



W.A.(MD)Nos.56 of 2012 and 598 of 2011

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
07.12.2022	22.12.2022

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE SUNDER MOHAN**

W.A.(MD)Nos.56 of 2012 and 598 of 2011

W.A.(MD)No.56 of 2012:-

1.KR.Subbaiah (Died)
2.S.Sornam, W/o.Late. KR.Subbaiah
3.S.Karuppaiah Raja, S/o.Late. KR.Subbaiah
4.S.Shantharam, S/o.Late. KR.Subbaiah ... Appellants
[Appellants 2 to 4 are brought on record as LR's. Of
the deceased sole appellant, vide Court order dated
20.04.2022, made in C.M.P.(MD)No.4659 of 2019]

vs.

1.R.Ramasubbu (Died)
2.The Registrar of Co-operative Societies (Housing),
No.22, 4th Main Road,
Gandhi Nagar,
Adayar,
Chennai – 600 020.
3.The Deputy Registrar of Co-operative Societies (Housing),
Virudhunagar.

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4.The Special Officer,
MDA-HSC 45, Tamil Nadu Government Officials
Co-operative House Sites Society Limited,
SKM Building,
Sekkalai Street,
Karaikudi Town,
Sivaganga District.

5.R.Vijayalakshmi, W/o.Late R.Ramasubbu

6.R.Ramasubramanian, S/o.Late. R.Ramasubbu

7.R.Babu Ramasami, S/o.Late. R.Ramasubbu ... Respondents
[R5 to R7 brought on record as LR's. of the deceased
first respondent as per order dated 10.08.2018, made
in C.M.P.(MD)No.78 of 2018]

PRAYER : Writ Appeal filed under Clause 15 of the Letters of Patent, against the order dated 18.03.2011, made in W.P.(MD)No.5417 of 2008.

For Appellants : Mr.S.Manikandan

For 1st Respondent : Died

For Respondents 2 and 3: Mr.D.Sasikumar
Additional Government Pleader

For 4th Respondent : Disd.

For Respondents 5 to 7 : Mr.P.R.Prithiviraj

W.A.(MD)No.598 of 2011:-

1.R.Ramasubbu (Died)
2.R.Vijayalakshmi, W/o.Late R.Ramasubbu

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3.R.Ramasubramanian, S/o.Late. R.Ramasubbu
4.R.Babu Ramasami, S/o.Late. R.Ramasubbu ... Appellants
[Appellants 2 to 4 brought on record as LR.s. of the deceased
first appellant as per order dated 10.08.2018, made
in C.M.P.(MD)No.10278 of 2016]

vs.

1.The Registrar of Co-operative Societies (Housing),
No.22, 4th Main Road,
Gandhi Nagar,
Adayar,
Chennai – 600 020.

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

3.The Special Officer,
MDA-HSC 45, Tamil Nadu Government Officials
Co-operative House Sites Society Limited,
SKM Building,
Sekkalai Street,
Karaikudi.

4.K.R.Subbaiah (Died)

5.Sornam, W/o.Late K.R.Subbaiah

6.S.Karuppaiah Raja, S/o.Late. K.R.Subbaiah

7.S.Shantharam, S/o.Late. K.R.Subbaiah ... Respondents

[R5 to R7 are impleaded as LR.s. of the deceased
fourth respondent as per order dated 12.10.2012,
made in C.M.P.(MD)No.9457 of 2022]

PRAYER : Writ Appeal filed under Clause 15 of the Letters of Patent, against the
order dated 18.03.2011, made in W.P.(MD)No.5417 of 2008.

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For Appellants : Mr.P.R.Prithiviraj

For Respondents 1 and 2: Mr.D.Sasikumar
Additional Government Pleader

For 3rd Respondent : Mr.M.Govindan

For 4th Respondent : Died

For Respondents 5 to 7 : Mr.S.Manikandan

COMMON JUDGMENT

**DR.G.JAYACHANDRAN, J.
and
SUNDER MOHAN, J.**

Since the issues involved in both the Writ Appeals are one and the same, they are heard together and disposed of by this common judgment.

2. For the sake of convenience, the parties are referred to as per their description in the Writ Petition.

3. R.Ramasubbu, the appellant in W.A.(MD)No.598 of 2011 was forced to approach this Court by way of W.P.(MD)No.5417 of 2008 being aggrieved by the order of the first respondent/Registrar of Co-operative Societies [Housing],



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cancelling the allotment of the Plot, bearing No.B207, which was sold to him by the third respondent Society through the registered sale deed, dated 07.03.1986, for valuable consideration.

4. The first respondent passed a proceedings, dated 28.04.2008, cancelling the allotment for not complying the condition of putting up construction in the vacant site within a period of two years. The third respondent/Special Officer of the Housing Site Society, after cancelling the allotment, had allotted the Plot to the fourth respondent K.R.Subbaiah, who on receipt of the allotment order, had put up construction and resided in that house. Under the said circumstances, the Writ Petition has been filed on the ground that the sale deed executed pursuant to the allotment, cannot be unilaterally cancelled without serving proper notice and affording an opportunity to the allottee.

5. Claiming that after allotment of the Plot and transfer of property in his name, the writ petitioner started construction in the Plot by putting up foundation. Meanwhile, he was transferred and therefore, not able to continue the construction by supervising the same. However, the third respondent with *mala*



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fide intention has deliberately sent a notice dated 01.09.1993, regarding his proposal to cancel the sale deed, dated 07.03.1986, to the incorrect address in order to favour the fourth respondent.

6. Attributing malice on the conduct of the third respondent to favour the fourth respondent, the Writ Petition was filed for quashing the proceedings, dated 28.04.2008 and pass an order, directing the respondents 3 and 4 to hand over possession of the Plot, bearing S.No.234/2, Plot No.B207, Kalanivasal Village, Karaikudi Taluk, Sivagangai District, which was illegally sold to the fourth respondent without proper cancellation of the earlier sale deed.

7. The respondents 3 and 4 contested the Writ Petition by engaging a counsel and filing counter. According to them, the writ petitioner failed to comply the mandatory condition of allotment, since he has not completed construction within a period of two years of the allotment. After due notice, the allotment was cancelled and the Plot was re-allotted to the fourth respondent.



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9. Challenging the said dismissal order, the writ petitioner filed A.S.No.49 of 1999 before the Subordinate Court, Devakottai. The said appeal was also dismissed. Thereafter, the writ petitioner approached the second respondent/Deputy Registrar under Section 90 of the Act challenging the proceedings of the third respondent, cancelling the sale deed stood in his name. The said appeal was allowed and the second respondent passed an award on 29.08.2007 declaring that the deed of cancellation dated 03.05.1994 against the writ petitioner and the sale deed made in favour of the fourth respondent on 23.05.1994 are invalid.

10. Being aggrieved, the fourth respondent preferred Revision Petition against the award of the second respondent, dated 29.08.2007, before the first



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respondent/Registrar of Co-operative Societies [Housing]. The said Revision preferred under Section 153 of the Act was allowed on 28.04.2008. The contention of the fourth respondent is that the cancellation of the sale deed in favour of the writ petitioner and subsequent allotment of the Plot to the fourth respondent are in tune with law and terms of contract, which affirmed by the first respondent in the Revision Petition preferred by the fourth respondent.

11. The learned Single Judge after appreciating the rival contentions and the arguments advanced by the respective counsels, relying upon the decision of this Court in **M/s.Latif Estate Line India Ltd., Rep. by its Managing Director vs. Mrs.Hadeeja Ammal and others** reported in **CDJ 2011 MHC 747**, held that unilateral cancellation of sale deed will not extinguish the right of the title holder and also relying upon the decision of this Court rendered in **G.D.Subramaniam vs. Sub-Registrar, Office of Konur Sub-Registrar, Sidco Nagar, Chennai** reported in **2009 (1) CTC 709** held that the Registering Authority at the time of presentation of documents for registration of cancellation of deed of conveyance should ensure that all the parties both Executant and Claimant consented for cancellation of the sale deed and that the cancellation of the sale deed dated



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07.03.1986, unilaterally made by the third respondent Society is not legally permissible in the eye of law. At the same time, the learned Single Judge has also observed that on the allotment of land to the fourth respondent, vide sale deed dated 23.05.1994, has vested right on the fourth respondent, who availed loan from L.I.C. and put up construction. As on date, he is in possession and enjoyment of the suit property. Therefore, directed the writ petitioner to file the suit for cancellation of sale deed, dated 23.05.1994, executed in favour of the fourth respondent and declaration that the said sale deed is void. The writ petitioner was advised to array necessary parties to the suit and seek a complete and comprehensive remedy in the manner known to law and in accordance with law, so as to give a complete quietus to the whole issue.

12. Being aggrieved by the first part of the order declaring the cancellation of sale deed in favour of the writ petitioner as contrary to law, the fourth respondent has preferred W.A.(MD)No.56 of 2012. Regarding recognition of subsequent sale deed in favour of the fourth respondent and direction to the writ petitioner to approach the Civil Court for composite relief, the writ petitioner has preferred W.A.(MD)No.598 of 2011.



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13. Heard the respective learned counsels appearing for the parties and perused the materials on record.

14. The facts as found from the record indicates that the writ petitioner Ramasubbu was allotted to Plot No.B207, vide order dated 23.06.1985. On receiving the entire sale consideration, sale deed was executed in his favour on 07.03.1986. The recitals in the sale deed, particularly, Clause 8 and Clause 9 indicate that the said Plot was allotted to the writ petitioner Ramasubbu drawing of lot and the allotment is subject to the terms and conditions of assignment stipulated in the Government Order and Bye-laws of the Society. By-law No.38 of the third respondent/ Society, empowers the Society to collect the value of the house site from the members, who occupy them and By-law No.39(6) mandates every member, who has been allotted a Plot shall commence construction of the building thereon within a period of two years from the date of allotment, failing which, the Society shall be competent to resume the site and evict the member from it. The writ petitioner has been divested of his right in the Plot by virtue of this Clause. But, before resorting to such a drastic action of depriving the right of property, the third respondent/Society has miserably failed to follow the principles of natural justice.

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15. The alleged proposal to cancel the allotment sent to the previous address of the writ petitioner and the returned cover, which form part of the file produced by the learned Additional Government Pleader, indicates that the notice regarding proposed cancellation of allotment has been addressed to the writ petitioner describing him as the Co-operative Sub-Registrar, 2, Subramaniapuram 2nd Street, Karaikudi. At that time, he was not residing in that address due to his transfer to Madurai.

16. It is contended by the learned Additional Government Pleader appearing for the respondent Department that before resorting to cancellation of the sale deed, public notice through paper publication was effected.

17. The learned counsel appearing for the writ petitioner R.Ramasubbu submitted that in the sale deed executed in favour of the writ petitioner, the address of the writ petitioner is mentioned as No.20, Pl.V.A Lane, Devakottai. After executing the sale deed, mentioning the above address, the alleged letter for proposed cancellation of the sale deed issued to Karaikudi address is an express *mala fide* action, more particularly, when the writ petitioner is a Sub-Registrar in



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the very same Department and has been transferred from Karaikudi to Madurai is known to the Society, however, intentionally the notice was caused to the wrong address.

18. This Court finds that the notice for cancellation of sale deed not caused to the known address of the allottee. Insofar as the said fact is concerned, the learned Single Judge has rightly observed that the cancellation of the sale deed, dated 07.03.1986, unilaterally made by the third respondent/Society is not legally permissible. Hence, finds no merit in W.A.(MD)No.56 of 2012 filed by the fourth respondent. However, insofar as the other observation of the learned Single Judge, which is challenged by writ petitioner in W.A.(MD)No.598 of 2011 is concerned, the perusal of the record indicates that allotment made to the writ petitioner was transparent after inviting applications from all prospective buyers and by drawing of lot, whereas the allotment to the fourth respondent, who is the appellant in W.A.(MD)No.56 of 2012, bristles with opaqueness. How the fourth respondent was chosen for re-allotment of the Plot is not explained by the official respondents. Soon after the issuance of the impugned order of cancellation of allotment made to the writ petitioner, the Plot has been allotted and registration of



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the said Plot in favour of the fourth respondent carried. Later, the fourth respondent has raised loan to put up construction. Without informing the members of the Society and the Public transparently that the Plot is available for sale, the Society has cherry-picked the fourth respondent to allot the Plot. For that reason, the later portion of the impugned order needs interference.

19. This Court is of the view that W.A.(MD)No.598 of 2011, filed by the writ petitioner, challenging the later portion of the writ order is to be allowed. The fourth respondent, who has purchased the Plot through back door cannot be termed as a *bona fide* purchaser and he is bound to suffer for the dubious manner, in which, he got the allotment of the Plot already sold to the writ petitioner.

20. In the result, the observations made by the learned Single Judge, recognizing the subsequent sale in favour of the fourth respondent, directing the writ petitioner to approach the Civil Court for composite suit, is set aside. At this juncture, it is pertinent to note that the writ petitioner in fact approached the Civil Court for appropriate remedy, but he was driven to approach the Department as per the provisions of the Tamil Nadu Co-operative Societies Act. He, in fact,



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thereafter, had filed an appeal to the Deputy Registrar and succeeded. The Revision Petition filed by the fourth respondent was allowed. As a consequence, the Writ Petition was filed. The Court while exercising the power under Articles 226 and 227 of the Constitution, cannot ignore the extraordinary power vested on it and drive the litigant to square one. More so, after coming into categorical conclusion that the unilateral cancellation of the sale deed is not legally permissible. Therefore, upholding the observation of the learned Single Judge regarding illegality in the unilateral cancellation, this Court is constrained to set aside the remaining portion of the observation made by the learned Single Judge in the order impugned.

21. In fine, the unilateral cancellation of the sale deed without proper notice is null and void and contrary to the principles of the natural justice. Therefore, the same is liable to be set aside. Accordingly, the cancellation of sale deed is set aside. As a consequence, the subsequent allotment in favour of the fourth respondent/appellant in W.A.(MD)No.56 of 2012 is *non-est* in law and declared as void. As a result, W.A.(MD)No.598 of 2011 is allowed and W.A.(MD)No.56 of 2012 filed by the fourth respondent is dismissed. No costs



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22. This Court is conscious of the fact that the fourth respondent has invested money to put up construction in the Plot allotted to him in a dubious manner and contrary to law. However, he being privy to the said dubious act has to suffer. Insofar the building put up by him is concerned, he shall remove the superstructure and hand over the vacant site to the appellant/writ petitioner within a period of six months from today or in alternate, he shall get compensation for the building from the writ petitioner any amount agreeable by both parties and hand over possession of the Plot with building. This is only a suggestion of this Court to set a platform for a win-win situation and not judicially enforceable.

Index : Yes / No
Internet : Yes
smn2

[G.J., J.] [S.M., J.]
22.12.2022

To

1. The Registrar of Co-operative Societies (Housing),
No.22, 4th Main Road,
Gandhi Nagar,
Adayar,
Chennai – 600 020.

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2.The Deputy Registrar of Co-operative Societies (Housing),
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3.The Special Officer,
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DR.G.JAYACHANDRAN, J.
and
SUNDER MOAHN, J.

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PRE-DELIVERY COMMON JUDGMENT MADE IN
W.A.(MD)Nos.56 of 2012 and 598 of 2011

DATED : 22.12.2022

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