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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-03-2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

**WP No. 15016 of 2021
and WMP No. 15897 of 2021**

1. R.Amsaveni

2. R.Sri Lekha

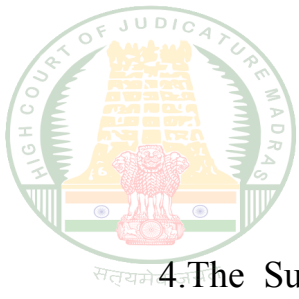
Petitioner(s)

Vs

1. The Managing director
Tamilnadu Housing Board,
Anna Salai,
Nandanam,
Chennai- 35.

2.The Executive Engineer
Tamilnadu Housing Board,
Coimbatore Housing Unit,
Coimbatore- 642 012.

3.The District Registrar
The District Registrar's Office,
The District Collectorate,
Coimbatore- 642 018.



4. The Sub Registrar
The Sub Registrar's Officer,
Ganapathy,
Coimbatore- 642 018,
Coimbatore District.

5. Indira Rajendran

Respondent(s)

PRAYER Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari Mandamus, calling for the records pertaining to proceedings in No.6211/A1/2019 dated 12.06.2020 of the 3rd respondent and to quash the order of the 3rd Respondent No. 6211/ A1/ 2019 dated 12.06.2020 and further direct the 3rd Respondent to rectify the error committed by the 4th Respondent by registering a fraudulent sale deed dated 02.02.2009 and consequently direct the 2nd Respondent to register the sale deed in favour of the petitioners in respect of the allotment order in Letter No. A3/ 12241/ 91 dated 23.11.1992

For Petitioner(s): Mr.M.Roshan Atiq

For Respondent(s): Mr.D.Veerasekaran
Standing Counsel for R1 and R2
Mr.B.Vijay,
Additional Government Pleader
for R3 and R4
Mr.J.Franklin for R5

**ORDER**

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This writ petition has been filed challenging the proceedings of the 3rd respondent dated 12.06.2020 and for a consequential direction to the 3rd respondent to rectify the error committed by the 4th respondent in registering the Sale Deed dated 02.02.2009 and for a further direction to the 2nd respondent to register the Sale Deed in favour of the petitioners.

2.Heard Mr.M.Roshan Atiq, learned counsel appearing on behalf of the petitioners, Mr.D.Veerasekaran, learned Standing Counsel appearing on behalf of the respondents 1 and 2, Mr.B.Vijay, learned Additional Government Pleader appearing on behalf of respondents 3 and 4 and Mr.J.Franklin, learned counsel appearing on behalf of the 5th respondent.

3.The husband of the 1st petitioner submitted an application for allotment of housing plot before the 2nd respondent. Based on the same, allotment order was passed on 23.11.1992 and Plot No.MIG3504 was allotted in the name of the husband of the 1st petitioner. The total cost was fixed at Rs.85,500/- The further



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case of the petitioners is that the 1st petitioner's husband paid all the instalments and he was entitled to get the Sale Deed executed in his name. However, he died on 21.09.2023 leaving behind his wife and daughter who are the petitioners herein. The petitioners submitted representations seeking for transfer of the allotment in their favour, so that they can get the Sale Deed executed in their names.

4.The grievance of the petitioners is that they came to know that the 5th respondent had managed to get the Sale Deed executed in her name on 02.02.2009 as if she is the widow of the original allottee Rajendran. Immediately, a complaint was given to the Housing Board and an order came to be passed on 08.07.2015 by the Managing Director of the Tamil Nadu Housing Board, cancelling the Sale Deed executed in favour of the 5th respondent and for a further direction to initiate criminal proceedings against the 5th respondent and those officials who had connived with the 5th respondent and created the Sale Deed in her favour. The relevant portion in the order is extracted hereunder:

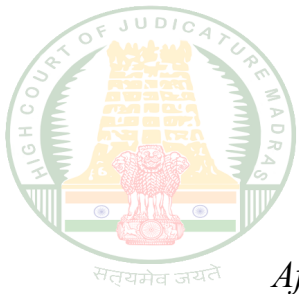


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திரு. கே. ராஜேந்திரன் அவர்கள் 1992 -ம் ஆண்டு முதல் 2002 -ம் ஆண்டு வரையில் ஒதுக்கீடு செய்யப்பட்ட மனைக்கு முன்வைப்புத் தொகை மற்றும் தவணைத் தொகையினை செலுத்தி வந்துள்ளார். ஒதுக்கீடுதாரரின் மரணத்திற்கு பிறகு, ஒதுக்கீடுதாரரின் வாரிசுதாரர்கள் தான் அந்த சொத்தின் மீது உரிமை கோர வேண்டும் என்ற நிலையில் வெகு எளிதில் கே. ராஜேந்திரன் என்ற பெயரில் உள்ள மனையினை இந்திரா ராஜேந்திரன் என்ற பெயருக்கு விற்பனைப் பத்திரம் பெற்று அதனை சார் பதிவாளர் அலுவலகத்தில் பதிவு செய்துள்ள இச்செயல் ஏற்றுக் கொள்ளக் கூடியதல்ல. இப்படிப்பட்ட செயலினால் உண்மையான வாரிசுதாரர்கள் பாதிக்கப்பட்டுள்ளார்கள். எனவே, முதலில் ஒதுக்கீடு பெற்ற அசல் ஒதுக்கீடுதாரரான திரு. K. இராஜேந்திரன் அவர்களுக்கு ஒதுக்கீடு செய்யப்பட்ட மனையினை, உண்மையான வாரிசுதாரர்களுக்கு திரும்ப அளிக்க வேண்டும் என்பதால், திருமதி இந்திரா ராஜேந்திரன் என்ற பெயரில் முறைகேடாக வழங்கப்பட்டுள்ள விற்பனைப் பத்திரத்தினை இரத்து செய்து உத்தரவிடப்படுவதோடு, வாரிய பணியாளர்களோடு இணைந்து திருமதி இந்திரா ராஜேந்திரன் அவர்களும் குற்ற நடவடிக்கைகளில் ஈடுபட்ட காரணத்திற்காக, இந்த முறைகேட்டிற்கு காரணமான மற்றும் உடந்தையாக இருந்த வாரியப் பணியாளர்கள் மற்றும் திருமதி இந்திரா ராஜேந்திரன் ஆகியோர் மீது குற்றவியல் நடவடிக்கை எடுக்க ஆணையிடப்படுகிறது. இதன் மீது உரிய நடவடிக்கை மேற்கொள்ளுமாறு செயற் பொறியாளர் மற்றும் நிர்வாக அலுவலர் அவர்களுக்கு உத்தரவிடப்படுகிறது.

5.The above order was put to challenge by the 5th respondent in W.P.No.22760 of 2015. This writ petition came to be disposed of by this Court by an order dated 02.11.2022 and the relevant portions are extracted hereunder:

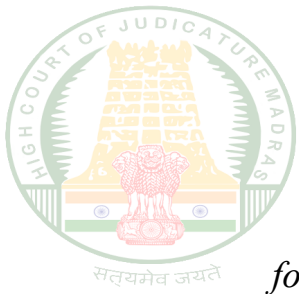
7. Admittedly, it is not disputed by the first respondent that the subject property has been originally allotted to one K.Rajendran, lease cum sale agreement has been executed and the plot has been handed over to the said Rajendran on 26.02.1994 and he was required to pay the monthly instalments.



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After his death, it appears that out right sale has been executed in favour of the petitioner claiming to be wife of the said Rajendran. Thereafter, on coming to know about the above sale deed, the fourth and the fifth respondents have filed a Writ Petition in W.P.No.10251 of 2014 and this Court by an Order dated directed the first respondent to conduct enquiry by issuing notice to the petitioner and the fourth and fifth respondents and after enquiry, the first respondents had passed the impugned Order holding that the allotment has been made in favour of K.Rajendran and he had paid the initial deposit and the instalments regularly. But, no document, whatsoever, has been filed to show that consideration of Rs.2,15,000/- has been paid by the petitioner.

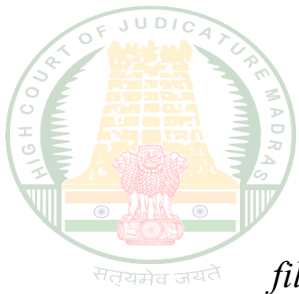
8. Whereas, the sale deed has been executed in favour of the petitioner for a total consideration of Rs.85,500/- and the officials of the Tamilnadu Housing Board appears to have executed the sale deed in favour of the petitioner. On enquiry, it was found that no payment has been made. Though it is claimed by the petitioner that a sum of Rs.2,50,000/- has been paid, no receipt has been filed. Therefore, the impugned Order has been



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found that there is collusion between the petitioner and the officials and the Order also directed action against the officers who have colluded and executed such sale deed. Accordingly, the first respondent had passed the impugned Order cancelling the sale deed. Though once sale deed is executed, by an Order it cannot be annulled, this Court is of the view that as the very allotment is in favour of the fourth respondent's husband and the entire sale consideration has been paid by them, execution of the sale deed in the name of the petitioner, in the later date, suppressing the earlier allotment in favour of the husband of the fourth petitioner, that too after receipt of consideration, would not convey any title to the petitioner as the sale deed itself is a result of some misrepresentation and falsification of records.

9. In such view of the matter, though legally the Housing Board cannot unilaterally cancel the sale deed by way of the impugned Order, the proper way of cancellation of the sale deed is to file necessary application before the registering authorities as per Section 77[A] of the Registration Act for cancelling the sale deed to make necessary entries in the book and thereafter, the Housing Board shall execute necessary sale deed in favour of the 4th and 5th respondents as per law. If any such application



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filed by the Housing Board before the District Registrar, the same shall be decided within a period of three months, after giving opportunity to the parties.

6.Pursuant to the above order, the petitioners submitted a representation before the District Registrar seeking for the cancellation of the Sale Deed dated 02.02.2009 and the same came to be rejected by the 3rd respondent by an order dated 12.06.2020, on the ground that the parties will have to agitate the grievance only before the competent Civil Court. The same has been put to challenge in the present writ petition.

7.In the considered view of this Court, the power that was available to the 3rd respondent under Section 77A of the Registration Act is no longer available since the said provision has been held to be unconstitutional by the Division Bench of this Court in ***M.Kathirvel vs. The Inspector General of Registration, Department of Registration and others*** reported in **2024 4 CTC 769**. However, this Court always has the power under Article 226 of the Constitution of India to



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exercise its jurisdiction in an appropriate case and direct for cancellation of the document. The Division Bench has reiterated this position of law after considering the judgement of the Apex Court in *Asset Reconstruction Company (India) Limited vs. S.P.Velayutham and others* reported in **2022 8 SCC 210**.

8. In the case in hand, it is seen that the 5th respondent had managed to get the Sale Deed executed in her favour by projecting herself to be the widow of Rajendran. On carefully reading the order passed by the Managing Director of Tamil Nadu Housing Board dated 08.07.2015, it is seen that a fraud has been committed with the connivance of the officials of the Housing Board and that is the reason why the Managing Director had directed for the cancellation of the Sale Deed. The 1st petitioner is the wife of the said Rajendran and the 2nd petitioner is the daughter and they are the legal heirs of Rajendran. Hence, the allotment that was made in favour of the said Rajendran will automatically enure in favour of the petitioners. If the 5th respondent has managed to create a fraudulent document by projecting as if she is the wife of Rajendran, such a document becomes non est in the eye of law and such document was executed



in favour of the 5th respondent only with the connivance of the officials
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belonging to the Tamil Nadu Housing Board who are facing criminal prosecution in Crime No.67 of 2017. The order passed by the Managing Director of the Tamil Nadu Housing Board dated 08.07.2015 must reach its logical conclusion and the only way in which it can be done is to declare the Sale Deed executed in favour of the 5th respondent dated 02.02.2009 as null and void and non est in the eye of law. Once such declaration is made, there will be no bar for the Tamil Nadu Housing Board to execute the Sale Deed in favour of the petitioners who are the legal heirs of the original allottee.

9.In the result, this Court holds that the Sale Deed dated 02.02.2009 executed in favour of the 5th respondent is null and void and non est in the eye of law. There shall be a direction to the 2nd respondent to execute the Sale Deed in favour of the petitioners with respect to the subject property and present it for registration before the 4th respondent. The 4th respondent on receipt of the same shall register the Sale Deed, if it is otherwise in order.



11/13

WP No. 15016 of 2021

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10. In the result, this writ petition stands allowed with the above directions. No Costs. Consequently, connected miscellaneous petition is closed.

25-03-2025

(2/2)

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To

1. The Managing director
Tamilnadu Housing Board,
Anna Salai,
Nandanam,
Chennai- 35.

2.The Executive Engineer
Tamilnadu Housing Board,
Coimbatore Housing Unit,
Coimbatore- 642 012.

3.The District Registrar
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The District Collectorate,
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Ganapathy,
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Coimbatore District.



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13/13

WP No. 15016 of 2021

N.ANAND VENKATESH J.

SSR

WP No. 15016 of 2021

25-03-2025

(2/2)