



W.P(MD)No.24118 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.01.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.24118 of 2019

and

W.M.P.(MD)No.20711 of 2019

P.Tamilarasi

... Petitioner

Vs.

1.The Registrar of Cooperative Societies (Housing),
Chennai – 600 007.

2.The Deputy Registrar (Housing),
Virudhunagar Zone, No.3, T.T.Road,
Mani Nagaram, Virudhunagar.

3.The Special Officer, MDA/HCG-5,
Tamil Nadu Government Employees Cooperative
Housing Society (Karaikudi),
No.3, T.T.Road, Mani Nagaram,
Virudhunagar.

4.N.Vijayalakshmi

5.Sundaresan

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the 1st respondent in his proceedings in Na.Ka.No.7310/2018/Sa.Pa.1 dated 29.07.2019 and quash the same as illegal.



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W.P(MD)No.24118 of 2019

For Petitioner : Mr.R.Shankar Ganesh,
For M/s.Dictum Law Firm

For Respondents : Mr.S.RA.Ramachandran,
Addl. Government Pleader for R1 to R3.
Mr.R.Gowri Shankar for R4.

ORDER

Heard the learned counsel on either side.

2.The fourth respondent was allotted Plot No.C264 by the third respondent in the year 1985. A proper sale deed was also executed in her favour on 08.01.1986. The third respondent proceeded to unilaterally cancel the sale deed on 03.05.1995 on the ground that the fourth respondent failed to construct a house in the plot in question within two years. After so cancelling the sale deed executed in favour of the fourth respondent, the third respondent proceeded to allot the very same plot in favour of the petitioner on 26.07.1994. A sale deed was also executed in her favour. This was challenged by the fourth respondent before the second respondent. The revision filed by the fourth respondent was allowed by the second respondent on 30.11.2006. Challenging the same, the petitioner filed W.P.(MD)No.5238 of 2007. It was dismissed on 15.11.2011. Questioning the same, the petitioner filed W.A.(MD)No.101 of



W.P(MD)No.24118 of 2019

2012. It was disposed of on 24.02.2012 and the petitioner was given liberty to file a revision before the first respondent. Availing the said liberty, the petitioner filed revision before the first respondent. The first respondent allowed the said revision on 18.11.2012. Challenging the same, the petitioner filed W.P.(MD)No.2709 of 2013. That was allowed on 13.08.2014. Questioning the same, the petitioner filed W.A.(MD)No.1259 of 2018. The Hon'ble Division Bench disposed of the appeal in the following terms:-

“12.Accordingly, the above said two orders are set aside and the matter is remitted back to the Registrar of Co-operative Societies (Housing), Chennai, for fresh consideration of the claims of the appellant as well as the fourth respondent after giving them notice and opportunity of being heard personally before the orders could be passed. The appellant as well as the fourth respondent are directed to appear before the revisional authority and put forth their submissions. The said exercise should be completed within a period of six weeks from the date of receipt of a copy of this order.”

3.Pursuant to the order of remand, the first respondent took up the matter again and this time the petitioner was unsuccessful. The impugned order came to be passed on 29.07.2019. Challenging the same, the present writ petition has been filed.



W.P(MD)No.24118 of 2019

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4. The learned counsel 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 order and allow the writ petition as prayed for. The learned counsel would pointedly contend that the fourth respondent failed to adhere to the conditions subject to which the sale was effected in her favour. He also would point out that pursuant to the cancellation of the sale deed, the third respondent had also allotted the plot in question in her favour and that the petitioner has also put up a temporary structure thereon and that these developments have not been taken into account by the first respondent.

5. I am not persuaded by the said submissions advanced by the learned counsel for the petitioner. The issue lies in a very narrow compass. The only question that calls for consideration is whether an unilateral cancellation of sale deed could be made. The issue is no longer res integra. The Hon'ble Full Bench in the decision reported in **2022 7 MLJ 1 (Sasikala Vs. The Revenue Divisional Officer Cum Sub Collector, Devakottai and Others)** held as follows:-

“46. The writ petition in W.P(MD)No.6889 of 2020 is filed by the daughter of the second respondent to quash the order passed by the



W.P(MD)No.24118 of 2019

first respondent under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007. The gift deed executed by the second respondent in favour of the writ petitioner was unilaterally cancelled by the second respondent father. The settlement deed stated to have been executed by the second respondent, dated 06.03.2015 is irrevocable and it is a deed of settlement out of love and affection. The second respondent has specifically stated that he has no right to revoke the settlement deed. From the recitals, the settlement does not attract Section 126 of Tamil Nadu Property Act. It is seen that the settlor viz., the second respondent, has not put any condition. In other words, the gift deed is not subject to any condition or terms that the transferor shall provide the basic amenities and basic physical needs to the second respondent. In such circumstances, this Court is of the view that there is no scope for invoking the power provided to the second respondent under Section 23 of the Tamil Nadu Maintenance and Welfare of Parents and Senior Citizens Act, 2007. Therefore, the order impugned is liable to be quashed. Even though we agree that the writ petition can be allowed, this Court is unable to decide the writ petition in this batch where question referred to us is different. Hence, the writ petition in W.P(MD)No.6889 of 2020 is de-linked and the Registry is directed to list the matter before the appropriate Bench.”

6.It is true that certain rights accrued in favour of the writ petitioner. But they are only contingent rights. They are dependent on the cancellation order made against the fourth respondent. Since unilateral cancellation of sale deed is impermissible in law, one has to necessarily come to the conclusion that



W.P(MD)No.24118 of 2019

the cancellation order passed by the third respondent was illegal. Once it is held to be illegal, the subsequent proceedings are also liable to be nullified.

The petitioner has to necessarily proceed only against the third respondent for getting back the amount paid by her together with interest and also claim damages. If any such proceeding is initiated by the petitioner, it will not be barred by limitation because the issue attained finality only today.

7. With this liberty to the writ petitioner to proceed against the third respondent for refund with interest and for claiming damages, I affirm the impugned order passed by the first respondent. The writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

09.01.2023

NCS : Yes/No
Index : Yes / No
Internet : Yes/ No
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W.P(MD)No.24118 of 2019

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WEB COPY

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W.P(MD)No.24118 of 2019

G.R.SWAMINATHAN, J.

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W.P(MD)No.24118 of 2019

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