



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2021

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NO.26017 OF 2021

AND

W.M.P.NOS.27463 AND 27464 OF 2021

K.A.Manoharan

... Petitioner

-Vs-

1. The Principal Secretary to Government,
The Housing and Urban Development Department,
Fort St. George,
Chennai - 600 009.
2. The Registrar (Housing),
48, Ritherdon Road, Vepery,
Chennai - 600 007.
3. The Deputy Registrar (Housing),
873, Gandhi Nagar East,
Vellore - 632 006.
4. The Authorised Officer/Secretary,
S.945, Hosur Co-operative House
Building Society Limited,
Appavu Nagar, Thalli Road,
Hosur - 635 109.
5. Loganathan,
President,
S.945, Hosur Co-operative House
Building Society Limited,
Appavu Nagar, Thalli Road,
Hosur - 635 109.

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to impugned sale notice dated 23.11.2021 issued by the fourth respondent herein published in



E-tender official website of Tenders Tamil Nadu and quash the same as being illegal, arbitrary, unconstitutional and consequently direct the first to third respondents to take necessary action against the fourth and fifth respondents for involving in such illegal and unlawful act for selling out the society property without conducting annual general body meeting of the society.

For Petitioners : Mr.T.Sundaravadanam

For Respondents : Mrs.V.Yamuna Devi
Special Government Pleader
For R1

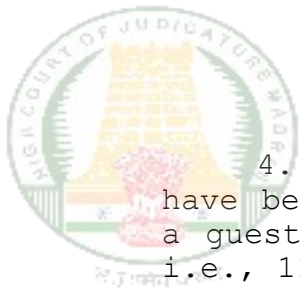
Mr.A.Selvendran
Special Government Pleader
For R2 to R5

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records relating to impugned sale notice dated 23.11.2021 issued by the fourth respondent herein published in E-tender official website of Tenders Tamil Nadu and quash the same as being illegal, arbitrary, unconstitutional and consequently direct the first to third respondents to take necessary action against the fourth and fifth respondents for involving in such illegal and unlawful act for selling out the society property without conducting annual general body meeting of the society.

2. The petitioner claimed to be the member of the fourth respondent Society. He also claimed that, he was the past President of the said Society. The prime object of the Society is to make housing plots for the purpose of selling it at reasonable price to its members. Therefore literally, it is called as 'Co-operative House Building Society Limited'. Accordingly, the Society obtained more than ten acres of land from the Government sometime in 1988 for the purpose of making a layout and to sell the plots to various members for their benefit.

3. Out of more than 10 acres of land obtained from the Government, since there has been dispute about two acres of land, the remaining land is 8.5 acres, which had been approved as a layout by the planning authorities, accordingly, the plots available in the layout have been sold to various members of the Society.



4. In that layout, the land to an extent of 11,875 sq.ft. have been earmarked for the Society's building and also to have a guest house to be constructed in this regard. The said land, i.e., 11,875 sq.ft. is the present issue.

WEB COPY

5. In this context, there is already a Society's Administrative Building constructed long years back, which according to the respondent Society is in dilapidated condition or in old condition. Therefore, in order to demolish or sell the building along with the excess land available in 11,875 sq.ft. by retaining a 1800 sq.ft. for the purpose of construction of new office building, there has been a proposal from the Society which was approved by the Registrar of Co-operative Societies vide proceedings dated 17.11.2021.

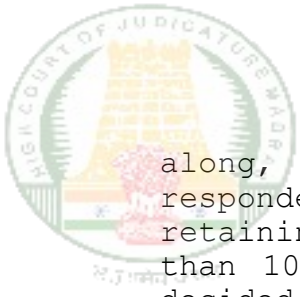
6. Following such an approval giving permission to the Society to sell the remaining land to an extent of 10,075 sq.ft., the Society has come forward to issue a public tender notice dated 23.11.2021.

7. Aggrieved over the said impugned public notice for selling the land, the petitioner being the member of the Society has moved this Writ Petition with the aforesaid prayer.

8. Mr.T.Sundaravadanam, learned counsel appearing for the petitioner would contend that, there is already a pucca building constructed in the land concerned as per the approved layout and the said building is not in a dilapidated condition, it is structurally strong and therefore it need not be either demolished or sold to any third party.

9. The purpose of selling more than 10,000 sq.ft of the land which is earmarked or allotted for having the administrative building and to have a guest house is only for some ulterior motive or purpose of the present management of the Society. Therefore, the present attempt made by them through the impugned notice to go for a public action or tender system to sell the vacant land of 10,075 sq.ft is unwarranted, unjustifiable and unlawful and therefore, this Court's interference is required, he contended.

10. Per contra, Mr.A.Selvendran, learned Special Government Pleader appearing for the second to fifth respondents having relied upon the various documents filed on their behalf in the typed set of documents would contend that, no doubt, the layout was approved, where the plotted out plots were sold already to the members. Since the prime function of the Society itself is to sell the land to reasonable price to its members, the land to an extent of 11,875 sq.ft. earmarked for Society building and the proposed guest house has been kept as a vacant land for all



along, except the old Society building, which according to the respondents is in a dilapidated condition. Therefore, instead of retaining the building, by which, the entire stretch of more than 10,000 sq.ft. of land has become un-utilized, the Society decided to sell the 10,075 sq.ft. of land to the members and the remaining land of 1800 sq.ft can be retained by the Society for the purpose of construction of a new building for the administration to locate the administrative office of the Society. Since the said decision having been taken by the Society, when the same was sent for approval to the respondent Registrar of Co-operative Societies, he has given his nod by his communication dated 17.11.2021, the said communication reads thus:

"பார்வை (1)ல் காணும் கடிதத்தின் படி எஸ்.945 ஓசூர் கூட்டுறவு, வீடுகட்டும் சங்கத்திற்கு சொந்தமான ஓசூர் டவுன், அப்பாவ, நகரில் உள்ள 11,875 சதுரடி இடத்திற்கு 23.07.2021 அன்று நடைபெற்ற விலைநிர்ணயக் குழு கூட்டம் மூலம் சதுரடி ஒன்று ரூ.5,000/- என விலைநிர்ணயம் செய்யப்பட்டுள்ளது.

பார்வை (2)ல் காணும் கடிதத்தில் மேற்படி 11,875 சதுரடி இடத்தில் 1800 சதுரடியில் சங்க அலுவலக கட்டிடம் கட்டிக்கொள்ளவும் மீதமுள்ள 10,075 சதுரடி இடத்தை மட்டும் விலைநிர்ணயக் குழு மூலம் விற்பனை செய்ய அனுமதி வழங்குமாறும் கோரப்பட்டுள்ளது.

மேற்படி கோரிக்கைக்கு இணங்க எஸ்.945 ஓசூர் கூட்டுறவு, வீடுகட்டும் சங்கத்திற்கு சொந்தமான ஓசூர் டவுன், அப்பாவ, நகரில் உள்ள 11,875 சதுரடி இடத்தில் 1800 சதுரடியில் சங்க அலுவலக கட்டிடம் கட்டிக்கொள்ளவும் மீதமுள்ள 10,075 சதுரடி இடத்தினை மட்டும் விலைநிர்ணயக் குழு மூலம் விற்பனை செய்யவும் இதன் மூலம் அனுமதி வழங்கப்படுகிறது."

11. Pursuant to the said permission given by the Registrar of Co-operative Societies, the Society proceeded to sell the property by issuing the tender notice dated 23.11.2021 which is impugned herein. In this context, the learned Special Government Pleader would further contend that, sine the very prime object and the purpose of the Society is to give housing plots or lands to the members of the Society in a reasonable price, this 10,000 and odd sq.ft since has been kept idle without any usage. Therefore, after retaining only 1800 sq.ft. of land for the purpose of Society building to be constructed in this regard, the remaining land, i.e., 10,000 and odd sq.ft., can be sold and for the said purpose, price has already been fixed by the Committee at the rate of Rs.5000 per sq.ft and accordingly, now the sale is going to be taken place by way of public auction or public tender system, for which, now the impugned notice has been issued on 23.11.2021.



12. In this regard, when a specific question was asked by this Court as to the existing building, whether it is going to be sold or to be retained, the learned Special Government Pleader submits that, since the existing building is located in the middle portion of the land, that is also going to be sold.

13. In this context, the learned Special Government Pleader has produced a communication dated 29.06.2021 between the Executive Engineer, PWD Krishnagiri and the respondent Society, whereby the said existing building has been valued to Rs.17,16,540/-.

14. Therefore, the learned Special Government Pleader would submit that, if at all, the land to the extent of 10,000 sq.ft and odd is to be sold along with the same, the building also would be sold. Therefore, in respect of the said building, the value fixed by the PWD also would be collected from the successful tenderer and therefore, in this context, absolutely, there can be no loss to the Society and instead some revenue would be augmented for the purpose of future expansion of the Society and also to construct a new building in the earmarked 1800 sq.ft. for the purpose of administrative building of the Society, he contended.

15. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

16. First of all, the Writ Petition has been filed by the petitioner as an adversarial Writ Petition, as he is one of the member of the Society and also he is a former President of the Society. The very grievance of the petitioner appears to be that, if the remaining land, i.e., 10,000 sq.ft. of land is sold to any third party including the building already been constructed that would pave the way for the winding up of the Society and if that is the intention of the present management, that would be detrimental to the interest of the members of the society including the petitioner, since that being the prime concern on the part of the petitioner, he has moved this Writ Petition.

17. However, if we look at the aforesaid documents, the land to the extent of 11,875 sq.ft. is still remaining as the Society building and proposed guest house building land.

18. In this context, it seems that, there is no proposal to construct any guest house and only for the purpose of constructing an administrative building, they need only a smaller extent, for which, they allotted 1800 sq.ft. The remaining land of 10,075 sq.ft. still being vacant land became



WEB COPY

unused and it can be kept idle without any proper usage. Therefore, the Society, in order to augment the revenue, decided to sell the property by way of public auction, for which, permission has been granted by the Registrar of Co-operative Society in his proceedings dated 17.11.2021.

19. However, even though, the existing building has been valued for a sum of Rs. 17,16,540/- ,the same has not been included as part of the property going to be sold by way of public auction in the impugned notice. When this has been specifically asked, the learned Special Government Pleader would submit that, it is an inadvertent omission, therefore the same also would be included and in this regard, a corrigendum would be issued shortly.

20. In view of the said stand taken by the learned Special Government Pleader on instructions from the respondents, especially the Society, that the building value also would be included in the auction notice or tender notice, for which, necessary corrigendum would be issued shortly, therefore, the 10,075 sq.ft. of land + existing building of worth about Rs.17,16,540/- should also be form part of the property going to be given for public auction or public tender for the purpose of selling the same at the rate fixed per sq.ft. that is vacant land of Rs.5,000/- already been mentioned.

21. If that being done, this Court feels that, there could be no impediment for the Society to go ahead with the public auction as initiated in the impugned notice.

22. In view of the afore stated discussions, the present Writ Petition is disposed of with the following orders:

"that the respondents including the Society shall issue a corrigendum to the impugned notice dated 23.11.2021 within one week from today, where the existing building to the value of Rs.17,16,540/- should also be included for the purpose of selling the same along with the vacant land of 10,075 sq.ft. Accordingly, they can go ahead with the public auction or public tender for selling the said land as well as the building. Insofar as the remaining land of 1800 sq.ft, that should never be exploited or sold to any third party, as it has been earmarked only for the purpose of construction of Administrative Building of the Society and the Society after getting the revenue from out of the sale that they are going to make pursuant to the impugned notice can utilize the said amount or part



of the said amount for the purpose of constructing the administrative building at the earliest."

23. With these directions and observations, this Writ Petition is dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vji

To

1. The Principal Secretary to Government,
The Housing and Urban Development Department,
Fort St. George,
Chennai - 600 009.
2. The Registrar (Housing),
48, Ritherdon Road, Vepery,
Chennai - 600 007.
3. The Deputy Registrar (Housing),
873, Gandhi Nagar East,
Vellore - 632 006.
4. The Authorised Officer/Secretary,
S.945, Hosur Co-operative House
Building Society Limited,
Appavu Nagar, Thalli Road,
Hosur - 635 109.

+1cc to Mr.T.Sundaravadanam, Advocate, S.R.No.65727

+1cc to the Government Pleader, S.R.No.65801

W.P.NO.26017 OF 2021 AND
W.M.P.NOS.27463 AND
27464 OF 2021

RK(CO)
PBS/15/02/2022