



Cont.P.(MD) No.502 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.06.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

Cont.P.(MD) No.502 of 2023

1.Mohammed Azad

2.Hiyumayum Kabir

.. Petitioners/Petitioners

Vs.

Noordeen

.. Contemnor/5th Respondent

Prayer: Petition filed under Section 11 of the Contempt of Courts Act, 1971 to initiate contempt proceedings against the contemnor/5th respondent and punish him for the wilful disobedience of the order of this Court in W.M.P.(MD) No.6622 of 2021 in W.P.(MD) No.8802 of 2021, dated 30.04.2021.

For Petitioner : Mr.S.Rajasekar

For Contemnor : Mr.S.Sivasudhan

ORDER

Contending that the orders of this Court dated 30.04.2021 had been violated, the petitioners have filed the instant contempt petition.



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2. They would submit that on 30.04.2021, this Court was pleased to pass an order of interim injunction restraining the contemnor, who is the fifth respondent in the writ petition, from transferring the property in S.No.287/3A to an extent of 0.23.5 Ares in Narippaiyur Village, Kadaladi Taluk, Ramanathapuram District, till the disposal of the writ petition.

3. It is the contention of the petitioners that the contemnor, despite orders of injunction, having been granted on 30.04.2021, has alienated the property in favour of one Mohammad Ali Jinnah on 29.09.2022 by way of registered sale deed, registered on the file of the Sub Registrar, Sayalkudi. This Court had ordered notice to the contemnor on 27.03.2023 and he has been present on all the subsequent hearings before this Court.

4. The petitioners trace title to the property in question to a sale deed dated 09.12.2005 executed by one Dhakshanamoorthy in favour of Jallaudeen and Mohammed Ibrahim. The said Dhakshanamoorthy, in turn, claims to have purchased the property under a sale deed dated



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29.04.2005 registered as Document No.806/2005. It is the first petitioner's case that after the demise of Jallaudeen, his wife had executed a sale deed in respect of portion of the property in S.No. 287/3A, measuring 29 cents in favour of the Tamil Nadu Thowheed Jamah, which is the second petitioner herein and the remaining 29 cents in favour of Hithayathul Islam Ilangar Narpani Mandram. However, the Hithayathul Islam Ilangar Narpani Mandram is not a party to the writ petition as well as to the contempt petition and it is Mohideen Jumaah Pallivasal (Shaffi Jamath), represented by its President Mohammed Azad, is shown as the first petitioner.

5. Learned counsel for the contemnor would submit that the contemnor had filed a complaint before the District Registrar, Ramanathapuram, alleging that the sale deed dated 29.04.2005 registered as Document No.806/2005 said to have been executed by him in favour of Dhakshanamoorthy is a rank forgery. After detailed enquiry, the District Registrar passed the following order:

□ஆவண எண் 806/2005 பதிவு செய்த பின்னர்
அதனை அடிப்படையாக கொண்டு பதிவு



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செய்யப்பட்டுள்ள அனைத்து ஆவணங்களும் போலியான மோசடி ஆவணங்களாக கருதி பதிவுத்துறைத்தலைவர் அவர்கள் சுற்றறிக்கையின்படி ஆவண நகலிலும், அட்டவணை II-லும் உரிய அடிக்குறிப்பு சேர்க்க சார்பதிவாளருக்கு ஆணையிடப்படுகிறது.

மோசடி ஆவணமாக பதிவான ஆவண எண். 806/2005 தொடர்புடைய நபர்கள் தாக்கல் செய்யும் ஆவணங்களை பதிவு மறுதலிக்கவும் சார்பதிவாளருக்கு ஆணையிடப்படுகிறது.

சாயல்குடி சார்பதிவாளர் அலுவலக 1 புத்தக ஆவண எண்.806/2005 விற்பனை ஆவணம் தொடர்பான அனைத்து நபர்களும் ஆள்மாறாட்டம் செய்து போலி ஆவணப்பதிவினை நிகழ்த்தி உள்ள நிலையில் அந்த நபர்கள் மீது உரிய குற்றவியல் நடவடிக்கை மேற்கொண்டு காவல்துறையினரிடம் புகார் அளித்து முதல் தகவல் அறிக்கை (FIR) பதிவு செய்து அதன் விவரத்தினை உடன் மாவட்டப்பதிவாளருக்கு தெரிவிக்கவும் சார்பதிவாளருக்கு ஆணையிடப்படுகிறது.□

6. This order has also been challenged by the petitioners herein and the appeal filed has also been dismissed.

7. Heard the learned counsel on either side.



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8. The very document under which the petitioners are claiming title to the property is found to be a creature of fraud. The very basis on which the petitioners claim right to the property is without any legal basis.

9. That apart, it is also brought to the notice of this Court that the contemnor had filed a vacate stay petition, which has not been taken up for hearing.

10. The further argument of the learned counsel for the contemnor is that the contemnor had filed a vacate stay petition and that the same had not been taken up for hearing and therefore, under Article 226(3) of the Constitution of India, there is a deemed vacation of the interim order.

11. The submission of the learned counsel for the contemnor that there is a deemed vacation of the interim order may not hold water in the light of the judgment of this Court in ***Dr.T.Gnanasambanthan Vs. The***



Board of Governors and others reported in **2014-1-L.W.612**, wherein a learned Judge, on considering the judgments of various Courts had held as follows:

“75. Therefore, an interpretation that would put a party, who is not at fault, to disastrous consequences, for the failure of an institution or for the happening of something that is beyond his control, is wholly unjustified. If a statutory provision imposes an obligation upon one party and makes the opposite party suffer for the consequences of non fulfillment of the obligation cast therein, such a provision cannot be said to be mandatory. Unfortunately, none of the High Court, whose decisions are relied upon by the respondents, has taken note of this basic difference between the person, on whom, an obligation is cast and the person, on whom, the consequences are made to fall under Article 226(3). Hence, with great respect, I am unable to agree with the views expressed by the other High Courts.”

12. Article 226(3) of the Constitution of India reads as follows:

“226(3) Where any party against whom an interim order, whether by way of injunction or stay or in



any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the aid next day, stand vacated.”

13. I am inclined to agree with this observation of the learned Judge, since such an interpretation, given the circumstances that there is a backlog and listing of cases is by itself difficult, the deemed vacation of



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the interims orders upon the filing of a vacate stay petition would cause irreparable loss to the person who has obtained the interim order. However, if the delay is on account of the writ petitioner, then the provisions of this Article would apply. In the instant case, it is not the case of the contemnor that the petitioners have contributed to the delay. Therefore, this argument has to be rejected. However, in the light of the earlier discussions, the contempt petition deserves to be dismissed, as no contempt is made out, more particularly when there is suppression on the side of the contempt petitioners in not bringing to notice about these proceedings referred *supra*.

14. In the result, this Contempt Petition is dismissed. No costs.

23.06.2023

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

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