



W.P. No. 1317 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 1317 of 2024

J.Sumangali

... Petitioner

-VS-

1. Registrar of Co-operative Society (Housing)
No.48, Ritherder Road
Vepery, Chennai - 600007.
2. The Deputy Registrar of Co-operative Society (Housing)
Salem Region
East Garden Street
Fair lands, Salem - 636016.
3. The Secretary
S-1565, Palace Nagar Co-operative House
Building Society Ltd.
Cherry Road, Salem - 636001.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing Respondents to consider the representation dated 11.08.2023 with regard to refund of the amount paid by the Petitioner's mother Tmt. Rathinammal, towards pay payment of Sale Consideration for shops 11 and 12 allotted by the Third Respondent society.

For Petitioner : Mr. G.Punniakoti

For Respondents : Mr. U.Baranidharan, AGP



W.P. No. 1317 of 2024

ORDER

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Heard Mr. G.Punniakoti, Learned Counsel for the Petitioner, Mr. U.Baranidharan, Learned Additional Government Pleader appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. It is the case of the Petitioner that she is the sole legal heir of her mother, viz., Rathinammal, who was a member of the co-operative society of the Third Respondent, which had allotted the shops bearing Nos. 11 and 12 measuring 254 sq.ft. and 231 sq.ft. respectively in the commercial complex owned and constructed by it in her favour and had received payments for a total sum of Rs. 6,10,000/-, but had cancelled that allotment by Proceedings in Na.Ka.No.5/2011 dated 19.04.2011 holding that she had not remitted the entire amount due. However, the amounts paid by the said Rathinammal had not been refunded to her for which the Petitioner (after the demise of her mother on 16.12.2019) had made a representation dated 11.08.2023 to the First and Second Respondents, but as it did not evoke any response, it has necessitated the filing of this Writ Petition.



W.P. No. 1317 of 2024

WEB COPY

3. The Petitioner is entitled to seek a reference under Section 90(1)(b) of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as 'the TNCS Act' for short), to determine any dispute touching the business of a co-operative society arising between it and a person claiming through its member, as in this case, before the jurisdictional Registrar of Co-operative Societies, who has also been empowered to condone delay in filing the same after the prescribed period of limitation has expired, if sufficient cause is made out.

4. It must, at once, be emphasized that the Hon'ble Supreme Court of India in *Assistant Collector of Central Excise -vs- Dunlop India Limited* [(1985) 1 SCC 260] has precisely explained the legal position relating to the exercise of discretionary powers under writ jurisdiction when an alternative remedy exists, in the following words:-

"3. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and



W.P. No. 1317 of 2024

WEB COPY

the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to by-pass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged.”

In ***Nivedita Sharma -vs- Cellular Operators Association of India*** [(2011) 14 SCC 337], advertent to the the previous decisions with regard to the rule of self-restraint when an alternative remedy is available to the aggrieved person, the Hon'ble Supreme Court of India has emphasized that when a statutory forum is created by law for redressal of grievance, a Writ Petition should not be ordinarily entertained ignoring that statutory dispensation. Further, the law has been restated by the Hon'ble Supreme Court of India in ***Radha Krishan Industries -vs- State of Himachal Pradesh*** [(2021) 6 SCC 771] as extracted below:-



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“27.1. The power under Article 226 of the Constitution to

issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or



W.P. No. 1317 of 2024

WEB COPY

liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. *In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”*

In such circumstances, the Petitioner has not been impeded from canvassing what is sought to be agitated in this Writ Petition in the aforesaid statutory remedy and there is no acceptable explanation from the Petitioner for not having availed it.

5. When the said legal position was pointed out to Learned Counsel for the Petitioner, he seeks permission of the Court to withdraw the Writ Petition with liberty to resort to the aforesaid procedure. He has also made an endorsement to that effect in the court record.



W.P. No. 1317 of 2024

In the result, the Writ Petition is dismissed as withdrawn granting such liberty. It is made that clear for the purpose of reckoning limitation for availing the aforesaid remedy, the period from the date of filing of the Writ Petitions, viz., 11.01.2024, till the date on which the certified copy of this order is made ready by the Registry, shall be excluded. No costs.

22.01.2024

Maya

Index: Yes/No

NCC: Yes/No

Note: Issue order copy on 26.03.2024.

To

1. Registrar of Co-operative Society (Housing)
No.48, Ritherder Road
Vepery, Chennai - 600007.
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W.P. No. 1317 of 2024

P.D. AUDIKESAVALU, J.

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W.P. No. 1317 of 2024

22.01.2024