



CRP(MD).Nos.1276 to 1280 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 16.08.2023

CORAM

THE HON'BLE MR.JUSTICE **C.KUMARAPPAN**

CRP (MD).Nos. 1276 to 1280 of 2018 and
CMP(MD).Nos.5513, 5573, 5374, 5375 and 5376 of 2018

1.The President,
Tiruchirapalli Co-operative House Construction Society Ltd.,
R-786,
Tiruchirapalli. - 620 018

2.The Secretary,
Tirichirapalli Co-operative House Construction Society Ltd.,
R-786
Tiruchirapalli.

Petitioners in both CRPs

Vs.

J. Santhi	Respondent in CRP(MD).No.1276 / 2018
Karunanithi	Respondent in CRP(MD).No.1277 / 2018
M.Pitchaiammal	Respondent in CRP(MD).No.1278 / 2018
M.Marudambal	Respondent in CRP(MD).No.1279 / 2018
S. Girija Sundaram	Respondent in CRP(MD).No.1280 / 2018



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COMMON PRAYER : Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decreetal order made in I.A.No.945,946, 947, 948 and 949 of 2017 in O.S.Nos.486, 489, 492, 495 and 498 of 2017, dated 07.02.2018 on the file of the I Additional Sub Court, Trichy and thereby, reject the suit made in O.S.Nos.486, 489, 492, 495 and 498 of 2017 on the file of the I Additional Sub Court, Trichy.

For Petitioners : Mr. M. Senthil Ayyanar in all CRPs
Government Advocate

For Respondents : Mr. Sankar Murali in all CRPs

ORDER

The revision petitioners herein are the respondents / defendants before the Court below. The respondents herein are the petitioners / plaintiffs before below.

2. For the sake of convenience, the parties are referred according to the litigative status before the Trial Court.

3. The brief facts of the case which give rise to the instant Civil



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Revision Petitions are that, the respondents / plaintiffs have filed a suit for the relief of declaration declaring the impugned notice, dated 05.04.2017 issued by the 1st defendant qua, “The President, Tiruchirapalli Co-operative House Construction Society Ltd., Tiruchirapalli. - 620 018” as null and void and un-enforceable in law, and for the specific performance of the allotment order, dated 18.05.2001. In the said suit, the petitioner herein has moved an application under Order 7 Rule 11 CPC by contending that the suit is barred under law in view of Section 156 of the Tamil Nadu Co-operative Societies Act, 1983. They would also raise an objection that the very relief for specific performance is barred by limitation, and there is no cause of action for filing a suit.

4. The said application was resisted by the respondents / plaintiffs, by contending that the very letter, dated 05.04.2017 against which declaration was sought for is not an order passed “under this Act” by the Arbitrator, Liquidator or Registrar, and therefore, the suit is not barred under Section 156 of the Co-operative Societies Act. (herein after referred as “Act”) . It is the further submission of the respondents / plaintiffs that the ground of limitation is a mixed question of law and fact,



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hence contended that the same cannot be considered, without there being any oral evidence. The learned counsel appearing for the respondents / plaintiffs would further submit that their plaint would disclose the cause of action, and that the ground alleged by the revision petitioners / defendants that the plaint did not disclose any cause of action for filing the suit for specific performance, is without any basis and prayed to dismiss these petitions.

5. The Court below after considering the submissions of either side submissions has ultimately dismissed the applications of the revision petitioners / defendants. Aggrieved over the said orders, the revision petitioners are before this Court.

6. The learned Government Advocate would vehemently submit that, the very impugned order, dated 05.04.2017 was passed by the President, Tiruchirapalli Co-operative House Construction Society Ltd., was under Section 2 (19) of the 'Act'. He would further submit that the President is deemed to be the Officer of the Co-operative Society and therefore, the very impugned order, dated 05.04.2017 is passed under the



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Act. It is also the submission of the learned Government Advocate that the allotment took place during 2001 and the instant suit for the allotment of specific performance was filed after a period of 16 years, hence, the same is barred by limitation. He would also further submit that on the harmonious reading of the plaint the same does not disclose cause of action. Hence, would contend that the order of dismissal passed by the Court below is erroneous and prayed to allow these petitions.

7. Per contra, the learned counsel appearing for the respondents / plaintiffs vehemently submit that the very impugned order, dated 05.04.2017 is neither an order passed by the Arbitrator, Registrar or Liquidator nor the said order has been passed under the Act, hence, the suit is not hit by bar of jurisdiction, and he would also submit that the question of limitation, and cause of action cannot be decided at very threshold without letting in evidence, as the same is a mixed question of law and fact.

8. I have given my anxious consideration to the submissions of the learned counsel appearing on either side, and perused the materials



available on record.

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9. Before embarking upon all the factual aspect, this Court deem it appropriate to extract the provision of order 7 Rule 11 CPC, which reads as follows:

11. Rejection of plaint – The plaint shall be rejected in the following cases:

(a) Where it does not disclose a cause of action;

(b) Where the relief claimed is under-valued and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;

(c) Where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) Where the suit appears from the statement in the plaint to be barred by any law;

(e) Where it is not filed in duplicate

(f) Where the plaintiff fails to comply with the provisions of rule 9”



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10. In the latest Judgment of the Hon'ble Supreme Court reported in **(2023) 3 MLJ 200 (Premkishore and Others. vs., Brahm Prakash and others)** it has been held as follows:

33. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) of the CPC can be summarized as follows:-

(i) To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to;

(ii) The defence made by the defendant in the suit must not be considered while deciding the merits of the application;

(iii) To determine whether a suit is barred by res judicata, it is necessary that (i) the 'previous suit' is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; (iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit; and

(iv) Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the 'previous suit', such a plea will be



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beyond the scope of Order 7 Rule 11 (d), where only the statements in the plaint will have to be perused.

11. As per the provision of Order 7 Rule 11 CPC, whenever a challenge for rejection of the plaint, then the Court should only consider the plaint averments and plaint documents alone. Here, it is the contention of the petitioners that the letter, dated 05.04.2017 against which the declaration is sought for was issued by the President, and he being the Officer of the Co-operative Society, it is protected from the civil Court jurisdiction under Section 156 of the Act. Section 156 of the Act reads as follows:

“Bar of jurisdiction of Civil Courts – Notwithstanding any thing contained in any other law for the time being in force no order or award passed, decision or action taken or direction issued under this Act by an Arbitrator, a Liquidator. The Registrar or an Officer Authorised or empowered by him, the Tribunal or the Government or any Officer subordinate to them, shall be liable to be called in question in any Court and no jurisdiction shall be granted by any Court respect of anything which is donees or intended to be done by or under this Act.”

12. As per the above provision, whenever any order or Award



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passed, decision or action taken or direction issued “under this Act” by an Arbitrator, Liquidator, Registrar or an Officer authorised are empowered by him, the Tribunal or the Government or any officer subordinate to them shall not be liable to be called in question in any Court.

13. Now, this Court has carefully perused the alleged letter, dated 05.04.2017, which is plaint document No.11. On a close scrutiny of this letter, this Court could not find any semblance of factor so as to conclude that the same was passed by the authority as per the power conferred under the 'Act'.

14. However, the learned Government Advocate invited the attention of this Court in respect of the last paragraph in impugned order, dated 05.04.2017, wherein it is referred to as follows:

□தமிழக அரசின் வீட்டு வசதி மற்றும் நகர்ப்புற வளர்ச்சித்துறை அரசாணை எண்.224 நாள்.27.11.2009 மற்றும் 1983 ம் வருடத்திய கூட்டுறவு சங்கங்களின் சட்டப்பிரிவு 181 ன் கீழ் பதிவாளர் (வீட்டுவசதி) சென்னை அவர்களால் பிறப்பிக்கப்பட்ட கட்டளைகளுக்குட்பட்டு புதிய விலை நிர்ணயம் செய்துதரக்கோரி உரிய முன்மொழிவு பதிவாளர்(வீட்டுவசதி) அவர்களுக்கு அனுப்பி அனுமதி பெற்று பிறகு புதிய விலைப்படி தொகை செலுத்துபவர்களுக்கு முன்னுரிமை அடிப்படையில் கடைமனை ஒதுக்கீடு செய்யப்படும்.□



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15. By referring the above paragraph, learned Government Advocate would submit that as per Section 181 of the 'Act' the President, who is the petitioner herein, is executing the order of Registrar. But, a reading of the above para would only indicate the order of the Government for fixation of new price of the property in dispute and not referring any order of the Registrar.

16. At this juncture, this Court would like to rely upon the Judgment of this Court reported in **2013(5) CTC 877 (The Managing Director and Special Officer vs. Muthuselvi)**. The relevant paragraph Nos.7, 8 and 15 reads as follows:

7. Section 156 of the Tamil Nadu Co-operative Societies Act reads as follows:-

"Bar of jurisdiction of Civil Courts Notwithstanding anything contained in any other law for the time being in force no order or award passed, decision or action taken or direction issued under this Act by an arbitrator, a liquidator, the Registrar or an officer authorised



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or empowered by him, the Tribunal or the Government or any officer subordinate to them, shall be liable to be called in question in any court and no injunction shall be granted by any court in respect of anything which is done or intended to be done by or under this Act."

8. Therefore, as per [section 156](#), no order or award passed, decision or action taken or direction issued under this Act by an arbitrator, liquidator, Registrar or an officer authorised or empowered by him, the Tribunal or the Government or any officer subordinate to them, shall be liable to be called in question in any court. Therefore, the emphasis is no order, award passed, decision or action taken or direction issued under this Act, shall be called in question before any civil court. Admittedly, no order or award was passed and no decision was taken and it is the contention of the learned Senior Counsel appearing for the revision petitioner that action has been taken by the officer of the Society in selling the finished products deposited with them and therefore, the said action cannot be challenged before the civil court of law. According to me, unless the action taken by the officer of the Society can be said to be an action taken under the provisions of the Act, the civil court's jurisdiction is not barred.



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15. *In the judgment reported in 2012 (2) Scale 113, the Honourable Supreme Court dealt with a similar question and held that the subject matter of the suit is not covered by section 91 (section 90 of the Tamil Nadu Co-operative Societies Act). An enquiry into the question whether a private dispute can be enumerated under section 91 of the Tamil Nadu Co-operative Societies Act was raised. In that case, the property was originally owned by the Society and the tenant members of the society initiated proceedings and during the pendency of the said proceedings, a resolution came to be passed by the General Body of Society to sell the land in favour of some respondents and aggrieved by the resolution two suits were filed in the Bombay High Court and in those suits, preliminary objection was raised regarding the maintainability in view of section 91 and 163 of the Maharashtra Co-operative Societies Act, 1960 and the same was allowed by the Division Bench of the Bombay High Court and the Honourable Supreme Court reversed the judgment of the Division Bench holding that the dispute cannot be brought within the ambit of section 90 of the Tamil Nadu Co-operative Societies Act.*”

17. As stated in the above Precedent, when this Court has asked a specific question to the Government Advocate with regard to the Section



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empowering the President to give that impugned notice, dated 05.04.2017.

The learned Government Advocate would fairly submit that the impugned notice was issued as a reply to the grievance letter, that too the said grievance letter was not addressed to the President. The learned Government Advocate would also submit that as per the act, no special power conferred upon the President.

18. However, the learned Government Advocate would submit that as per Section 181 of the 'Act' and Section 2(19) of the Act, he being the Officer of the society, he may very well act upon the instruction of the Registrar. Therefore, would contend that the very notice, dated 05.04.2017 can be construed as a notice under the Act. However, this Court is not in a position to agree with the submission made by the learned Government Advocate. As a matter of fact, in order to get the protection under the Act, the authorities under the Act must have exercised power conferred under the Act, and passed an order or Award, for which they are specifically empowered under the Act. As such in view of the foregoing discussion this court has no hesitation to arrive at a conclusion that the petitioners have miserably failed to establish right conferred upon of the President to



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pass this order under the Act. Therefore, this Court is of the firm view that the submission of the petitioners that the suits are hit by Section 156 of the Act, cannot be countenanced.

19. The learned Government Advocate invited the attention of the order passed by this Court in W.P(MD).No.12440 of 2020 and would submit that a fraud was committed against the society and therefore, a compensation of Rs.10,00,000/- was ordered to be payable by the respondents herein to the Chief Minister's Relief Fund as cost for filing vexatious Writ Petition, and would also submit that the issue in the present suit has also been dealt in the above Writ Petition. But the said Writ Petition admittedly did not say anything about the Civil suit.

20. Apart from that, the learned Government Advocate has also invited the attention of this Court in respect of the order passed by the Single Judge of this Court in WP(MD).Nos.10372 to 10376 of 2018, against the very same impugned order, dated 05.04.2017, which is the subject matter of the instant suits. Wherein, the Writ Court has granted an order of interim stay not to sell the property. Hence, the learned Government Advocate would submit that the respondents / plaintiffs



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cannot have a two parallel proceedings one before the Civil Court and another before Writ Court. But, the contention of the learned Government Advocate is beyond the scope of Order 7 Rule 11 CPC. Therefore, this Court is not in a position to consider the grounds raised in the above Writ Petition while considering the applications of Order 7 Rule 11 CPC.

21. The next ground for rejection of plaint urged by the defendants is in respect of limitation. On plain reading of the plaint, this Court is of the indubitable view that the reliefs sought for is well within limitation. It is pertinent to mention here that, according to the plaint, till 2016 the petitioners / defendants were ready to execute the sale deed. Therefore, the limitation for specific performance will start only from the date of refusal of specific performance. Therefore, in view of the above legal position, this Court is also not in a position to find any substance in respect of the other ground qua limitation for rejection of the plaint.

22. In respect of the final ground of lack of cause of action, though the petitioners have stated so in the petition, a harmonious reading of the plaint would exemplify the existence of cause of action. Therefore,



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this Court could not find any justification in the submission of the petitioners. Eventually, this Court is of the firm view that the order passed by the Court below in rejecting the applications filed under Order 7 Rule 11 CPC has legal basis and this Court could not find any grounds to interfere in the said order.

23. In the result, these Civil Revision Petitions are **dismissed**. No costs. Consequently, the connected Miscellaneous Petitions are closed.

24. At this juncture the learned counsel for the plaintiffs seeks for an early disposal of the suits. Considering the long Pendency of these suits, the Commercial Court, Trichy is directed to dispose of the same as expeditiously as possible according to law, preferably within a period of six months from the date of receipt of a copy of this order.

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To

1. The Commercial Court, Trichy.
2. I Additional Sub Court, Trichy.



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C.KUMARAPPAN, J.,

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