

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

WP(C).No. 8377 of 2014 (V)

PETITIONER:

MADHU P.P
PATHANIPADAM HOUSE, PERINGANDOOR P.O.
TRICHUR -680 581.

BY ADVS.SMT.S.K.DEVI
SRI.SANTHOSH P.ABRAHAM

RESPONDENT:

1. AVANOOR GRAMA PANCHAYAT
VELLAPPAYA, MEDICAL COLLEGE P.O., TRICHUR -680 596
REPRESENTED BY ITS SECRETARY.
2. BANK OF MAHARASHTRA
TRICHUR BRANCH, CONVENT ROAD, TRICHUR -680 020.
3. MR.SILVI DAVIS
MEYKATTUKULAM, CHINA BAZAR, MEDICAL COLLEGE P.O.
TRICHUR - 680 596.

R1 BY ADV. SRI.K.B.GANGESH, SC
R2 BY ADV. SRI.S.B.PREMACHANDRA PRABHU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
08-07-2015, THE COURT ON 14.07.2015 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P-1: TRUE COPY OF THE ACCEPTANCE LETTER DATED
15.11.2011 ISSUED BY THE 2ND RESPONDENT
- EXT.P-2: TRUE COPY OF THE SALE DEED DATED 18.6.2012
- EXT.P-3: TRUE COPY OF THE SALE CERTIFICATE DATED 18.6.2012
- EXT.P-4: TRUE COPY OF THE APPLICATION DATED 14.8.2012
SUBMITTED BY THE PETITIONER BEFORE THE 1ST
RESPONDENT
- EXT.P-5: TRUE COPY OF THE NOTICE DATED 27.9.2012 ISSUED BY
THE 1ST RESPONDENT
- EXT.P-6: TRUE COPY OF THE COMMUNICATION DATED 31.10.2013
ISSUED BY THE 1ST RESPONDENT.
- EXT.P-7: TRUE COPY OF THE AGREEMENT DATED 1.3.2010
EXECUTED BY THE 3RD RESPONDENT
- EXT.P-8: TRUE COPY OF THE LETTER OF CONFIRMATION OF
EQUITABLE MORTGAGE DATED 25.2.2009 EXECUTED BY
THE 3RD RESPONDENT.

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

smv

SHAJI P. CHALY, J.

W.P.(C). No.8377 of 2014

Dated this the 14th day of July, 2015

JUDGMENT

This writ petition is filed by the petitioner seeking direction to the first respondent Panchayat to change the ownership of the building situated in the property covered by Ext.P2 sale deed and for other related reliefs.

2. Heard the learned counsel for the petitioner and the learned Standing Counsel for the first respondent.

3. Brief facts of the case are as follows:

4. Pursuant to an advertisement appeared in New Indian Express daily dated 09.10.2011 purportedly under the SARFAESI Act, petitioner has submitted tender and his tender was accepted and the second respondent has issued acceptance letter as per Ext.P1.

5. The property belongs to the 3rd respondent. After acceptance of the tender of the petitioner, petitioner has remitted entire sale consideration of Rs.8,65,000/- to the second respondent bank, consequent to which, the sale in his favour was confirmed by the bank. Thereafter, bank has executed Ext.P2

sale deed on 18.06.2012 in favour of the petitioner and on the same day Ext.P3 sale certificate was also issued.

6. Having acquired ownership of the property and the building situated thereon, petitioner has submitted Ext.P4 application dated 14.08.2012 before the first respondent seeking to change the ownership of the residential building to his name and in order to substantiate his claim, petitioner has produced Exts.P2 and P3 before the first respondent. Subsequently, first respondent issued notice dated 13.5.2012 seeking certain clarification regarding name of the previous owner, nature of building etc. etc. and thereupon petitioner has submitted necessary clarification as required by the first respondent. Thereafter, petitioner understood that first respondent issued Ext.P5 notice to the third respondent dated 27.9.2012 directing the third respondent to explain the reason for the transfer of house and property.

7. It is the further case of the petitioner that after issuance of Ext.P5, petitioner has approached the first respondent but they have not given any reply. Consequent to which, he has issued a reminder and thereupon by Ext.P6 dated 31.10.2013, a

communication was sent by the first respondent to the petitioner conveying that the ownership can be changed to the name of the petitioner on the petitioner executing an indemnification bond in favour of the first respondent undertaking that if any loss is caused to the first respondent, the same will be indemnified by the petitioner. Since the document relied on in Ext.P6 was not with the petitioner, he has filed an application under the Right to Information Act and obtained a copy of the same which is produced in the writ petition as Ext.P7 dated 01.03.2010. On a reading of Ext.P7 what I gather is that the third respondent has secured an amount of Rs.75,000/- from the State Government through the first respondent Panchayat in a housing scheme launched by the Government namely EMS Housing Scheme and by which third respondent has undertaken that she will not transfer the property covered by Ext.P2 sale deed and the house proposed to be constructed in the said property either by the third respondent or her legal representatives for a period of 10 years.

8. On a further reading of the said document and after hearing the arguments of the counsel for the respondent what I

understand is that the amount of Rs.75,000/- received by the petitioner is a grant which is not recoverable from the 3rd respondent. The only condition imposed is that she will not encumber or transfer the property and the building after execution of the said agreement for a period of 10 years. Admittedly the document of the landed property was mortgaged by the third respondent before the second respondent bank and has secured a business loan from the bank and on failure to repay the same, bank has initiated action under the SARFAESI Act. The said aspect is confirmed by the bank as per Ext.P8 letter of confirmation.

9. Second respondent bank has filed a statement supporting the contentions raised by the petitioner in the writ petition and further stating that the agreement executed by the third respondent in favour of the first respondent dated 01.03.2010 is not binding on the bank since third respondent has created an equitable mortgage of the property covered by Ext.P2 sale deed on 25.2.2009 in favour of the bank and therefore, the bank has contended that it is only just and proper that the change of ownership of the building is carried out in favour of

the petitioner.

10. The first respondent Panchayat has not filed any counter affidavit. But the counsel contended that the Panchayat is apprehensive of the Government proceeding against it in view of the violation of undertaking contained in Ext.P7 agreement.

11. I have gone through the pleadings and documents produced along with the writ petition and the statement filed by the second respondent. Having heard the arguments of the learned counsel for the petitioner and also the learned counsel for the contesting parties, I am of the considered opinion that since under Ext.P7 agreement, no liability is created against the third respondent by the Panchayat or the Government, even if the property and the building is transferred by the third respondent voluntarily, no action can be taken against the third respondent.

12. Here, in this case, what I feel is that there is no violation of undertaking at all since the mortgage was created by the third respondent to the second respondent bank prior to the execution of Ext.P7 agreement and the bank has proceeded against the third respondent on her failure to repay the loan

amount advanced by the bank. Therefore, it cannot be said that there is any violation on the part of third respondent by voluntarily transferring the building to a third person. The bank has notified the property for sale under the compelled circumstances, which was purchased by the petitioner on a properly constituted sale transaction. So also since there is no liability created to the first respondent for violation of any condition of Ext.P7 agreement nor there is any provision in Ext.P7 for repayment or recovery of the grant received by the third respondent, for violation of the agreement condition, no liability can be fastened against the first respondent Panchayat.

13. In view of the said facts and circumstances and the discussions made above, the attitude of the Panchayat that it will not effect change of ownership of the building situated in the property covered by Ext.P2 sale deed without an indemnification bond cannot be sustained either factually or legally. The reason shown by the Panchayat in Ext.P6 impugned order can never be sustained and the petitioner is not duty bound to execute any indemnification bond in favour of the Panchayat. If at all any action is taken by the State Government against the Panchayat

on account of violation committed by the third respondent under Ext.P7, the first respondent Panchayat is at liberty to proceed against the third respondent.

14. Therefore, the writ petition is allowed. Ext.P6 order of the first respondent dated 31.10.2013 is hereby quashed. The first respondent Panchayat is directed to consider Ext.P4 application submitted by the petitioner seeking transfer of ownership of the building situated in the property covered by Ext.P2 sale deed dated 18.6.2012 by taking into account the observations and findings made above and pass orders thereon within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
SHAJI P. CHALY
JUDGE

smv