



W.P.(MD).No.11625 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON :04.07.2022

ORDER PRONOUNDED ON : 11 .07.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

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1.Ariyanatchi

2.M.Rajakumar (died)

3.Lalithambigai

4.Pandiarajan

5.Vedavalli

6.Jagadeeswari

7.Chandrika

8.Pavithra

9.Sasikumar

....Petitioners

(Petitioners 7 to 9 are substituted as legal heirs of the second petitioner vide Court order dated 09.06.2022)

Vs

1.The Registrar of Co-operative Societies (Housing)

492, Annasalai

TNHB Complex 2nd Floor

Nandanam, Chennai



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2.The Deputy Registrar of Co-operative Societies(Housing)
Virudhunagar Region, Virudhunagar District

3.The Special Officer
Tamil Nadu Government Officials
Co-operative House Site (MDA HSG 45) Society
Karaikudi

4.Tmt.Thangam
Represented by her Power of Attorney
Mr.K.MuthukrishnanRespondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order issued by the first respondent in his proceedings in RC 5861/2009/SF 1 dated 22.09.2016 confirming the proceedings issued by the first respondent in RC.No.5861/2009 SF 1 dated 19.07.2010 and quash the same.

(Prayer amended vide Court order dated 09.06.2022)

For Petitioners	: Mr.Ram Sundar Vijayaraj
	For M/s.Veera Associates
For R1 to R3	: Mr.M.Ramesh
	Government Advocate
For R4	: Ms.V.Jeyarani

ORDER

The writ petition has been filed by the original allottee of a housing plot from the second respondent Housing Society.



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2.The Society has executed an order of allotment in favour of the ancestor in title of the writ petitioner on 20.06.1985. Thereafter, a sale deed has also been executed in favour of the ancestor in title of the writ petitioner namely one S.Muthu Karuppan. The said sale deed has been cancelled by the Housing Society on 28.11.1994 on the ground that the allottee has not put up construction within a period of two years as contemplated in the bylaws of the Society.

3.The Co-operative Housing Society after cancelling the sale deed in favour of the Muthu Karuppan, has executed another sale deed in favour of one A.V.Thiyagarajan. The said A.V.Thiyagarajan has executed a power deed in favour of one Muthu Krishnan on 22.01.2004. The said power agent Muthu Krishnan has executed a sale deed in favour of the fourth respondent on 09.12.2004.

4.The legal heirs of the original allottee have raised an objection for cancellation of the allotment order for the first time on 08.04.2002 by filing an application before the Deputy Registrar (Housing). The said application was returned by the second respondent on 18.10.2002 citing certain defects. On 20.10.2005, a proceeding was issued by the second respondent herein calling for objection from the original allottees whose allotment orders were



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cancelled. Pursuant to the same, the petitioner has filed his objection. After hearing the writ petitioner and the fourth respondent herein, the second respondent herein has passed an order on 18.05.2009 invoking the provisions of Section 90 of Tamil Nadu Co-operative Societies Act. As per the said order, the second respondent has arrived at a finding that before cancelling the sale deed, no proper notice has been issued to the original allottee namely Muthu Karuppan. On the said finding, the second respondent has allowed the application thereby registering the allotment in favour of Muthu Karuppan.

5.The said order was challenged by the fourth respondent herein before the first respondent by way of a revision. By an order dated 19.07.2010, the first respondent passed an order holding that proper notices have been issued to the ancestor in title of the writ petitioner. That apart, the original allottee has not informed his change of address and hence, the cancellation of the allotment order for not constructing a house within a period of two years is correct. On the said finding, the first respondent reversed the order passed by the second respondent. Thereafter, the writ petitioner filed a review before the first respondent. The Review Application was dismissed on 22.09.2016 by the first respondent. The present writ petition has been filed to quash the order of the first respondent dated 19.07.2010 and the review the order passed by the first respondent on 22.09.2016.



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6.The learned counsel for the petitioners had contended that at the time of allotment of plots, the original allottee Muthu Karuppan was working in Karaikudi. Thereafter, he got transferred to Madurai. The sale deed has been executed in favour of Muthu Karuppan on 03.01.1986. Even in the said sale deed, only Madurai address has been mentioned. According to the learned counsel for the petitioner, the order of cancellation dated 28.11.1994 has been passed without any notice or enquiry. He had further contended that a paper publication has been made on 29.11.1994 with regard to cancellation of the allotment order of various persons. However, the name of the original allottee namely Muthu Karuppan is not found. He had further contended that a notice is said to have been issued by the third respondent on 01.11.1994. However, the said letter has been addressed to Karaikudi address and the same was not received by the said Muthu Karuppan. Another paper publication has been made on 11.04.1994 for cancellation of the allotment for not constructing a house. Even in the said notification, the petitioner's name does not find a place.

7.The sum and substance of the counsel for the petitioner is that the cancellation of the allotment order and the sale deed have been passed by the third respondent herein without issuing any proper notice or conducting any



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enquiry. Hence, the first respondent had erred in not properly appreciating the said fact and in confirming the order of cancellation of the allotment order in favour of the Muthu Karuppan. He had further contended that the second respondent herein has properly considered all the documents and has arrived at a finding that no proper notice was issued to the Muthu Karuppan before cancelling the sale deed. Hence, he prayed for setting aside the order passed by the first respondent herein and allow the writ petition.

8.Per contra, the learned counsel appearing for the respondents 1 to 3 had contended that proper notices have been issued to the petitioners before cancelling the sale deed. There is a specific Clause in the bylaws of the Housing Society that the Society has got power to cancel the sale deed, if the allottee has not put up construction within a period of two years. Only after accepting the said condition in the bylaws, the said Muthu Karuppan has become a member of the Society. Only on the basis of the said membership, an allotment order was issued which was followed by a sale deed in favour of Muthu Karuppan.

9.The learned counsel for the Official respondents had further contended that a notice has been issued to the petitioners on 01.11.1994 calling for explanation why the sale deed in his favour should not be

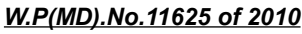


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cancelled for putting up construction within a period of two years. The said notice was sent to an address which was given by the Muthu Karuppan at the time of becoming member of the Society. The said Muthu Karuppan has not informed about the change of his address to the Housing Society which is mandatory as per bylaws. That apart, a paper publication has been effected that the third respondent Society intends to cancel the said sale deed. Since there was no response from the said Muthu Karuppan, the third respondent Society has proceeded to cancel the sale deed on 28.11.1994.

10.The Official Respondents had further contended that the limitation for raising a dispute under Section 90 of the Tamil Nadu Co-operative Societies Act is 6 years. However, the legal heirs of the petitioner have raised dispute for the first time only on 08.04.2002, even though the sale deed was cancelled on 28.11.1994. That apart, the said application was returned on 18.10.2002 for complying with certain defects. Thereafter, Section 90 of the proceedings have again been initiated only in the year 2005 before the second respondent herein. Hence, the proceedings initiated are barred by limitation.

11.The learned Counsel appearing for the fourth respondent had contended that the third respondent Society had executed a sale deed in favour of another member namely A.V.Thiyagarajan on 11.01.1995 and



12.I have considered the submissions made on either side.

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per the case of the writ petitioner, the original allottee namely Muthu Karuppan has not put up construction till the date of cancellation namely 28.11.1994. In effect, no construction was made in the allotted plot for nearly 9 years.

14.The learned counsel for the petitioners has vehemently contended that notices have not been served on the original allottee Muthu Karuppan before cancelling the sale deed. On 31.10.1994, a notice has been issued to the said Muthu Karuppan that if the construction work is not started within a period of 15 days, the allotment order will be cancelled. The said letter has been addressed to Karaikudi address. However, according to the petitioner, even in the year 1986, the original allottee Muthu Karuppan was transferred to Madurai and the sale deed in his favour dated 03.01.1986 will clearly indicate that he has already been transferred to Madurai. When the Society was aware of the address of Muthu Karuppan, the Society should have issued a notice only to his Madurai address. Any notice issued to Karaikudi address cannot be termed to be a proper notice. However, the fact reminds that the said Muthu Karuppan has not put up any construction till the sale deed was cancelled on 28.11.1994. No purpose would have been served by issuance of notice to the said allottee Muthu Karuppan. Only he had put up any construction during the said period, he could have defended the said



proceedings. Issuance of any notice could only be an empty formality, when the decision of the third respondent would not have challenged by the reply of the allottee.

15. The Hon'ble Division Bench of our High Court in a judgement reported in **(2014) 8 MLJ 641 (Om Metal Infra Projects Ltd. Vs. Union of India)** has held as follows:

“35.Question (vi):Whether the impugned actions have violated the principles of natural justice and whether following of such principle is warranted under the facts and circumstances of the present case?

It is well settled that application of the principles of natural justice is not a straight-jacket formula to be applied in each and every case. Certainly, facts and circumstances of each case should be gone into to decide as to whether such principle needs to be applied or not. The purpose of applying such principle is to put the affected person on notice and to get his views or explanation as to why such proposed action cannot be taken. If the person so affected, on receipt of notice gives explanation and satisfies the authority that the proposed action cannot be taken and/or it is not at all warranted, then the authority who is competent to take action, can take a view or decision based on such explanation. Therefore, it is crystal clear that such explanation or objection to be given by the affected person, much have a bearing on the decision to be taken by the authority concerned. In other words, such objection or explanation must be in a position to make the



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authority concerned to take a different view also, other than the one proposed already. To put in a nut-shell, there must be two views possible, one in favour and the other against the noticee. Only under such circumstances, the requirement of issuing notice and following the principles of natural justice arises. If no other view is possible or the explanation or objection to be made by such person cannot alter or have any bearing on the decision to be taken, there is no need to issue such notice. In those cases, issuance of notice would be only an empty formality”.

16. In view of the Division Bench judgement, I am of the view that the issuance of notice prior to the cancellation of the sale deed would only be an empty formality, when the original allottee has no defence whatsoever for the non construction of any building in the allotted plot for nearly 9 years. Hence, this contention of the petitioner deserves to be rejected.

17. A sale deed in favour of the Muthu Karuppan has been cancelled on 28.11.1994. As per Section 90 of the Tamil Nadu Co-operative Societies Act, the allottee is entitled to raise a dispute before the second respondent herein. As per Section 90(9)(a) of the Tamil Nadu Co-operative Societies Act, 1983, the period of limitation for raising a dispute under Section 90 of the Co-operative Societies Act, 1983 is 6 years. In the present case, for the first time, an objection was raised before the second respondent on 08.04.2002



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which was closed on 18.10.2002 for non compliance of certain defects in the application. Thereafter, a second application was filed in the year 2005 before the second respondent who has passed an order in favour of the original allottee. The said order has been reversed by the first respondent. Hence, it is clear that the dispute raised by the writ petitioner after a period of six years is clearly barred by limitation as contemplated under Section 90(9)(a) of the Tamil Nadu Co-operative Societies Act, 1983. Hence, the contention of the respondent that the dispute raised by the writ petitioner under Section 90 of the Tamil Nadu Co-operative Societies Act is barred by limitation is legally sustainable.

18.The learned counsel for the petitioners had further contended that the second allottee namely A.V.Thiyagarajan had sold away the property in the year 2004 even without putting up any construction and the said sale deed has not been questioned by the authorities under the Co-operative Societies Act. The sale deed in favour of the fourth respondent herein has to be questioned only by the respondents 1 to 3 herein. The writ petitioners' allotment was cancelled way back in the year 1994 and have has no locustandi whatsoever to question the same, especially when he has lost his right to challenge the same by due limitation.



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19. In view of the above said discussion, I do not find any illegality or infirmity in the order passed by the first respondent herein in confirming the cancellation of the sale deed of the said Muthu Karuppan. The writ petition stands dismissed. No costs.

11.07.2022

Internet : Yes/No
Index : Yes/No
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To

1. The Registrar of Co-operative Societies (Housing)
492, Annasalai
TNHB Complex 2nd Floor
Nandanam, Chennai

2. The Deputy Registrar of Co-operative Societies(Housing)
Virudhunagar Region, Virudhunagar

3. The Special Officer
Tamil Nadu Government Officials
Co-operative House Site (MDA HSG 45) Society
Karaikudi



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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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