



W.A.(MD).Nos.1039 to 1041
and 194 to 196 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED:28.10.2024

CORAM :

**THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN
AND
THE HONOURABLE MR.JUSTICE K.K. RAMAKRISHNAN**

W.A.(MD).Nos.1039 to 1041 and 194 to 196 of 2017
and
C.M.P(MD).Nos.7289, 7291, 7293, 2002, 2004 and 2006 of 2017

W.A.(MD).Nos.1039 to 1041 of 2017:

1.The Registrar,
Co-operative Societies (Housing),
Chennai.

2.The Regional Deputy Registrar,
(Housing), (i/c),
Virudhunagar Region.

... Appellants
(In all W.As.)

Vs.

1.Selvi

... 1st Respondent
in W.A.(MD).No.1039 of 2017

Vasuki

... 1st Respondent
in W.A.(MD).No.1040 of 2017

S.Panchakalyani

... 1st Respondent
in W.A.(MD).No.1041 of 2017

2.The Secretary,
A/1321, Karaikudi Cooperative Housing Society,
Church 6th Street Karaikudi,
Sivagangai District.



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3. The President,
A 1321, Karaikudi Cooperative Housing Society,
Church 6th Street,
Karaikudi, Sivagangai District.

... Respondents 2 and 3
(in all W.As.)

COMMON PRAYER: Writ Appeals are filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 16.11.2016 in W.P(MD).Nos.21706 to 21708 of 2016.

For appellants : Mr.M.Prakash
Additional Government Pleader
(in all W.As.)

For Respondents : Mr.P.Arun Jayatram
for R1 (in all W.As.)
Mr.Al.Ganthimathi,
Senior Counsel
for Mr.C.Mahadevan
for R2 (in all W.As.)

: No appearance for R3

W.A.(MD).Nos.194 to 196 of 2017:

1. The President,
A1321, Karaikudi Cooperative Housing Society,
Church 6th Street,
Karaikudi,
Sivagangai District.

2. The Secretary,
A1321, Karaikudi Cooperative Housing Society,
Church 6th Street,



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Karaikudi,
Sivagangai District.

... Appellants
(In all W.As.)

Vs.

1.Selvi

... 1st Respondent
in W.A.(MD).No.194 of 2017

1.Vasuki

... 1st Respondent
in W.A.(MD).No.195 of 2017

1.S.Panchakalyani

... 1st Respondent
in W.A.(MD).No.196 of 2017

2.The Registrar,
Co-operative Societies (Housing),
Chennai.

3.The Regional Deputy Registrar,
(Housing), (i/c),
Virudhunagar Region.

... Respondents 2 and 3
(in all W.As.)

COMMON PRAYER: Writ Appeals are filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 16.11.2016 in W.P(MD).Nos.21706 to 21708 of 2016.

For appellants : Mr.Al.Ganthimathi,
Senior Counsel
for Mr.C.Mahadevan
(in all W.As.)



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For Respondents : Mr.M.Prakash
Additional Government Pleader
for R2 & R3
: Mr.M.Mohamed Zamil
for M/S.Ajmal Associates

for R1 in W.A.(MD).No.196 of 2017
: Mr.P.Saravanakumar
for R1 in W.A.(MD).No.195 of 2017

COMMON JUDGMENT

(Judgment of the Court was delivered by **K.K.RAMAKRISHNAN,J.**)

These writ appeals are filed to set aside the impugned order dated 16.11.2016 passed in W.P(MD).Nos.21706 to 21708 of 2016.

2.The Karaikudi Co-Operative Building society Ltd., comes under the control and supervision of the registrar of co-operative societies (Housing), Chennai. The said Karaikudi Co-Operative Building society Ltd., (hereinafter called) society promoted layout and in the said layout, plot Nos. 182-D, 183-D and 183-C were reserved for the public purpose. The said layout was approved by the director of Town and Country Planning. Without obtaining the proper permission from the director of the Town and Country Planning and the Registrar of the Co-operative



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Societies, then special officer and then president sold the said plots allotted for public purpose to various persons illegally. The first respondent in W.A.(MD).No.194 to 196 of 2017 also purchased the plot illegally. Subsequently, the special officer of the said society cancelled the same on 09.01.1996. Therefore, the 2nd respondent in this writ appeal had filed appeal before the Regional Deputy Registrar under Section 90 of the Tamil Nadu Co-operative Societies Act 1983. The said appeal was allowed on 21.02.2006 in his proceedings in Tha.Vaa.Nos.325, 326 and 329/99-2000. Thereafter, the sale deed was not reconveyed and hence, the first respondent in W.A.(MD).No.194 to 196 of 2017 had filed writ of mandamus in W.P.(MD).Nos.17474 to 17476 of 2016 directing the 2nd and 3rd respondents herein to implement the above said order dated 21.02.2006. During the pendency of the writ petition, the 1st appellant had set aside the above said order dated 21.02.2006 by passing the order dated 31.03.2006. The said order has been impugned in the W.P.(MD).Nos.21706 to 21708 of 2016. The Writ Court by the impugned order dated 16.11.2016 allowed the writ petition at the admission stage without hearing the appellant. Challenging the same, the registrar, Co-operative societies (Housing), Chennai and regional Deputy registrar



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(housing) incharge Virudhunagar region have filed the writ Appeal Nos. 1039 to 1041 of 2017. The secretary and president of the Karaikudi Co-operative Societies have filed the writ Appeal Nos.194 to 196 of 2017.

3.The Learned counsel for the appellants would submit that the 1st respondent had filed the writ of certiorari to quash the order of the 1st appellant dated 31.03.2006. In the said order, it is stated that notice was properly sent to all the persons including the 1st respondent. Therefore, the reasoning of the Learned trial Judge that there is a violation of the principle of natural justice is not correct and also against the record. In the said circumstances, the impugned order is liable to be set aside. The Learned senior counsel would further submit that in plot Nos. 182-D, 183-D and 183-C an extent of 59312 sq.ft. was reserved for public purpose. The same was divided illegally without obtaining permission from the competent authority and sold by the then secretary of the society for a low price and entered into the illegal transaction. Therefore, illegality cannot be approved under the guise of the violation of the principles of natural justice. Hence, he seeks to set aside the impugned order.



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4.The Learned counsel for the 1st respondent would submit that the 1st respondent and other similarly placed persons purchased the said land and number of persons have obtained sale deed as per the order dated 21.02.2006. Only three persons namely the private respondents in the Writ Appeal Nos.194 to 196 of 2017 have not obtained sale deed. Therefore, there is a discrimination in respect of the 1st respondent alone. The appellant passed the impugned order cancelling the order dated 21.02.2006 without notice. As per Section 181 of the Co-operative Societies Act, the appellant has power to cancel or modify the order only in the public interest after affording opportunity of hearing. Therefore, the writ Court correctly set aside the impugned order of the 1st appellant dated 31.03.2006. Hence he seeks to dismiss the writ appeal.

5.The 2nd and 3rd respondents namely president and secretary of the said society reiterated the submission of the appellant and also submitted that they have also filed the separate writ appeals in W.A.Nos. 194 to 196 of 2017 to set aside the order of the writ Court.



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6.This Court considered the rival submissions made on behalf of all the parties to the proceedings and also perused the entire records and the impugned order.

7.The 1st respondent has not disputed that she purchased the property in plot Nos.182-D, 183-D and 183-C which had been reserved for the public purpose of the layout.

8.The 1st appellant has specifically held that the land comprised in plot Nos. 182-D, 183-D and 183-C are allotted for the public purpose. The said allotted land was illegally sold to number of persons without obtaining permission from the director of town and country planning authority and the bye laws of the society and against the appellant's circular dated 08.12.1988. The 1st respondent and the then special officer all committed fraud and made the fraudulent transaction. They all perpetrated the fraud and thereby, they sold the land allotted for the public purpose. The Hon'ble supreme Court in number of cases reiterated the principle that the promoter of the layout has no right to transact the land relating to the land reserved for the public purpose and the same amounts to illegality. Therefore, strict compliance of the principle of



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natural justice in the case of the fraudulent transaction is not required and it would encourage illegality.

9.In this case this court is duty bound to apply the “*theory of useless formality*”. The said theory has been propounded by the Hon’ble Supreme Court in the case of ***S.L. Kapoor Vs. Jagmohan***, reported in **(1980) 4 SCC 379** and the same was reiterated in the case of ***M.C.Mehta Vs Union of India*** reported in **1999 6 SCC 237** and the same was further reiterated in the case of ***Canara Bank Vs. V.K. Awasthy***, reported in **2005 6 SCC 321** and also subsequent decisions. The sum and substance of the principle of the said “*theory of useless formality*” is as follows :

1980 4 SCC 379 (S.L.Kapoor Vs. Jagmohan)	1999 6 SCC 237 (M.C.Mehta Vs. Union of India)	2005 6 SCC 321 (Canara Bank Vs. V.K.Awasthy)
As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs.	If on the admitted or indisputable factual position, only one conclusion is possible and permissible, the Court need not issue a writ merely because there is violation of the principles of natural justice.	Where grant of opportunity in terms of principles of natural justice do not improve the situation, “useless formality theory” can be pressed into service.



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10.From the above principles laid down by the Hon'ble Supreme Court in the case of the violation of principle of natural justice, the Court has a duty to see any disputed fact to be addressed. The said disputed fact would change the result of the decision. The applicant not only has a duty to establish real substance of his case and also establish substantial possibility of his success and show that atleast result would be different if the natural justice had been followed. In this case, it is not disputed that the 1st respondent had purchased the portion of the land reserved for public purpose in the layout with the active connivance of the then secretary of the society illegally without obtaining the conversion order of the said reserve land from the competent officer of the Director of Town and Country Planning Authority and also it is utter violation of the Society bye law 45(6) and also the binding circular issued by the 1st appellant dated 08.12.1988 in Circular No. 16444/88/Ki1. Therefore, she has no legal defense to substantiate her case of the legal title. She committed fraud and she entered into fraudulent transaction. In the said circumstances, even if show cause notice had been issued, the result of the impugned order could not change. Nature of her transaction is patently fraudulent one and the same cannot be changed whatever



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opportunities would have been given. Therefore, in this special circumstance of the case, this Court holds that the compliance of the principle of natural justice amounts to useless formality. The 1st respondent has claimed her right through the fraudulent transaction and illegality and she is in illegal possession and therefore, remitting the matter and giving opportunity of hearing to submit her defense would amount to continuing another round of litigation which would consume another decade.

11. Therefore, this Court considered these facts and circumstances as a special case and duty bound to discuss the matter on merits without remitting the matter to the appellant on the ground that there is no scope for arriving a different conclusion and there is no factual dispute for the purchase of the property reserved for public purpose is illegal. Therefore, this court applies the principle and holds that there is no necessity to apply the principle of natural justice in the peculiar circumstances of the case.

12. In result, the order of the 1st appellant dated 31.03.2006 is in



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accordance with law and the writ Court order at the admission stage on the ground of violation of principle of natural justice is not in accordance with law and hence liable to be set aside.

13. Therefore, this Court inclines to accept the submission of the appellants' counsel and sets aside the impugned order of the writ court. The 1st respondent without any legal right on the basis of the fraudulent transaction is in occupation of the land reserved for the public purpose, and filed the writ petition with the plea that notice was not served. Therefore, this Court inclines to impose a cost of Rs.15,000/- payable by the first respondent within a period of two weeks from the date of receipt of a copy of this order.

14. Accordingly, these writ appeals are allowed with a cost of Rs.15,000/- payable by the 1st respondent in the following terms :

14.1. The impugned orders of the writ court dated 16.11.2016 in W.P(MD).Nos.21706 to 21708 of 2016 are set aside.

14.2. The order of the first appellant dated 31.03.2006 is not liable to be quashed and the same is in accordance with law.



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14.3. The appellant is directed to take steps to repossess the land from the 1st respondent and utilize the same for the public purpose.

Consequently, the connected civil miscellaneous petitions are closed.

[V.B.S.J.] [K.K.R.K.J.]

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NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
vsg



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Co-operative Societies (Housing),
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- 2.The Regional Deputy Registrar,
(Housing), (i/c),
Virudhunagar Region.
- 3.The Special Government Pleader,
Madurai Bench of Madras High Court,
Madurai.



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vsg

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