



W.P. No. 13525 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2024

CORAM

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

W.P. Nos. 13525 and 19078 of 2023

and

W.M.P. Nos. 13196, 13198, 18328 and 18330 of 2023

W.P. No. 13525 of 2023 :-

1. G.Sathiakeerthy
2. Malini
3. Renuka
4. Vijaykumar Baid
5. Kamalchand Baid
6. N.Ganesa Prasad
7. R.Elanchezian
8. S.Rajagopal
9. C.Kamalakannan
10. C.Senthamarai
11. R.Kalavathy
12. Brijesh
13. G.Kalavathi
14. Suseela
15. Annamalai
16. D.Santhamani
17. A.Raihanathur Qurdia
18. Sengani Selvam
19. R.Aravindhan
20. Na.Manivannan
21. Karpagam

... Petitioners

-VS-



W.P. No. 13525 of 2023

1. The Secretary
The Madras City Co-operative Building Society
No. 101, Vellalar Street
Purasawakkam, Chennai-600084.

2. The Registrar of Co-operative Societies (Housing)
No. 48, Ritherdon Road
Vepery, Chennai – 600007.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, by directing the First Respondent to prepare the layout with the Plot size of 2400 sq.ft. In Pulikkaradu Village, Tambaram Taluk, bearing new Town Survey Nos. 1/2, 1/3, 1/4, 1/11, 1/12, 1/13, 8/44, 8/45, 18/3, 23/1, 23/2, 23/3, 23/4, 23/5, 25/4, Survey No. 32/3A and other lands procured under Hill Grow Town scheme and allot and register the same to the Petitioners herein.

W.P. No. 19078 of 2023 :-

1. S.Gunasekaran
2. K.Venkatesan
3. P.Thirumalai Subramanian
4. Selvi Subramanian
5. Sheela Rai
6. Dr.Nikhil Roy
7. T.Baskaran
8. P.Andews Laser
9. Leela Krishnan.B
10.Sambandam
11.Valliammal
12.T.Shankarlingam
13.T.Avudaiyammal
14.Geetha Rajasekar

... Petitioners



W.P. No. 13525 of 2023

-VS-

1. The Secretary
The Madras City Co-operative Building Society
No. 101, Vellalar Street
Purasawakkam, Chennai-600084.

2. The Registrar of Co-operative Societies (Housing)
No. 48, Ritherdon Road
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... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the First Respondent to prepare the layout with the Plot size of 2400 sq.ft. In Pulikkaradu Village, Tambaram Taluk, bearing New Town Survey Nos. 1/2, 1/3, 1/4, 1/11, 1/12, 1/13, 8/44, 8/45, 18/3, 23/1, 23/2, 23/3, 23/4, 23/5, 25/4, Survey No. 32/3A procured under Hill Grow Town scheme and allot and register the same to the Petitioners herein.

For Petitioner : Ms. S.Rajeni Ramadass

For Respondents : Mr. R.S.Anandan (R1)
Mr. P.Sathish, AGP (R2)

COMMON ORDER

Heard Ms. S.Rajeni Ramadass, Learned Counsel for the Petitioners, Mr. R.S.Anandan, Learned Counsel appearing for the First Respondent and Mr. P.Sathish, Learned Additional Government Pleader appearing for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.



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2. It is the case of the Petitioners that they are members of the co-operative society of the First Respondent, from whom they had sought allotment of housing plots of 2400 sq. ft. each by formation of lay-out in Survey Nos. 1/2, 1/3, 1/4, 1/11, 1/12, 1/13, 8/44, 8/45, 18/3, 23/1, 23/2, 23/3, 23/4, 23/5, 25/4 and 32/3A in Pulikkaradu Village, Tambaram Taluk under the Hill Grow Town Scheme for which they had made representations dated 17.04.2023 and 01.06.2023 to the Respondents, but as it did not evoke any response, it has necessitated the filing of this Writ Petition.

3. The Petitioners are entitled to seek reference under Section 90(1)(b) of the Tamil Nadu Co-operative Societies Act, 1983, to determine any dispute touching the business of a co-operative society arising between it and 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



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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."

In ***Nivedita Sharma -vs- Cellular Operators Association of India*** [(2011) 14 SCC 337], advertng to the the previous decisions with regard to the rule of



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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) 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.



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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.”*

In such circumstances, the Petitioners have not been impeded from canvassing what is sought to be agitated in these Writ Petitions in the aforesaid statutory remedy and there is no acceptable explanation from the Petitioners for not having availed it.



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5. In the light of the said legal position, this Court is not inclined to delve into the merits of the controversy involved touching upon disputed questions of fact for effectual and complete adjudication of the matter by entertaining these Writ Petitions in the exercise of its discretionary powers following summary procedure under Article 226 of the Constitution.

In the result, these Writ Petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

22.02.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 24.05.2024.

Maya

To

1. The Secretary
The Madras City Co-operative Building Society
No. 101, Vellalar Street
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2. The Registrar of Co-operative Societies (Housing)
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P.D. AUDIKESAVALU, J.

Maya

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