



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.08.2023**

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRVARTHY**

**W.A(MD)NO.1337 OF 2023
and
C.M.P(MD)No.10067 of 2023**

The Commissioner,
Kodaikanal Municipality,
Kodaikanal

:Appellant/4th Respondent

.VS.

1.The Revenue Divisional Officer,
Kodaikanal Taluk,
Kodaikanal.

2.The Tahsildar,
Kodaikanal Taluk,
Kodaikanal.

3.The Deputy Inspector of Survey,
Kodaikanal Taluk,
Kodaikanal.

4.The Town Planning Officer,
Kodaikanal Municipality,
Kodaikanal.

: Respondents/Respondents

5.The Head Town Surveyor,
Kodaikanal Municipality,
Kodaikanal.

6.S.Nazrin

: Respondent/Petitioner



PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent praying this Court to set aside the order passed by this Court in W.P(MD)No.2790 of 2022, dated 15/02.2022.

For Appellant	:Mr.T.S.Mohammed Mohideen
For Respondents 1 to 5	:Mr.D.Sachi Kumar Addl.Govt.Pleader
For Respondent-6	:Mr.M.A.Murthuza Ali

JUDGMENT

[Judgment of the Court was made by **S.S.SUNDAR,J.**]

This Writ Appeal is directed against the order of the learned Single Judge in the Writ Petition filed by the sixth respondent/Writ Petitioner in W.P(MD)No.2790 of 2022.

2.Mr.D.Sachikumar, learned Additional Government Pleader takes notice for the respondents 1 to 5 and Mr.M.A.Murthuza Ali, learned counsel takes notice for the sixth respondent. By consent of both parties, the Writ Appeal is taken up for final disposal at the admission stage itself.

3.The brief facts that are necessary for the disposal of this Writ Appeal is as follows:



The sixth respondent herein filed a Writ Petition in W.P(MD)No.2790 of 2022 seeking issuance of a Writ of Mandamus directing the second respondent to consider his representation, dated 11.1.2022 and to issue patta to his property namely, an extent of 3.3/4 cents in Old Survey No.193/Part, T.S.NO.15, Ward-D in Kodaikanal Town and Taluk, Dindigul District. It is the case of the Writ Petitioner/sixth respondent herein that she is the absolute owner of the property in respect of which she claimed patta. It is her further case that she purchased the said property under a sale deed, dated 11.09.2013. It is also stated by the sixth respondent that earlier her vendor had purchased the property from the fourth respondent/Municipality under the sale deed, dated 27.09.1943. The learned Single Judge of this Court has directed the second respondent to consider the representation of the sixth respondent, dated 11.01.2022 seeking issuance of patta in her name for the property purchased by her, as stated above. The order passed by a learned Single Judge, dated 15.02.2022 directing the second respondent to consider the representation of the Petitioner, is challenged in the above Writ Appeal.

4.The case of the appellant/fourth respondent is that the sale, dated 27.09.1943, vide Document No.523 of 1943 is not a sale in



respect of the property, but only an agreement of sale. The learned counsel for the appellant then relied upon the letter, dated 27.12.1944 stated to have been given by the vendor of the sixth respondent, which reads as follows:

"சமூகம் ஆபீசிலிருந்து நான் ஏலத்தில் எடுத்திருக்கும் பிரஞ்சுமேலேண்டு பிலாட் நிர் 39க்கு ரூபாய் வாங்கிக்கொள்ள வேண்டுமென்று நோட்டீஸ் கிடைத்திருக்கின்றது.

இனிமேல் வேறு பிளான் எடுத்து (Sketch) ஸ்கெட்ச் போட்டு ஏலத்தில் விடுவதற்கு நாள் அதிகமாக ஏற்பட வேண்டியிருப்பதாலும் எனக்கு அதே பிளாட் கிடைக்கும் என நிச்சயம் இல்லாமல் இருப்பதாலும் நான் சமூகம் ஆபீசுக்கு பிலாட் நிர் 39க்கு ரூ.201.00 பத்திரம் ரூ.4-8-0 ரிஜிஸ்டர் சிலவு ரூபாய் 3-12-0 ஆக ரூ.209.4-0 இருநூற்றி ஒன்பதே காலும் கட்டியிருக்கும் ரூபாயை வாபஸ் செய்ய வேண்டுமாய் கேட்டுக்கொள்ளுகிறேன்.

5.Referring to the document as a sale agreement and the letter above referred to, the learned counsel for the appellant submitted that the Writ Petitioner has no right to claim ownership over the property based on the sale deed obtained by her on 11.09.2013. This Court considered the document of conveyance, dated 27.09.1943.The relevant portion of the document reads as follows:



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“.....ALL THAT piece or parcel of land situates in French Land Town Planning Scheme and more particularly described in the schedule hereunder written and which together with the message or tenement erected thereon is commonly called or known as French Land together with all buildings, go-downs, trees, commons, hedges, ditches, fences, ways, waters, water-courses, liberties, privileges, easements, advantages and appurtenances whatsoever to the said piece or parcel of land messuage and promises or any of them in anywise appertaining or heretofore occupied or enjoyed therewith AND all the estate right title interest property claim and demand whatsoever of the vendor into and upon the same promises TO HAVE AND TO HOLD the said piece or parcel of land messuage and promises hereby granted conveyed and assigned unto the purchaser for ever AND the vendor doth hereby covenant with the purchaser that the vendor now hath good right to grant convey and assign the promises hereby granted, conveyed and assigned unto the purchase in manner aforesaid AND that the purchaser shall and may at all times hereafter peaceably and quietly possess and enjoy the said promises free from all encumbrances whatsoever and receive the rents and profits thereof without any lawful eviction interruption claim or demand whatsoever from or by the vendor or any other person or persons AND



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further that the vendor and all persons having or lawfully or equitably claiming any estate.....”.

6. Thus the document is an absolute sale deed conveying the rights of the seller. Therefore the Municipality by conveying its right over the entire property in respect of the plot, cannot now come and contend contrary to the terms of conveyance. As a matter of fact, the Local Body is estopped from claiming title by virtue of absolute sale deed referred to above. The letter does not indicate the actual re-conveyance of the property by the purchaser namely, the vendor of the sixth respondent. Though the vendor of the sixth respondent wants to recovery and intended to withdraw from the offer, by virtue of conveyance, the letter will have no significance or evidentiary value to suggest re-conveyance. Therefore, the contention of the Local Body cannot be countenanced. Though this Court does not go into the question of title in a proceeding under Article 226 of the Constitution of India, the Local Body has invited problem referring to the two documents referred to above.

7. In all fairness, this Court, finds that the appellant is estopped from disputing the title and ownership of the property by the Writ Petitioner, who is claiming right under the document, by which, the Municipality had conveyed its right earlier in the year 1943 itself.



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8. For all the reasons stated above, the Writ Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

[S.S.S.R.,J.] [D.B.C.,J.]
22.08.2023

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

To

1. The Revenue Divisional Officer,
Kodaikanal Taluk,
Kodaikanal.
2. The Tahsildar,
Kodaikanal Taluk,
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S.S.SUNDAR, J.
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vsn

JUDGMENT MADE IN
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