



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE **M.M.SUNDRESH**

AND

THE HONOURABLE MRS.JUSTICE **S.ANANTHI**

W.P. (MD) No.17106 of 2020

N.Saraswathi

: Petitioner

Vs.

1.The Registrar,
Co-operative Societies (Housing),
170, EVR Road,
Radhakrishnan Nagar,
Arumbakkam,
Chennai - 600 106.

2.The Deputy Registrar (Housing),
Madurai Region,
Madurai.

3.The Secretary,
No.A.1990, The Bodinayakanur,
Co-operative House Building Society Ltd.,
Bodinayakanur - 625 513,
Theni District.

4.A.Pandiyammal

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the respondents 1 to 3 to remove the encroachment made by the 4th respondent upon the plot No.C-8 in R.S.No.603 to the extent of 3200 sq.ft situated at Subburaj Nagar, Puducolony, Bodinayakanur, Theni District, based on the petitioner's representation dated 31.10.2020.

For Petitioner : Mr.C.Ganesh Kumar

For Respondents : Mr.R.Murugan,
Additional Government Pleader
for R.1 & R.2
Mr.P.Mahendran
for R.3
Mr.M.Mahaboob Athiff
for M/s.Ajmal Associates
for R.4



ORDER

(Order of the Court was made by **M.M. SUNDRESH, J.**)

The petitioner has come forward to file this writ petition seeking a Writ of Mandamus directing the respondents 1 to 3 to remove the encroachment made by the fourth respondent, over a property which was allotted to her husband. A direction was also issued by this Court in W.P.(MD)No.303 of 2019 to execute a deed of conveyance in her favour.

2. It appears that the petitioner's husband, in whose favour the property was allotted, entered into an agreement for sale with a third party, by name, Gandhi. The said Gandhi again sold the property in favour of one Mahalingam, who, in turn, is said to have sold the property to the fourth respondent herein. We do not wish to state anything on the legal basis of the so-called transfer. By the order of this Court in W.P.(MD)No.303 of 2019, a direction was issued to the third respondent herein to execute a sale deed in favour of the petitioner. The third respondent has asked the petitioner to come forward to execute the sale deed. The petitioner insisted that the fourth respondent has to be removed before undertaking the said exercise. Thereafter, the present writ petition is filed.

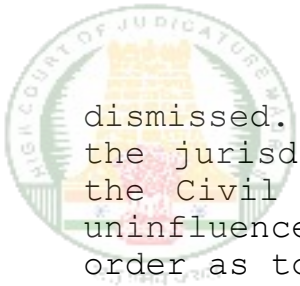
3. The learned Counsel appearing for the petitioner submitted that the fourth respondent is in unauthorized occupation. The third respondent is duty bound to hand over the possession.

4. The learned Counsel appearing for the third respondent submitted that the fourth respondent has put up a construction in the plot and got electricity service connection in her name. The property tax also stands in her name. In any case, it is not the look out of this respondent to remove the said respondent from her possession.

5. The learned Counsel appearing for the fourth respondent submitted that the earlier order was passed behind the back of the said respondent and therefore, they are contemplating an appeal as against the order. The petitioner has not placed correct facts. Having undertaken the earlier exercise, it is not open for the petitioner, who claims through her husband, that she is entitled for execution of sale deed and possession.

6. The facts, as narrated, speak for themselves. There is no duty imposed upon the respondents 1 to 3 to evict the fourth respondent. The situation has been put forth by the husband of the petitioner. The fourth respondent has been in possession and enjoyment for quite number of years. A Writ of Mandamus would not lie unless there exists a legal right corresponding to a legal duty, which, we do not find in this case.

<https://hcservices.courts.gov.in/hcservices/> 7. In such view of the matter, this writ petition stands



dismissed. However, liberty is granted to the petitioner to approach the jurisdictional Civil Court, if she so advised, in which case, the Civil Court will have to decide the case on its own merits, uninfluenced by any of the findings of this Court. There shall be no order as to costs.

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Sd/-

Assistant Registrar ()

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/ /2021

Sub Assistant Registrar (CS)

To

- 1.The Registrar,
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W.P. (MD) No.17106 of 2020
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TP (CO)

KB(12.02.2021) 3P 4C