



W.P.No.3817 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2024

CORAM :

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.3817 of 2020

and

W.M.P.No.4523 of 2020

M/s.Cheran Co-operative House Building Society,
Represented by its President,
No.B2 (b) Cheran Nagar,
Kavundampalayam,
Gnanambika Mills Post, Coimbatore.

... Petitioner

Vs.

1.The Deputy Registrar of Co-operative Societies (Housing),
Office of the Deputy Registrar of Co-operative
Societies (Housing),
Coimbatore.

2.The Sub-Registrar,
Palladam, Tiruppur District.

3.A.Raja
(R3 impleaded vide order dated 28.04.2023
made in W.M.P.No.24371 of 2020
in W.P.No.3817 of 2020)

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for
issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining
to the order dated 07.05.2019 on the file of the second respondent in



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Na.Ka.No.213 of 2019 and quash the same as illegal and consequentially direct the second respondent to cancel the Construction Agreement dated 24.01.2014 bearing Doc.No.801 of 2014 by implementing the order passed by the first respondent in Thava No.01/2018-19/SAPA dated 04.03.2019.

For Petitioner : Mr.S.Kumaresan

For Respondents :
For R1 and R2 : Mr.P.Anandakumar
Government Advocate

For R3 : No appearance

ORDER

This Writ Petition has been filed seeking for issuance of a certiorarified mandamus, to call for the records pertaining to the order dated 07.05.2019 on the file of the second respondent in Na.Ka.No.213 of 2019 and quash the same as illegal and consequentially direct the second respondent to cancel the Construction Agreement dated 24.01.2024 bearing Doc.No.801 of 2024 by implementing the order passed by the first respondent in Thava No.01/2018-19/SAPA dated 04.03.2019.

2. The case of the petitioner Society is that the petitioner Society entered an Agreement with one A.Raja having Membership No.6927, who is working as



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conductor at Uppilipalayam, Tamil Nadu State Transport Corporation (TNSTC), Coimbatore District. As per the Society by-law, Society property will be allotted only to the members who does not have any property either in his name, his wife or his children. The petitioner further submitted that fraudulently the said A.Raja joined in the Palladam Housing Scheme through his application dated 21.10.2011. On 08.12.2016, the petitioner Society verified with the deductions of Equated Monthly Installment (EMI) and it was found that the said A.Raja have obtained another allotment with Tamil Nadu State Transport Corporation (TNSTC) Employment Housing Society. Hence, the petitioner Society filed a petition in Thava No.01/2018-2019/SAPA before the Deputy Registrar of Co-operative (Housing) the first respondent herein. On 04.03.2019, the first respondent passed an order by cancelling the status of the membership of the said A.Raja by disqualifying him from membership and consequentially cancelling the Construction Agreement dated 24.01.2014 bearing Doc.No.801 of 2014 on the file of the Sub Registrar Office, Palladam Taluk, Tiruppur District.

3. The further case of the petitioner Society is that following the order passed by the first respondent, a communication was sent by the petitioner



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Society to the second respondent on 06.05.2019, to cancel the Construction Agreement dated 24.01.2014. In this regard, the District Registrar (Registration), Tiruppur, has sought for clarification from the Inspector General of Registration, Chennai. The Inspector General of Registration, Chennai, through his Letter dated Nil.11.2019 replied to the District Registrar (Registration), Tiruppur, that there is no clarification required in the said issue. The petitioner Society have given representation dated 27.08.2019 to the Inspector General of Registration, Chennai, to cancel the Construction Agreement. Despite the representation, the second respondent through his proceedings in Na.Ka.No.213 of 2019 dated 07.05.2019, without any reasons, have summarily rejected the representation stating that they have to work out the remedy through Court. Hence, challenging the impugned order dated 07.05.2019 in Na.Ka.No.213 of 2019 passed by the second respondent, the petitioner has approached this Court by way of filing the present writ petition.

4. Learned counsel appearing for the petitioner submitted that the first respondent has passed the order on 04.03.2019 and the Construction Agreement dated 24.01.2014 was entered between the petitioner and the third respondent and the Allotment Order issued by the petitioner Society to the third



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respondent allotting Plot No.77 (House No.C33) situated at S.F.No.152/1A2,

Madhappur Village, Palladam Taluk, Tiruppur District, can be cancelled.

Based on the above order passed by the first respondent, the petitioner Society submitted the document to the second respondent to cancel the Construction Agreement dated 24.01.2024 bearing Doc.No.801 of 2014. But, the same was refused by the second respondent. Aggrieved by which, the petitioner Society has come forward with the present writ petition.

5. Learned Government Advocate appearing for the second respondent has filed Counter Affidavit. Relevant paragraphs of the Counter Affidavit is extracted hereunder:-

*“5. With regard to the other averments made in the affidavit, it is respectfully submitted that there is no provision in the Registration Act, 1908, to cancel the registered document by the registering officer either on the representation of a person or suo motu. It has been well settled by the Hon'ble Supreme Court in **Satya Pal Anand Vs. State of M.P. & Ors, (2016) 10 SCC 767**, as under:-*

“Para 21: The role of the Sub-Registrar (Registration) stands discharged, once the document is registered The fact whether the document was properly presented for registration cannot be reopened by the Registrar after its registration. The power to cancel the registration is a substantive matter. In absence of any expenses provision in that behalf, it is not open to



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assume that the Sub-Registrar (Registration) would be competent to cancel the registration of the documents in question. Similarly, the power of the Inspector General is limited to do superintendence of registration offices and make rules in that behalf. Even the Inspector General has no power to cancel the registration of any document which has already been registered.

Para 25:- The aggrieved party can challenge the registration and validity of the document before the Civil Court.”

6. In view of the above said judgment the recourse to the Petitioner is to file only civil suit seeking discredit of the registered document which infringes its right and as such this Writ Petition is maintainable and liable to be dismissed.”

6. It is settled law that the Construction Agreement cannot be cancelled by the registering authority in view of the above Judgement of the Hon'ble Supreme Court. Hence, the only remedy available to the petitioner Society is to approach the Civil Court to cancel the Construction Agreement as well as the Allotment Order issued to the third respondent.

7. The order passed by the first respondent is dated 04.03.2019 and the writ petition was filed on 31.01.2020. If the limitation period is calculated from 04.03.2019, it expired on 04.03.2022, since there was a Covid-19 pandemic



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period from March 2020, the Hon'ble Supreme Court of India has granted exemption to the delay for the period from 15.03.2020 to 28.02.2022. If this period is calculated, then the petitioner Society is within the period of limitation of three years and they can very well approach the Civil Court by filing Civil Suit seeking the above relief.

8. The period of the pendency of the writ petition from 31.01.2020 to till date i.e., on 02.07.2024 is excluded for the period of calculating the limitation period for approaching the Civil Court.

9. In view of the above, the petitioner Society is directed to approach the Civil Court for appropriate remedy, in accordance with law.

10. This Writ Petition is disposed of with the above observations and directions. No costs. Connected Writ Miscellaneous Petition is closed.

02.07.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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To

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Societies (Housing),
Coimbatore.
- 2.The Sub-Registrar,
Palladam, Tiruppur District.



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