

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.08.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.22542 of 2021
and
W.M.P.(MD)No.19067 of 2021

R.Albert Nixon

... Petitioner

Vs

- 1.The Inspector General of Registration
O/o. Inspector General of Registration,
Chennai-600 028.
- 2.The Registrar of Cooperative Societies
O/o. The Registrar of Cooperative Societies
No.170 N.V.Natarajan Maaligai
Periyar E.V.R.High Road,
Poonamallee High Road,
Kilpauk,
Chennai-10.
- 3.The District Registrar,
O/o. The District Registrar,
Tuticorin,
Tuticorin District.
- 4.The Sub Registrar,
O/o.The Sub-Registrar No.1,
Tuticorin,
Tuticorin District.
- 5.The Deputy Registrar of Cooperative Societies (Housing)

O/o.The Deputy Registrar of Cooperative Societies (Housing)
Tirunelveli,
Tirunelveli District.

6.The Cooperative Sub-Registrar/Liquidator,
O/o.The Deputy Registrar (Housing)
Tirunelveli,
Tirunelveli District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the Respondent Nos.1 to 6 to remove the proceedings of Respondent No.5 in Na.Ka.No.350/2021/E1 dated 20.10.2021 mentioned in encumbrance certificate of the petitioner's property in Survey No.55 Thoothukudi Town, Thoothukudi district and pass orders within the time frame stipulated by this Court.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.J.K.Jayaseelan

Additional Government Pleader

ORDER

Heard the learned counsel on either side.

2. The 6th respondent executed sale deed dated 13.05.2020 in favour of one Stephen conveying the petition mentioned property. On the same day, Stephen settled the said property in favour of his brother / writ petitioner herein. When this transaction came to the notice of the fifth respondent, he moved the fourth respondent and created the petition mentioned encumbrance

declaring that the aforesaid sale as well as the settlement deeds are bad in law. Challenging the same, this Writ Petition came to be filed.

3. The learned counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned encumbrance created at the instance of the fifth respondent and allow the writ petition.

4. Per contra, the learned Additional Government Pleader appearing for R1 to R5 submitted that no interference is called for. According to him, the fifth respondent is empowered to give direction in question under Section 181 of the Tamil Nadu Cooperative Societies Act, 1983. He submitted that the sale made by the sixth respondent in favour of the writ petitioner's brother is fraudulent in nature. He attempted to substantiate his contention by pointing out that on the same day, when the sale deed was executed in favour of Stephen, settlement was executed by him in favour of the writ petitioner. He submitted that a huge financial loss has been caused to the society. He also submitted that liquidator was not competent to execute the sale deed.

5. I carefully considered the rival contentions and went through the materials on record.

6. I make it clear that I am not concerned with the validity of the transaction entered into between the parties. The only question which I am called upon to answer is whether the registering authority can create the encumbrance in question at the instance of the fifth respondent thereby casting cloud over the writ petitioner's title. Section 181 of the Tamil Nadu Corporative Societies Act, 1983 is as follows:-

181.Power of Registrar to give directions in the public interests, etc-

(1) Where the Registrar is satisfied that in the public interest or for the purpose of securing proper implementation of co-operative production and other development programmes approved or undertaken by the Government or to secure the proper management of the business of any class of registered societies generally, or for preventing the affairs of any registered society being conducted in a manner detrimental to the interests of the members, or of the depositors or the creditors thereof, it is necessary to issue directions to any class of registered societies generally or to any registered society or registered societies in particular, he may, by order issue directions to them from time to time and all registered societies or the registered society concerned, as the case may be, shall be bound to comply with such directions.

2. The Registrar may, by order, modify or cancel any directions issued under sub-Section (1) and in modifying or cancelling such directions may impose such conditions as he may deem fit.

7. A reading of the aforesaid statutory provision would clearly indicate that an extraordinary power is conferred on the Registrar to issue direction in public interest. The restrictions on the exercise of this power have been set out in many precedents. For instance, in the decision reported in 1999 (II) CTC 626 (*T.Mutheeswaran Vs. The Registrar of Co-operative Societies (Housing) Gandhi Nagar, Adayar*), it has been held that power under Section 181 does not enable the Registrar to give direction regarding appointment of Secretary or paid servant to the Co-operative Society. Likewise, he cannot invoke the said power so as to nullify the settlement arrived at under Section 18(1) of the Industrial Disputes Act, 1947. Likewise, by the aforesaid provision, the fifth respondent cannot call upon the fourth respondent to enter any encumbrance in the register of encumbrances. The authorities under the Co-operative Societies Act can resort to only such measures as are available to them under law.

8. For setting aside the sale made by the sixth respondent in favour of the writ petitioner's brother Stephen, only a regular civil suit can be filed. Without any statutory basis, the registering authority cannot be called upon to enter the petition mentioned encumbrance in the register. The impugned action is patently without jurisdiction. It is accordingly quashed. I make it clear that the outcome of this writ petition will not in any way come in the way of the fifth respondent from taking such measures as are available under law.

9. The writ petition is allowed. No costs. Consequently, connected connected miscellaneous petition is closed.

17.08.2022

Index : Yes / No
Internet : Yes/ No
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