

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2015

CORAM

THE HON'BLE Mr. JUSTICE M.M.SUNDRESH

W.P.No.2218 of 2015
& M.P.Nos.1 & 2 of 2015

S.Dasthageer .. Petitioner

Vs.

1.The District Collector,
Erode District, Erode-638 011.

2.The District Revenue Officer,
Collectorate Building,
Erode-638 011,
Erode District.

3.The Divisional Officer,
Fire Service Department,
Erode Division,
Erode-638 001.

4.The Superintendent of Police,
District Police Office,
Erode-638 001.

5.The Revenue Divisional Officer,
Gobichettipalayam,
Erode District.

6.The Territory Manager,
Bharat Petroleum Corporation Ltd.,
Irugur TOP Installation,
Ravathur-641 103,
Coimbatore District.

7.V.Lalitha

8.Ansar Begum

9.Musthafa

10.Sulthan Basha

.. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records relating to the impugned No Objection Certificates namely:-

- i) R.Dis.No.36332/2012-C4 dated 17.11.2014
- ii) Oo.Mu.No.10016/A2/2012 dated 01.11.2012; and
- iii) Na.Ka.No.G2/34716/715/2012 dated 04.12.2012

issued by the respondents 2 to 4 respectively, quash the same and consequently, forbear the respondents 6 to 10 from in any way acting against petitioner's right to properties over Nanjai lands bearing R.S.Nos.527/3 and 527/6 to 8 of P.Mettupalayam Village, Bhavani Taluk, Erode District, under the guise of starting a Retail Outlet (Petrol Pump).

For Petitioner .. Mr.N.Manokaran
For Respondents .. Mr.R.A.S.Senthilvel,
Additional Government Pleader
for R1to R5

Mr.O.R.Santhanakrishnan for R6

Mr.V.Raghavachari for
Mr.MA.P.Thangavel for R7

Mr.T.L.Thirumalaisamy for R8 & R9

No appearance for R10

ORDER

The petitioner was one of the legal heir of Late Sheik Imam Sahib along with respondents 8 to 10. The said Sheik Imam Sahib purchased the property in question by a registered sale deed in the year 1960. He died on 01.05.1973. Based upon the understanding said to have arrived at between the parties, respondents 8 to 10 sold an extent of 1.32 acres of land to one Vivekanandan and two others. The said Vivekanandan executed the settlement deed on 19.03.2012 in favour of his daughter viz., respondent No.7 for an extent of 26 cents. The respondent No.7 applied for a dealership on 09.04.2012 from respondent No.6. The respondent No.6 conducted an interview and selected respondent No.7 on 31.07.2012. A letter of intent was served to respondent No.7 on 20.09.2012. A communication was sent on 21.09.2012 by respondent No.6 to the respondent No.1 seeking No Objection Certificate. The respondent No.2 has sent a communication to respondents 3 to 5 to submit their reports to issue No Objection Certificate by letter dated 16.10.2012. The Tahsildar, Gobichettipalayam has forwarded his recommendation to the respondent No.5 for grant of No Objection Certificate on 20.10.2012. The respondent No.5 has forwarded his recommendation to the respondent No.2 on 26.10.2012. On the very same day, the petitioner has issued legal notice to the other sharers. He has also filed objections before the respondent No.5 on 29.10.2012 and respondents 1 and 2 on 30.10.2012. On 01.11.2012, 04.12.2012 and 17.11.2014, respondent Nos.3, 4 and 2 had issued No Objection Certificates. On 03.04.2013, the Tahsildar, Bhavani has reclassified the land. The respondent No.5 has also conducted an enquiry and sent his recommendations on 04.02.2013. The petitioner has also attended the enquiry conducted by the respondent No.2 before issuance of No Objection Certificate on

17.11.2014. Thereafter, on 23.01.2015, the present writ petition has been filed.

2. Mr.N.Manokaran, learned counsel appearing for the petitioner, submitted that it is a clear case of fraud committed by respondents 8 to 10. The petitioner, being a co-owner has been deprived of his share. An act of fraud would vitiate and nullify the orders issued against the interest of the petitioner. The petitioner's valuable rights have been taken away. The Tahsildar, Bhavani, has reclassified the punja land without any jurisdiction. Respondents 3, 4 and 2 ought to have applied their mind before issuing No Objection Certificates. In support of his contention, the learned counsel has made reliance upon the judgment of the Apex Court in MEGHMALA AND OTHERS V. G.NARASIMHA REDDY AND OTHERS ((2010) 8 Supreme Court Cases 383).

3. Mr.V.Raghavachari, learned counsel appearing for the respondent No.7 has submitted that the sale deed has been executed way back in the year 2004. There are number of other sale deeds executed by the respondents 8 to 10. Curiously no objection has been raised for the same. Similarly, separate properties were given in favour of the petitioner and mutation has been done in his name. These facts would indicate that there was a partition between the parties. The Settlement Deed was executed in the year 2012. The settlor was a bona-fide purchaser for value. The petitioner has come to this Court belatedly even assuming that he was not aware of the transactions atleast from 2012 onwards. Therefore, no interference is required.

4. Mr.O.R.Santhana Krishnan, learned counsel appearing for the sixth respondent submitted that an administrative decision has been arrived at by the authority and it cannot be subjected to judicial review by this Court in the absence of any plea of mala fides or arbitrariness. As the relevant records have been looked into and No Objection Certificate has been given, no interference is required. Reliance has been made upon the judgment of this Court in KANYAKUMARI DISTRICT PETROLEUM DEALERS ASSOCIATION, REP. BY ITS SECRETARY S.KUMAR, CHUNGANKADAI, KANYAKUMARI DISTRICT V. DISTRICT REVENUE OFFICER AND ADDITIONAL DISTRICT MAGISTRATE, NAGERCOIL AND OTHERS ((2006) 4 MLJ 1164).

5. The claim of the petitioner is that he is the one of the co-owners. The petitioner did not question the prima facie title of the respondents 8 to 10 in a manner known to law. The sale deed has been executed in favour of the settlor of the property namely respondent No.7 in the year 2004 by way of registered settlement deed. There is no explanation for not challenging the said sale deed or any other document. Even assuming that the petitioner was not aware of the same, subsequently, he could have taken appropriate steps to question the transaction atleast in the year 2012. It is nothing but an after thought on the part of the

petitioner to file this writ petition now after execution of the sale deed in the year 2004.

6. A challenge has been made in this writ petition only to the No Objection Certificates issued by the official respondents. They are nothing but administrative orders. The petitioner, instead of working out his remedy before the Civil Court, has come before this Court. This Court cannot go in to inter se dispute over title to the property between the petitioner and the respondents Nos.8 to 10. More so, the purchaser from respondents 8 to 10 is not before this Court. Who might contend that the property was purchased for a valuable sale consideration. Respondent No.7 is only a settlee having got the property settled by her father. There is no difficulty in appreciating the settled position of law that fraud would vitiate or nullify all the previous transactions. However, the question of fraud is one to be proved by a party on evidence. This Court is not able to come to the conclusion that a fraud has been committed, that too, in the year 2004. There is no explanation forthcoming from the petitioner for not challenging the sale deed said to have been executed by Respondents 8 to 10 to various persons. The No Objection Certificates issued in pursuance of enquiry conducted by the official respondent No.2 cannot be said to be illegal. Thus the grievance of the petitioner must be against the sale deed and not the issuance of No Objection Certificate for which the remedy lies elsewhere.

7. In so far as the contention that the No Objection Certificates having been given to the Punjab land, the same also cannot be countenanced. As of now, the petitioner does not have locus to challenge it. Further more, appropriate orders have already been passed by the Tahsildar, Bhavani, who reclassified the land as early as on 03.04.2013. The said order also has not been put into challenge. The Tahsildar, Bhavani is also not arrayed as a party before this Court. The lack of jurisdiction on the part of Tahsildar, Bhavani can only be raised if the Tahsildar, Bhavani is impleaded as a party before this Court.

8. On the question of validity of the orders sought to be impugned, this Court in KANYAKUMARI DISTRICT PETROLEUM DEALERS ASSOCIATION, REP. BY ITS SECRETARY S.KUMAR, CHUNGANKADAI, KANYAKUMARI DISTRICT V. DISTRICT REVENUE OFFICER AND ADDITIONAL DISTRICT MAGISTRATE, NAGERCOIL AND OTHERS ((2006) 4 MLJ 1164), held as follows:-

"22. Grant of No Objection Certificate under Rule 144 of the Petroleum Rules, 2002 is an Administrative Order issued by the first respondent. As held in the decision J.R.Raghupathy and Others V. State of A.P. and Others AIR 1988 SC 1681 : 1988 (4) SCC 364, exercising jurisdiction under Article 226 of the Constitution of India, the High Court cannot sit in Appeal over the Government's decision and proceed to

evolve the merits and demerits of such decision with its own perspective. The order is not justiciable merely on the ground of violation of certain guidelines. In the absence of mala fides, extraneous considerations and arbitrariness, the No Objection Certificate issued by the first respondent cannot be interfered with."

9. The ratio laid down by this Court in the decision mentioned above would apply to the case on hand. Hence, considering the issues, both legal and facts, no ground is made out to quash the impugned orders. Accordingly, the writ petition stands dismissed. It is made clear that this order will not stand in the way of the petitioner in working out his remedy under common law. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

raa

To

1.The District Collector,
Erode District, Erode-638 011.

2.The District Revenue Officer,
Collectorate Building,
Erode-638 011,
Erode District.

3.The Divisional Officer,
Fire Service Department,
Erode Division,
Erode-638 001.

4.The Superintendent of Police,
District Police Office,
Erode-638 001.

5.The Revenue Divisional Officer,
Gobichettipalayam, Erode District.

1 cc to Mr.O.R.Santhanakrishnan , Advocate Sr.No.45538

1 cc to Mr. N.Manokaran, Advocate Sr.No.45288

1 cc to Mr.MA.P.Thangavel, Advocate Sr.No.45280

1 cc to Mr.T.L.Thirumalaisamy , Advocate Sr.No.45274

1 cc to Government Pleader.Sr.No.45493

W.P.No.2218 of 2015

ala(co)pmk.14.9.2015