BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13 .01.2015

CORAM:

THE HONOURABLE Mr.JUSTICE M.VENUGOPAL

W.P.(MD).No.18007 of 2014

S.Manivarma ... Petitioner

V.

1.The Sub-Registrar,
Thirupparankundram,
Madurai.

2.The Assistant Commissioner of HR & CE,
- Cum – Administrative Officer,
Arulmigu Subramania Swamy Thirukovil,
Thiruppaarankundram, Madurai. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the 1st respondent to allow the petitioner to create an Equitable Mortgage Deed as in favour of Axis Bank and also register a document pending in Doc.No.P.201400062 by its receipt dated 30.09.2014 as expedite as possible.

For Petitioner : MrK.Neethimohan
For 1st Respondent : Mr.K.Guru
Additional Government Pleader

For 2nd Respondent : Mr.S.Manohar

order reserved on : 16.12.2014.

order delivered on : 13.01.2015

ORDER

The Petitioner has focussed the instant Writ of Mandamus praying for passing of an order by this Court in directing the 1st Respondent to allow him to create an Equitable Mortgage Deed in favour of Axis Bank and also registered a document pending in P.No.201400062 by its receipt dated 30.09.2014 as expeditiously as possible.

2.Heard both sides.

3.According to the Petitioner, the land and building measuring an extent of 2400 square feet at plot No.9, Door No.21, Mini Colony, III Cross Street, Thirunagar, Madurai comprised in S.No.114-1C, Re-Survey No.114-1C Thirupparankundram Village, Madurai South Taluk, Sub-Registration District of Thirupparankundram and the Registration District Madurai South was purchased by one Tmt.M.N.Sornam Achi W/o.A.M.N.Nagappan on 06.01.1984 from the Thirunagar Co-operative house construction and the same was registered as Document No.17 of 1984 at Book No.I Volume (6) Page No.197 to 198 before the 1st Respondent/Sub Registrar Thirupparankundram, Madurai. Further, the said Sornam Achi sold the aforesaid property, by means of Sale Deed dated 13.10.1985, to and in favour of Mrs.Mangayarkarasi, W/o.Balasubramani and the same was registered in Document No.1716/85 on the file of the 1st Respondent.

4.Subsequent to the aforesaid Sale Deed dated 13.10.1985, the said Mangayarkarasi had transferred the property to her husband Balasubramanian, S/o.Kuthalanathan Pillai by means of Registered Settlement Deed on 11.02.1991 bearing Document No.146 of 1991 Book No.I Volume (288) page No.407 to 411 on the file of the 1st Respondent. In fact, Balasubramanian executed a Sale Deed to and in favour of Aravindan, S/o.Mani and the same was duly registered as a document in Document No.436/05 dated 18.02.2005 on the file of the 1st Respondent. Later, the said Aravindan executed a Sale Deed to and in favour of the Petitioner and his brother S.Karthikeyan and thereby conveyed the entire property in their favour and the same was registered as Document No.502/2011 dated 09.02.2011 on the file of the 1st Respondent. Ever since the date of purchase, the Petitioner and his brother Karthikeyan are in continuous possession and peaceful enjoyment of the aforesaid property. Soon after the purchase, the Petitioner and his brother Karthikeyan had jointly created an equitable mortgage over the aforesaid property to and in favour of M/s.Sundaram BNP Paribas Home Finance Limited at Thallakulam, Madurai for a sum of Rs.30,43,000/- in Document No.503/2011 dated 09.02.2011 on the file of the 1st Respondent. Also, he approached the M/s.Axis Bank (within the period of Equitable Monthly Instalment) to take over the loan amount sanctioned by his earlier Bank viz., M/s.Sundaram BNP Paribas Home Finance Limited after a proper consideration, the Axis Bank had accepted to take over the loan amount sanctioned by Petitioner's earlier Bank. As such, M/s.Sundaram BNP Paribas Home Finance Limited executed a receipt in his favour and his brother and discharged them from the aforesaid mortgage (which was duly registered on 18.08.2014 in Document No.2637/11 dated 18.08.2014 on the file of the 1st Respondent).

5.The stand of the Petitioner is that subsequent to the Receipt, M/s.Sundaram BNP Paribas Home Finance Limited handed over the entire title deeds to Axis Bank and he and his brother accepted to create an Equitable Mortgage over the said property to and in favour of M/s.Axis Bank and at that time, the 1st Respondent had refused to register a Mortgage Deed and kept it pending after receiving the necessary fee for Registration on 30.09.2014 stating that the 2nd Respondent had issued a notice dated 28.01.2012. As a matter of fact, in the said notice, the 2nd Respondent/Assistant Commissioner of H.R. & C.E. - cum – Administrative Officer of the Temple had enclosed a list of survey numbers that the land comprised in survey numbers belongs to the Arulmighu Subramania Swamy Kovil at Thirupparankundram and also requested the 1st Respondent/Sub Registrar, Thirupparankundram, Madurai not to register any document relating to the survey number enclosed along with the said notice.

6.The real grievance of the Petitioner is that he and his brother Karthikeyan are joint owner of the property viz., land and building measuring an extent of 2,400 Sq. ft. at Plot No.9, Door No.21, Mini Colony, III Cross Street, Thirunagar, Madurai in S.No.114-1C and Re-Survey No.114-1C in Thirupparankundram Village and also have clear rights and title over the property and due to unavoidable financial situation for their family, himself and his brother jointly wanted to create an Equitable Mortgage in favour of their Bank viz., Axis Bank and now the 1st Respondent had refused to register the document in favour of Petitioner's Bank in pending Doc.No.201400062 by Receipt No.20148817 stating that the 2nd Respondent issued a notice dated 28.01.2012. Hence, he has filed the present Writ Petition.

7.Per contra, it is the submission of the Learned Additional Government Pleader for the 1st Respondent that the land in question belongs to the Arulmighu Subramania Swamy Thirukkovil, Thirupparankundram and hence, the document in issue was not registered by the 1st Respondent.

8.Advancing his arguments, the Learned Counsel for the 2nd Respondent submits that Survey No.114/1 measuring 3.22 acres as per Temple Minor Inam Register is shown as "Sthanigam Service" lands in T.D.No.1064 - Thirupparankundram Village, Madurai and after coming into force of Tamil Nadu Act 30 of 1963, proceedings were initiated under the Act in S.R.Nos.3, 4 and 5 of 1969 by the Settlement Tahsildar (Unit No.5), Madurai and patta in respect of the entire lands were granted in favour of Thirunagar House Building Society and Chitrakala Studios under Section 13 of Tamil Nadu Act 30 of 1963. Also that, an Appeal was filed before the Inams Abolition Tribunal.

9.The Learned Counsel for the 2nd Respondent strenuously projects an argument that the Petitioner is to establish that he purchased the property from a person possessing title and in respect of Inam lands the person doing service can have only right of occupancy and any number of sale in respect of Inam lands is not valid unless the land is discharged from its Inam character. Moreover, in terms of the Property Register maintained by the Temple in S.No.114/1 measuring 3.22 acres it is mentioned as 'Temple Lands'. That apart, patta cannot confer title to the predecessors of the Petitioner and since the property was entered in the Property Register of the temple, an objection was given to the 1st Respondent not to register the property. Continuing further, the 2nd Respondent is not concerned about the transactions between the Petitioner and the Banks and for issuance of Writ of Mandamus, it is necessary for the Petitioner to establish that he has a statutory right. Furthermore, the Petitioner had given representations to the 2nd Respondent on 20.08.2014 and 16.09.2014 to issue 'No Objection Certificate' and he had suppressed the same. In short, the Writ Petition filed by the Writ Petitioner is not maintainable.

10.At this stage, this Court refers to the Division Bench Judgment dated 30.03.2007 in W.A.No.167 of 2007 and W.P.No.42445 of 2006 ***(between Captain Dr.R.Bellie V. The Sub Registrar, Registration Office, Sulur, Coimbatore District and others) reported in 2007 (3) CTC 513***, wherein in paragraphs 5 and 6, it is observed as follows:

"Admittedly, no statutory rule or any other provision has been made by the Legislature of the State of Tamil Nadu defining "public policy" or "as opposed to public policy". It is the Executive of the State Government vide G.O.Ms.No.150, Commercial Taxes, dated 22.9.2000 laid down guideline relating to documents/class of documents "as opposed to public policy", which reads as follows:

"In exercise of the powers conferred by sub section (1) of Section 22A of the Registration Act, 1908 (Central Act, XVI of 1908), the Governor of Tamil Nadu hereby declares the following documents as opposed to public policy, namely:

1.Any instrument relating to -

(i) conveyance of properties belonging to the Government or the local bodies such as the Chennai Metropolitan Development Authority or Corporations, or Municipalities, or Town Panchayats, or Panchayat Unions or Village Panchayats; or

(ii) conveyance of properties belonging to any religious institutions including temples, mutts, or specific endowments managed by the Hereditary Trustees/Non-hereditary trustees appointed to any religious institution under a Scheme settled or deemed to have been settled under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959) and mutts and temples including specific endowments attached to such of those temples managed by mutts; or

(iii) conveyance of properties assigned to or held by -

(a)The Tamil Nadu State Boodan Yagna Board established under Section 3 of the Tamil Nadu Bhoodan Yagna Act, 1958 (Tamil Nadu Act XV of 1958) or

(b) The Tamil Nadu Wakf Board

unless a sealed No Objection Certificate issued by the competent authority as provided under the relevant Act or the rules framed thereunder for this purpose and in the absence of any such provisions in any relevant Act or in the rules framed thereunder authority so authorised by the Government, to the effect that such registration is not in contravention of the provisions of the respective Act, is produced before the Registering Officer,

2.Conveyance of lands, converted as house sites without the approved layouts unless a No Objection Certificate issued by the authority concerned of such local bodies, namely, Corporations, or Municipalities or Town Panchayats, Panchayat Unions, or village Panchayats or Chennai Metropolitan Development Authority is produced before the Registering Officer;

(3)Cancellation of sale deeds without the express consent of the parties to the documents.":

6.As the matter practically stands settled by the decision of the Supreme Court in the case of State of Rajasthan & Ors. v. Basant Nahata, 2005 (4) CTC 606, it is not necessary to discuss all the facts and provisions of law except the relevant one."

Also, in the aforesaid decision, in paragraphs 7 and 8, it is observed as follows:

"7.A similar (amended) provision like Section 22-A was made by the State of Rajasthan, which reads as under:

Section 22-A. Documents registration of which is opposed to public policy – (1) The State Government may by notification in the Official Gazette declare that the registration of any document or class of document is opposed to public policy.

(2) Notwithstanding anything contained in this Act, the registering officer shall refuse to register any document to which a notification issued under sub-section (1) is applicable."

8.The said provision was challenged before the Rajasthan High Court, which held the provision unconstitutional and ultra vires Article 14 and 246 of the Constitution of India. While the matter fell for consideration before the Supreme Court in the case of State of Rajasthan & Ors. v. Basant Nahata, 2005 (4) CTC 606, having noticed similar amendment made by other States, such as State of Bihar, Gujarat, Karnataka, Mararashtra and Meghalaya, notices were issued to those States also. In the said case, the Supreme Court, while upholding the decision rendered by the Rajasthan High Court, held the aforesaid amendment, Section 22-A, ultra vires and while doing so, made the following observations:

"42.A party in a suit against who, illegality is pleaded also gets an opportunity to defend himself. Hence this essential function to decide on what is Public Policy cannot be delegated to executive through a subordinate legislation.

43.The legislature of a State, however, may lay down as to which acts would be immoral being injurious to the society. Such a legislation being substantive in nature must receive the legislative sanction specifically and not through a subordinate legislation or executive instructions.

44.The phraseology 'opposed to Public Policy' may embrace within its fold such acts which are likely to deprave, corrupt or injurious to the public morality and, thus, essentially should be a matter of legislative policy.

45.The said phraseology came up for consideration before this Court in Central Inland Water Transport Corporation Limited and another V. Broio Nath Ganguly and another, etc., 1986 (3) SCC 156, where a note of caution has been sounder that it being a 'very unruly horse', once when gets astride one does not know how far it would carry him. The question as to whether the statement as regard the validity of a contract on the ground that it is opposed to public policy must normally be viewed within the parameters fixed therefore by longstanding authorities or precedents but in deciding a case it may not be covered by such authorities and lacking precedents, the preamble of the Constitution or the principles underlying the fundamental rights and the Directive Principles in our Constitution can be taken recourse to. This Court in Rattan Chand Hira Chand V. Askar Nawazjung (Dead) by Lrs. and others, 1991 (3) SCC 67, quoted the following from Prof. Winfield's Article "Public Policy in the English Common Law":

"Some judges appear to have thought it (the unruly horse of public policy) more like a tiger, and refused to mount it at all, perhaps because they feared the fate of the young lady of Riga. Others have regarded it like Balaam's case which would carry its rider nowhere. But none, at any rate at the present day, has looked upon it as a Pegasus that might soar beyond the momentary needs of the community."

....

52.A doctrine which is so vague or uncertain, in our opinion, thus, cannot and does not provide any guideline whatsoever. Furthermore, the executive while making a subordinate legislation cannot be permitted to open new heads of public policy in its whims. Towards opposed to public policy, therefore, do not lay down any guidelines to render it constitutional. Execution of power of attorney per se is not invalid. On the other hand, it is lawful.

....

59.Hence, Section 22-a of the Act through a subordinate legislation cannot control the transactions which fall out of the scope thereof."

11.It is to be pointed out that Section 3 of the Transfer of Property Act, 1882 does not define immovable property. But it simply excludes standing timber, growing crops nor grass. It is a negative definition and it is not exhaustive, in the considered opinion of this Court. The definition is similar to the Registration Act, 1908. It is to be remembered that a benefit to arise out of land is an interest in law and hence, it is immovable property. Since immovable property is not defined under the Transfer of Property Act, 1882, the definition has to be looked into from the General Clauses Act. However, the definition under the General Clauses Act is also not exhaustive. It has been defined under Section 3(25) of the General Clauses Act wherein it includes benefit to arise out of land and things attached to the earth or permanently fastened to anything attached to earth.

12.According to Section 2(6) of the Registration Act, 1908, the definition 'immovable property' includes the lands, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops, nor grass.

13.In the instant case on hand, the Petitioner had addressed two representations dated 20.08.2014 and 16.09.2014 to the 2nd Respondent praying for issuance of 'No Objection Certificate' to the effect that 'Survey No.114/1C and 146A/14B do not belong to the temple'. In fact, in the 2nd representation dated 16.09.2014, the Petitioner had categorically stated that the 1st Respondent had stated that Survey No.114/1C belonged to the temple.

14.It cannot be gainsaid that the Petitioner in the typed set of papers enclosed a copy of the Sale Deed dated 06.01.1984 in favour of Sournam Achi, Sale Deed dated 13.10.1985 in favour of Mangaiyarkarasi, Settlement Deed dated 11.02.1991 in favour of Balasubramanian, Sale Deed dated 18.02.2005 in favour of M.Aravindan, Sale Deed in favour of the Petitioner dated 09.02.2014 respectively. Admittedly, for the two representations dated 20.08.2014 and 16.09.2014 of the Petitioner addressed to the 2nd Respondent, till date replies have not been sent by the 2nd Respondent. The 2nd Respondent before this Court has taken a clear cut stand that the Petitioner to establish that he purchased the property from the person possessing the title in respect of the Inam Lands, the person doing service can have only right of occupancy and any number of sale in respect of Inam lands is not valid unless the land is discharged from its Inam character. Furthermore, as per the Property Register maintained by the temple in S.No.114/1, measuring 3.22 acres, the same is shown as 'Temple Lands'.

15.It transpires that on 15.05.1972, the Court of the Settlement Tahsildar for Minor Inams (Unit No.5), Madurai had passed order concerning Inams granted for the service of Sthanikam or worshipping Sri Subramaniaswami at Thirupparankundram and the numbers and description of Inam is mentioned as T.D.Nos.1062, 1064 and 1065 of Thirupparankundram Village in which R.S.No.114/1 and other survey numbers in the said Settlement Tahsildar Order dated 15.05.1972 Claimant No.3 is mentioned as 'The Tirunagar House Construction Co-operative Society, Tirunagar' which claims patta for R.S.No.114-1 part Dry 1.63; 114-5 Dry 0.60 and 108-2 Dry 8.99 acres. Further, in the said order, the Claimant No.4 is mentioned as 'The Chitrakala Studio. Tirunagar by its Liquidator V.B.Haribhakti' wherein patta is claimed for R.S.No.114/1 part 1.59 acres. Further, the said Haribhakti had stated that the land has purchased by Marudanayagam Pillai, the then Proprietor of Chitrakala Movitone on 5.6.1945 from R.Subramania Pillai Marudanayagam Pillai transferred the land to Chitrakala Studio on 05.01.1946. The Studio went into Liquidation. The Official Receiver, High Court, Madras, transferred the land to Chitrakala Studio by a Registered deed dated 27.11.1951. This is a Service Inam and the Inamdars parted with the land long ago and it was converted as Ryotwari in 1937 and that he had no knowledge of Resumption proceedings.

16.More importantly, in the aforesaid Settlement Tahsildar Order dated 15.05.1972 in respect of the Claimant No.3, 'The Tirunagar House Construction Co-operative Society, Tirunagar, it is mentioned *inter alia* that 'The Society contends that as the lands were acquired under the Land Acquisition Act they have lost the inam that the Devasthanam did not claim any compensation during the pendency of Land Acquisition proceedings character and not to be affected by the Regrant that the case does not fall under Act 30/1963, and in the alternative it falls under Section 13 of the Act; that after the High Courts decision' there was no specific order for resuming both warams followed by regrant etc. and wants patta in its name for all the lands'. Finally, the Settlement Tahsildar Order dated 15.05.1972 shows that in respect of Survey No.114/1 measuring 3.22 extent and Survey No.114/5 measuring 0.60 extent, joint patta in the names of Tirunagar Housing Building Society, Chitrakala Studio under Section (a) read with Section 13 of Act 30/1963 was directed to be issued.

17.In the upshot of qualitative and quantitative discussions and in view of the fact that the representations of the Petitioner dated 20.08.2014 and 16.09.2014 addressed to the 2nd Respondent are pending as on date and also this Court bearing in mind a most important fact that the Survey No.114/1 measuring 3.22 acres as per Temple Minor Inams Register is shown as “Sthanigam Service” lands in T.D.No.1064- Thirupparankundram Village and also patta was granted in respect of the Tirunagar House Building Society and Chitrakala Studio under Section 13 of Tamil Nadu Act 30 of 1963, at this stage, this Court, simpliciter, without traversing upon the merits and demerits of the contents of representations of the Petitioner and also the divergent pleas taken on respective sides, in the interest of Equity, Fair Play, Justice, Good Conscience, even as a matter of prudence and on balance, directs the 2nd Respondent earnestly and seriously to look into the representations of the Petitioner dated 20.08.2014 and 16.09.2014 (wherein he had prayed for issuance of No Objection Certificate in the subject matter in issue) and to dispose of the same, in an objective, dispassionate and pragmatic manner, by passing a reasoned speaking order on merits ascribing necessary qualitative and quantitative details, uninfluenced and untrammelled with any of the observations made by this Court in the present Writ Petition, within a period of three weeks from the date of receipt (of copy of this order, of course, after providing due opportunity to the Petitioner and others by adhering to the Principles of Natural Justice in true letter and spirit).

18.With the aforesaid directions, the Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar(C.S.)

To
1.The Sub-Registrar,
Thirupparankundram,
Madurai.

2.The Assistant Commissioner of HR & CE,
- Cum - Administrative Officer,
Arulmigu Subramania Swamy Thirukovil,
Thiruppaarankundram, Madurai.

+1cc to Mr. K.Neethi Mohan,Advocate in SR.No. 1926

+1cc to Mr. S.Manohar,Advocate in SR.No. 1898

TS/22.01.2015/8P-5C

ORDER IN
W.P.(MD)No.18007 of 2014

13.01.2015