

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.18545 of 2014

M.Sumathy

.. Petitioner

vs.

1.Union of India,
Rep. By its Secretary,
Govt. of Pondicherry.

2.The Sub-Registrar,
Oulgaret,
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 give guideline value of petitioner's property bearing Plot No.54,55 and 56 at Oulgaret Village, comprised in Re-survey No.231/4, Cadastre No.1120 PS 1/3, 1120 PS 2/2 so as to enable the petitioner to convey/mortgage the property.

For Petitioner : Mr.J.Rajmohan
For Respondents: Mr.A.Tamilvanan,
Government Advocate

ORDER

The petitioner seeks for a direction to the 2nd respondent to furnish the guideline value of the property bearing Plot No.54, 55 and 56 at Oulgaret Village, comprised in Re-survey No.231/4, Cadastre No.1120 PS 1/3, 1120 Ps 2/2.

2. According to the petitioner, he has purchased the property by sale deed dated 25.02.1999 and the same was registered as document No.782 of 1999 on the file of Registrar of Pondicherry. The petitioner is said to have mortgaged the property with Dena Bank and he repaid the entire loan and the bank has also released the title deeds. Now the petitioner seeks for creating the mortgage with the private financiers for the purpose of availing hand loan. When the petitioner approached the second respondent for obtaining guideline value of the property, to enable the petitioner to register the mortgage deed, the second respondent is said to have orally refused to give the guideline value stating that the land in Re-Survey

No.230/2 and the lands owned by the petitioner are covered by the Land Reforms proceedings.

3. In fact, an identical case came up for consideration before this Court in W.P.No.26558 of 2014. Though the prayer in the said writ petition was slightly different, the reason assigned by the registering authority refusing to register the document was same as that of in this writ petition. The said writ petition was allowed by this court following an earlier order passed in W.P.No.12330 of 2007 and 36622 of 2006 dated 15.12.2008. The operative portion of the orders 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."

4. The learned Government Advocate also does not dispute the fact that the issue involved in this writ petition is covered by the earlier decision.

5. In the light of the above, following the earlier order passed by this Court, this writ petition is allowed with the following direction:

"The 2nd respondent is directed to furnish the guideline value of the property bearing Plot No.54, 55 and 56 at Oulgaret Village, comprised in Re-survey No.231/4, Cadastre No.1120 PS 1/3, 1120 Ps 2/2 to enable the petitioner to convey/mortgage the property in question.

No costs.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.The Secretary,
Union of India,
Govt. of Pondicherry.

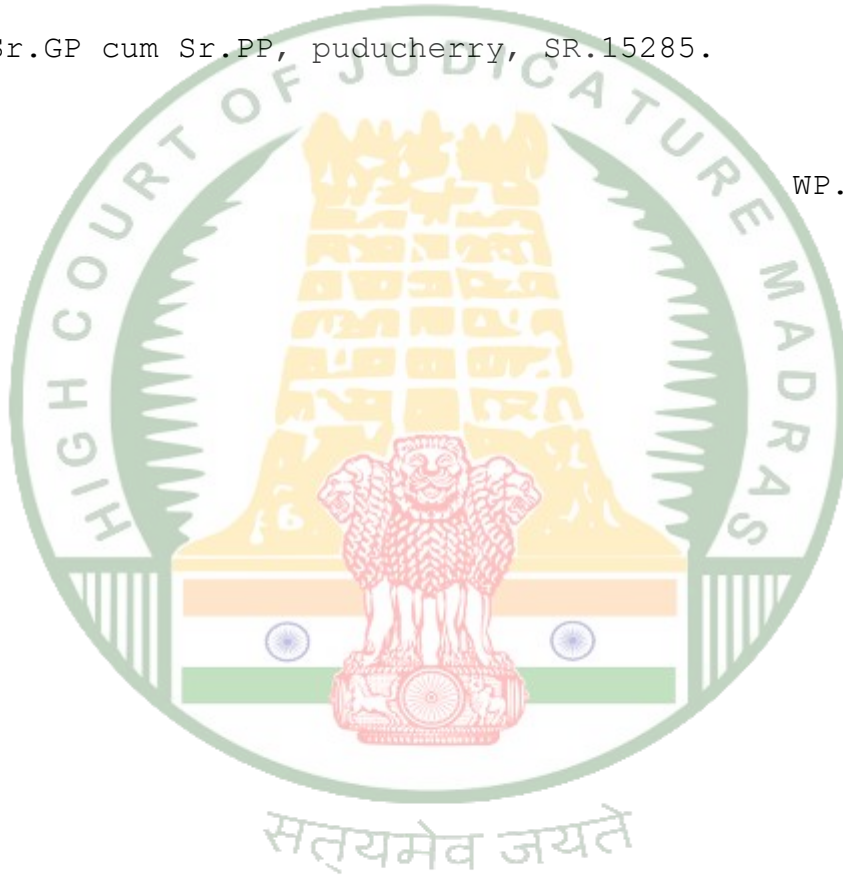
2.The Sub-Registrar,
Oulgaret,
Pondicherry.

+1 cc to Mr.J.Rajmohan, Advocate,SR.15114

+1 cc to Sr.GP cum Sr.PP, puducherry, SR.15285.

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