

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.03.2021

Coram

The HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.No.7452 of 2021

1.R.Krishnakumar
2.K.Subha

..Petitioners

vs.

1. The Registrar of Co-operative Societies (Housing), 2nd Floor, Housing Board Building, Nandanam, Chennai - 35.
2. The Deputy Registrar of Co-operative Societies (Housing), Salem Region, East Garden Street, Fair Lands, Salem - 16.
3. S1565 Palace Nagar Co-operative House Building Society, Rep by its Secretary / President, Palace Towers, Cherry Road, Salem - 1.

... Respondents

Prayer

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to execute the sale deed in favour of the petitioners for Flat No.29, Block "C" East 2nd floor having sale area of 1211 sq.ft Palace Tower, Cherry Road, Salem - 1.

For Petitioners ... Mr.M.S.Palaniswamy

For Respondents 1 & 2 ... Mr.L.P.Shanmugasundaram
Spl.G.P.

O R D E R

This Writ Petition has been filed for the issue of a Writ of Mandamus directing the respondents to execute the sale

deed in favour of the petitioners for Flat No.29, Block "C" East 2nd floor having sale area of 1211 sq.ft Palace Tower, Cherry Road, Salem - 1.

2. The petitioners are the members of the third respondent society. The third respondent society purchased large extent of land from various persons with a view to construct residential flats and commercial complex. The petitioners also submitted an application before the third respondent society for allotment of a flat along with undivided share in the land. The third respondent, through allotment letter dated 27.12.2006, allotted the subject property in favour of the petitioners along with the undivided share in the land. The petitioners also paid the entire sale consideration and the 3rd respondent has also issued payment receipts for the same.

3. The third respondent, thereafter, entered into a sale agreement with the petitioners and the grievance of the petitioners is that the sale deed has not been executed in their favour till date and therefore, left with no other option, the present Writ Petition has been filed before this Court seeking for appropriate directions.

4. Heard Mr.M.S.Palaniswamy, learned counsel for petitioners and L.P.Shanmugasundaram, learned Special Government Pleader appearing for respondents 1 and 2.

5. The issue involved in the present Writ Petition is squarely covered by the earlier orders passed by this Court with regard to the very same third respondent society. The relevant portions in the order in W.P.No.29301 etc., of 2014 dated 07.01.2016 is extracted hereunder:-

8. From the counter affidavit filed by the Deputy Registrar of Co-operative Societies (Housing), Salem, it is seen that the House Building Society is an unencumbered property, which is stated to be of value of more than 13 crores. Those are properties in the form of commercial complexes and Flats which are not sold or allotted to any members. Therefore, those properties are technically free from any encumbrance, which, if sold by proper auction, would be sufficient to satisfy the dues payable to the PACCS as well as the dues to the Housing Federation. It is further stated that the members of the House Building Society have formed themselves into an Association called Palace Nagar Welfare Association and filed a petition under Section 90(2) of the Tamil Nadu Cooperative Societies Act for a direction to execute the Sale Deed in favour

of its members. Since such petition was filed by the Association for want of locus standi, the application is yet to be numbered.

9. As rightly pointed out by the learned counsel for the PACCS, no useful purpose would be served in directing the Deputy Registrar (Housing) to number those applications, since already, he has passed an order against the House Building Society and there is no order of attachment of the property of the House Building Society, as some of the properties are in possession and enjoyment of the petitioners. Therefore, this Court is of the view that the matter should be resolved by an Officer of a Higher level preferably by the Registrar (Housing), the first respondent herein.

10. This Court is inclined to make such an observation in the light of the fact that on one side, the interest of the members/petitioners have to be protected and equally the dues payable to the other PACCS and the Federation have to be settled, since ultimately, the interest of the members/individuals would be in jeopardy. If the statement that the property restrained by the House Building Society free of encumbrance is worth more than 13 crores is true, then a workable solution can be made, so that all the stakeholders are benefitted.

11. In the light of the above factual scenario, at this stage of the matter, this Court would not be in a position to issue a direction to the respondents to execute the Sale Deed, since as on date, when an order of attachment is in force, without raising the same, it would not be appropriate and it would not be legally tenable to direct execution of the Sale Deed. Therefore the following order would meet the ends of justice.

"The Writ Petitions are disposed of by directing the Registrar of Co-operative Societies (Housing) to take up the matter either by himself or by an Officer of sufficient seniority and jurisdiction to consider a one-time solution for the entire problem, bearing in mind the interest of the petitioners, PACCS, Housing Federation and also the interest of the petitioners, who are all senior citizens aged above 70 years, for which purpose, the 1st respondent has issued notice to the petitioners or their

Association, the PACCS, the House Building Society and the Federation to collect the details and work out the value of the property, what are the dues payable and thereafter chart out the plan of action, whereby the petitioners get the benefit of the sale deed, the PACCS are able to release the deposit amount and the Federation to recover the loan amount.?"

12. The above direction should be completed within a period of three (3) months from the date of receipt of a copy of this order. If further extension of time is required, it is open to the 1st respondent to approach this Court. It is also open to the 1st respondent to seek any further clarification in the process of executing the order. No costs. Consequently, connected Miscellaneous Petitions are closed.?

6. The non-compliance of the order passed by this Court became a subject matter in Contempt Petition No.107 of 2017. This Court, while disposing of the Contempt Petition on 23.10.2018, recorded the fact that the sale deeds have been executed in favour of the beneficiaries, who were petitioners in those relevant Writ Petitions.

7. In view of the above, the petitioners are also entitled for the very same benefit extended to the other beneficiaries by virtue of the above orders passed by this Court.

8. In the result, there shall be a direction to the third respondent to execute sale deed in favour of the petitioners with respect to the subject property within a period of six weeks from the date of receipt of a copy of this order. The third respondent shall ensure that the petitioners have paid the entire amount due towards the subject property before executing the sale deed.

9. This Writ Petition is disposed of with the above directions. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

vsi

Index:Yes/No

To

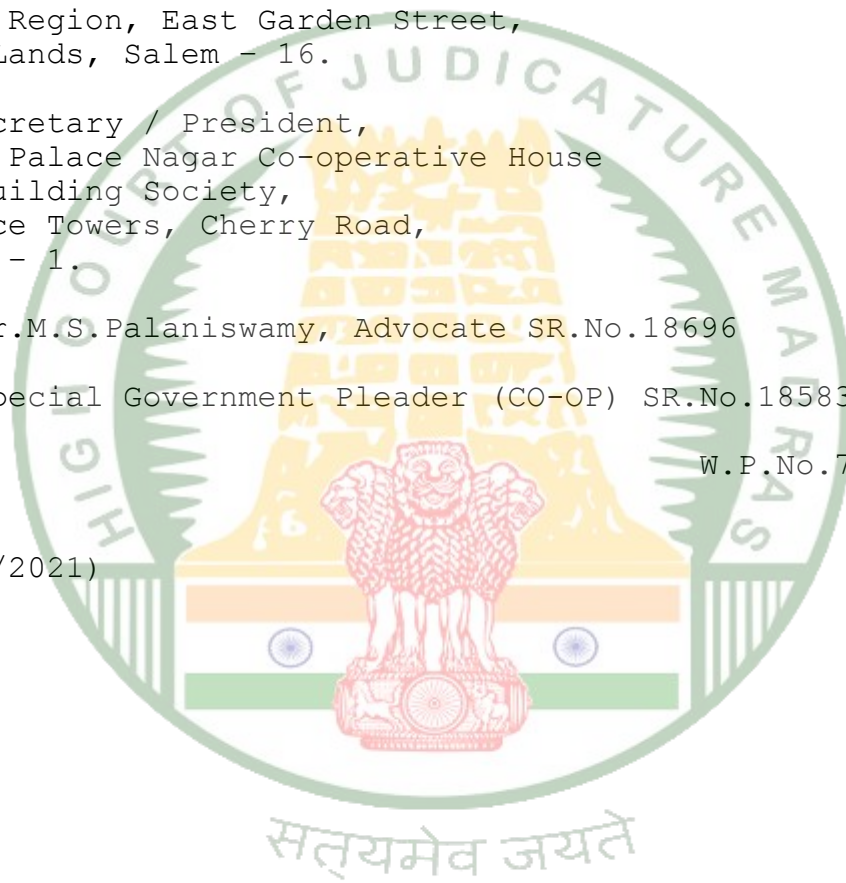
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+1cc to Mr.M.S.Palaniswamy, Advocate SR.No.18696

+1cc to Special Government Pleader (CO-OP) SR.No.18583

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GPL (CO)
GMY (08/04/2021)



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