



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.06.2021

CORAM :

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD).No.1303 of 2021

Vadasery Pothujana Kaitharer Nesavalur
Kotturavu Sangam Ltd., rep. by its President,
M.Murugan,
No.3439, Vadaseri, Vadaseri Village,
Agasteeswaram Taluk,
Kanniyakumari District.

... Petitioner

Vs.

1.The Deputy Inspector General of Registration,
O/o.The Deputy Inspector General of Registration,
Holy Markis Street,
Holy Jones Hr. Sec. School Downwards,
Sankar Colony, Palayamkottai,
Tirunelveli District.

2.The District Registrar of Societies,
District Registrar Office,
Kanniyakumari District.

3.The Sub Registrar,
Sub Registrar Office,
Vadasery,
Kanniyakumari District.

... Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent No.1 to dispose the appeal preferred by the petitioner's Sangam, dated 21.12.2020, in the light of Section 90 and 156 of the Tamilnadu Co-operative Societies Act, 1983 and consequently a direction directing the respondents to remove the illegal entries made in the Encumbrance Certificate of the society properties situated in D.No.128/70 in T.S.No.A-2-4-9/10B, A2/4-1, measuring 101.3 sq. ft. at Podhujana Nesavalur Kotturavu Sangam, Paramathinlinagapuram, Vettoornimadam, Nagerkovil, Kanniyakumari District, within the time limit fixed by this Court.



For Petitioner : Mr.I.Pinaygash
For Respondents : Mr.M.Lingadurai
Government Advocate

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ORDER

This writ petition has been filed for the issue of writ of Mandamus directing the first respondent to dispose of the appeal filed by the petitioner on 21.12.2020, within the time frame fixed by this Court.

2.The petitioner society claimed rights over certain properties. A suit was filed without impleading the society as a party and ultimately, the case came up before this Court in S.A. (MD).No.1079 of 2011. This Court disposed of the second appeal by judgment, dated 08.11.2011. The relevant portions in the judgment are extracted hereunder.

"14. I would like to point out that a mere pouring over and perusal of the said Sections and the precedents cited supra would display and demonstrate that the appellant has chosen the wrong forum. The appellant being the society, as per the contract itself, as contended by the learned counsel for the appellant, could have very well invoked the provisions of the Tamil Nadu Co-operative Societies Act, 1983 and proceeded to recover the property, in view of the alleged default committed by the second respondent. It is also worthwhile to remind that judgments/orders in most of the civil cases are only in personam and they do not bound third parties. Here also the appellant is not a party to the suit. In such a case, because the first respondent obtained a sale deed by proceeding as against the second respondent, that will not bind the Co-operative Society.

15. Section 90 of the Tamil Nadu Co-operative Societies Act would unambiguously and unequivocally highlight and spotlight that the co-operative Society, which allotted the land or house or immovable property to its Member can recover it from the allottee in case of default of the later, if the allottee is having any grievance, it is for him to raise the same as a dispute under Section 90 of the Tamil Nadu Co-operative Societies Act and no Civil Court can



interfere in view of Section 156 of the Tamil Nadu Co-operative Societies Act.

16. I recollect and call up the adage "why buy a cow, when you could get milk for free".

17. Once the Society itself is vested with rights to proceed as against the allottee, who defaulted to pay the instalments, I am at a loss to understand as to why the Society should figure as a third party in the Execution Petition filed by the first defendant. Both the Courts below without adverting to the aforesaid legal position, went tangent. Still I am of the view that the Second Appeal could not be entertained.

18. In view of the aforesaid legal position, I hereby recognise the statutory rights of the appellant to proceed under the Tamil Nadu Co-operative Societies Act, 1983, to recover the property concerned if at all the facts as stated by the appellant is true."

3. Pursuant to the above judgment passed by this Court, a representation was made before the second respondent and the second respondent by order, dated 22.09.2020, rejected the claim made by the petitioner seeking for the cancellation of the documents. Aggrieved by the same, an appeal was filed before the first respondent, on 21.12.2020. Since the same was not considered, the present writ petition has been filed before this Court, seeking for appropriate directions.

4. Heard Mr. I. Pinaygash, learned counsel appearing for the petitioner and Mr. M. Lingadurai, learned Government Advocate, appearing for the respondents.

5. Taking into consideration the facts and circumstances of this case and the limited relief sought for in this writ petition, there shall be a direction to the first respondent to deal with the appeal filed by the petitioner, on 21.12.2020 by affording opportunity to the petitioner and other interested parties and pass orders on its own merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

6. The petitioner is directed to make a fresh representation to the first respondent along with all relevant documents and also a copy of this order.



7.This writ petition is disposed of with the above directions. No costs.

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// True Copy //

Sd/-

Assistant Registrar (CS-I)

/ /2021

Sub Assistant Registrar(CS)

TM

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

1.The Deputy Inspector General of Registration,
O/o.The Deputy Inspector General of Registration,
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3.The Sub Registrar,
Sub Registrar Office,
Vadasery,
Kanniyakumari District.

+1 CC to SPL GP (SR-20689[F] dated 30/06/2021)

**Order made in
W.P. (MD) .No.1303 of 2021
28.06.2021**

KM(02.07.2021) 4P 5C