



Writ Appeal No.289 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON
12.04.2024

PRONOUNCED ON
24.04.2024

CORAM

**THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal No.289 of 2020
and C.M.P.No.4756 of 2020**

K.Somasundaram

... Appellant

Vs

1.M.Chidambaram

2.The Special Officer,
M.D.A./ H.S.G. 45, Tamil Nadu Government
Officials Co-operative Housing society Ltd.,
25, Police Colony Main Road,
Sekkalai, Karaikudi – 2.

3.The Deputy Registrar, (Housing),
Virudhunagar Region,
Virudhunagar.

4.The Registrar,
Co-operative Societies (Housing),
4th Main Road, Gandhi Nagar,
Agayar, Chennai – 600 020.

... Respondents



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PRAYER:- Writ Appeal has been filed under Clause 15 of Letter Patent to set aside the order dated 17.09.2019 made in W.P.No.23817 of 2010 and pass such further order.

For Appellant : Mr.S.J.Jagadev

For Respondents : Mr.K.Balajee for R1
: Not ready in notice – R2
: Mr.P.Ganesan for RR3 & 4
Additional Government Pleader

JUDGMENT

(Judgment of the Court was made by Mr.K.KUMARESH BABU.,J.)

This Intra-Court Appeal had been preferred as against the order of dismissal in W.P.No.23817 of 2010, dated 17.09.2019.

2. Heard Mr.S.J.Jagadev, learned counsel for the appellant, Mr.K.Balajee, learned counsel for the first respondent and Mr.P.Ganesan, learned Additional Government Pleader appearing on behalf of the respondents 3 and 4.

3. The learned counsel for the appellant would submit that the appellant is a member of the second respondent Society and that an allotment of plot had been given in his favour on 23.06.1985 and that pursuant to the said order of allotment, a sale deed dated 18.12.1985 has



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also been executed in his favour which has been registered as Document No.2135 of 1985, on the file of the Joint Sub-Registrar-II, Karaikudi.

However, after the execution of the sale deed, he had been transferred from Karaikudi District. When he had gone to visit the place he had purchased, it came to his knowledge that a third party had been trying to develop the land. It also came to his knowledge that the second respondent herein had unilaterally cancelled the sale deed executed in the favour of the appellant and had executed a sale deed in favour of the first respondent. Hence, he had approached the third respondent herein under Section 90 of the Tamil Nadu Co-operative Societies Act against the cancellation of the allotment and the sale deed. He would submit that the third respondent herein by an order dated 21.08.2007 had confirmed the allotment and sale in favour of the appellant and had directed the second respondent Society to cancel the allotment and sale made in favour of the first respondent.

4. Against the said order passed by the third respondent, the first respondent had preferred a Revision to the fourth respondent herein and the fourth respondent by its order dated 20.09.2010 without analysing the facts of the present case and the authority of the second respondent to unilaterally



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cancel the sale deed had set aside the order of the third respondent. Being aggrieved against the same, the appellant had preferred a Writ Petition before this Court in which the order impugned had been passed. He would submit that the learned Single Judge had concluded that notice had been issued to the appellant before cancellation stating that there has been violation of the condition of sale. Therefore, there is no error or infirmity in the cancellation.

5. He would relying upon a Full Bench Judgment of the Madurai Bench of this Court in the case of ***Sasikala & Others Vs The Revenue Divisional Office & Others*** reported in ***2022 5 CTC 257***, would contend that the learned Single Judge had failed to see that there can be no unilateral cancellation of a sale deed, as the same is impermissible in law. Further, he would also rely upon a Division Bench judgment of this Court made in ***W.A.(MD).No.56 of 2012*** and contended that in respect of the same second respondent Society, where similar sale deed had been cancelled unilaterally had been interfered by this Court and therefore, he would submit that the order of the learned Single Judge would have to be interfered with by this court.



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6. Countering his arguments, Mr.K.Balajee, learned counsel appearing for the first respondent would submit that the sale deed had been executed in favour of the appellant is not an absolute sale deed and the conditions have been imposed in the same. He would submit that as per the said sale deed, the purchaser cannot sell the property for a period of ten years and further, the purchaser should also begin the construction within a period of two years and use the same only for residential purposes. In the present case, even though the sale deed had been executed by the second respondent Society in favour of the appellant in the year 1985, no steps have been taken by the appellant to put the property in use. Hence, a notice had been issued to him and also a paper publication had been effected by the second respondent Society and since, there was no reply, which had emanated from the appellant either explaining his circumstances and since, the appellant had also not begun his construction, the sale deed had been cancelled by the Society as the purpose for which the sale deed had been effected, had not been complied with and the first respondent being a Government servant entitled for an allotment and subsequently, allotted the



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land and he had also put up construction and residing there by paying all necessary taxes to the respective authorities. He would further submit that as regards to the Full Bench Judgment of this Court, the decision has only held that unilateral cancellation is impermissible in law and therefore, the concerned Registrars cannot entertain the registration of a document which is an unilateral document effecting the cancellation of the earlier transfer made. He would further submit that the decision relied upon by learned counsel for the appellant would not be applicable to the facts of the present case, since in the said case, the person therein had initiated proceeding much within the period of limitation before a Civil Court, and only when the Civil Court had refused to entertain the same on the issue of jurisdiction, he had approached the Tribunal. Further, he would submit that a Co-ordinate Bench has also in erred in declaring the sale deed as void since, it is only the power of the Civil Court and not exercising of the power under Article 226 of the Constitution to declare a sale deed null and void. What had been declared by the Full Bench is only a question of law as regards when it came to registration of an unilateral document rescinding or cancelling the transfer that had taken place already. He would submit



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that the learned Single Judge had rightly relied upon the Division Bench judgment of the Madurai Bench of this Court in W.P.(MD).No.12342 of 2018 in a similar issue that when no construction had been put up by the allottee, which is a violation of the allotment order and the byelaw of the Society which the appellant is also bound then there is not even a necessity to issue notice to the appellant as it could be an empty formality. Therefore, he would submit that there is no necessity for this Court to interfere with the order passed by the learned Single Judge.

7. Mr.P.Ganesan, learned counsel appearing on behalf of the respondents 3 & 4 would reiterate the submissions made by the learned counsel for the first respondent and further submit that the Full Bench Judgment cannot give power to this Court exercising power under Article 226 of the Constitution to cancel a sale deed which power is only vested with a Civil Court. He would further submit that there are disputed question of facts since, the appellant claims to have put up a small construction, whereas, the second respondent has categorically cancelled it as there are no construction put up by the appellant. Further, he would submit that the proceedings initiated by the appellant is only in the nature of the arbitration



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proceedings before the third respondent, against which he had preferred a Statutory Revision before the fourth respondent and therefore, the Writ Petition could not be maintainable and the only remedy available to him is to approach the appropriate Court by filing an appropriate appeal before the Civil Court. Hence, he would seek no interference of the order passed by the learned single Judge.

8. We have considered the rival submissions made by the learned counsels appearing on either side and perused the materials available on record.

9. The main contention of the learned counsel for the appellant is that the unilateral cancellation of a sale deed by the second respondent is impermissible in law. In support of his contention, he had relied upon the Full Bench judgment of this Court in the case of **Sasikala & Others Vs The Revenue Divisional Office & Others** reported in **2022 5 CTC 257** and a Division Bench judgment of this Court made in **W.A.(MD).No.56 of 2012**. The Full Bench of this Court in the judgment reported supra, has held as follows:-

45. As a result of our forgoing conclusions, we answer the reference by holding that the Registrar has no power to



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accept the deed of cancellation to nullify the deed of conveyance made earlier, when the deed of conveyance has already been acted upon by the transferee. Since anyone may try to mislead or misinterpret our judgment by referring to the question of reference we insist that our answer to the reference should be understood in the light of our conclusions summarised in the previous paragraph.

.....

47. In view of our conclusions and answer to the reference, the writ petition in W.P(MD)Nos.11674 of 2015 and 8330 of 2020 are allowed. The writ petition in W.P(MD)No.13297 of 2020 is dismissed. Similarly, the writ appeal in W.A(MD)No.800 of 2022 is dismissed. In all cases, it is open to the aggrieved person to file a civil suit challenging the gift or settlement deed as may be permissible under Section 31 of the Specific Relief Act. No costs. Consequently, connected miscellaneous petition is closed.”

10. A perusal of the aforesaid judgment would show that the reference made to the Full Bench was with regard to the authority of the Registrars to register an unilateral cancellation was the prime question that had been involved. The Full Bench, while analysing the law on the subject had incidentally held that an unilateral cancellation of a document under which a property that had been transferred is sought to be cancelled was



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found to be impermissible in law. On that context, the Hon'ble Full Bench had held that the Registrar cannot register such a document. However, had left open the rights of the individuals concerned to seek cancellation of the alleged unilateral cancellation in an appropriate civil proceedings.

11. The reliance placed upon by the learned counsel for the appellant on the Division Bench judgment of this Court stated supra, the Division Bench had set aside the unilateral cancellation of a sale deed which was without proper notice and therefore, held the same to be null and void. In the present case, it has been brought on record not only the appellant had been put on notice by a registered post which was returned, but, also through a paper publication. On that aspect, the said Division Bench judgment cannot be made applicable to the facts of the present case. Further, with due respect to the Co-ordinate Bench, we find that it had not analysed the Full Bench judgment in its proper perspective, as the Full Bench had held that for challenging the unilateral cancellation, a civil suit alone can be the remedy. Further, in the present case, the cancellation of the sale deed had happened in the year 1993 and thereafter, a sale deed had also been executed in favour of the first respondent as early as in the year 1994.



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Even though, the appellant claims that the said documents are explicitly null and void, in view of the judgment of the Full Bench in which it had relied upon a judgment of the Hon'ble Apex Court, we are of the considered view that this Court sitting at Article 226 of the Constitution cannot set aside the unilateral cancellation of sale deed executed by the second respondent and further sale deed in favour of the first respondent.

12. From a perusal of the sale deed that had been executed in favour of the appellant, *prima facie* in our view is a contingent sale deed. Even though, the appellant claims that he had fulfilled the contingency, the respondents had disputed the fulfillment of contingency which factual dispute cannot be gone into by us in these proceedings. It is however, left open to the appellant to initiate appropriate civil proceedings for appropriate relief as he may be advised.

13. For the foregoing reasons, we do not find any necessity to interfere with the order passed by the learned Single Judge. In fine, this Writ Appeal is dismissed. However, liberty is granted to the appellant to seek appropriate remedy in the manner known to law. There shall be no order as to costs. Consequently, connected miscellaneous petition is also



closed.

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(D.K.K.,J.)

(K.B., J.)

24.04.2024

Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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To
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D. KRISHNAKUMAR., J.
and
K.KUMARESH BABU.,J.

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A Pre-delivery Judgment made in
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24.04.2024