



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.11224 of 2014
and
M.P.Nos.1 & 2 of 2014

P.Chinnasamy

.. Petitioner

Vs.

1. The Presiding Officer / District Judge,
Principal District Court / District Co-op.
Cases Appellate Tribunal,
Coimbatore District.
2. The Deputy Registrar of Co-op. Societies (Housing),
Coimbatore Circle,
Coimbatore - 641 002.
3. Cheran Co-operative Housing Society Ltd.,
Rep. by its President,
Cheran Nagar, Goundempalayam,
Coimbatore - 641 029.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order in ARC No.337/2009/Sa.Pa dated 28.07.2010 passed by the 2nd respondent and the consequential order in Co-op. CMA No.13/2011 dated 15.04.2013 passed by the 1st respondent and quash the same as being illegal, arbitrary, unconstitutional and consequently direct the 3rd respondent to allot one plot measuring to the extent of 5.5 cents reserved for the petitioner in Thekkalur housing scheme or any other housing scheme after collecting the balance amount as per the calculation and to award costs.

For Petitioner : Mr.T.Sundaravadanam

For RR 1 & 2 : Mr.U.Baranidharan
Additional Government Pleader

For R3 : Ms.T.P.Savitha



O R D E R

The petitioner has come out with the present Writ Petition challenging the order of the 2nd respondent dated 28.07.2010 as well as the judgment of the 1st respondent dated 15.04.2013 and for a direction to the 3rd respondent to allot one plot to the petitioner.

2. According to the petitioner, he was an employee of Cheran Transport Corporation and also member of the 3rd respondent society. He retired from service on 30.11.2012. The 3rd respondent society formed a layout by name Thekalur Housing Plots scheme. The 3rd respondent allotted a house site for the petitioner measuring 5 ½ cents at the approximate cost of Rs.67,100/- excluding amenities. The said amount has to be paid by the petitioner in 55 equal monthly installment of Rs.2,000/-. The said sum will be deducted from the salary of the petitioner and credited to the 3rd respondent society. While so, the 3rd respondent sent a notice dated 05.04.2004, calling upon the petitioner to pay the balance sum of Rs.85,458/-, failing which deduction from his salary will be stopped and turned down the request for relieving the petitioner from the housing scheme. The 3rd respondent also informed the petitioner that plot will be re-allotted to others and demanded more money. The Secretary of the society wanted to grab the plot with an intention to sell it to the third parties at higher price and pay lesser amount to the society. In spite of the complaint given to the 2nd respondent by the petitioner, the 2nd respondent has not taken any action against the Secretary of 3rd respondent society. Therefore, the petitioner issued legal notice dated 22.11.2006 to the 3rd respondent society to allot the plot to him. The 3rd respondent sent a reply, stating that plot was not purchased for the petitioner, since he has not paid the sum of Rs.85,458/-.

3. In view of the above, the petitioner filed ARC No.337 of 2009 before the 2nd respondent. The 2nd respondent by the order dated 28.07.2010, directed the 3rd respondent to repay the amount to the petitioner together with interest at the rate of 12% per annum and rejected the claim of the petitioner for allotment of the plot. Against the said order dated 28.07.2010 made in ARC No.337 of 2009, the petitioner filed appeal before the Principal District Court, Coimbatore in Co-op.C.M.A.No.13 of 2011. The said Co-op.C.M.A.No.13 of 2011 was allowed in part by the judgment dated 15.04.2013 setting aside the order of the 2nd respondent in respect of refund of the amount to the petitioner alone and confirming the order in other aspects. Hence, the petitioner has come out with the present Writ Petition challenging the order of the 2nd respondent dated 28.07.2010 in ARC No.337 of 2009 and judgment of the 1st respondent dated 15.04.2013 in Co-op.C.M.A.No.13 of 2011.



4.The learned counsel appearing for the petitioner submitted that the action of the 3rd respondent, order of the 2nd respondent as well as judgment of 1st respondent are invalid and illegal. He further submitted that the petitioner is entitled for allotment of house site as per the earlier allotment of 3rd respondent and prayed for allowing the Writ Petition.

5.The respondents 2 & 3 filed separate counter affidavits.

6.The learned Additional Government Pleader appearing for the respondents 1 & 2 as well as the learned counsel appearing for the 3rd respondent submitted that the house site was allotted to the petitioner on tentative cost of Rs.67,100/-. The petitioner gave an application for payment of said amount from his Provident Fund account. But, no amount was paid from the petitioner's Provident Fund account. Subsequently, at the request of the petitioner, the amount of Rs.67,100/- alone was sanctioned and the petitioner agreed to repay the same in 55 equal monthly installments of Rs.2,000/- each. The 3rd respondent recovered the said amount from the monthly salary of the petitioner for the period from August 2002 to February 2007 and 3rd respondent called upon the petitioner to choose the house site and pay a sum of Rs.85,458/-, being the balance amount payable including the amenities. In spite of repeated reminder and demands, the petitioner did not pay the said amount. By the letter dated 27.03.2004, the petitioner requested the 3rd respondent to come out from the scheme due to financial constraint and had withdrawn his claim of house sites. But, the claim of the petitioner was rejected. Now, the petitioner has retired from service and he is not a member of the society. Hence, he is not entitled for any allotment. The learned Additional Government Pleader appearing for respondents 1 & 2 as well as the learned counsel appearing for the 3rd respondent further submitted that the 2nd respondent by giving valid reason, rejected the request of the petitioner for allotting the plot and directed the 3rd respondent to refund the amount to the petitioner. In the appeal filed by the petitioner, the Tribunal set aside the order of the 2nd respondent in respect of refund of the amount to the petitioner and confirmed the order in other aspects. There is no error in the order of the 2nd respondent as well as in the judgment of the 1st respondent and prayed for dismissal of the Writ Petition.

7.Heard the learned counsel appearing for the petitioner, learned Additional Government Pleader appearing for the respondents 1 & 2 as well as the learned counsel appearing for the 3rd respondent and perused the entire materials on record.



8. From the materials on record, it is seen that the petitioner while working in the Cheran Transport Corporation, became a member of 3rd respondent society. At his request, house site was allotted at the cost of Rs.67,100/-, being the tentative cost of the land. The final cost would be fixed after development of land into house sites and providing amenities. Subsequently, considering the expenses incurred in forming the lay-out, the 3rd respondent fixed the final cost and called upon the petitioner to pay a sum of Rs.85,458/-, being the development charges and amenities. The petitioner has not paid the said amount. On the other hand, by the letter dated 27.03.2004, the petitioner requested the 3rd respondent to relieve him from housing scheme as he urgently requires money to pay the semester fees to his daughter, who was studying 4th year BDS course. The petitioner, when raised a dispute before the 2nd respondent under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983, has not paid the amount of Rs.85,458/-, as claimed by the 3rd respondent. The petitioner, after requesting the 3rd respondent to relieve him from housing scheme as well as refund the amount paid by him and without paying the balance amount as claimed by the 3rd respondent, is not entitled for allotment of plot. It is the further contention of the 3rd respondent in the counter affidavit filed by them that when the 3rd respondent called upon the petitioner to choose the plot, the petitioner failed to avail the said opportunity. The petitioner has not denied the said contention of the respondents 2 & 3. Having failed to choose the plot as called upon by the 3rd respondent, the petitioner is not entitled for allotment of plot. Both the respondents 1 & 2 have given valid reason for rejecting the request of the petitioner for allotment of plot and directed the 3rd respondent to refund the amount paid by the petitioner. There is no reason to interfere with the said order and judgment of the respondents 2 & 1 respectively.

9. For the above reasons, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Presiding Officer / District Judge,
Principal District Court/District Co-op.
Cases Appellate Tribunal,
Coimbatore District.
2. The Deputy Registrar of Co-op. Societies (Housing),
Coimbatore Circle, Coimbatore - 641 002.
3. The President,
Cheran Co-operative Housing Society Ltd.,
Cheran Nagar, Goundempalayam,
Coimbatore - 641 029.

+1cc to Mr.T.Sundaravadanam, Advocate, S.R.No.26886
+1cc to Ms.T.P.Savitha, Advocate, S.R.No.27145
+1cc to the Government Pleader, S.R.No.27149

W.P.No.11224 of 2014

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NSK/24/05/2022