

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.03.2016

Coram

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.38600 of 2015
and
M.P.No.1 of 2015

Mrs.A.M.Susila
rep. by her Power Agent E.Harikrishna ...Petitioner

Vs.

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Housing & Urban Development Department,
Fort St. George, Chennai - 600 009.
2. The Special Tahsildar (Land Acquisition -I)
Maraimalai Nagar Scheme,
Kattankulathur.
3. The Chennai Metropolitan Development Authority,
rep.by its Member Secretary,
No.8, Gandhi Irwin Road,
Egmore, Chennai - 600 008.
4. The Superintendent of Police,
Kancheepuram District.

(R-4 is suo motto impleaded
as per this Court's order,
dated 28.01.2016)

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the respondents to release the lands, measuring about 165 cents, situate at No.74, Thirukkachur Village of Kuttankulathur Panchayat Union of Chenglepet District, comprised in various Survey Numbers, viz., S.No.92 A/4B -10 cents, Survey No.92 A/4A2 -13, cents, Survey No.92 A/4A1 - 27 cents, Survey No.92 A/4A2 - 14 cents, Survey No.92 A4B -17 cents, Survey No.91/2A - 10 cents, Survey No.92 A/4B - 6 cents, Survey No.92 A/4A1 - 6 cents, Survey No.91/2B2 - 29 cents, Survey No.91/2B1 - 30 cents, acquired from the petitioner and to release the same in her favour.

For Petitioner/Dr.A.M.Susila : Mr.A.Edwin Prabakar
For E.Harikrishna : Mr.J.James
For Respondents 1 and 2 : Mr.R.Vijayakumar
Addl Govt Pleader
For Respondent-3 : Mr.K.Rajasrinivas
Standing Counsel for
CMDA

O R D E R

This Writ Petition has been filed in the name of Dr.A.M.Susila, represented by Power Agent, by name E.Harikrishna. The relief sought herein, is for issuance of Writ of Mandamus upon the respondents 1 to 3 to release the lands, measuring about 162 cents, comprised in S.No.74, situate at Thirukkachur Village of Kuttankulathur Panchayat Union, Chenglepet District, which were stated to have been acquired from the petitioner and to release the same in her favour.

2. Heard Mr.Edwin Prabakar, the learned counsel appearing for the Petitioner/Dr.A.M.Susila, Mr.J.James, the learned counsel appearing for the Power Agent/E.Harikrishna, Mr.R.Vijayakumar, the learned Additional Government Pleader for respondents 1 and 2, Mr.K.Rajasrinivas, learned Standing Counsel for fourth respondent/CMDA and the Superintendent of Police/fourth respondent.

3. The Writ Petition was listed for admission on 08.12.2015, and this Court issued notice to respondents 1 to 3, returnable by 22.12.2015, and directed the matter to be listed for final hearing on 22.12.2015. Accordingly, the matter was listed on 22.12.2015, on which date, the learned Additional Government Pleader for respondents 1 and 2 sought for time to file counter affidavit. Accordingly, the matter was adjourned to 28.01.2016. When the matter was taken up on 28.01.2016, Dr.A.M.Susila, who is shown as writ petitioner, appeared before this Court in person, and stated that she never executed any such Power of Attorney in favour of E.Harikrishna, and the Power of Attorney is false and fabricated document. She further stated that, regarding the said criminal act, she has lodged a complaint before the Superintendent of Police, Kancheepuram District against E.Harikrishna and other persons. In order of effectively adjudicate the matter, so as to unearth the truth, this Court, suo motto, impleaded the Superintendent of Police, Kancheepuram, as fourth respondent in this Writ Petition, and issued certain directions upon him and directed the matter to be listed on 24.02.2016. For better appreciation, the entire order, dated 28.01.2016, is extracted hereunder:-

"Dr.A.M.Susila, who is shown as the writ petitioner appeared in person assisted by Mr.Edwin Prabhakar, learned counsel. Dr.Susila, has stated before this Court that she never executed a Power of Attorney in favour of E.Harikrishnan, who has filed this Writ Petition, stating that he is representing Dr. Susila, as her Power Agent. In this regard, a complaint has been given to the Superintendent of Police, Kancheepuram District on 25.01.2016. Further, on the same day, an objection letter has also been given to the Joint Sub Registrar No.II, Chengalpattu, not to entertain any document for registration, pursuant to the power of attorney which is said to be forged.

2. When this Court questioned Dr. Susila, she would state that she has never executed any Power of Attorney and she does not have any immovable property and the property which is the subject matter of General Power of Attorney was owned by her, but, was acquired by the Government. However, she is desirous of taking steps to get the property released from the acquisition.

3. Be that as it may, the case requires to be investigated. Since already the Superintendent of Police, Kancheepuram has received the complaint, the said Superintendent of Police, Kancheepuram District, is suo motu impleaded as the fourth respondent in the writ petition and he is directed to submit a report as regards the outcome of the investigation on the complaint given by the petitioner.

4. Mr.Edwin Prabakar, learned counsel assisting Dr.Susila, submits that Dr. Susila, is aged about 78 years and she is hard of hearing and due to arthritis she is unable to walk properly and requires assistance and taking advantage of these facts, there can be a threat to her life.

5. If such apprehension is genuine, Dr.A.M. Susila, is also permitted to seek for necessary Police protection from the Superintendent of Police, Kancheepuram, which shall be considered at the cost of the State.

List the case on 24.02.2016.

(i) On the said date, the petitioner Mr.E.Harikrishna, as well as Dr.A.M.Susila, shall be present before this Court.

(ii) The Superintendent of Police, Kancheepuram District, is directed to submit a report as regards the outcome of the investigation on the complaint given by the petitioner on or before 24.02.2016. "

4. When the matter was taken up on 24.02.2016, once again Dr.A.M.Susila, was present in person before this Court. As per the earlier direction issued by this Court on 28.01.2016, a report was filed by the Superintendent of Police, Kancheepuram District, and, on a perusal of the said report, this Court expressed utter dissatisfaction to the manner, in which, investigation has been conducted, and observed that the Superintendent of Police had been signatory to the said report, which had been prepared with an intention to hoodwink this Court, and to create an impression, as if, investigation is proceeding in a right track. This Court further observed that, there was no whisper as to whether the so-called Power Agent-E.Harikrishna was questioned/enquired. Therefore, this Court pointed out that the investigation was not proceeding in a right direction, and the Investigating Officer was oblivious of the fact that the property, which is sought to be dealt with in this Writ Petition is a Government property. However, this Court before passing any harsh orders, or issuing strictures against the fourth respondent was inclined to show one more indulgence to remedy the breach and report before this Court today (03.03.2016). At this juncture, it would be beneficial to quote the order, dated 24.02.2016, which is as hereunder:-

"As per the direction issued by this Court on 28.01.2016, in this Writ Petition, Dr.A.M.Susila, is present before this Court, and as expected by this Court, the so-called Power Agent, who has filed this Writ Petition, viz., E.Harikrishna, has not appeared, and he has taken change of vakalath from his counsel. This adds to the suspicious. Report has been filed by the Superintendent of Police, Kancheepuram, viz., the fourth respondent. It is unfortunate

that the Superintendent of Police, Kancheepuram, has been signatory to the report, which has been prepared with an intention, probably, to hoodwink this Court to create an impression, as if, investigation is proceeding in a right track. There is no mention as to what has been done against the so called E.Harikrishna, nor, there is no whisper as to whether he was questioned/enquired. Above all, the Investigating Officer is oblivious of the fact that the property, which is now sought to be dealt with, in this Writ Petition, is a Government property, as on date. Though, prima facie, this Court expresses utter dissatisfaction with regard to the manner, in which, investigation has been conducted, however, before passing any harsh order, or issuing strictures against the Investigating Officer, is inclined to show one more indulgence to remedy the breach and report before this Court on 03.03.2016."

5. Today, when the matter is taken up, the fourth respondent has produced a further report filed by the Investigating Officer/Inspector of Police, Kancheepuram District, in which, it is stated that, on investigation, it revealed that the property belongs to Chennai Metropolitan Development Authority (CMDA), and E.Harikrishna created bogus documents, as if, he is the Power of Attorney Agent of Dr.A.M.Susila, and he executed two sale deeds, one in favour of Srividhya Ekambaram, and the other in favour of Sidhidevi, vide documents dated 10.07.2013, registered as Document Nos.7740 and 7741 of 2013. The said Srividhya Ekambaram executed a Power of Attorney, appointing Sidhidevi as Power Agent, vide Document No.9596 of 2014, and registered the same before the Sub Registrar Officer, Chengalpattu, and thereby, grabbed the Government's property illegally.

6. It is further stated in the said Further Report that, summon dated 24.02.2016, were issued to all the aforesaid three persons to appear for enquiry on 25.02.2016. However, the said E.Harikrishna alone appeared on the said day, and it is stated that, during enquiry, he admitted his guilt that he grabbed the Government's property by executing the aforesaid deeds. His confession statement was recorded, and he was arrested, and all the documents in original were seized under the Mahazar, and the accused/E.Harikrishna was produced before the learned Judicial Magistrate No.II, Chengalpattu, on 26.02.2016, and remanded to judicial custody on the same day itself. Furthermore, it is stated that all the documents, which were seized under Mahazar,

have been handed over to the aforesaid learned Judicial Magistrate on 26.02.2016 itself. Further, it is stated that the thumb impression of E.Harikrishna was obtained and the same has been sent along with the photographs etc., affixed in the documents to the Deputy Superintendent of Police, Finger Print Section, Kancheepuram, for verifying its genuineness and the forensic report is yet to be received.

7. Thus, prima facie, it is established that the Power of Attorney created by E.Harikrishna, is fake and fabricated document, as consequence thereof, the sale deeds executed vide document Nos.7740 and 7741 of 2013, dated 10.07.2013, are invalid documents. However, investigation should be taken to the legal end, and final report has to be filed. When this Court posed a question to the fourth respondent within what period, final report would be filed, it is submitted that since the forensic report is yet to be received, minimum three months' time is required to file final report.

8. In the light of the above, the Writ Petition filed in the name of Dr.A.M.Susila, represented by E.Harikrishna, has to be dismissed, and it is held that the Power of Attorney, alleged to have been executed in his favour vide Document No.6336 of 2013, is held to be nullity, and accordingly, the same is cancelled. Consequently, the two sale deeds executed by E.Harikrishna in favour of Srividhya Ekambaram and Sidhidevi, vide Document Nos.7740 and 7741 of 2013 are too held to be invalid. It appears that two purchasers (viz,. Srividhya Ekambaram and Sidhidevi) are not cooperating with the investigation of the case, hence, the Investigating Officer is directed to take effective steps to call them to appear for enquiry. If the said two persons failed to appear, then, the Investigating Officer shall move an application for non bailable warrant seeking arrest of those two persons. Since as on date, the property belongs to CMDA, the CMDA shall address a letter along with a copy of this order to the Sub Registrar of Registration, who shall make necessary entry in the Book 4, stating that the property is a Government property, and the same shall not be dealt with by any other third party. So far as the original land owner's right over the private land is concerned, (i.e., Dr.A.M.Susila's right) the same should not be in any manner prejudiced, as she intends to move for re-conveyance of the land. It is made clear that this Court is concerned only about the bogus transaction done by E.Harikrishnan, and it is not concerned about the actual petitioner's rights, if any, over the property in question.

9. With the above directions and observations, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.
sd

s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Judicial Magistrate, No.II, Chengalpattu.
2. The Secretary to Government,
State of Tamil Nadu,
Housing & Urban Development Department,
Fort St. George, Chennai - 600 009.
3. The Special Tahsildar (Land Acquisition -I)
Maraimalai Nagar Scheme,
Kattankulathur.
4. The Chennai Metropolitan Development Authority,
rep.by its Member Secretary,
No.8, Gandhi Irwin Road,
Egmore, Chennai - 600 008.
5. The Superintendent of Police,
Kancheepuram District.

+ 2 ccs to Mr.K.Raja Shrinivas, Advocate, SR 13625 & 14522

+ 1 cc to Govt.Pleader, High Court, Madras SR 14131

vgk(co)
prk22/3

Writ Petition No.38600 of 2015

WEB COPY