

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.23428 of 2014

and

M.P.No.1 of 2014

M.Ramalingam

.. Petitioner

vs.

1.The District Collector cum
Additional Secretary (Revenue),
Kamaraj Salai, Pondicherry.

2.The Sub Registrar,
Office of the Sub Registrar,
Registration Department,
Government of Pondicherry.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to direct the second respondent to register the Settlement Deed dated 13.08.2014 executed by the petitioner in respect of the land comprised in cadastre No.1076/1/2/2pt corresponding to R.S.No.228/5, Thattanchavadi Village, Oulgaret Revenue village, within the time fixed by this Court.

For Petitioner : Mr.U.Karunakaran

For Respondents: Mr.A.Tamilvanan

Government Advocate

O R D E R

Heard Mr.U.Karunakaran, learned counsel for petitioner and Mr.A.Tamilvanan, learned Government Advocate for respondents.

2. The petitioner seeks for issuance of a writ of mandamus to direct the second respondent to register the Settlement Deed dated 13.08.2014 executed by him in favour of his son in respect of the land comprised in cadastre No.1076/1/2/2pt corresponding to R.S.No.228/5, Thattanchavadi Village, Oulgaret Revenue village, within the time fixed by this Court.

3. According to the petitioner, originally the subject land was in the possession of one Siva @ Vinayagam and he had sold the same to one Vikraman vide sale deed dated 16.04.1996. Thereafter, the petitioner purchased the said property from Vikraman and till date, he is in possession of the same. The petitioner decided to settle the property in favour of his son and executed a Settlement Deed. However, when the same was presented before the second respondent for registration on 13.08.2014, the second respondent refused to accept and register the document on the reasoning that the property is attracted by Land Ceiling and no PLR value has been assigned by the Revenue Department. Aggrieved by such rejection, the present writ petition has been filed.

4. When the matter is taken up today, it is brought to the notice of this Court that in identical circumstances, in respect of the very same properties covered under the same Notification, similar problem arose in respect of the petitioner's predecessor-in-title in respect of other survey numbers and they were constrained to approach this Court by way of W.P.Nos.12330 of 2007 and 36622 of 2006 and this Court by order dated 15.12.2008 disposed of the writ petitions by allowing the same. The operative portion of the order reads as follows:

"10. To appreciate the contention and nature and scope of bar of transfers, it is necessary to look at some of the provisions of Pondicherry Land Reforms Act, 1973. The ceiling of land holding is fixed by the Act u/s.4 and 6 requires that no persons shall hold land in excess of the Ceiling Area on and from the appointed date. Sec.7 requires every person to file a return in respect of his land holding, if he holds land in excess of the Ceiling Area and Sec.8 empowers the Authorised Officer to require any person to furnish a return, if he fails to furnish a return u/s.7 or if he furnishes an incorrect or incomplete return. On the basis of the returns so furnished under Secs.7 or 8, a draft statement is to be prepared and published u/s.9 and a final statement is to be published u/s.11, after the enquiry under Sections 9 and 10.

11. After publication of a final statement u/s.11 or on an amended final statement u/s.13, the Government is obliged to publish a notification to the effect that the surplus land is required for a public purpose, u/s.17 (1) of the Act. By virtue of Sec.17 (3), the land specified in the notification u/s.17(1) shall vest in the Government free from all encumbrances with effect from the date of publication.

12. Sec.19 of the Act makes its obligatory on the part of every person presenting a document of sale, gift, exchange, lease, possessory mortgage, surrender,

agreement or settlement to file a declaration in writing made by the transferee before the Registering Authority. The said declaration is to be forwarded to the Authorised Officer under Sec.19 (2) and the Authorised Officer is empowered to take such action as he deems fit.

13. Sec.22 interdicts transfers except when permitted by Authorised Officer. By reading of Sec.22 of Pondicherry Land Reforms Act, it is clear that it does not completely bar the transfer; it gives protection to the transferee. As per Sec.22, Government can always insist the owner of the land to compensate the loss and where such recovery from the land owners is not possible then from the transferee and equal in area to be acquired by Government from out of possession of the land held by such person. The embargo under Sec.22 (1) cannot be taken to be absolute.

14. When transfer is made on taking declaration under Form 16, the document could be registered. The object of taking Form 16 is to make known to the Authorised Officer that the land has been transferred.

15. Sec.19 of Pondicherry Land Reforms Act, 1973 is a safety clause for the Authorised Officer to take cognizance of prospective assesses and the declaration is meant to be produced by the transferee only so as to ensure that his holdings do not exceed the ceiling limit by virtue of acquiring the land for which he is giving declaration.

16. There had been a number of proceedings by the original assesseees, which may not be relevant for the limited purpose of this case. It is now stated that in the process of reviewing the Land Reform cases, Form 10 / Statement under Sec 11 has been published vide a Gazette No.43 dated 12.06.2008. Learned counsel for the Petitioner had also produced the Notification u/s.11 vide a Gazette No.43 dated 12.6.2008. In the said G.O., the lands purchased by the Petitioners and now proposed to be sold are included as item No.22 (Cad.No.1076-½/2 [corresponding R.S.No.228/5]) in the list of lands to be retained by the land owners (Petitioners vendor) within the Ceiling Area of land holder.

17. In respect of the final Notification u/s. 11 vide Gazette No.43 dated 12.06.2008, the learned Government Pleader (Pondicherry) Mr.T.Murugesan would submit that there are two more stages before issuing the final Notification. The learned Government Pleader (Pondicherry) would submit that further Notifications are to be published u/s. 13 and 17 of the Act.

However, since the ceiling area of land owner and the lands have been identified by the Statement u/s.11 of the Act, there could be no impediment in the registration of the document by taking declaration under Form-16 and necessary undertaking to pay additional stamp duty that may be payable consequent upon the adjudication of reference for under valuation.

18. Writ Petitioners seek for a direction to register the sale deed. Writ Petitioners also purchased the property in Cad.No.1076-½/2 [corresponding R.S.No.228/5]. As the said property purchased by the Writ Petitioners is in the list of the lands to be retained by the land owners (Item No.22 of the Notification). As the land is within the Ceiling Area, there is no impediment in registering the document. In similar facts and circumstances, in W.P.No.32472/2006 Justice V.Ramasubramanian has directed the authorities to register the Sale Deed by taking declaration in Form-16. By the order dated 11.11.2008 in W.P.No.19483/2007, I have also taken a similar view.

19. As the property proposed to be sold is in the list of lands to be retained by the land owners within the ceiling area, there could be no impediment for registering the documents. In the similar facts and circumstances, referring to Sec. 22 and other provisions of Pondicherry Land Reforms Act in W.P.No.14710/2007 and batch, this Court has directed ;-(i) Return of the registered Sale Deeds by obtaining necessary undertaking; (ii) Registration of the document subject to the filing of declaration in Form-16.

20. In the result,
- the Writ Petitions are allowed.
 - The Sub-Registrar is directed to register the Sale Deeds presented by the Petitioners (pertaining to R.S.No.228/5, Cad.No.1076-½ /2) subject to the filing of declaration in Form-16 and subject to the payment of correct stamp duty payable on the document.
 - Connected M.P.Nos. 2 and 3 of 2007 in W.P.No.12330/2007 and M.P.Nos. 1 and 2 of 2006 in W.P.No.36622/2006 are closed.
 - There is no order as to costs."

5. In the case on hand, learned Government Advocate has not been able to show that the present case is in any manner different from the decision rendered by this Court in the earlier writ petitions, referred to supra. The legal issue involved is one and the same and

the lands in question are also covered in the same Gazette Notification; the only difference being, there is a different survey number.

Therefore, this Court is of the view that following the aforesaid decision, this writ petition also has to be allowed and accordingly, the same is allowed with the following direction:

"The second respondent/Sub-Registrar is directed to register the Settlement Deed dated 13.08.2014 executed by the petitioner in respect of the land comprised in cadastre No.1076/1/2/2pt corresponding to R.S.No.228/5, Thattanchavadi Village, Oulgaret Revenue village, subject to the filing of declaration in Form-16 and subject to the payment of correct stamp duty payable on the document."

No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.The District Collector cum
Additional Secretary (Revenue),
Kamaraj Salai, Pondicherry.

2.The Sub Registrar,
Office of the Sub Registrar,
Registration Department,
Government of Pondicherry.

+1 cc to Mr.V.Karunakaran, Advocate,SR.15719

+1 cc to Senior Government Pleader cum Senior
Public Prosecutor, Puducherry,SR.15967.

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W.P.No.23428 of 2014