

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2015

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

W.P.Nos.1758 of 2009 and 22728 of 2013

W.P.No.1758 of 2009

S.Sundar

.. Petitioner

vs

1.Tamil Nadu Housing Board,
Rep. By its Chairman,
Anna Salai, Nandanam, Chennai.

2.Executive Engineer & Adm. Officer,
Tamil Nadu State Housing Board,
K.K.Nagar Division, Chennai.

3.Executive Engineer,
Town Planning, Tiruttani Town Panchayat,
Tiruttani.

4.Janakiraman (alias) Johny
5.A.Gadhadaran

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus to direct the 1st, 2nd and 3rd respondents Board to remove all construction from the land earmarked for the Children's play ground, well and O.H.T in Subramaniyapuram Housing Scheme and restore and maintain the Children's Play Ground, Well and O.H.T. Layout plan for Railway Employees (S.L.C) Scheme at Tiruttani, C.No.1985/75 M.P.2.

W.P.No.22728 of 2013

Sri Subramaniapuram Kudi Iruppor
Nalasangam, Rep. By its Vice President
V.R.Seshadri.

.. Petitioner

vs

1.District Collector,
Thiruvallur District.

2.Inspector General of Registration,
Santhome High Road, Chennai.

3.Chairman,
Tamil Nadu Housing Board,
Anna Salai, Nandanam,
Chennai.

4.Revenue Divisional Officer,
Thiruthani.

5.Johny

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus to direct against the respondents 1 to 4 to evict the 5th respondent on his men, agents or anyone claiming under him from Plot No.41, Sri Subramaniapuram, Arakkonam Road, Thiruthani comprised in Survey No.217/17 within a stipulated time and report the same before this Court and preserve the said Plot No.41 as play ground and children's park as per the layout approval in DTCP No.1/76.

For Petitioners .. Mr.C.Umashankar

For Respondents .. Mr.S.T.S.Moorthy

Govt. Pleader for R 3 in WP.1758/2009
and for RR 1, 2 & 4 in WP.22728/2013

.. Mr.V.Anantha Murthy for RR 1 and 2 in
WP.1758/2009 and for R-3 in WP.
22728/2013.

.. Mr.V.Raghavachari for RR 4 & 5 in
WP.1758/2009 and for R-5 in WP.
22728/2013

O R D E R

(Order of the Court was made by The Hon'ble Chief Justice)

On hearing the submissions of learned counsel for parties, it transpires that the retired employees of the Railway Department decided collectively to develop their housing, for which purposes they authorised Late A.Gadhadharan / original respondent no.5, to act on their behalf, including for construction to be made by Tamil Nadu Housing Board / first respondent against loan. The construction was completed and loan repaid.

2.The controversy being the subject matter of these two Public Interest Litigations - one by an individual and the other by the now registered society, emanates from a sale deed executed in favour of the 4th respondent, Janakiraman @ Johny, by A.Gadhadharan in respect of Plot No.41, Sri Subramaniapuram, Arakkonam Road, Thiruthani. It

is the case of the petitioners that this land was meant for a children's park and being commonly owned, could not have been sold to any third party. It is further alleged that the 4th respondent, contrary to injunction order, even constructed on that property and is in occupation thereof. The contempt proceeding is, however, stated to have been closed on account of the fact that Janakiraman @ Johny / 4th respondent had no knowledge of the injunction order.

3.It is the case of the 4th respondent / Janakiraman @ Johny that there was some exchange of user of land on account of practicalities of the situation, though it is conceded that this did not result in formal approval of change of plan, but it is stated that that was done with the consent of the then occupants of the plots / association.

4.Be that as it may, there have been certain subsequent developments. On the petitioners approaching the first respondent, a D.O. letter was issued to the Inspector General of Registration, Pattinapakkam, dated 22.06.2009 in the following terms:

" I wish to bring to your kind notice that the lands bearing S.No.270, 270 pt, 270/10, 12, 13, 15 and 271/13, 14, 15, 16, 17 etc. in Tiruttani Village were handed over to Tamil Nadu Housing Board by Sri Subramaniapuram Housing Welfare Association through its Secretary for developing the layout and construction of houses for the Society members.

Based on their request, TNHB got the layout approved and constructed houses for the Society members as a deposit work and the land was also mortgaged to TNHB for execution of the said work. In the approved layout, the plot bearing No.41 was reserved as Children's Play Space (OSR) with an open well and pumphoom for common purpose.

However, it has now been brought to our notice that the above plot was registered in the name of one Thiru.G.Johny on 09.07.08 by Thiru A.Gadadharan, ex-Secretary of the Association at Sub-Registrar's office, Tiruttani. Thiru.A.Gadadharan, ex-Secretary of the Society had no title right over the property and hence, no right to convey this property to Thiru G.Johny. However, the Sub-Registrar, Tiruttani has allowed the registration without going into the above facts. Hence, I request you to take necessary action to cancel the above Conveyance Deed and also to initiate appropriate action against the concerned Sub-Registrar."

5.It appears that thereafter notices were issued to the 4th respondent / Janakiraman @ Johny, who has alleged not to have responded. The result is an order passed by the District Registrar (Administration) dated 25.01.2012 in the following terms:

' ' ORDER

On the basis of enquiry conducted on the petition cited received from the petitioner regarding bogus registration of document within the jurisdiction of Tiruthani Sub Registrar Office in respect of plot No.41, village Survey No.271/17, S.S.Puram, Tiruthani, it is ordered to the Sub Registrar to add a note on the Registration document No.4213/2008 to Table II as bogus registration and also file First Information Report to the Police Station about the persons concerned.'

Sd/-

District Registrar,
Kancheepuram. ' '

6.In view of the aforesaid order, the sale deed executed in favour of Janakiraman @ Johny / 4th respondent has been declared to be bogus. As to what steps the 4th respondent has to take to protect his interest is for the said respondent to decide.

7.Learned counsel for the petitioners now states that in pursuance to the sale deed being declared bogus, the first respondent was asked to take steps to remove the construction made by Janakiraman @ Johny / the 4th respondent, which is stated to be unauthorised and to restore the property to the association. However, on account of resistance by the 4th respondent, the action could not take place.

8.On hearing the learned counsel for parties, we are of the view that the matter really partakes the character of a civil dispute. On representation of the petitioners, the concerned authorities have taken action and the 4th respondent / Janakiraman @ Johny has suffered an adverse order dated 25.01.2012, of which learned counsel for the said respondent claims lack of knowledge till he received the typed set from the Court. Learned counsel submits that it will now be for the 4th respondent to take whatever action as he may be advised.

9.As far as the petitioners are concerned, they now seek to actually remove the construction made by the 4th respondent / Janakiraman @ Johny and restore the property to the association as a consequence of the 4th respondent having lost any semblance of title in view of the order dated 25.01.2012. This can be carried out only in appropriate civil proceedings.

10.We, thus, dispose of these two petitions with liberty to the two contesting parties to seek appropriate remedy in accordance with law arisen from the aforesaid factual matrix. No costs. Consequently, M.P.No.1 of 2013 stands closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sra
To

- 1.The The Chairman, Tamil Nadu Housing Board,
Anna Salai, Nandanam, Chennai.
- 2.The Executive Engineer & Adm. Officer,
Tamil Nadu State Housing Board,
K.K.Nagar Division, Chennai.
- 3.The Executive Engineer, Town Planning,
Tiruttani Town Panchayat, Tiruttani.
- 4.The District Collector,
Thiruvallur District.
- 5.The Inspector General of Registration,
Santhome High Road, Chennai.
- 6.The Revenue Divisional Officer, Thiruthani.

- 1 cc to Mr. V.Anandha Murthy,Advocate, SR.No.21884
1 cc to Mr.C.Umashankar ,Advocate, SR.No.21934
1 cc to Mr. V.Raghavachari,Advocate, SR.No.21916

सत्यमेव जयते

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and 22728 of 2013

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