



W.P. No. 9928 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2024

CORAM

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

W.P. No. 9928 of 2023

and

W.M.P. No. 9992 of 2023

V.S.Nagarajan

... Petitioner

-VS-

1. Registrar of Co-operative Societies (Housing)
No. 48, Reitherdon Road
Vepery, Chennai – 600007.
2. Deputy Registrar of Co-operative Societies (Housing)
Chengalpattu Region
Chengalpattu.
3. Special Officer
Chennai Government Officers Co-operative
Building Society Ltd.
No.372, Mudichur Road
Tambaram West, Chennai – 600045.
4. M.Subramanian
5. E.Sendhil Kumar

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the First, Second and Third Respondents not to transfer the Public Purpose lands earmarked for Postal and Telegraph Office and Police station in the Lay-out called "Hi Tech Nagar" developed by the Third Respondent at Ayanambakkam village, Madhuravoyal Taluk, Tiruvallore District to the Fifth Respondent and further to direct the Third Respondent Society to obtain CMDA approval for converting the Public Purpose lands into house-sites for further sale in the interest of the Society.



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For Petitioner : Mr. S.Lakshminarayanan

For Respondents : Mr. S.Arumugam,
Government Advocate (for R1 & R2)

Mr. K.Suresh (for R3)

Mr. AL.Ganthimathi, Senior Counsel
for M/s. L.Palanimuthu (for R4)

Mr. Krishna Ravindran
for Mr. B.Cholan (for R5)

ORDER

Heard Mr. S.Lakshminarayanan, Learned Counsel for the Petitioner, Mr. S.Arumugam, Learned Government Advocate appearing for the First and Second Respondents, Mr. K.Suresh, Learned Counsel for the Third Respondent, Mrs. AL.Ganthimathi, Learned Senior Counsel appearing for the Fourth Respondent and Mr. Krishna Ravindran, Learned Counsel for the Fifth Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. It is the case of the Petitioner that he is the Vice-President of the co-operative society of the Third Respondent, with whom the Fifth Respondent had entered into a Memorandum of Understanding on 21.02.2018 for purchase of lands of an extent of 3.99 acres in Ayyanampakkam Village, Maduravoyal



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Taluk, Tiruvallur District. Certain disputes have arisen between the Third Respondent and the Fifth Respondent relating to the said transaction entered between them, which is sought to be agitated in this Writ Petition.

3. In this context, it must be noticed that 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) could be made to determine any dispute touching the business of a co-operative society arising between it and its members 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. That apart, Section 153 of the TNCS Act empowers the jurisdictional Registrar of Co-operative Societies, on application, to call for an examine the record of any officer subordinate to him or of the Board or any officer of a co-operative society. Further, the matter evidently fall under the realm of disputed questions of fact, which cannot be effectively determined in the summary procedure followed under Article 226 of the Constitution.

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



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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 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."



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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:-

“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)*



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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 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.”*



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

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.

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., 27.03.2023, till the date on which the certified copy of this order is made ready by the Registry, shall be excluded. No costs.

Index: Yes/No

11.01.2024

NCC: Yes/No

Note: Issue order copy by 26.03.2024.

Maya

To



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P.D. AUDIKESAVALU, J.

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