discretionary. Since it is obvious that an act of fraud had been committed, I am not inclined to show indulgence in favour of the petitioner.

7. It is for the petitioner to work out his rights in the manner known to law before the authorities constituted under the Tamil Nadu Co-operative Societies Act 1983.

8. With this liberty, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To:

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Co-operative Societies (Housing),
Madurai Zone, Madurai.
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+1 CC to SGP (SR-16255[F] dated 08/09/2020)

W.P. (MD) No. 4031 of 2018
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