IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.02.2016
Date of verdict: 29.02.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.29887 of 2015

H.A.Badurunnisa ... Petitioner

Vs.

1. The Sub Registrar,
   Sub Registrar's Office Triplicane,
   Royapettah, Chennai-14.

2. The Government of India,
   rep. by its Intelligence Officer/
   Intelligent Officer,
   Narcotics Control Bureau,
   Plot No.FD2, 2nd Main Road,
   3rd Avenue,
   Tamil Nadu Housing Board,
   Ayyappakkam, Chennai-77. ... Respondents

(R.2 is impleaded as per order dated 30.11.2015 made in M.P.No.1 of 2015 in W.P.No.29887 of 2015.)

Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus, directing the respondent to release the petitioner's sale deeds registered on 12.6.2015 and assigned pending document Nos.P102 and P103 of 2015 on the file of the first respondent.

For Petitioner : Mr.V.Lakshminarayanan,
for Mr.A.Amanullah

For Respondents : Mrs.P.Rajalakshmi,
Government Advocate, for R.1
Mr.Su.Srinivasan,
Assistant Solicitor General of India
for R.2

ORDER

The petitioner has come up with the present writ petition for a mandamus, directing the first respondent to release her sale deeds registered on 12.6.2015 and assigned pending document as document Nos.P102 and P103 of 2015.

2. It is the case of the petitioner that she has purchased a property consisting of land, building, super structure and premises situated at Old Door No.45, then Door No.11, New Door No.5, Habibullah Sahib Street, now known as Habibullah Sahib Cross Street, Second Lane, Triplicane, Chennai-5. The said property consists of six flats. The ground floor, first floor and second floor have two flats each. The property is measuring about 920 sq.ft. The petitioner purchased the said property for valid consideration from one A.Iqbal Basha and Rehana Begum. The said A.Iqbal Basha and Rehana Begum executed a sale deed in favour of the petitioner and the same was presented for registration in the office of the first respondent. The said purchase was made under two separate sale deeds. The said sale deeds were registered on 12.6.2015. Thereafter, the first respondent assigned them pending document as Document Nos.P102 and P103 of 2015. The petitioner has also paid necessary stamp duty. Despite the same, the first respondent has not registered the sale deeds and is keeping the same pending. In this regard, the petitioner made repeated representations in person. Thereafter, the petitioner sent a lawyer's notice on 25.8.2015 to the first respondent and the same was received by the first respondent on 26.8.2015. But, till date, the first respondent has not registered and released the documents. Hence, the petitioner has come up with the present writ petition seeking a direction to the first respondent to release her sale deeds registered on 12.6.2015 and assigned pending document Nos.P102 and P103 of 2015.

3. The first respondent has filed a counter affidavit inter alia stating that as per the instructions given by the Narcotics Control Bureau under the Ministry of Home Affairs, Chennai Zonal Unit by the Government of India through its letter in Ref.No.NCB.F.No.48/1/3/ 2015/NCB/MDS Dated 15.6.2015, not to allow any kind of name transfer or sale of the said property without prior permission of the Narcotics Control Bureau, because the Narcotics Control Bureau were conducting Financial Investigation under Chapter VA of NDPS Act, 1985 in connection with seizure of about 2.980 kgs of Methamphetamine at Chennai Central Railway Station on 21.2.2015 from the possession of one Sadiq Basha and Javeed Basha and hence, the first respondent has not registered the sale deeds presented by the petitioner.

4. In view of the said stand taken by the first respondent in the counter statement, this Court, by an order dated 23.11.2015, directed the petitioner to implead the Intelligence Officer, Narcotics Control Bureau, Chennai Zonal Unit as a party respondent. Thereafter, the Intelligence Officer, Narcotics Control Bureau, Chennai Zonal Unit was impleaded as second respondent.

5. The second respondent has filed a counter, wherein, it has been stated as follows:-

(a) Based on a specific information received on 20.2.2015, the officers of Narcotics Control Bureau, Chennai along with two independent witnesses, mounted surveillance at Platform No.3 of Chennai Central Railway Station, where the Mumbai-Chennai Mail was supposed to come. At that time, at about 4.25 hours, the Mumbai-Chennai Mail had arrived at and one person, who carried a black backpack, gave the same to another person. Immediately, the officers along with the independent witnesses, approached them and enquired them about their identity, after introducing themselves. The person, who brought the backpack introduced himself as Javeed Basha and the person received the backpack, introduced himself as Sadiq Basha. Both of them said that they are living at No.37/26, elephant Tank 2nd Street, Royapettah, Chennai-14. On enquiry, Sadiq Basha replied that he was having about 3 kgs of Methamphetamine in the bag brought for him from Mumbai by his brother Javeed Basha. However, they were not having any valid license to carry the entire three packets of white colour crystal. Therefore, the officials of the second respondent seized all the white coloured crystal from them and put them in a polythene cover. Based on the voluntary statements of Sadiq Basha and Javeed Basha, they were arrested on 21.2.2015 and were produced before the learned Magistrate concerned.

(b) The property in question was initially purchased by the accused Sadiq Basha and his wife Aneesunisa in their name on 28.1.2015 for a sum of Rs.57,00,000/- by way of two sale deeds. The share of Sadiq Basha is said to have been transferred to his wife Aneesunisa's name through HIBA in the month of February, 2015 only in order to evade the legal proceedings against the property after the arrest of Sadiq Basha. While so, the said Aneesunisa is said to have disposed the whole property standing in her name and the property allegedly received by HIBA to A.Iqbal Basha and Rehana Begam on 20.3.2015 for a sum of Rs.57,00,000/-, who in turn, have disposed of the same to one Badurunnisa, the petitioner herein for a sum of Rs.60,00,000/-.

(c) In spite of three summons dated 1.5.2015, 11.5.2015 and 22.5.2015 issued in the name of A.Iqbal Basha and Rehana Begam for enquiry, they have not appeared for enquiry. Further, during the course of Financial Investigation, while the Investigating Officer was collecting material evidence to prove that the property in question was purchased from the money earned from the illegal trafficking of drugs, the said A.Iqbal Basha and Rehana Begam instead of appearing before the Investigation Officer, were trying to sell the said property illegally to avoid forfeiture of the same. On receipt of secret information that they were trying to dispose the said property, a letter dated 15.6.2015 was issued immediately to the Sub Registrar, Triplicane, the first respondent herein, not to allow any kind of name transfer or sale of the property in question. After collecting the material evidence and on reasonable belief that the property in question and other movable and immovable properties were purchased out of the money earned from illegal trafficking of drugs, a freezing order under Section 68F (1) of NDPS Act dated 1.7.2015 was issued by the second respondent office. The competent authority has also confirmed the said freezing order dated 1.7.2015 under Section 68F(2) of NDPS Act, 1985 vide their proceedings dated 31.7.2015 with an option that "Any persons aggrieved by this order, may, within 45 days on receipt of the Order file appeal before the Appellate Tribunal for Forfeiture of Property, New Delhi."

(d) The said A.Iqbal Basha and Rehana Begam were also given option to appeal before the Appellate Tribunal for Forfeiture of the Property, New Delhi for quashing the confirmation order. But, they failed to avail the opportunity. During the further investigation, it came to light that in the quick transaction of this property within few months, both A.Iqbal Basha and Rehana Begam have just acted as inter mediators only. The money received by A.Iqbal Basha and Rehana Begam from the petitioner on 12.6.2015 was immediately transferred to the account of Aneesunisa, wife of Sadiq Basha and M/s.Salim Fabrics run by Kaiser Basha, brother of Sadiq Basha respectively on 13.6.2015. Both Aneesunisa and Kaiser Basha have subsequently withdrawn the said amount within a couple of days. From the said transactions, it is clear that the whole transactions were made solely with a view to circumvent the provisions of NDPS Act on the illegally acquired property. Thus, he sought for dismissal of the writ petition.

6. Learned counsel appearing for the petitioner submitted that the first respondent has no authority to keep the documents without registration except the grounds enunciated under Rule 55 of the Registration Rules. Therefore, the refusal of the first respondent to register and release the documents based on the

instructions given by the second respondent is not legally sustainable. Moreover, in the instant case, the sale deeds were presented for registration on 12.6.2015, that is three days prior to the letter sent to first respondent by the 2nd respondent on 15.6.2015, directing the 1st respondent not to register the sale deeds without their permission. It is further submission of the learned counsel for the petitioner that since the letter on financial investigation under Chapter-VA of NDPS Act was issued only to Sadiq Basha, Aneesunisa, A.Iqbal Basha and Rehana Begam, there is no need for her to challenge the same. Thus, he sought for a direction to the first respondent to release her sale deeds registered on 12.6.2015 and assigned pending document Nos.P102 and P103 of 2015.

7. Learned Government Advocate appearing for the first respondent has made her submissions reiterating the averments made in the counter filed by the first respondent.

8. Learned Assistant Solicitor General of India, appearing for the second respondent submitted that the property in question was originally purchased by Sadiq Basha and his wife Aneesunisa out of the money earned from illegal trafficking of drugs. In fact, the said Sadiq Basha was arrested by the second respondent on 21.2.2015. Hence, in order to avoid the legal proceedings against the said property, his wife Aneesunisa disposed the same in favour of A.Iqbal Basha and Rehana Begum claiming that her husband has transferred his share through HIBA on 20.3.2015. Thereafter, within a short span of time, the property was sold to this petitioner by A.Iqbal Basha and Rehana Begum. But, on investigation, it was found that the amount that was paid by the petitioner was received by A.Iqbal Basha and Rehana Begum and the same was immediately transferred to the account of Aneesunisa wife of Sadiq Basha. The said transaction that took place within a short span of time would go to show that only in order to avoid any legal proceedings as against the property, the property was transferred in favour of this petitioner. Hence, the second respondent issued a freezing order under Section 68F (1) of NDPS Act and the Sub Registrar was instructed not to allow the transaction.

9. Keeping the submissions made on either side, I have carefully gone through the entire materials available on record.

10. No doubt, in normal circumstances, the registration of a sale deed cannot be denied except the grounds enunciated under Rule 55 of the Registration Rules. In the instant case, the second respondent has passed an order for financial investigation under Chapter-VA of NDPS Act. Though the learned counsel appearing for the petitioner submitted that the said

order was issued only as against Sadiq Basha, Aneesunisa, A.Iqbal Basha and Rehana Begum, in my considered opinion, the said order covers the property which the petitioner purchased. Under such circumstances, this Court cannot give a direction to the first respondent to register the sale deeds, especially, when the second respondent has been empowered under Section 68F (1) of NDPS Act to pass a freezing order.

11. For the reasons stated above, I am of the opinion that the writ petition is liable to the dismissed and accordingly, dismissed. No costs. However, the petitioner is at liberty to challenge the freezing order passed by the second respondent under Section 68F (1) of NDPS Act, in a manner known to law, if she is so advised.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sbi

To

1. The Sub Registrar,
   Sub Registrar's Office Triplicane,
   Royapettah, Chennai-14.

2. The Intelligence Officer /Intelligent Officer,
   Government of India,
   Narcotics Control Bureau,
   Plot No.FD2, 2nd Main Road, 3rd Avenue,
   Tamil Nadu Housing Board,
   Ayyappakkam, Chennai-77.

+1cc to Mr.Su.Srinivasan,Assistant Solicitor General of India, S.R.No.10505
+2cc's to Mr.A.Amanullah, Advocate, S.R.No.12647

W.P.No.29887 of 2015

BVR(CO)
CA(15/03/2016)