



W.P.(MD).No.2230 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 29.09.2022

ORDER PRONOUNCED ON : 18 .10.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.2230 of 2014

S.Jegadeesan

....Petitioner

Vs

1.The Secretary to the Government
Housing and Urban Development (Housing Society) Department
Fort St.George
Secretariat
Chennai 600 009

2.The Registrar of Co-operative Societies (Housing)
Office of the Registrar of Co-operative Societies
II Floor, Door No.493, Anna Salai
Nandanam
Chennai 600 035

3.The Deputy Registrar of Co-operative Societies (Housing)
Virughunagar Region
No.3, T.T.Road
Maninagaram
Virudhunagar
Virudhunagar District

4.A 1321 Karaikudi Co-operative House Building Society
28/61, Church 2nd Street, T.T.Nagar
Karaikudi 630 001
Sivagangai District

5.P.Rajappan

....Respondents



W.P(MD).No.2230 of 2014

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in G.O(IT) No.3 Housing Urban Development Department (V.Ku.Sa.1) dated 07.01.2014 on the file of the respondent No.1 and quash the same as illegal and consequently for a direction directing the respondent Nos.1 to 3 to re-allot the house site bearing Plot No.746 situated at Sudamanipuram Layout, Karaikudi, Sivagangai District to the petitioner within the time period stipulated by this Court.

For Petitioner	: Mr.T.Lajapathi Roy
For R1 to R3	: Mr.S.Shanmugavel Additional Government Pleader
For R4	: No appearance
For R5	: Mr.G.Prabhu Rajadurai

ORDER

The present writ petition has been filed challenging an order passed by the first respondent herein under which he has confirmed the order passed by the respondents 2 and 3 herein wherein the request of the fifth respondent for execution of a sale deed in his favour has been accepted. The petitioner has further sought a mandamus to re-allot the house site bearing Plot No.746 in Sudamanipuram Layout, Karaikudi, Sivagangai District to the petitioner.

2. According to the petitioner, he is one of the members of the fourth respondent Society and even after a passage of one year, no housing plot was



W.P(MD).No.2230 of 2014

allotted to him and hence, he issued a legal notice on 19.06.1993. Thereafter, he filed a consumer complaint in Consumer Complaint No.22 of 1995 before the Consumer Disputes Redressal Forum, Sivagangai District. The said forum has passed an order that the petitioner is entitled to allotment of a house plot.

3.The petitioner had further contended that he had initiated a proceeding before the third respondent herein under Section 90 of the Tamil Nadu Co-operative Societies Act and in the said proceeding, an order was passed in his favour on 08.10.2003 with a direction to allot a housing plot to the petitioner by giving priority and by following seniority. The petitioner has further contended that the fourth respondent Society has passed a resolution on 25.02.2004 which resulted in cancellation of the allotment made in favour of the fifth respondent herein on the ground that he has not residing within the housing Society limits and re-allot the housing plot No.746 to the writ petitioner. The fourth respondent herein had sought permission of the second respondent for cancelling the allotment in favour of the fifth respondent and re-allot the same in favour of the writ petitioner. On 16.05.2007, the first respondent invoking his power under Section 181 of the Tamil Nadu Co-operative Societies Act, passed an order that after duly cancelling the allotment in favour of the fifth respondent and refunding the amount to him, necessary steps will be taken to re-allot the said house site to the petitioner.



W.P(MD).No.2230 of 2014

4.The said order was challenged by the fifth respondent herein in WP.(MD).No.10442 of 2007. However, the said writ petition was dismissed on 16.05.2007. The petitioner had further contended that since the second respondent has not properly followed the order, the first respondent has issued a stern warning to him. The fifth respondent had filed another writ petition in WP.(MD).No.3599 of 2008 challenging the re-allotment in favour of the petitioner. However, the was withdrawn on 21.01.2010 on the ground that he had already raised a dispute under Section 90 of the Tamil Nadu Co-operative Societies Act, before the third respondent. The third respondent herein by his order dated 15.11.2010 directed the Society to execute a sale deed in favour of the fifth respondent herein. The said order was challenged by the petitioner before the second respondent herein. The second respondent also concurred with the findings of the third respondent and by way of an order dated 31.01.2012, he dismissed the revision petition. Thereafter, the petitioner had filed a review application before the first respondent under Section 154 of the Tamil Nadu Co-operative Societies Act. The said review application was dismissed on 07.01.2014. The said order is under challenge in the present writ petition.

5.According to the learned counsel for the petitioner, the Society has passed a resolution on 25.02.2004 to cancel the allotment in favour of the fifth respondent for violation of bye-laws and re-allotted the said plot in



W.P(MD).No.2230 of 2014

favour of the writ petitioner. Thereafter, the said resolution was forwarded to the second respondent herein seeking his approval. An approval was also granted by the said authority on 16.05.2007. The writ petition filed by the fifth respondent challenging an order dated 16.05.2007 in WP(MD).No. 10442 of 2007 was dismissed on 12.02.2007. Hence, it is clear that the second respondent has already directed the fourth respondent Society to cancel the allotment in favour of the fifth respondent and has also directed the Society to re-allot the same plot to the writ petitioner.

6. The learned counsel for the petitioner had further contended that the order of the second respondent herein dated 16.05.2007 was challenged before this Court unsuccessfully. Thereafter, the fifth respondent has chosen to file an application under Section 90 of the Co-operative Societies Act before the third respondent herein seeking a direction to the fourth respondent Society for execution of the sale deed. The said application under Section 90 is not at all maintainable, in view of the fact that already a higher authority namely the third respondent has directed to cancel the allotment made in favour of the fifth respondent herein. The third respondent without properly appreciating the order of this Court and the direction of the second respondent herein, has allowed the said application and directed the Society to execute the sale deed. As against the said order, the petitioner had



W.P(MD).No.2230 of 2014

filed a revision before the second respondent. The second respondent has also not properly appreciated the grounds raised by the writ petitioner and has dismissed the revision petition. Respondents 2 and 3 herein have not considered the fact that the fifth respondent has clearly violated the bye-laws, in view of the fact that he was not residing within the society limit. He was already having a own house within the Society limits. He had further contended that once there is a direction from the second respondent to cancel the allotment in favour of the fifth respondent, the Society ought to have implemented the said order and re-allotted the same plot to the writ petitioner.

7. The learned counsel had further contended that the first respondent herein has not properly appreciated the sequence of events and resolution passed by the fourth respondent Society. Without considering the same, the order impugned in the writ petitioner has been passed. He had further contended that though he is a member of the Society from the year 1991 onwards. So far no housing plot has been allotted to him and the allotment are made jumping the seniority. Hence, he prayed for allowing the writ petition.

8.Per contra, the learned counsel appearing for the fifth respondent had contended that he is a member of the fourth respondent Society and he was allotted housing Plot No.746 on 28.07.1994. Though the plot was allotted in



W.P(MD).No.2230 of 2014

his favour and the entire amount was remitted by him as per demand made by the Society, sale deed was not executed in his favour. Hence, he was constrained to send several representations to the authorities seeking their intervention for execution of the sale deed in favour of the fifth respondent herein.

9.The fourth respondent Society has passed a resolution on 25.02.2004 cancelling the order of allotment in his favour on the sole ground that he has violated the bye-laws, in view of the fact that he is residing out side the Society limits. Admittedly the petitioner being a Government servant, he was transferred from one place to another and he was not permanently residing within the Society limits. Though several other allottees were also residing out side the Society limits, their allotment was not cancelled and plot of the writ petitioner was cherry picked for cancellation so as to favour the writ petitioner. Even before cancellation of the allotment in favour of the writ petitioner, the Society has passed a resolution to re-allot the same in favour of the writ petitioner. He had further contended that the resolution by the fourth respondent Society was forwarded to the second respondent. The second respondent has given his concurrence with a condition to get appropriate permission of the Executive Committee and the General Body before cancelling the allotment in favour of the fifth respondent herein. Only thereafter, the request for re-allotment of the writ petitioner should be



W.P(MD).No.2230 of 2014

considered by the Executive Committee and the General Body. Hence, it is clear that there was no positive direction from the second respondent herein to cancel the allotment that was granted in favour of the writ petitioner.

10.The learned counsel for the fifth respondent had further contended that the fourth respondent Society did not get consent of the Executive Committee or General Body for cancellation of plot allotted in favour of the fifth respondent. The resolution passed by the fourth respondent Society on 25.02.2004 has not reached a finality as per law. He had further contended that since the sale deed was not executed in his favour and the Society was attempting to cancel the allotment order, he was constrained to raise a dispute under Section 90 of the Tamil Nadu Co-operative Societies Act before the third respondent. The third respondent has given a concrete finding that the allegation as against the petitioner that he is not residing within the Society limit is not legally sustainable. The third respondent has further found that he has not proved that the fifth respondent is having any other own house or house site within the limits of the Society. The third respondent in the said order has also pointed out that, in case, if the allotment of the some other person is cancelled, the request of the writ petitioner can be considered by the Society. The said order of the third respondent was challenged by the writ petitioner before the second respondent.



W.P(MD).No.2230 of 2014

11. In fact the third respondent has directed the Society to consider allotment of some place to the writ petitioner. However, the petitioner was insisting upon Plot No.746 which was already allotted in favour of the fifth respondent on 28.07.1984. The second respondent also after hearing both sides arrived at a finding that the reasons stated by the fourth respondent Society for proposing to cancel the allotment of the fifth respondent herein is not legally sustainable. The second respondent further found that the attempt made by the Society to cancel the allotment in favour of the fifth respondent was rejected by the General Body of the Society. Based upon the above said finding, the second respondent had confirmed the order passed by the third respondent.

12. The learned counsel for the fifth respondent had further contended that the authorities under the Co-operative Societies Act have categorically found that the petitioner is entitled to get a sale deed executed in his favour. The writ petitioner cannot insist upon a particular plot to be allotted to him. In case of any cancellation of any other allotment, depending upon the seniority, the petitioner could get a house plot allotted in his name. Since the orders of the authorities are well within the bounds of the Co-operative Societies Act, the writ petition may be dismissed.

13. I have considered the submissions made on either side and perused the materials available on record.



W.P(MD).No.2230 of 2014

14. There is no dispute that the fifth respondent was allotted a housing plot in Plot No.746 on 28.07.1984. It is also not in dispute that he has paid the entire amount as demanded by the Society. The Society has chosen to pass a resolution on 25.02.2004 to cancel the allotment in favour of the fifth respondent on the alleged ground that he is not residing within the limits of the society. In the said resolution, it was also proposed to re-allot the same in favour of the writ petitioner. A perusal of the resolution makes it clear that is only a proposal to be approved by the second respondent herein. The second respondent by his order dated 16.05.2007 has directed the fourth respondent Society to place the cancellation before the Executive Committee and General Body for approval. Only if they are approved by the general body, the plot allotted in favour of the fifth respondent would get cancelled. The second respondent has further directed that only after cancellation of the plot allotted to the fifth respondent, the request for re-allotment of the said plot in favour of the writ petitioner could be considered after placing it before the General Body.

15. A perusal of the said order would clearly indicate that the writ petitioner did not get any right of allotment by way of the said resolution dated 25.02.2004 or by an order of the second respondent herein dated 16.05.2007. Unless and until the fourth respondent Society had placed the cancellation before the General Body and the General Body had approved the



W.P(MD).No.2230 of 2014

cancellation, the plot allotted to the fifth respondent herein would not get cancelled. As long as the allotment in favour of the fifth respondent is in subsistence, the question of re-allotting the said plot in favour of the writ petitioner would not arise. The fifth respondent had approached the third respondent only for a direction for execution of a sale deed. The writ petitioner though was an unnecessary party, he was impleaded there, only because of the resolution of the fourth respondent Society dated 25.02.2004. The third respondent after analysing the factual situation, found that the fifth respondent is entitled to get a sale deed in his favour. Since the allotment in favour of the fifth respondent has not been cancelled, the writ petitioner will not have any right at all to challenge the said order of the third respondent. However, he has chosen to challenge the same before the second respondent. The second respondent has also concurred with the findings of the third respondent and dismissed the revision.

16.The petitioner had filed a review under Section 154 of the Tamil Nadu Co-operative Societies Act before the first respondent. The said review jurisdiction is not an independent jurisdiction of the first respondent. Section 154 provides for review of the order passed either under Section 152 or under Section 153 of the Act. Therefore, it is clear that the review application under Section 154 could be filed only before the concerned authorities who passed the order under Sections 153 and 154 as the case may be. The review filed by



W.P(MD).No.2230 of 2014

the writ petitioner invoking Section 154 of the Tamil Nadu Co-operative Societies Act before the first respondent herein is not maintainable in the eye of law. The present writ petition is filed challenging an order passed by the first respondent herein. In the present writ petition, the orders passed by the respondents 2 and 3 have not been challenged. Hence, I find that the present writ petition itself is not maintainable.

17.Hence, viewed from any angle, the writ petitioner's right is inchoate. The petitioner cannot seek re-allotment of Plot No.746 unless and until the said allotment in favour of the fifth respondent is cancelled in a manner known to law. Even if it is cancelled, it is not known who is in the next line of seniority to get the plot. The petitioner cannot jump the queue and seek re-allotment of cancelled plot just because he has filed a writ petition. Therefore, the present writ petition is devoid of merits and the same is liable to be dismissed.

18.In view of the above said discussion, the writ petition stands dismissed. No costs.

18.10.2022

Internet : Yes/No
Index : Yes/No
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W.P(MD).No.2230 of 2014

To

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W.P.(MD).No.2230 of 2014

Pre-delivery order made in

W.P.(MD).No.2230 of 2014

18.10.2022