

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP (PD) Nos.2705 of 2015, 1935 & 3923 of 2016
and M.P.No. 1 of 2015 & CMP.Nos.10090 & 20049 of 2016

CRP (PD) No.2705 of 2015

The Madras Journalists
Cooperative Housing Society Ltd.,
rep by President
Park Area, Srinivasapuram,
Thiruvanniyur
Chennai – 600 041.

.... Petitioner

Vs.

R.Eswar

.... Respondent

CRP (PD) No.1935 of 2016

The Madras Journalists
Cooperative Housing Society Ltd.,
rep by President
Park Area, Srinivasapuram,
Thiruvanniyur
Chennai – 600 041.

.... Petitioner

Vs.

P.Rangarajan

.... Respondent

CRP (PD) No.3723 of 2016

The Madras Journalists
Cooperative Housing Society Ltd.,
rep by President
Park Area, Srinivasapuram,
Thiruvannamiyur
Chennai – 600 041.

.... Petitioner

Vs.

1. V.Manimaran

2. Registrar of Cooperative
Societies (Housing),
TNHB Buildings,
493, Anna Salai,
Nandanam, Chennai – 600 035.

3. Deputy Registrar of
Cooperative Societies (Housing),
Chennai Region,
28, Ramanathan Street,
T. Nagar, Chennai – 600 017.

.... Respondents

Prayer in CRP (PD) No.2705 of 2015 : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 17.04.2015 made in I.A.No.19316 of 2014 in O.S.No.6547 of 2014 on the file of the VI Assistant Judge, City Civil Court, Chennai.

Prayer in CRP (PD) No.1935 of 2016 : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 17.03.2016 made in I.A.No.9207 of 2015 in O.S.No.2446 of 2015 on the file of the VI Assistant Judge, City Civil Court, Chennai.

Prayer in CRP (PD) No.3923 of 2016 : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order

dated 06.09.2016 made in I.A.No.15986 of 2015 in O.S.No.5402 of 2015 on the file of the VI Assistant Judge, City Civil Court, Chennai.

For Petitioner in all CRPs : Mr.P.Anbarasan

For Respondent in all CRPs : No appearance

COMMON ORDER

These Civil Revision Petitions are filed against the fair and decreetal order dated 17.04.2015 made in I.A.No.19316 of 2014 in O.S.No.6547 of 2014, order dated 17.03.2016 made in I.A.No.9207 of 2015 in O.S.No.2446 of 2015 and order dated 06.09.2016 made in I.A.No.15986 of 2015 in O.S.No.5402 of 2015, respectively on the file of the VI Assistant Judge, City Civil Court, Chennai, thereby dismissing the petitions for rejection of plaint.

2. The first respondent in all the Civil Revision Petitions is the plaintiff and the revision petitioner is the third defendant. The first respondent filed a suit for declaration declaring that the letters issued by the petitioner dated 09.10.2014 and 07.04.2015 respectively, thereby cancelled the allotment of plots/flats bearing Plot No.10, Plot No.111 and Flat No.B.G-2 respectively, in Thiruvanniyur Housing Scheme as null and void and other reliefs.

3. Pending suit, the petitioner filed a petition for rejection of plaint on the ground that the suit itself is barred by law. The petitioner is a registered

Cooperative Society governed by the provisions of the Tamil Nadu Co-operative Societies Act,1983. The petitioner purchased the land measuring 5.50 acres in Thiruvannamiyur with the help of a loan granted by the Indian Bank. The petitioner arranged for the construction of houses and mortgaged the entire properties and raised a housing loan. Accordingly, the petitioner/Society constructed 112 independent houses and 24 flats. The first respondent was allotted Plot No.10, Plot No.111 and Flat No.B.G-2 respectively, on 29.09.1993 and the sale deed yet to be registered in their favour. The first respondent failed to pay the monthly instalments and they wilfully defaulted the monthly instalment to the petitioner. Therefore, they have dues to the tune of Rs.38,03,827/-, Rs.51,96,436 /- as on 28.02.2015 and Rs.21,30,972/- as on 30.11.2014.

4. Therefore, the petitioner was not able to clear the loans and the Society is facing SARFEASI proceedings initiated by the banker. Even then, the first respondent in all the Civil Revision Petitions did not make any payment to the petitioner/society. Therefore, the petitioner has no other option to cancel the plots/flats as per the terms of allotment and to resume the plots/flats.

5. Accordingly, the petitioner issued show cause notice on 04.03.2015 to the first respondent as to why the allotment of plots/flats should not be cancelled. In fact, the first respondent also replied through their respective counsel. Without satisfying the reply, the petitioner/society by a letter dated 07.04.2015 cancelled the allotment of the plots/flats in accordance with the terms of allotment of plots/flats to its members. The said order is under challenge in the present suit.

6. Section 9 of the Civil Procedure Code mandates that the Courts shall have jurisdiction to try all the suits of civil nature excepting suits of which cognizance is either expressly or impliedly barred. The present suit is filed as against the cancellation of allotment order issued by the petitioner herein. The first respondent admittedly is a member of the petitioner/society. Any dispute arises between the members and the society, the Section 90 of the Tamil Nadu Cooperative Societies Act, 1983 provides for a separate mechanism by way of arbitration for settlement of disputes touching the business of the society.

7. Admittedly, the main crux of the issue is a dispute relating to the repayment of the loan dues and such disputes have to be solved under Section

90 of the Tamil Nadu Cooperative Societies Act. Therefore, the jurisdiction of the Civil Court is barred by law. That apart, under Section 156 of the Tamil Nadu Cooperative Societies Act, 1983 specifies that no order, decision or action taken under the Tamil Nadu Cooperative Societies Act, by an authorised officer shall be liable to be called in question and no injunction shall be granted by any court in respect of anything which is done or intended to be done. Therefore, there is a clear bar of jurisdiction of Civil Court to entertain the suit.

8. In fact, there is the provision of Section 90 of the Tamil Nadu Cooperative Societies Act and also in the by-laws of the society for referring the dispute between a member and the society for arbitration. Therefore, the Civil Court has no jurisdiction to entertain the suit, that too, for cancellation of allotment of plots/flats in favour of the first respondent herein.

9. In view of the above, the orders passed by the Court below is hereby set aside. However, the first respondent in all the Civil Revision Petitions is at liberty to approach the authority concerned in accordance with law. The period of pendency of the present Civil Revision Petitions can be waived for limitation purpose.

10. With the above direction, these Civil Revision Petitions are allowed.

Consequently, connected Miscellaneous Petitions are closed. No costs.

31.03.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

1. The VI Assistant Judge,
City Civil Court, Chennai.

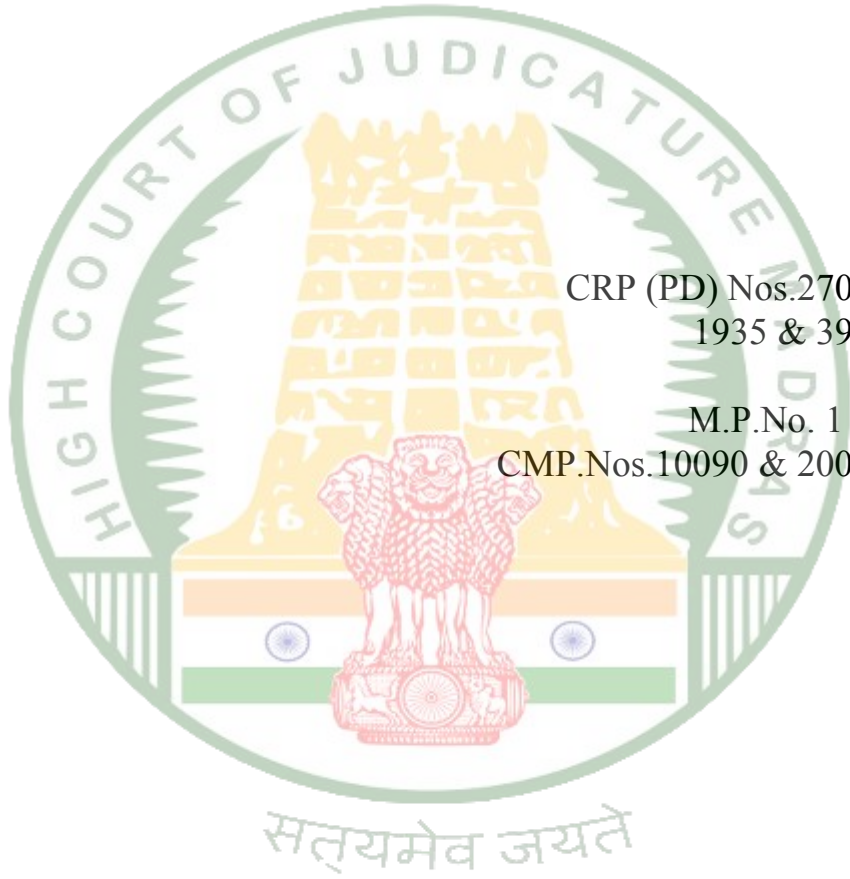
2.The Section Officer,
V.R.Section, High Court, Madras.



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G.K.ILANTHIRAIYAN.J,

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