



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.01.2021

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THE HONOURABLE MR. JUSTICE R. SUBRAMANIAN

C.R.P (MD) .No.2467 of 2014 (NPD)

and

M.P (MD) .No.1 of 2014

R.Elangovan

.. Petitioner/Appellant/Respondent

vs.

1.The Regional Deputy Registrar Housing,
Thanjavur Region,
Daniel Thomas Nagar,
(Near Old Housing Unit)
Thanjavur.

2.The Special Officer,
Rajarajan Co-operative Housing Society,
Rajappa Nagar,
Thanjavur.

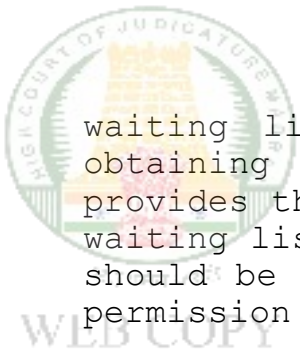
.. Respondents/Respondents/
Complainants

Prayer: Civil Revision Petition is filed under Article 227 of constitution of India, to set aside the decree passed by the learned Principal District Judge, Thanjavur in C.M.A.No.8 of 2007 dated 31.07.2008 by confirming the order passed by the 1st respondent in Na.Ka.No.1053/06/Sa.Pa., dated 19.12.2006.

For Petitioner	: Mr.G.Karnan
For R1	: Mr.VR.Shanmuganathan Special Government Pleader
For R2	: Mr.M.R.S.Prabhaker

ORDER

The petitioner challenges the order passed in C.M.A.No.8 of 2007. The said appeal was filed by the petitioner against the order of recovery passed under Section 87 of the Tamil Nadu Co-operative Societies Act. Surcharge proceedings were launched on the ground that the petitioner has caused loss to the Society by selling 2,400 Sq.ft., land belonging to the Society at Rs.27/- per Sq.ft., when the actual price in the area was Rs.157/- per Sq.ft. The plot in question was allotted to one Simonraj, at Rs.8/- per Sq.ft. Since the said Simonraj failed to pay the amount, the sale was cancelled and the property was resumed to the Society. Upon resumption, the property was sold to one Dhandapani at Rs.27/- per Sq.ft. The price ie., Rs.27/- per Sq.ft., according to the petitioner, was fixed, taking into account the interest charged by the Society and it was also contended that when the site is resumed by the Society or when the allotment of the site is cancelled, it shall be competent for the Society to reallocate the house site to the eligible members in the waiting list in conformity with the regulations framed for the purpose and approved by the Registrar. If there is no one in the

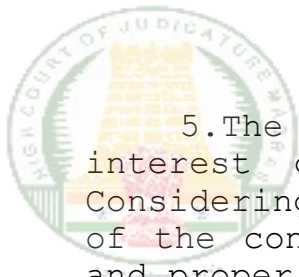


waiting list, it should be disposed of in public auction after obtaining prior permission of the Registrar. Regulation 46(K), provides that the sale should be made to the members, who are in the waiting list and in the absence of any member in the waiting list, it should be disposed of by public auction after obtaining the prior permission of the Registrar.

2.The petitioner would submit that since the said Dhandapani was number one in the waiting list, the sale was made to him and the price was fixed at Rs.27/- per Sq.ft., by adding interest to the original price of Rs.8/-. This was not accepted by the original authority viz., the Zonal Deputy Registrar Housing, Thanjavur, on the ground that the said Dhandapani was included as a member just 2 days prior to the cancellation of the sale in favour of Simonraj and therefore, there was a collusion between the petitioner and the said Dhandapani. The finding of the original authority was also confirmed by the Principal District Judge, Thanjavur in C.M.A.No.8 of 2007.

3.The learned counsel appearing for the petitioner vehemently contended that in the absence of mens rea viz., the intention to cheat the Society or to deprive the Society of its funds, there cannot be a surcharge proceedings under Section 87 of the Act. He also relied upon the decision of the Division Bench of this Court in **K.AJAY KUMAR GOSH AND OTHERS VS. TRIBUNAL FOR CO-OPERATIVE CASES (DISTRICT JUDGE OF KANYAKUMARI DISTRICT) NAGERCOIL AND ANOTHER** reported in (2009) 4 MLJ 992, in support of the said contention. My attention was also drawn to the judgment of the Hon'ble Mr.Justice P.Jothimani, in **AR.Shanmugha Murthy and M.Jayaraman vs. The principal District Judge/Co-operative Tribunal Cuddalore and others** reported in 2011(2) CWC 286, in support of the said argument.

4.Both the division Bench as well as the Hon'ble Mr.Justice P.Jothimani, have held that in the absence of a finding with reference to the intention to cheat the surcharge proceedings cannot be sustained. In the case on hand, both the original authority and the appellate authority have, on the basis of evidence available, come to the conclusion that the petitioner has colluded with the said Dhandapani and caused financial loss to the Society. Despite his best efforts, the learned counsel for the petitioner is unable to make out any illegality or irregularity in the said findings. Once there is a finding regarding the intention of the petitioner to cause loss to the Society by colluding with the said Dhandapani, I do not think that the revisional Court can interfere with the surcharge proceedings. It is evident that the said Dhandapani was admitted as a member of the Society just 2 days prior to the cancellation of the sale and the present sale was made to Dhandapani at Rs.27/- per Sq.ft., and at the time of the said alleged sale, the guideline value of the property was at Rs.157/- Sq.ft. I, therefore, do not think that there is any material irregularity or illegality in the order of the Appellate Court made in C.M.A.No.8 of 2007.



5.The learned counsel for the petitioner would contend that 14% interest granted by the authorities, is on the higher side. Considering the fact that the sale was made in the year 2006, I am of the considered opinion that interest at 9% p.a., would be just and proper.

6.In the light of the above, this civil revision petition is partly allowed and the rate of interest granted by the authorities at 14% p.a., is reduced to 9% p.a. In other respects, the order of the Principal District Judge, Thanjavur, in C.M.A.No.8 of 2007 will stand confirmed. Since the liability is made joint and several, the amount paid by the other defaulter viz., the Secretary of the Society, shall be given credit and the petitioner will be liable to pay the balance amount. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (crl.side)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The Principal district Judge,
Thanjavur.

2.The Regional Deputy Registrar Housing,
Thanjavur Region,
Daniel Thomas Nagar,
(Near Old Housing Unit)
Thanjavur.

3.The Special Officer,
Rajarajan Co-operative Housing Society,
Rajappa Nagar,
Thanjavur.

Copy to
The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.V.K.VIJAYA RAGHAVAN, Advocate (SR-379[F] dated
06/01/2021)

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