IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.10.2021

Pronounced on : 02.11.2021

CORAM

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

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

CRP (PD) No.3923 of 2016

The Madras Journalists
Cooperative Housing Society Ltd.,
rep by President
Park Area, Srinivasapuram,
Thiruvanmiyur
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

<u>Prayer in CRP (PD) No.3923 of 2016 :</u> 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.

<u>CRP (PD) No.2705 of 2015</u>

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

Vs.

R.Eswar .... Respondent

<u>Prayer in CRP (PD) No.2705 of 2015 :</u> 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.

For Petitioner in both CRPs : Mr.P.Anbarasan

For R1 in both CRPs : Mr.S.Parthasarathy,
Senior Counsel
for Mr.K.S.Navin Balaji

COMMON ORDER

The Civil Revision Petition in CRP.PD.No.3923 of 2016 is filed 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. The Civil Revision Petition in CRP.PD.No.2705 of 2015 is filed 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.

2. Mr.P.Anbarasan, the learned counsel for the petitioner in both the civil revision petitions submitted that the first respondents in both the revision petitions are the plaintiffs and the petitioner is the third defendant. The first respondents filed 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 and B.G-2 respectively in Thiruvanmiyur Housing Scheme as null and void and other reliefs. While pending the suit, the petitioner filed

petition for rejection of plaint on the ground that the suit itself is barred by law. The petitioner is a registered Cooperative Society and the first respondents are members of the society. If any dispute relates to the business of the society and there is a statutory obligation for the parties to resort to Section 90 of the Tamilnadu Cooperative Societies Act, 1983 which provides for arbitration of such disputes. Section 8 of the Arbitration and Conciliation Act, 1986 makes it mandatory for a judicial authority, before which an action is brought in a matter, which is the subject matter of an arbitration agreement, shall refer the parties to arbitration. The first respondent has filed suit challenging the order dated 09.10.2014 and 07.04.2015 passed by the petitioner thereby cancelling the allotment of house site to the first respondents which is well within the realm of the contract between the society and the first respondents for allotment of house sites and that such disputes have to be first referred to arbitration under Section 90 of the Tamilnadu Cooperative Societies Act, 1983.

2.1 He further submitted that Section 156 of the Tamilnadu Cooperative Societies Act, 1983, specifies that no order, decision or action taken under the said Act by an Officer authorised or empowered shall be liable to be called in question in any court and no injunction shall be granted by any court in respect of anything which is done or intended to be done under the Act. The impugned order in the suit is one passed by the authorised person. Jurisdiction civil court has no power as the Act expressly provides for legal remedy under Section 90 of the Tamilnadu Cooperative Societies Act, 1983. However, without considering the above, the court below dismissed the petition for rejection of plaint. In support of his contention, he relied upon the following judgments:

(i) ***Rajamani Vs. Cooperative Sugars Ltd Chithur*** reported in ***1989 TLNJ 213***

(ii) ***Sarangan Vs. Vadivelu Mudaliar and others*** reported in ***(2009) 3 MLJ 463***

(iii) ***Seni and others Vs City Civil Court, Chennai and others*** in ***WP.No.34692 of 2014***

(iv) ***Gopalakrishnan and others Vs. Secretary to Government Housing and Urban Development Department*** in ***WP.No.24649 of 2007***

3. Per contra, Mr.S.Parthasarathy, Senior Counsel appearing for the first respondent submitted that the first respondent in both the civil revision petitions are the journalists and the Government of Tamilnadu has extended the cash benefits to the journalists. The petitioner Society was formed for the purpose of allotment of land to the allottees. Accordingly, they had paid amounts towards cost of the land and the petitioner Society was formed for operation of the said scheme. The members of the Society approached Indian Bank for loan to build houses for journalists. The petitioner Society never paid other amount either towards cost of the land or towards cost of the building. They were allotted plot No.10 and flat No.BG-2 respectively in Tiruvanmiyur Housing Scheme. Thereafter, construction was completed and the possession was handed over to them. Their house property has been assessed for property tax and they are regularly paying the property tax. They are liable to pay outstanding loan amount to the bank and 1% of the loan amount as commission to the petitioner Society for the service rendered by the petitioner Society,. However, the petitioner Society

served statement to the first respondent in both the civil revision petitions and directed them to pay 15.5% interest to the Society on the compound interest and also penal charges for the amount borrowed from the petitioner Society. Even as per the guideline issued by the Registrar of Cooperative Societies, the petitioner Society is entitled to charge only 1% as service charge. Therefore, the first respondent in both the civil revision petitions refused to pay the same and as such the allotment of the land and building was cancelled by the impugned letter dated 09.10.2014 and 07.04.2015. Therefore, the first respondent in both the civil revision petitions have filed suit challenging the impugned notice dated 09.10.2014 and 07.04.2015 as null and void and for direction to issue statement of accounts and to direct the Society to accept 1% of service charges.

3.1 The learned Senior Counsel further submitted that the provision under Section 90 of the Act and also under the bye-laws of the Society for referring the disputes between the member and the society touching the business of the society to the Registrar for arbitration. The act is a _special enactment which provides machineries for settlement of dispute between the member and the society, touching the constitution of the Board or the management or the business of a registered society. The dispute is with regard to the property allotted to the first respondent in both the civil revision petitions, cannot be decided by the machineries provided under the Act. There is no bar under Section 9 of CPC to maintain the suit. The suit is of a civil nature and the cognizance of the same is not a bar under Section 9 of CPC. Further the Act does not provide any machinery to solve the dispute or enforce any civil right. Therefore, there is no specific bar under Section 9 of CPC. They were alloted their respective house plots and as such the right of the first respondent in both the civil revision petitions to move to the civil court is not a bar. The dispute arose out of civil right and they are not precluded from bringing the suit before the civil court. The Act does not provide any machinery to solve the dispute or enforce any civil right . In order to invoke power under Section 90 of the Act, it should have been passed by the authority under the Act and it is not an order passed under any provisions of the Act. Therefore, the dispute between the petitioner Society and the first respondent in both the civil revision petitions could not be resolved under any of the provisions under the Act. He further submitted that the first respondents have made specific allegation that they were not informed either by the bank or Society while closing their using HLA account with the bank, there seems to be preplanned to put hardship to the first respondent in both the civil revision petitions in keeping them in the dark on extending details of payments made by them even at the earlier stage which also resulted in the Society allegedly indulging in mismanagement of funds. Therefore, the petitioner Society flouted the rules and have committed fraud on the first respondent in both the civil revision petitions. When it being so, it cannot be resolved before the arbitrator as contemplated under Section 90 of the said Act. Therefore, there is no bar under Section 156 of the Tamilnadu Cooperative Societies Act, 1983 to file the suit. In support of his contention, he relied upon the following judgments:

(i) ***Mardia Chemicals Limited Vs. Union of India***

reported in ***(2004) 4 SCC 311***

(ii) ***K.N.Mohan Raj Vs. The Registrar of Cooperative Societies***

reported in ***2016 Writ LR 96***

(iii) ***Robin Thapa Vs. Rohit Dora***

reported in ***(2019) 7 SCC 359***

4. Heard, Mr.P.Anbarasan, the learned counsel for the petitioner, and Mr.S.Parthasarathy, Senior Counsel appearing for the first respondents.

5. The first respondent in both the civil revision petitions filed their respective suits for the following prayers:

> *(i) declaring the letter dated 09.10.2014 issued by the third defendant in cancelling the allotment of the house site allotted to the plaintiff bearing door no.10, Journalist Colony, Thiruvanmiyur as null and void and illegal*
>
> *(ii) direct the third defendant to issue audited statement of accounts from 1992 to till 31.01.2012*
>
> *(iii) direct the third defendant to accept the one percent service charge as directed by the Registrar*
>
> *(iv) awarding costs of the suit and*
>
> *(v) passing such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.*

6. While pending the suit, the petitioner Society filed petition for

rejection of plaint on the ground that the suit itself is barred by law. According to the petitioner Society 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 Thiruvanmiyur 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 in both the civil revision petitions were alloted Plot No.10 and Flat No.B.G-2 respectively, on 29.09.1993 and the sale deed yet to be registered in their favour. They 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. Therefore, the petitioner was not able to clear the loans and the Society is facing SARFAESI proceedings initiated by the banker. Even then, the first respondent in both 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.

7. Accordingly, the petitioner issued show cause notice to the first respondent in both the civil revision petitions as to why the allotment of plots/flats should not be cancelled. In fact, they also replied through their respective counsel. Without satisfying the reply, the petitioner/society by letter dated 09.10.2014 and 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 orders are under challenge in the present suit.

8. On perusal of the plaint in the respective suits, revealed specific allegations that the petitioner Society indulged in mismanagement of funds and also misappropriation of funds. Further averred that there are manipulation in accounts by the petitioner Society to make illegal gains. Therefore, though the act is a special enactment which provides machineries for settlement of dispute between the member and the society, touching the constitution of the Board or the management or the business of a registered society, the dispute is with regard to the property

allotted to the first respondents and also the disputes with regards to the management and misappropriation including the manipulation of records cannot be decided by the machineries provided under the Act. Therefore, there is no bar under Section 9 of CPC.

9. The learned Senior Counsel relied upon the judgment in the case of ***Mardia Chemicals Limited Vs. Union of India*** reported in ***(2004) 4 SCC 311***, wherein it is held as follows:

> *50. It has also been submitted that an appeal is entertainable before the Debt Recovery Tribunal only after such measures as provided in sub-section (4) of Section 13 are taken and Section 34 bars to entertain any proceeding in respect of a matter which the Debt Recovery Tribunal or the appellate Tribunal is empowered to determine. Thus before any action or measure is taken under sub-section (4) of Section 13, it is submitted by Mr. Salve one of the counsel for respondents that there would be no bar to approach the civil court. Therefore, it cannot be said no remedy is available to the borrowers. We, however, find that this contention as advanced by Shri Salve is not correct. A full reading of section 34 shows that the jurisdiction of*

the civil court is barred in respect of matters which a Debt Recovery Tribunal or appellate Tribunal is empowered to determine in respect of any action taken "or to be taken in pursuance of any power conferred under this Act". That is to say the prohibition covers even matters which can be taken cognizance of by the Debt Recovery Tribunal though no measure in that direction has so far been taken under sub-section (4) of Section 13. It is further to be noted that the bar of jurisdiction is in respect of a proceeding which matter may be taken to the Tribunal. Therefore, any matter in respect of which an action may be taken even later on, the civil court shall have no jurisdiction to entertain any proceeding thereof. The bar of civil court thus applies to all such matters which may be taken cognizance of by the Debt Recovery Tribunal, apart from those matters in which measures have already been taken under sub-section (4) of Section 13.

51. However, to a very limited extent jurisdiction of the civil court can also be invoked, where for example, the action of the secured creditor is alleged to be fraudulent or their claim may be so absurd and untenable which may not require any probe, whatsoever or to say precisely to the extent the scope is permissible to bring an action in the civil court in the cases of English *mortgages. We find such a scope having been recognized in the two decisions of the Madras High Court which have been relied upon heavily by the learned Attorney General as well appearing for the Union of India, namely V.Narasimhachariar (supra) p.135 at p.141 and 144, a judgment of the learned single Judge where it is observed as follows in para 22:*

"The remedies of a mortgagor against the mortgagee who is acting in violation of the rights, duties and obligations are twofold in character. The mortgagor can come to the Court before sale with an injunction for staying the sale if there are materials to show that the power of sale is being exercised in a fraudulent or improper manner contrary to the terms of the mortgage. But the pleadings in an action for restraining a sale by mortgagee must clearly disclose a fraud or irregularity on the basis of which relief is sought: 'Adams v. Scott, (1859) 7 WR (Eng.) 213 (Z49). I need not point out that this restraint on the exercise of the power of sale will be exercised by Courts only under the limited circumstances mentioned above because otherwise to grant such an injunction would be to cancel one of the clauses of the deed to which both the parties had agreed and annul one of the chief securities on which persons advancing

moneys on mortgages rely. (See Rashbehary Ghose Law of Mortgages, Vol.II, Fourth Edn., page 784).

10. He also relied upon the judgment in the case of ***K.N.Mohan Raj Vs. The Registrar of Cooperative Societies*** reported in ***2016 Writ LR 96***, wherein the Hon'ble Division of this Court held that when allegations of fraud, misappropriation etc, are made, they cannot be adjudicated under Section 90 of the Cooperatives Societies Act, 1988. Section 90 is for the resolution of disputes as between the members or as between the member on the other hand and the Society on the other hand. This provision does not deal with the enquiry into the allegations of those nature.

11. In the case on hand, as stated supra, there are specific allegations of fraud, misappropriation of records against the petitioner Society herein. Therefore, these kind of disputes cannot be adjudicated under Section 90 of the Tamilnadu Cooperative Societies Act, 1983.

12. Whereas the learned counsel for the petitioner Society relied

upon the judgment in the case of ***Rajamani Vs. Cooperative Sugars Ltd Chithur*** reported in ***1989 TLNJ 213***, wherein the Hon'ble Division Bench of this Court held that a claim by a past member of a registered Cooperative Society to recover certain amounts from the society, alleged to have been given by him as loan or deposit to the Society when he was a member, will fall within the scope of Section 73(1) (b) of the Tamilnadu Cooperative Societies Act, 1961 and will have to be decided by the Registrar and a civil suit to recover such amount is not maintainable.

13. He also relied upon the judgment in the case of ***Sarangan Vs. Vadivelu Mudaliar and others*** reported in ***(2009) 3 MLJ 463***, wherein it is held that a bare perusal of the said Section would highlight and spotlight the fact that if there is any dispute between the member or a person claiming under a member and the Co-operative Society concerned, such a dispute should be referred to the Registrar for decision.

14. He also relied upon the judgment in the case of ***Seni and***

others Vs City Civil Court, Chennai and others in ***WP.No.34692 of 2014***, wherein it is held as follows:

> *6.In the instant case the dispute pertains to the affairs of the Society, which is registered under the provisions of the Tamil Nadu Co-operative Societies Act. Admittedly, the provisions of the Tamil Nadu Co-operative Societies Act, is a complete code by itself and it provides for hierarchy of remedies for parties aggrieved by various decisions. Therefore, the petitioners should necessarily avail the remedy available under the Act, without resorting to the Civil Forum.*

15. In all the above cases, there were disputes between the member and the society in respect of default in repayment of the loan. Whereas in the case on hand, the first respondent in both the civil revision petitions were already allotted their respective house plots. They availed loan from the bank to construct their respective houses and thereafter the petitioner Society claimed more interest. Therefore, the above judgments are not helpful to the case on hand.

16. Insofar as bar under Section 156 of the Tamilnadu Cooperative Societies Act, 1983 specifies that no order, decision or action taken under the said Act by an Officer authorised or empowered shall be liable to be called in question in any court and no injunction shall be granted by any court in respect of anything which is done or intended to be done. As rightly held by the court below that no award or order had been passed by any authority as enumerated under Section 156 of the Tamilnadu Cooperative Societies Act, 1983 and the petitioner Society cannot function as arbitrator or Registrar. Therefore, the suit is not barred by any law and the court below rightly dismissed the petitions seeking rejection of plaint.

17. In view of the above, this Court finds no infirmity or illegality in the orders passed by the court below. Accordingly, both the civil revision petitions are dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

02.11.2021
(2/2)

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
lok

To

1. Registrar of Cooperative
   Societies (Housing),
   TNHB Buildings,
   493, Anna Salai,
   Nandanam, Chennai – 600 035.
2. Deputy Registrar of
   Cooperative Societies (Housing),
   Chennai Region,
   28, Ramanathan Street,
   T. Nagar, Chennai – 600 017.

G.K.ILANTHIRAIYAN, J.

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