



WEB COPY



W.P. No. 26783 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2024

CORAM

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

W.P. No. 26783 of 2018

Dr. N.Velu

... Petitioner

-VS-

1. The Registrar of Co-operative Societies,
Co-operative Societies (Housing),
50, Ritherdon Road,
Vepery,
Chennai - 600 007.
2. The President,
AU MIT Employee Cooperative House Building Society Limited,
MIT Campus,
Anna University,
Chrompet,
Chennai - 600 044.

...

Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the First Respondent in Proceedings Na. Ka. 331/2018/Sa. Pa1 dated 19.04.2018 and quash the same as illegal and in any event liable to be set aside and further direct the Second Respondent to issue allotment order to the Petitioner allotting a house site measuring 2400 square feet in the layout formulated in the land to the extent of 9.14 acres in various Survey Nos. 57/3,



W.P. No. 26783 of 2018

69/3, 68/1, 63/4, 59/1, 69/1, 63/6, 69/4, 69/5, 95, 98/4, 124/3, 124/1, 119/15, 119/5, 97 and 98/4B at Athanancheri Village, Padappai Panchayat, Kundrathur, Sriperumbuthur, Kancheepuram District or in any other layout.

For Petitioner : Ms. R.Poornima

For Respondents : Mr. P.Sathish,
Additional Government Pleader (for R1)

Mr. J.Ram (for R2)

ORDER

Heard Ms. R.Poornima, Learned Counsel for the Petitioner, Mr. P.Sathish, Learned Additional Government Pleader appearing for the First Respondent and Mr. J.Ram, Learned Counsel for the Second 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 had remitted a sum of Rs. 30,000/- to the Second Respondent on 19.02.1999 towards allotment of house site measuring 2400 square feet in the lay-out formed in the land of an extent of 9.14 acres in various Survey Nos. 57/3, 69/3, 68/1, 63/4, 59/1, 69/1, 63/6, 69/4, 69/5, 95, 98/4, 124/3, 124/1, 119/15, 119/5, 97 and 98/4B at Athanancheri Village, Padappai Panchayat, Kundrathur, Sriperumbuthur, Kancheepuram District, but he was neither granted the allotment nor the said amount has been



W.P. No. 26783 of 2018

refunded to him. The earlier Writ Petitions in W.P. Nos. 33154 of 2016 and 16892 of 2017 seeking such relief were not entertained by orders dated 22.09.2016 and 31.07.2017 respectively, and the First Respondent was required to enquire into the matter and pass orders thereon. In furtherance to the said orders passed by this Court, the First Respondent examined the claim made by the Petitioner with reference to the available materials placed on record and rejected it by order dated 19.04.2018 in Na. Ka. 331/2018/Sa. Pa1 under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as 'the TNCS Act' for short), which is assailed in this Writ Petition.

3. In this context, it must be noticed that the Petitioner is entitled to prefer appeal under Section 152 of the TNCS Act against the impugned order before the Special Tribunal for Co-operative Cases, which 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 requires to be emphasized here 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 discretionary powers under writ jurisdiction when an alternative remedy exists,



W.P. No. 26783 of 2018

as extracted below:-

WEB COPY

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 bypass 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], advertent to 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 pointed out 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] in the following words:-



WEB COPY

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.

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.

Having regard to the aforesaid legal position, the Petitioner has not been impeded from canvassing what is sought to be agitated in this Writ Petition in the aforesaid statutory remedy and there is no acceptable explanation from the



W.P. No. 26783 of 2018

Petitioner for not having availed it. In such circumstances, this Court is not inclined to entertain this Writ Petition to delve into the merits of the controversy involved.

In the result, the Writ Petition is dismissed with the aforesaid observations. Consequently, connected Miscellaneous Petition is closed. No costs.

12.03.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 05.06.2024.

vjt

To

1. The Registrar of Co-operative Societies,
Co-operative Societies (Housing),
50, Ritherdon Road,
Vepery,
Chennai - 600 007.
2. The President,
AU MIT Employee Cooperative House Building Society Limited,
MIT Campus,
Anna University,
Chrompet,
Chennai - 600 044.



WEB COPY



W.P. No. 26783 of 2018

P.D. AUDIKESAVALU, J.

vjt

W.P. No. 26783 of 2018

12.03.2024