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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2022

CORAM

The Hon'ble Mr. Justice PARESH UPADHYAY
and
The Hon'ble Mr. Justice SATHI KUMAR SUKUMARA KURUP

W.A.No.2565 of 2021

K.Selvaraj

.. Appellant

Vs

1.The Arbitrator / Sub-Registrar of Co-operatives,
(Housing Development),
Sankari, Salem District.

2.The Special Officer (Co-operatives),
Palace Nagar Co-operative House Building Society
Ltd., S.1565,
Salem.

.. Respondents

Appeal preferred under Clause 15 of Letters Patent against
the order dated 29.10.2020 made in W.P.No.15101 of 2020.

Prayer in W.P.No.15101 of 2020 : Writ Petition filed under
Article 226 of the Constitution of India, praying for the
issuance of writ of certiorari calling for the records
pertaining to the Impugned order passed by the learned
Principal District Judge Salem in CMA..CS.No 20/2011 DATED
30.8.2019 confirming the impugned award passed by the 1st
Respondent herein in his proceedings dated 3.9.2011 in OS.NO
1564/2011 filed against the Impugned order passed by the 2nd
Respondent dated 19.4.2011 in his proceedings in NA.KA.NO 5/2011
and quash the same.

For Appellant : Mr.K.S.Govinda Prasad

For Respondents : Mr.C.Jayaprakash,
Government Advocate,
for R2



JUDGMENT
(Delivered by PARESH UPADHYAY, J.)

Challenge in this appeal is made to the order dated 29 October 2020 recorded on W.P.No. 15101 of 2020. This appeal is by the original writ petitioner.

2. Learned advocate for the appellant has submitted that the impugned order is unsustainable since the grounds raised in the writ petition are not dealt with inasmuch as the writ petitioner / appellant could not pay the amount asked for by the respondent society / authorities for want of 'No Objection Certificate' given by it and therefore the allotment of the property in question could not have been cancelled by them. It is submitted that the arbitrator, so also the District Court ought to have interfered with, which they did not and that error ought to have been corrected in the writ petition, and the same having not been done, this appeal be entertained. It is submitted that the decision of the respondent of cancelling the allotment be interfered with. During the course of the hearing, learned advocate for the appellant has also submitted that, the appellant is willing to pay some amount, if breathing period is given to him so that he can salvage the property. Learned advocate for the appellant has also disputed the calculation given on behalf of the respondent whereby the amount of Rs. 41,50,227/- is indicted to be outstanding. It is noted that, learned advocate for the appellant has taken this Court through the paper book which includes the order passed by the arbitrator, the District Court and other relevant papers. It is submitted that this appeal be entertained.

3. On the other hand, learned Government Advocate for the second respondent has submitted that after initial payment of Rs. 2,00,000/- (Rupees Two Lakhs Only), the appellant did not make any payment and continued in possession of the property in question unauthorisedly for a period of about two decades. It is submitted that though the allotment of flat was cancelled on 19.04.2011, he has continued in the possession of the property in question unauthorisedly. It is submitted that three authorities have examined this issue, including learned Single Judge of this Court and therefore no interference be made in this appeal. It is submitted that this appeal be dismissed.

4. Having heard learned advocates for the respective parties and having considered the material on record, this Court finds as under:-

4.1 The respondent No.2 Society allotted Flat No.7, Block E, First Floor (the property in question) to the appellant on 07



July 2001. At that time, an amount of Rs. 9,47,100/- was payable by the appellant to the Society. He had paid an amount of Rs.2,00,000/-. After the initial payment of Rs.2,00,000/-, the appellant did not pay anything.

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4.2. It is indicated that the loan of an amount of Rs.7,50,000/- was sanctioned by HDFC Bank, which the appellant was to avail. It is the case of the appellant that he could not avail that loan because 'No Objection Certificate' was not given by the Society. Non-disbursement of loan by HDFC to the appellant, for about two decades can not be the subject-matter of scrutiny by this Court in this appeal. Fact remains that, the amount of about Rs.7,50,000/-, which the appellant was required to pay to the Society, was not paid by him at all. This continued for a decade. As last recourse, the Society cancelled the allotment of the property in question by an order dated 19 April 2011.

4.3 The above was challenged by the appellant before the arbitrator as stipulated under the agreement between the parties but his claim was not accepted by the arbitrator. The said order dated 03 September 2011 is on record and this Court has considered the same. Apart from the merits, the arbitrator also noted that the present appellant / plaintiff did not appear before it and had not made any representation. On the basis of the material on record, the arbitrator did not interfere in the cancellation of allotment of the property in question.

4.4 The above was challenged by the appellant before the District Court, Salem in C.M.A.C.S.No.20/2011. The District Court also, on the basis of the material on record, did not interfere and confirmed the order passed by the arbitrator. The said order of the District Court dated 30 August 2019 was challenged by filing writ petition which is considered by learned Single Judge and recorded satisfaction that, no interference is required in the orders passed by the authorities below. It is this order dated 29 October 2020 which is the subject-matter of this appeal.

5. This Court has considered all the three orders i.e., by the arbitrator, the District Court, so also in the writ petition. On conjoint consideration thereof, it transpires that there was no ground to interfere in the cancellation of allotment vide order dated 19 April 2011 and the same is rightly not interfered with by the authorities below. The confirmation thereof by the learned single Judge, in the facts of the case can not be said to be erroneous in any manner. No interference therefore is required.



6. It is noted that, during the course of hearing of this appeal, to test the bonafide of the appellant, at one stage it was inquired if the appellant was willing to settle the dispute with the authorities, as one time settlement. The calculation given by the respondent is disputed by the appellant. We do not express any opinion with regard to the calculation given by the respondent authorities, nor the dispute raised by the appellant.

7. The only point for consideration before this Court in this appeal is, whether the order passed by learned Single Judge can be said to be erroneous in any manner. As noted above, we find that none of the orders can be said to be erroneous and the appellant could not have been granted any relief against cancellation of allotment letter. Therefore this appeal needs to be dismissed.

8. It is noted that the appellant has already remained in possession of the property in question for more than two decades. Needless to observe that the respondent authorities are at liberty to take recourse to any proceeding, in accordance with law, including coercive proceedings.

9. This writ appeal is disposed of in above terms. No costs. Consequently, connected C.M.P.No.16679 of 2021 is closed.

Sd/-

Assistant Registrar (CS-VII)

//True copy//

Sub Assistant Registrar

ssm/30

To:-

1.The Arbitrator / Sub-Registrar of Co-operatives,
(Housing Development),
Sankari, Salem District.

2.The Special Officer (Co-operatives),
Palace Nagar Co-operative House Building Society Ltd.,
S.1565, Salem.

+1cc to Mr.K.S.Govinda Prasad, Advocate SR.No.3462

+1cc to Mr.C.Jayaprakash, Advocate SR.No.3601

+1cc to Government Pleader SR.No.3396

W.A.No.2565 of 2021

MT (CO)

GMV (02/02/2022)