
(1990) 01 MAD CK 0069

Madras High Court

Case No: Writ Petition No. 5885 of 1988

V. Shantha and others

APPELLANT

Vs

The Registrar of
Co-operative Societies,
(Housing) Madras, The
Deputy Registrar,
(Housing) Vellore and
The Thiruvannamalai
Co-operative House
Building Society Ltd
and others

RESPONDENT

Date of Decision: Jan. 3, 1990

Acts Referred:

- Tamil Nadu Co-operative Societies Act, 1983 - Section 153, 181, 181(1)

Hon'ble Judges: Srinivasan, J

Bench: Single Bench

Advocate: R.S. Venkatachari, for the Appellant; K. Balasubramaniam, Govt. Advocate and Mr. Singaravelu, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Srinivasan, J.

The order under challenge has been made by the first respondent directing cancellation of allotment of house sites made by the society viz., Thiruvannamalai Cooperative House Building Society from 1-10-1987 and also directing that the society shall not issue any further allotment order until further orders from the first respondent. The main ground of attack is that the order has been passed without any notice to the allottees which are considerably prejudiced and affected by the said order. Secondly, it is stated that the order does not make a reference to there-cords on the basis of which the findings have been arrived at by the first respondent. I find that the Registrar has not issued notice to

the concerned allottees before passing the order. Nor has he referred to the relevant records wherefrom he got the facts that the allotments were irregular and the relevant rules had not been followed by the Society. Hence the order is vitiated and requires to be quashed.

2. The Registrar has referred to the S. 181 (1) of the Tamil Nadu Co-operative Societies Act, 1983 and professed that he is exercising the powers under the said subsection. The said sub section reads as follows :

Where the Registrar is satisfied that in the public interest or for the purpose of securing proper implementation of co-operative production and other development programmes approved or undertaken by the Government or to secure the proper management of the business of any class of registered societies generally, or for preventing the affairs of any registered society being conducted in a manner detrimental to the interests of the members, or of the depositors or the creditors thereof, it is necessary to issue directions to any class of registered societies generally or to any registered society or registered societies in particular, he may, by order issue directions to them from time to time, and all registered societies or the registered society concerned, as the case may be, shall be deemed to comply with such directions.

3. Learned counsel for the writ petitioners contends that it is not open to the Registrar to pass an order under the said sub section with reference to any past transaction already completed by the society and under that section the Registrar can issue directions only with reference to the future conduct of the society. In other words, learned counsel submits that allotments of house sites having been already made by the society, and the allottees having also pursuant to the allotments got registered sale deeds from the society and erected superstructures on their respective sites, it is not open to the Registrar under S. 181 to cancel the allotments. If at all, according to him, the Registrar can issue directions only with reference to future allotments to be made by the Society.

4. Learned counsel invites my attention to S. 153 of the Tamil Nadu Co-operative Societies Act, whereunder powers of revision are conferred on the Registrar. Under the said section the Registrar has got power to issue, modify, revise any order, but under sub S. (2) no order prejudicial to any person shall be passed by the Registrar unless an opportunity is given to the person concerned to make his representation. According to the learned counsel, if at all, the Registrar had decided to cancel allotments, he should have exercised his power under S. 153 and issued notice to the persons concerned and passed orders only after giving them reasonable opportunity to make their representations.

5. I do not agree with learned counsel on the interpretation of S. 181(1). In my view, under that section, directions to be issued by the Registrar may also cover to past transactions of the Society. The section is not confined to future conduct of the Society only. In this case, the Registrar has, on his finding that the allotments were irregular and

not in accordance with the rules, directed the society to cancel the allotments. Such a direction is certainly within the scope of S. 181(1) of the Act.

6. In any event, when admittedly the Registrar has got power of suo moto revision under S. 153 and to pass appropriate orders, it will be open to the Registrar to make order of cancellation of allotments under that section. Just because he has not quoted the relevant section in the order, it does not mean that the order is without jurisdiction.

7. However, I have taken the view that the order is vitiated because there is no notice to the concerned allottees who are the persons prejudicially affected by the order of the Registrar.

8. Hence the impugned order is quashed. The Registrar is directed to give notice to the allottees as well as respondents 4 to 13 in the present writ petition and hear all the parties. The Registrar shall consider each and every allotment of house site made by the society and decide whether the allotments has been made properly in accordance with the rules. The decision of the Registrar shall be passed only on the merits of each allotment. The Registrar may pass orders either under S. 153 or under S. 181 but he shall do so only after giving due opportunity to all the persons concerned including the persons who claim that they have priority but they have not been allotted house sites and their priority has been overlooked by the society. The Registrar shall conclude all the proceedings and pass orders on or before 30-4-1990. It is open to the parties to urge all the contentions in respect of their respective cases.

9. Till the Registrar passes orders in accordance with the directions contained herein, the writ petitioners shall not put up any constructions on the sites allotted. It is represented by learned counsel that constructions are already over and there is no need for any further orders thereon. If constructions had already been completed there is no worry for the petitioner. It is represented by the learned counsel for the respondents 4 to 13 that the petitioners and other allottees have not constructed any buildings so far and they are attempting to construct only now. But my direction is sufficient to protect the interest of both parties. The writ petition is allowed on the above terms. There will be no order as to costs.