



C.R.P.(MD).No.845 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

C.R.P.(MD).No.845 of 2021

and

C.M.P(MD)Nos.4533 and 4534 of 2021

1. R.Dhakshanamoorthy(Died)

2. N. Prema

3. D. Annamalai

4. Sreenivasaramani

5. Ramaswamy

6. Lakshmanan

***(*Petitioners 2 to 6 are brought on record
as LR's of the deceased sole petitioner
vide order dated 12.06.2023)***

... Petitioners

Vs

1. The Cooperative Sub Registrar/special Officer,
A.1321, Karaikudi
Cooperative Housing Society Ltd,
No.28/61, Church 2nd Street,
T.T.Nagar, Karaikudi-630 001,
Sivagangai District.



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2. The Secretary,
A.1321,
Karaikudi Cooperative Housing Society Ltd.,
No.28/61, Church 2nd Street,
T.T Nagar, Karaikudi-630 001,
Sivagangai District.

3. K.R.Meenakshisundaram,
S/o.Karuppanan Servai,
Ex-Secretary,
A.1321, Karaikudi Cooperative Housing Society Ltd,
No.28/61, Church 2nd Street,
T.T. Nagar, Karaikudi-630 001,
Sivagangai District.

4. N.Muniyandi

5. Ar.Nagappan

6. The Regional Deputy Registrar (Housing),
Office of the Regional Deputy Registrar,
Virudhunagar.

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to setting aside the judgment and decree made in CMA(CS)No.13 of 2016, dated 16.07.2020 on the file of the Court of the Co-Operative Tribunal/Principal District Judge, Sivagangai, partly reversing the order made in Case No.1 /2012-2013, dated 25.08.2014 on the file of the Regional Deputy Registrar (Housing), Virudhunagar.



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For Petitioner : Mr.A.L.Sundaresan
Senior Counsel
For Mr.C.Mahadevan
For R1, R2 & R6 : Mr.G.V.Vairam Santhosh
Additional Government Pleader
For R3 & R4 : No Appearance
For R5 : Mr.R.Sundar Srinivasan

ORDER

This civil revision petition is filed as against the order passed by the Co-Operative Tribunal/learned Principal District Judge, Sivagangai in C.M.A(CS) No.13 of 2016, dated 16.07.2020.

2.The said civil miscellaneous appeal was filed by the revision petitioner as against the order passed by the Regional Deputy Registrar (Housing), Virudhunagar in Case No.1 of 2012-2013, dated 25.08.2014.

3.The revision petitioner is the member of the Housing Society from the year 1974. The second respondent Housing Society has allotted a vacant



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house site to the petitioner by its communication, dated 22.06.1979. He was allotted plot No.168 and he was also directed to pay additional amount for the plot by communication, dated 09.03.1984. The petitioner said to have paid all the amount for the allotted plot No.168 (new plot No.121). The second respondent Society has to execute the sale deed in favour of him in the year 1992 but it was not executed. In this circumstance, the petitioner has issued a legal notice in the year 2009, for which, he was informed that the plot allotted to the petitioner was cancelled and the same was re-allotted to one Muniyandi. The petitioner has again issued a legal notice calling upon the second respondent to furnish the details with regard to the order of cancellation and the allotment if any made in the original plot allotted to him. However, he has no reply. Therefore, he has applied for encumbrance from the Registrar Office and filed an application before the Regional Deputy Registrar (Housing), Virudhunagar under Section 90 of the Co-Operative Societies Act in the year 2013. The application was rejected by the Regional Deputy Registrar (Housing), Virudhunagar as against which, he has filed the civil miscellaneous appeal before the Tribunal in C.MA(CS) No.13 of 2016. This civil miscellaneous appeal was partly allowed by the Tribunal accepting the case of the petitioner that it has been re-allotted illegally and it needs to be re-considered by the authorities concerned. However, the petitioner's request in



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questioning the cancellation of the allotment order of the revision petitioner was rejected. As against the second portion of the order passed by the Tribunal, this petition has been filed.

4.The learned Senior Counsel appearing for the petitioner submits that the petitioner is a member of the Society from the year 1974 and he was considered for allotment of the plot in the year 1974 and he had also paid all the charges, which has been charged for the plot allotted by the second respondent. He had completed all the payments in the year 1990 and therefore, he had requested the second respondent to execute the sale deed however, the second respondent had not executed the same. In the mean time, the fourth respondent was inducted as a member of the Society on 31.03.1993 and thereafter, the allotment order of the petitioner was cancelled by order dated 20.09.1993 without issuing any notice. On the same day, the Plot No.121, which was allotted to the petitioner was re-allotted to the fourth respondent on 20.09.1993. The learned Senior Counsel has also pointed out that the fourth respondent is the son of the Special Officer of the Society and therefore in order to allot this plot to the fourth respondent, the allotment order of the petitioner was cancelled on 20.09.1993 without issuing any notice and has been re-allotted to the fourth respondent on the same day. On this ground of violation of principles of



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natural justice, the Tribunal ought to have set aside the order of the Regional Deputy Registrar (Housing), Virudhunagar and would have remanded back for a fresh consideration by providing an opportunity to the revision petitioner. However, the Tribunal has rejected the request of the petitioner with regard to the cancellation of his allotment, which was made without any notice to the petitioner. The learned Senior Counsel has also referred to the additional typed set of papers and submit that 17 other persons, who are not residing within the radius of 8 Kms from the second respondent Society have been allotted plots. However, the petitioner allotment was cancelled that the petitioner was not residing within the radius of 8 Kms from the second respondent Society. The learned Senior Counsel by referring to the passport issued to the revision petitioner submits that the petitioner was the resident of Aavaramkudi, which is within the radius of 8 Kms from Karaikudi. However, the same has not been appreciated by the Tribunal. The ground, on which, the allotment was cancelled as against the petitioner is that he is not residing within the 8 kms and the same has not been strictly followed by the second respondent Society for others and allotments were made to 17 others, who were residing not within the radius of 8 Kms from Karaikudi.

5.The learned Senior Counsel further submits that when the Tribunal



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has found that the allotment made to the fourth respondent is illegal and remanded the matter for deciding the legality of the re-allotment of plot in question to the fourth respondent ought to have found that the allotment of the petitioner was cancelled by order, dated 20.09.1993 without any notice, only in order to allot this plot to the fourth respondent. The learned Senior Counsel by referring to the bye-law of the Society submits that the bye-law prohibits the allotment of plot to any person, whose relative is working as staff or in-charge of the Society. The fourth respondent is the son of the Special Officer of the Society, namely, Natchiappan and the fourth respondent who was allotted the plot, had sold the same without constructing any building as per the condition of allotment. The learned Senior Counsel also submits that the attesters in the sale deed of the fourth respondent are the father of the fourth respondent, who is the then Co-Operative Sub Registrar/Special Officer and the Secretary of the Society, which would expose the manner, in which, the fourth respondent was allotted with this plot. He also submits that the petitioner as directed by the second respondent has paid all the dues to the plot, which has been allotted to him and the amount is still with the second respondent Society.

6.The learned Additional Government Pleader appearing for the respondents 1, 2 and 6 submits that the second respondent Society has issued a



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notice to the revision petitioner on 10.09.1993 and he has not responded to the same and thereafter, the order of allotment was cancelled on 29.09.1993. He further submits that the petitioner has not approached the second respondent for refund of the amount and the second respondent Society is prepared to refund the same at any point of time. The petitioner's amount has also been kept in separate account and the petitioner can very well receive the same from the second respondent Society. He also submits that the petitioner is also having a house at Dindigul and he is not a resident of Kariakudi and therefore, the order of allotment made in favour of the petitioner was cancelled.

7. There is no representation for the third and fourth respondents.

8. The learned Counsel appearing for the fifth respondent submits that this petition is not maintainable. The application filed by the petitioner under Section 90 of the Co-Operative Societies Act, itself is not maintainable in view of the delay and laches. If any application is filed under Section 90 of the said Act, it has to be filed within a period of six years from the date of the order. In this case, the allotment made to the petitioner was cancelled by order dated 29.09.1993, which was challenged by the petitioner only in the year 2012 i.e., after 22 years and thereafter, the initial application filed by the petitioner before



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the Regional Deputy Registrar (Housing), Virudhunagar under Section 90 of the said Act itself is time barred and therefore, the consequential proceedings are all not maintainable. He further submits that as against the order passed by the Regional Deputy Registrar (Housing), Virudhunagar under Section 90 of the said Act, a remedy is available to the petitioner under Section 153 of Tamilnadu Co-Operative Societies Act before the District Registrar.

9.This Court has considered the rival submissions made and also perused the materials place on record.

10.The second respondent is a Co-Operative Housing Society. The revision petitioner is a member of the second respondent Society from the year 1974. The qualification prescribed under the bye-law of the second respondent for a member is as under:

"QUALIFICATIONS:

6.(1)(a) Any individual who is over 18 years of age, competent to contract either residing within the area of operations of the Society and having a vacant house site or not residing within the area of operations but having a vacant house-site within the area of operations of the Society shall be eligible for admission as a member.

However when the society undertakes the distribution of house sites to the members, persons who are residing within the area of operations of the society without house sites and who are intending to acquire a site through the society, may be admitted as members.



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DISQUALIFICATIONS:

(2) No person shall be eligible for admission as a member of the society if he

(a) is an applicant to be adjudicated as an insolvent is an undischarged insolvent; or

(b) has been sentenced for any offence involving moral turpitude, punishable under any law with imprisonment for one year and upwards, such sentence having been annulled and a period of one year not elapsed from the date of the expiration sentence; or

(c) is a paid officer or servant of the society or financing Bank or of any society for which financing bank; or

(d) has been expelled from membership under the provisions of the Act and a period of three years have been elapsed from the date of such expulsion; or

(e) is engaged directly or indirectly in a business industry or activity similar to that of the society inconsistent with or prejudicial to the work society; or

(f) has resigned from the membership of the society and a period of one year has not elapsed from date of such resignation; or

(g) is already a member of society of the same;

(h) is owning a house in his/her own name or name of his wife/her husband or minor children where in Tamilnadu except in a rural place. This restriction will not be applicable to a person owns thatched house only and who owns which requires to be demolished and rebuilt, owns a house with fractional interest."

11. The petitioner has been inducted as a member in the year 1974 in



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the second respondent Society, after satisfying his qualification as stipulated in the bye-law with regard to the membership and the disqualification. He was also allotted a vacant housing site in the year 1974. The petitioner has placed a demand notice issued by the second respondent Society dated 22.06.1979 calling upon the petitioner to pay the second installment of Rs.500+1.50/- for the allotted site on or before 02.07.1979. The petitioner claims he completed all his payments. The petitioner was directed to pay the balance amount of Rs. 2,508/- and the petitioner has also paid his last installment of Rs.2,509/- by way of a demand draft on 20.09.1990. Therefore, according to the petitioner, he has paid all the installments from the year 1979 till 1990. The petitioner is continued to be a member of the Society from the year 1974 onwards. In these circumstances, the order of allotment made to the petitioner was cancelled by the second respondent Society on 20.09.1993. The contention of the petitioner is that this resolution has been passed without issuing any notice to the petitioner and without affording any opportunity to him.

12.The learned Additional Government Pleader submits that the second respondent Society has issued a notice to the petitioner before cancelling the allotment. The very same ground has been taken before the Tribunal also. However, the Tribunal has not accepted the same. The



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contention of the second respondent is that a notice has been issued to the petitioner before passing this resolution, dated 20.09.1993.

13.This Court directed the second respondent to produce some proof for the notice if any issued by them to the petitioner before cancelling the order of allotment made in favour of the petitioner. The second respondent failed to produce the same.

14.The order of allotment made in favour of the petitioner in the year 1974 was cancelled in the year 1993 without any notice. Therefore, on this ground of violation of principles of natural justice., this Court is inclined to set aside the order of the cancellation, dated 20.09.1993.

15.The petitioner has also attributed motive that in order to accommodate the fourth respondent, who is the son of the Special Officer of the Society, the allotment of plot made in favour of the petitioner in the year 1974 was cancelled in the year 1993. He further states that within three days, the fourth respondent was allotted with the very same plot and a sale deed was executed in a hurried manner. The petitioner has also raised a ground that the Sub Registrar, the Special Officer and the Secretary of the Society are the



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parties to the sale deed executed in a favour of the fourth respondent. This submissions of the revision petitioner that the fourth respondent is the son of the Special Officer is not denied by the respondents. Therefore, this ground needs to be enquired by the Regional Deputy Registrar (Housing), Virudhunagar and necessary action has to be taken as against the concerned officials, if the allegations made by the petitioner is found to be true.

16. Therefore, this civil revision petition is allowed on the ground of violation of principles of natural justice in cancelling the order of allotment made in favour of the petitioner by the second respondent without affording an opportunity. No Costs. Consequently, the connected miscellaneous petitions are closed. The resolution of cancelling the order of allotment in favour of the petitioner on 20.09.1993 is illegal, which is liable to be set aside. Accordingly, the same is set aside.

17. The second respondent Society has taken a plea that the petitioner is hailing from Karaikudi. However, the second respondent Society has not disqualified him as a Member. The petitioner is continuing as a member from the year 1974 in the second respondent Society. After cancelling the order of allotment, the petitioner's payments towards the house is not yet refunded.



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18. Since the second respondent has taken a stand that the petitioner is not hailing from Karaikudi and he is resident of Dindigul District, it is open to the second respondent to conduct an enquiry with regard to the same and pass appropriate orders, within a period of six months from the date of receipt of a copy of this order. In view of the order passed by this Court, this Court set aside the order passed by the Regional Deputy Registrar (Housing), Virudhunagar dated 25.08.2014 and the order passed by the Tribunal in C.M.A(CS)No.13 of 2016, dated 16.07.2020 and remit the matter back to the Regional Deputy Registrar (Housing), Virudhunagar to conduct an enquiry afresh based on the enquiry report to be submitted by the second respondent by affording an opportunity to all the parties concerned and shall take appropriate action in accordance with law, within a period of six months, from the date of receipt of the report of the second respondent.

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NCC : Yes/No
Index : Yes / No
Internet: yes / No
LR



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4. The Regional Deputy Registrar (Housing),
Office of the Regional Deputy Registrar,
Virudhunagar.
5. The Section Officer, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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