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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.04.2023

CORAM

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

W.P.(MD)No.529 of 2022

A.Muthiah

... Petitioner

vs.

1.The Registrar of Cooperative Societies (Housing),
No.48, Ritherdon Road, Vepery, Chennai-7.

2.The Managing Director,
Tamil Nadu Cooperative Housing Federation Limited,
No.48, Ritherdon Road, Vepery, Chennai-7.

3.The Deputy Registrar of Cooperative Societies (Housing),
No.1, Milk Project Campus,
DD Road, Maninagaram, Virudhunagar-1.

4.The Sivagangai Mavatta Anaithu Nagaratchi, Perooratchi,
Ooratchi, Ondriya Paniyalarkal Matrum Pothu
Kooturavu Veettuvassathi Sangam Limited,
represented by its President, Sivagangai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the fourth respondent to return the sale deed in Document No.1612/2000, dated 21.07.2000 deposited with the fourth respondent as deposit of title deed in connection with housing loan No.9, Member No.222 with the fourth



respondent by considering the representation, dated 07.09.2021 within the time limit that may be fixed by this Court.

For Petitioner :Mr.K.Sundaravel
For R1, R3 and R4:Mr.Shanmugavel
Additional Government Pleader
For R2 :Mr.Kanmani Annamalai

ORDER

The Writ Petition has been filed in the nature of a Mandamus seeking a direction to the fourth respondent, the Sivagangai Mavatta Anaithu Nagaratchi, Perooratchi, Ooratchi, Ondriya Paniyalarkal Matrum Pothu Kooturavu Veettuvassathi Sangam Limited, represented by its President to return the sale deed in Doc.No.1612/2000, dated 21.07.2000, which had been deposited by the petitioner herein with the said fourth respondent, as mortgage by deposit of title deed in connection with housing loan No.9, Member No.222, between the petitioner and the fourth respondent. The petitioner had given a representation, dated 07.09.2021.

2.Heard Mr.K.Sundaravel, learned Counsel for the petitioner, Mr.Shanmugavel, learned Additional Government Pleader for the



respondents 1, 3 and 4 and Mr.Kanmanai Annamalai, learned Counsel for the second respondent.

3.The petitioner and the fourth respondent had a contractual relationship. The fourth respondent had advanced housing loan. The petitioner had deposited the title document aforementioned with the fourth respondent. The housing loan advanced to the petitioner was a sum of Rs.1,20,000/-. This has to be repaid by the petitioner within a period of ten years. The petitioner had also completed the construction of the house and had commenced repayment of the term loan from 01.09.2004. The petitioner had paid a total sum of Rs.1,57,990/- till 24.09.2012. The amount paid under the mortgage receipt to a sum of Rs. 3,100/- was also taken into account as repayment of the loan. Totally it is claimed that the petitioner had paid a sum of Rs.1,61,090/-. A further sum of Rs.8,500/- was also with the fourth respondent as membership share amount. A subsidy had been announced by the Government of Tamil Nadu and on calculation, it is claimed that the petitioner is deemed to have paid a sum of Rs.51,430/- on 30.06.2011. The last payment made by the petitioner was on 24.09.2012 to a sum of Rs.29,980/-.



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4. It is an admitted fact that the petitioner had discharged the loan.

It is also an admitted fact that there was a privity of contract only between the petitioner and the fourth respondent. In order to lend money to the petitioner herein, the second respondent, Tamil Nadu Cooperative Housing Federation Limited had advanced amounts to the fourth respondent for this particular purpose. The fourth respondent had advanced loans not only to the petitioner but also to many others, who had so availed loans. The fourth respondent after receiving funds from the second respondent had forwarded the title deed deposited by the petitioner to the second respondent. The title deed of the petitioner is now in the custody of the second respondent.

5. Notice had been directed to the second respondent. The fact that the petitioner had repaid the entire loan amount is admitted by the learned Counsel for the fourth respondent. This is also admitted by the learned Counsel for the second respondent. However, it is stated that the fourth respondent owing to the funds allotted by the second respondent for sanctioning of loans not just to the petitioner but to various other



individuals is still due and payable to the second respondent a sum of Rs.1,95,000/-, after taking into consideration the various subsidies. This is not the amount due and payable by the petitioner herein.

6.The second respondent has no say in the matter since there is no privity of contract between the petitioner and second respondent. So long as the second respondent retains the document of the petitioner, the second respondent can be categorised as illegally holding on to the document and can also be liable to pay costs to the petitioner herein. The petitioner as a member of the fourth respondent Society has repaid the entire loan amount to the fourth respondent. Once that is done, the second respondent will have to release the document for which the loan had been advanced and for which the loan had been repaid. Holding back of the documents cannot be appreciated by this Court.

7.A direction is given that the second respondent must release the document of the petitioner within a period of two weeks from the date of receipt of a copy of this order. The Document to be so released is Doc.No.1612/2000 deposited by the petitioner with the fourth



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respondent, dated 21.07.2020 in relation to Housing Loan No.9, Membership No.222. The second respondent may mind it that they cannot hold on to the document as a threat as against the petitioner herein, when they have no direct contractual relationship with the petitioner at all. As a responsible Federation, they should act with dignity and should be a model in returning back the documents for which the loan amounts have been repaid by members like the petitioner herein.

8.The direction to return back the document within a period of two weeks is specifically directing against the second respondent herein. No furthers orders are passed. This Court is refraining from imposing cost on the second respondent only because they had advanced loan to the fourth respondent, which had ultimately benefitted the petitioner herein in building his house.

9.The learned Counsel for the second respondent, after the orders are dictated stated that the second respondent would hand over the document to the fourth respondent and if it is done so, a direction is given to the fourth respondent to hand over the document back to the



petitioner herein. The entire exercise should be completed within a period of two weeks from the date of receipt of a copy of this order.

10.The Writ Petition stands allowed. No costs.

Index :Yes / No
Internet :Yes
NCC : Yes/No

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C.V.KARTHIKEYAN, J.

cmr

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