



W.P.No.12469 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2024

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

**W.P.No.12469 of 2020 &
W.M.P.Nos.15379, 15380 and 15382 of 2020**

1. G.Maharaja
2. V.Pagalavan
3. C.Palani
4. K.Lakshmanasamy
5. K.Kannammal
6. S.Gajalakshmi
7. B.Ayisha Begum

... Petitioners

Vs.

1. The Registrar of Co-operative Societies (Housing)
No.48, Ritherton Salai
Veppery, Chennai – 600 007
2. The Deputy Registrar of
Co-operative Societies, (Housing)
Chengalpattu Region,
No.18, Varadhanar Street,
Vedhachalam Nagar, Chengalpattu
Chengalpattu District

...Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the entire records relating to the impugned order passed by the 1st respondent in his proceedings Na.Ka.No.5947/2019/Sa.Pa.2, dated 08.6.2020 and quash the same.

For Petitioners : Mr.C.Prakasam

For Respondents : Mr.S.Ravikumar for R1 and R2



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Special Government Pleader

ORDER

The present Writ Petition has been filed for issuance of a Writ of Certiorari to call for the entire records relating to the impugned order passed by the 1st respondent in his proceedings Na.Ka.No.5947/2019/Sa.Pa.2, dated 08.6.2020 and quash the same.

2. The brief facts of the case is as follows:-

(i) The petitioners were elected as Board of Directors for K.P.(SPL), Government Last Grade Employees Cooperative Housing Society, while the petitioners discharging their duties, they decided to remove the encroachment in Plot No.1 to the extent of 2400 sq.ft., and sell the same, accordingly, with great difficulty, the petitioners removed the encroachment made by the 3rd parties and obtained Government guideline value from the Registration Department, as Rs.820/- and after obtaining opinion from the government approved engineer for fixation of value of the said plot at the rate of Rs.820/- per sq.ft., sold the said plot to the two members at the rate of Rs.920/- per sq.ft.,

(ii) Further, the plot no.1 was brought to sale, in this connection, the erstwhile Management passed resolution in No.3 dated 10.12.2013 and allotted the said plot and decided to receive the sale price at the time of



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registration, when the Board of Directors insisted the allottees to pay Rs.1,300/- per sq.ft., the allottees were not inclined to accept the same, in order to prevent further encroachment, the petitioners decided to sell the said plot at the rate of Rs.920/- per sq.ft.,. Now, the 1st respondent disqualifying the Board of Directors on the ground that the Board has not obtained any prior permission from the 1st respondent. Even though the petitioners have submitted a detailed explanation, the 1st respondent passed an impugned order disqualifying the petitioners from the post of Board of Directors by invoking under Section 36(1) of the Tamilnadu Co-operative Societies Act, 1983.

3. Per contra, a detailed counter affidavit has been filed by the respondents wherein it is stated that since certain irregularities were noticed in the functioning of Board of Management of Society, the 2nd respondent ordered an enquiry under Section 81 of the Act, 1983. Only after following the due process of law, the impugned order has been issued. Further, the Housing Coop Societies should follow the guidelines issued by the Government in their G.O.No.224 dated 27.11.2009, wherein it was ordered that the Housing Societies shall sell the vacant land only after obtaining report of the Rate Fixation Committee. In this case, the petitioners, independently and arbitrarily and in gross violation of the instructions issued G.O., dated 27.11.2009, sold the vacant plot to V.Pagalavan and C.Palani/



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2nd and 3rd petitioners, who are Board of Directors of the said Society without reference to the Rate Fixation committee.

4. The learned Special Government Pleader appearing for the respondents would further submit that in the books of account, it was recorded that on 18.12.2017, 2400 sq.ft., plot was sold at Rs.920/- per sq.ft., to the petitioners 2 and 3, but only a sum of Rs.12,08,000/- was received towards sale of such plot and the remaining Rs.10,00,000/- was received on 22.12.2017 and 01.02.2018 and directly remitted into the society account, which was maintained at Kancheepuram District Central Coop Bank and the receipt of the said amount was not transacted in the books of accounts of the society. It is established accounting practice that unless and until the full amount is received as consideration of sale, no one can register the documents. Therefore, the enquiry officer has rightly held the charges against the petitioners, which does not require any interference from this Court and the petitioners have not exhausted the appellate remedy, thereby pleaded to dismiss the petition.

5. Heard the learned counsel for the petitioners and the learned Special Government Pleader for the respondents 1 and 2 and perused the documents placed on record.



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6. It is pertinent to note that the Government in G.O.No.224 Housing and Urban Development Department dated 27.11.2009 have constituted a Rate Fixation Committee consisting of Registrar of Coop. Societies (Housing) / 1st respondent herein, wherein it was ordered that any housing societies should follow the guidelines issued by the Government in their G.O.No.224 dated 27.11.2009.

7. As far as the present case is concerned, the enquiry officer has averred that there is one plot to the extent of 2400 sq.ft., remained unsold in the Gandhi nagar housing scheme, Sevilimedu, Kancheepuram, after allotting plots over up to 28.10.1999. The said plot was divided into two areas each consists of 1200 sq.ft., and sold to the petitioners 2 and 3 at the rate of Rs.920/- per sq.ft. Further, in the books of accounts, it was recorded that on 18.12.2017, 2400 sq.ft., of vacant plot was sold at Rs.920/- per sq.ft., to the petitioners 2 and 3, however, only a sum of Rs.12,08,000/- was received towards sale of such plot and the remaining amount of Rs.5,00,000/- was remitted on 22.12.2017 and another sum of Rs.5,00,000/- was remitted on 01.02.2018 directly into the society account, which was maintained at Kancheepuram District Central Coop Bank.

8. When it is established accounting practice that unless and until the



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full amount is received as consideration of sale, no one can register the documents, in the instant case, the sale deed documents were registered on 18.12.2017, but the sale consideration amount was received only after two months. Further, the petitioners have sold the vacant plot without reference to Rate Fixation Committee and the same is gross violation of G.O. Dated 27.11.2009 and in violation of 1st respondent's Circular dated 13.12.2010 and in violation of provisions of bye-law of the society.

9. It is seen that the 1st respondent only after issuing notice and obtaining statement, have passed the impugned order of permanent disqualification of the Board of Directors of the society / petitioners for the proved gross mismanagement of the affairs of the society and guilty of breach of trust. Further, the petitioners have not exhausted their alternative statutory remedy by filing appeal petition under Section 152(2)(a)(A) of the Tamilnadu Coop Societies Act, 1983 before the Principal Secretary to Government, Housing and Urban Development Dept., Fort St.George, Chennai – 600 009.

10. In view of the above, the impugned order passed by the 1st respondent does not require any interference and there is no merits in the case of the petitioners and the same is liable to be dismissed. Accordingly, the same is dismissed. Consequently, connected miscellaneous petitions are closed. No costs.



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Index:Yes/No

Internet:Yes/No

Speaking / Nonspeaking order
ssd

To

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