

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 27.06.2024****CORAM****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****W.P.(MD)No.5791 of 2024**

R.Pechiammal

... Petitioner

Vs.

1. The Secretary,
MDA/HSR 124,
Tamil Nadu Cooperative Housing Department,
14A, Chithirai Kala Mini Colony,
Thirunagar 3rd bus stop,
Thirunagar, Madurai – 16.

2. The Deputy Registrar(Housing),
No.5, Besant Road, Baskar Complex,
2nd Floor, Chinna Chokkikulam,
Madurai – 2.

3. The Additional Registrar / Managing Director,
Tamil Nadu Cooperative Housing Board,
No.48, Ritherton Road,
Vepperi, Chennai – 7.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to return the sale deed dated 18.05.1998 bearing D. No.2862/1998 registered on the file of the Madurai South District Register Office, which was kept as mortgage with the first respondent's society for mortgage loan and to pay an amount of compensation for not returning of the above said original sale deed till date, on merits and in accordance with law within the time fixed by this Court.



For Petitioner : Mr.M.Gurusamy
For R-1 & R-2 : Mr.M.Senthil Ayyanar,
Government Advocate.
For R-3 : M/s.S.Kanmani Annamalai

* * *

ORDER

Heard both sides.

2. The petitioner availed loan from the first respondent Society.

The loan liability has since been settled. But on account of misappropriation said to have been committed by the Society Secretary, the amount was not duly credited. The Society had in turn deposited the documents with the third respondent federation and obtained refinancing facility. Since the amount has not been paid to the third respondent, the third respondent has not returned the documents. In these circumstances, the present writ petition came to be filed.

3. A similar writ petition was filed by one S.Kumar and P.Madasamy in W.P.(MD)No.25455 of 2023. The said writ petition was disposed of by me on 01.12.2023 in the following terms:-

“Heard both sides.



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2.One Shanmugavel and Madasamy availed mortgage loan from the third respondent way back on 10.11.2004. The title document was deposited with the third respondent. It is not in dispute that the loan liability has been cleared in full in the year 2017 itself. The petitioners want this Court to direct the respondents to return the documents.

3.The third respondent had in turn handed over the title document to the first respondent federation and obtained financial facilities.

4.It appears that the third respondent had not settled their liability towards the first respondent. Similarly placed borrower from the third respondent Society filed W.P(MD)No.11027 of 2021 seeking the similar relief. A learned Judge of this Court vide order dated 13.07.2021 disposed of the said writ petition in the following terms:

“7. In the considered view of this Court, the petitioners have discharged the entire loan amount and the same is evident from the registered discharge receipt issued on 15.04.2009. This receipt has been registered as Doc.No. 2691/2009. This receipt is a prima facie



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proof for the redemption of the mortgage and the discharge of the loan.

8. The misappropriation on the part of the Secretary of the Society cannot be put against the petitioners. The petitioners have been running from pillar to post for the last eleven years for getting back the original documents. Ultimately they have knocked the doors of this Court. Therefore the handing over of the original document of the petitioner cannot be postponed and kept pending endlessly awaiting for a report to be filed by the enquiry office under Section 81 of the Act.

9. In view of the above discussion, there shall be a direction to the third respondent to hand over the original sale deed dated 30.08.2000 to the first respondent within a period of two(2) weeks from the date of receipt of a copy of this order. The first respondent immediately on receipt of the same, shall hand over the original document to the first petitioner within a period of two (2) weeks thereafter.”

I am inclined to adopt the very same approach in the present case also. The third respondent will write to the first respondent seeking return of the documents. The first respondent will in turn return the documents from the third



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respondent and the petitioners can collect the petition mentioned original documents from the third respondent. This exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. It is declared that the third respondent's liability to the first respondent to the tune of Rs.15,77,000/- (Rupees Fifteen Lakhs Seventy Seven Thousand only) arising out of the present transaction remains undischarged. It is open to the first respondent to take appropriate steps from recovering the said amount from the third respondent.

5. With this observation and liberty to the first respondent, this writ petition is allowed. There shall be no order as to costs.”

4. I am inclined to adopt the same approach in this case also.

The first respondent will write to the third respondent seeking return of the document. The third respondent will in turn return the documents to the second respondent (The Deputy Registrar (Housing), Madurai). The petitioner and the first respondent will appear together before the second respondent and collect the petition mentioned original documents. This



exercise shall be concluded within a period of twelve weeks from the date of receipt of a copy of this order. It is declared that the first respondent's liability to the third respondent is to the tune of Rs.5,85,771/- with interest. It is open to the third respondent to take appropriate steps for recovering the said amount from the first respondent Society.

5. With this observation and liberty, this writ petition stands allowed. No costs.

27.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
PMU

To:

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