



WEB COPY



W.P.No.10023 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.10023 of 2022
and W.M.P.No.10545 of 2023

1. E.Arumugam
2. E.Devendiran
3. G.Arun

... Petitioners

-Vs-

1. The Registrar of Co-Operative Societies,
N.V.Natarajan Maligai,
No.170, Poonamallee High Road,
Kilpauk, Chennai-600 010.
2. The Joint Registrar of Co-op Societies,
Vandavasi Road,
Gandhi Nagar, Kancheepuram - 631 501,
Kancheepuram District.
3. The Deputy Registrar of Co-Operative Societies,
Kancheepuram Circle, Kancheepuram - 631 501,
Kancheepuram District.
4. The President,
G. 1682, Maduramangalam Primary
Agricultural Co-op-Credit Society,
Maduramangalam Village and Post,
Sriperumbudur Taluk,
Kancheepuram District - 602 108.

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying



W.P.No.10023 of 2022

for the issuance of a Writ of Certiorarified Mandamus, to call for the records related to the impugned proceedings of the third respondent bearing Na.Ka. 2105/2013A1 dated 11.01.2022 and quash the same and consequently direct the Respondents 3 and 4 herein to re-convey the property of an extent of 96 cents in Survey No.18/2 and 4 Acres in Survey No.19 totally 4.96 Acres in Kanthur Village, Sriperumbudur Taluk, Kancheepuram District to and in favour of the Petitioners herein by considering the resolution dated 20.01.2017 passed by the 4th Respondent Co-operative Society.

For Petitioners : Mr.V.R.Appaswamee
For R1 to R3 : Mr.S.Ravikumar
Special Government Pleader
For R4 : Mr.P.Ganesan
Government Advocate

ORDER

This writ petition has been filed challenging the order passed by the third respondent dated 11.01.2022, thereby rejected the request made by the petitioner to re-convey the property to an extent of 96 cents in Survey No.18/2 and 4 Acres in Survey No.19 totally 4.96 Acres in Kanthur Village, Sriperumbudur Taluk, Kancheepuram District.

2. Heard both sides and perused the materials available on record.

3. The petitioners are the legal heirs of the deceased Ethiraj. The said



W.P.No.10023 of 2022

Ethiraj owned property to an extent of 96 cents in Survey No.18/2 and 4 Acres in Survey No.19 totally 4.96 Acres in Kanthur Village, Sriperumbudur Taluk, Kancheepuram District. The petitioners' father mortgaged the said property and availed loan to the tune of Rs.2000/- from the fourth respondent Society (herein after called as “Society”) vide mortgage deed dated 04.03.1964 registered vide Document No.212 of 1964. Thereafter, the petitioners' father failed to repay the said loan and the Co-operative Bank passed a decree dated 01.09.1995 to the tune of Rs.2278/- in favour of the Society. Pursuant to the decree, the Co-operative Bank set off the outstanding amount of Rs.3020/- by taking over the property which was already mortgaged in favour of the Society. Thereafter, the petitioners' father died on 17.03.1984.

4. The petitioners, being the legal heirs decided to take back the property in their favour. In fact, the Society did not sell the subject property through auction to third parties so far. Therefore, the petitioner submitted a representation dated 22.11.1990, thereby expressed their desire to take back the property by paying necessary sale consideration to the Society. The said request was placed before the Board of Co-operative Society and passed a resolution dated 29.11.1990, subject to the permission of Registrar as well as the Deputy Registrar of Co-operative Societies, thereby accepted the request made by the



W.P.No.10023 of 2022

petitioners and directed them to deposit a sum of Rs.14,447/-.

WEB COPY

5. Accordingly, the petitioners had deposited a sum of Rs.18,125/- on 11.02.1991 in favour of the Society. On receipt of the same, the petitioners were directed to produce the legal heirship certificate to their father. According to the petitioners, from the date of the said payment, they were permitted to possess the subject land and they are in possession and enjoyment of the subject property. However, the Society failed to cancel the mortgage deed and also failed to re-convey the said property in favour of the petitioners.

6. A perusal of records revealed that the petitioners repeatedly submitted representations to re-convey the subject property in their favour. The third respondent, by its communication dated 09.10.2014 directed the Society to take necessary steps to re-convey the subject property in favour of the petitioners. In fact, thereafter, by a resolution dated 20.03.2017 accepted the request made by the petitioners and decided to re-convey the subject property after getting concurrence with the third respondent.

7. The resolution was forwarded to the third respondent by the Society. At that juncture, the petitioners had filed a writ petition before this Court in W.P.No.31278 of 2014. While the petition came up for hearing, the Society



W.P.No.10023 of 2022

assured before this Court to return the original documents. In view of the said assurance, the petitioners had withdrawn the said writ petition. Subsequently, the third respondent, by its communication dated 20.01.2020 directed the Society to take appropriate steps to re-convey the subject property in favour of the petitioners, in view of the entire amount deposited by the petitioners.

8. Thereafter, the legal opinion was sought for re-conveyance. However, the legal opinion did not support the request made by the petitioners, on the ground of lapse, due to efflux of time, the period of limitation, the claim of re-conveyance cannot be entertained by the Society. Therefore, the request made by the petitioner has been rejected by the communication dated 11.01.2022.

9. The third respondent filed counter and on the submissions made by the learned Government Advocate appearing for the third respondent revealed that after registration of mortgage deed in favour of the fourth respondent, the entire property was set off due to the decree passed as against the petitioners' father for a sum of Rs.3498/-. Subsequently, on the request made by the petitioners, the Society passed a resolution and also received a sum of Rs.18,125/- on 11.02.1991 for re-conveying the subject property in favour of the petitioners. Thereafter, the legal opinion did not support the claim made by the petitioners



W.P.No.10023 of 2022

and as such their claim is rejected on the ground of lapse. The right of mortgagor to recover the possession is existed only for 30 years from the date of mortgage. As per Section 27 of the Limitation Act, the petitioners ought to have filed a suit for recovery of possession within a period of 30 years from 1964. Therefore, the writ petition its devoid of merits and barred by limitation.

10. A perusal of records revealed that the Society passed a resolution on receipt of the request made by the petitioners to re-convey the said property in their favour on deposit of amount fixed by the Society. Accordingly, the petitioners had deposited a sum of Rs.18,125/- on 11.02.1991 and the same was duly received by the Society. In fact, on receipt of the said amount, the Society sought for opinion from the first and third respondents. Subsequently, the Sub Registrar of the Societies also inspected the subject property and on receipt of the deposit made by the petitioners recommended to re-convey the subject property and directed the Society to do the same. Even then, the fourth respondent kept quiet and did not take any steps to re-convey the subject property in favour of the petitioners. In fact, the third respondent also by its communication dated 20.01.2020 directed the Society to take steps to re-convey the said property after obtaining legal opinion and also legal heirship certificate from the petitioners.



W.P.No.10023 of 2022

WEB COPY

11. It is undisputed that the petitioners are the legal heirs of the deceased Ethiraj, who borrowed loan by mortgaging the subject property. However, the legal opinion dated 25.02.2020 revealed that the claim of the petitioners for re-conveyance of the subject property cannot be considered due to efflux of time beyond the period of limitation.

12. As stated supra, in the year 1991 itself, the petitioners had deposited the entire amount as fixed by the Society. However, the Society failed to re-convey the subject property. That apart, the fourth respondent is also not able to maintain the property which was set off pursuant to the decree passed in its favour. Further, the Society so far did not bring the property for auction and as such, no third parties interest is created over the subject property.

13. It is relevant to rely upon the provisions under Section 131 of the Tamil Nadu Co-operative Societies Act, 1983 as follows:-

“ 131. Reconveyance of immovable property by a Society. _

(1) Where an immovable property purchased by a society as decree-holder is in its possession the society may with the prior approval of the Registrar and subject to such conditions as may be imposed by him reconvey such property to the original owner on an application in writing made in this behalf.

(2) Along with the application for reconveyance of



W.P.No.10023 of 2022

WEB COPY

the property the original owner shall deposit with the society-

(a) the amount at which the property was purchased by the society including stamp duty and other charges paid upto the confirmation of sale;

(b) the interest on the above mentioned amount at the maximum lending rate in the case of a credit society or at a rate not less than the maximum borrowing rate, in the case of any other society, from the date of purchase till the date of deposit of the amount ; and

(c) other expenses incurred in relation to such property.”

Section 131 (2)(b) of the Tamil Nadu Co-operative Societies Act speaks about the release of property on payment. There is no limitation for re-conveying the property.

14. In fact, as directed by the Society, the petitioner had deposited the entire amount as early as on 11.02.1991 itself. Therefore, it cannot be said that the claim of the petitioners lapsed due to limitation. Though the Society is now ready to return the amount which was deposited by the petitioners with interest at the rate of 1.5%, there is absolutely no right to reject the claim made by the petitioners. The petitioners are agriculturist coolies and for the past 30 years they are very much struggling to re-convey the subject property even after depositing the entire amount.



W.P.No.10023 of 2022

15. In view of the above, this Court finds infirmity in the order passed by the third respondent and is liable to be quashed. Accordingly, the order passed by the third respondent bearing Na.Ka. 2105/2013A1 dated 11.01.2022, is hereby quashed.

16. In view of the present market value of the subject property, the third respondent is directed to fix a reasonable further amount payable by the petitioners for re-conveyance of the subject property, within a period of four weeks from the date of receipt of a copy of this order and communicate the same to the petitioners. On payment of the amount, the fourth respondent is directed to re-convey the subject property in favour of the petitioners.

17. Accordingly, this writ petition is allowed. Consequently, connected Miscellaneous petition is closed. There shall be no order as to costs.

28.10.2024
($\frac{1}{2}$)

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No
mn



WEB COPY



W.P.No.10023 of 2022

To

1. The Registrar of Co-Operative Societies,
N.V.Natarajan Maligai,
No.170, Poonamallee High Road,
Kilpauk, Chennai-600 010.
2. The Joint Registrar of Co-op Societies,
Vandavasi Road,
Gandhi Nagar, Kancheepuram - 631 501,



W.P.No.10023 of 2022

Kancheepuram District.

3. The Deputy Registrar of Co-Operative Societies,
Kancheepuram Circle, Kancheepuram - 631 501,
Kancheepuram District.

4. The President,
G. 1682, Maduramangalam Primary
Agricultural Co-op-Credit Society,
Maduramangalam Village and Post,
Sriperumbudur Taluk,
Kancheepuram District - 602 108.

G.K.ILANTHIRAIYAN. J.

mn



WEB COPY



W.P.No.10023 of 2022

W.P.No.10023 of 2022

28.10.2024