

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2016

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.37675 of 2007

and

M.P.No.2 of 2007

S.Gurunathan

rep.by his Power of Attorney

R.Baulraj

... Petitioner

Vs.

1. The Tasildhar
Tambaram
Chennai-600 045

2. The Inspector of Police
Central Crime Branch
St.Thomas Mount
Chennai-600 016

3. Usha Rani

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorari to call for the records from the first respondent pursuant to his impugned order in MM 5400/2006/B1, dated 16.06.2006 and to quash the same.

For Petitioner : Mr.B.Rabu Manohar
for Mr.G.Devadoss

For Respondents : Mr.R.Lakshmi Narayanan
Additional Government Pleader,
for R1 & R2
Mr.K.A.Ravindran for R3

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O R D E R

Reserved on : 04.09.2014

Pronounced on : 08.01.2016

The prayer in the writ petition is for issuance of a writ of certiorari to quash the impugned order, dated 16.06.2006, passed by the first respondent, whereby and whereunder he has cancelled the enjoyment certificate issued in favour of the

petitioner.

2. The short facts of the case are as follows:

According to the petitioner, from 2005 he has been in absolute possession and enjoyment of the landed property, comprised in Survey No.52 of Perumbakkam Village, Tambaram Taluk, Kancheepuram District, measuring an extent of 9231 sq.ft. The said land has been termed as "Gramanatham". He had applied for enjoyment certificate before the first respondent. By order, dated 10.10.2005, the first respondent had certified that the petitioner has been in absolute possession and enjoyment of the said property. The procedure for issuance of enjoyment certificate has been prescribed in Rule 15 of the Village Administrative Officers and Citizen Procedural Rules. In respect of Gramanatham property, the procedure adopted by the first respondent for issuance of enjoyment certificate is that the person, who wants enjoyment certificate, should apply for the same and the first respondent would conduct a detailed enquiry and the Village Administrative Officer would conduct an inspection. After the Village Administrative Officer is satisfied that the person, who applied for enjoyment certificate, is in absolute possession, he would furnish a report to the first respondent. Before that, the Village Administrative Officer has to exhibit the same under Form-23A in the Village for a period of fifteen days. Only after that, such a report would be sent to the first respondent.

3. The petitioner has further submitted that after such a detailed verification, the first respondent had issued the enjoyment certificate, dated 10.10.2005. Subsequently, on 15.10.2005, he had executed a Power of Attorney in favour of Ravisankar, empowering him to promote the said property, after receiving consideration and in turn Ravisankar had applied for planning permission and approached the Chennai Metropolitan Development Authority for further details with regard to development of the said property. One Subash Chandra, who is the husband of third respondent and holding a prominent post in C.M.D.A. seemed to have influenced Ravisankar and informed that the enjoyment certificate is a forged one and that the petitioner herein has no control over the said property and the third respondent has purchased the said property from a third party and she has claimed ownership of the said property. In the document of the third respondent itself, it has been clearly stated that the land in question is an agricultural land, whereas in the document of the petitioner it has been stated that the land in question is a Gramanatham land, which is in conformity with the revenue records of the first respondent.

4. Further, the petitioner has submitted that believing the words of the third respondent, Ravisankar gave a false

complaint, before the learned Judicial Magistrate, under Section 200 Cr.P.C., and the learned Judicial Magistrate had referred the complaint to the second respondent, who had registered a case against the petitioner and four others under Sections 465, 468 and 471 r/w 12(b) I.P.C. However, he had settled the matter with the consent of Ravisankar and he had cancelled the Power of Attorney also. In the meanwhile, the first respondent, believing the report of the second respondent, passed the impugned order, dated 16.06.2006, and cancelled the enjoyment certificate issued on 10.10.2005, without conducting any enquiry. Aggrieved by the same, he has filed this writ petition.

5. The third respondent has filed a counter affidavit stating that at the outset the writ petition is not maintainable. The impugned order has rightly been passed by the first respondent since neither the petitioner nor his vendor was in possession of the land in question. The subject land has absolutely been belonging to her and she has been in effective possession of the subject land from the date of purchase i.e. 16.07.1999, from the Tamil Nadu Government Servants Cooperative Building Society Ltd. The petitioner had purchased the property from one Uma Rani, through her Power Agent A.L.Sekar and they in turn obtained money from Ravisankar, who is a promoter. He was duped into giving Rs.57,00,000/- to the petitioner and others. The petitioner and others were arrested for using fake property documents and the complaint was given by Ravisankar. They have used fake documents with respect to the subject land, which she has purchased from the Building Society. The first respondent, on coming to know that the petitioner had obtained enjoyment certificate based on fake documents, cancelled the certificate.

6. Further, the third respondent has submitted that she has purchased the land in question from the Tamil Nadu Government Servants Cooperative Building Society as early as during 1999 and the alleged sale in favour of the petitioner took place on 01.09.2005. Since the question of title between the parties involved and the Tahsildar, who had issued enjoyment certificate was based on fake documents, it was cancelled subsequently and hence the writ petition is not maintainable. The revenue records have also been mutated in her name and she has been paying tax to the Panchayat.

7. The third respondent has further submitted that on record the petitioner had purchased the property from Uma Rani, through her power agent Sekar, during 2005. Uma Rani was not at all having any title or interest over the property and they had created fake documents to enrich themselves. They were never in possession of the property to hand over the same to the petitioner after registration. The petitioner is

not in possession of the subject land. The Village Administrative Officer had never conducted any enquiry as prescribed under the Citizens Procedure Rules and no inspection was made by him. The Village Administrative Officer had neither informed nor enquired from them before furnishing the report to the first respondent. Further, the first respondent has not referred anything about the Village Administrative Officer's report in the possessory certificate. Hence, it is quite unbelievable that the Village Administrative Officer had conducted enquiry and sent a report to the Tahsildar and the Tahsildar issued the possessory certificate.

8. Further, the third respondent has submitted that it is true that the petitioner and his vendor used fake documents to enrich themselves. The petitioner had entered into an agreement to promote the property with the promoter Ravisankar, who had applied for planning permission to C.M.D.A. In fact, before applying to C.M.D.A., the petitioner had applied for sub-division of the land to St. Thomas Mount Panchayat Union Commissioner and obtained sub-division on 22.09.2005 and on her representation an enquiry was conducted. Subsequently, after giving opportunity, the sub-division was cancelled. Her husband, who was in C.M.D.A., had not influenced Ravisankar. She had purchased the Building Society during 1999 and the alleged sale in favour of the petitioner took place only during 2005 after six years of her purchase. The subject land is not an agricultural land and in the schedule of the sale deed executed in favour of the petitioner, it has been mentioned as house site.

9. The third respondent has further submitted that the cancellation of power of attorney is between the petitioner and the promoter for which she has no nexus. But, at the same time, she has no right to proceed with any construction activities with the subject land. She was called by the second respondent by letter, dated 31.05.2006, for enquiry with all the documents pertaining to the subject land. On verifying the documents and after giving opportunity to the parties concerned, the second respondent had confirmed that the subject land is belonging to her. The first respondent has rightly cancelled the possessory certificate on 16.06.2006 and the petitioner has approached this Court nearly after 1 ½ years. The petitioner has not given sufficient reason for the delay in filing the writ petition. Having failed in all his attempts, he has come forward with this writ petition after 1 ½ years from the date of impugned order. Therefore, on the ground of laches, the writ petition is liable to be dismissed.

10. Further, the third respondent has submitted that since the petitioner had purchased the subject land on fake

documents, the first respondent has rightly cancelled the possessory certificate. The second respondent had conducted a detailed enquiry and sent a report to the first respondent. Her husband, who has retired from service, has nothing to do with the cancellation of the possessory certificate. The petitioner, while purchasing the subject land, should have verified the documents and possession over the land. She is in effective possession of the land from the date of purchase from the Building Society. Having purchased the property under fake documents, the petitioner has no right and title over the property and hence the writ petition is not maintainable. The petitioner has not come to this Court with clean hands. The petitioner has claimed title over the property against her and the question of title cannot be decided in writ proceedings. Hence, for all these reasons, she has prayed for dismissal of the writ petition.

11. The learned counsel appearing for the petitioner has submitted that the petitioner had purchased the subject land from Uma Rani under a registered Sale Deed. From the date of purchase, the petitioner is in physical possession and enjoyment of the said land. To that effect, the first respondent had issued an enjoyment certificate, based on the statement submitted by the Village Administrative Officer. The petitioner had executed a Power of Attorney to and in favour of one Ravisankar in order to promote the said land after obtaining planning permission from Chennai Metropolitan Development Authority, wherein the husband of the third respondent was holding a high post and he informed the power agent that the petitioner has no title or interest over the subject land. Further, the third respondent has purchased the said land from third party. In the document executed in favour of the third respondent, it has been mentioned that the subject land is an agricultural land, but actually the said land is a gramanatham land as per revenue records.

12. Further, the learned counsel has submitted that based on the oral complaint of the third respondent's husband, the power agent had lodged a complaint under Section 200 Cr.P.C., before the learned Judicial Magistrate, who had referred the complaint for further investigation to the second respondent. The second respondent registered a case under Sections 465, 468 and 471 r/w 12(b) I.P.C., against the petitioner and four others. Subsequently, the said criminal case has been settled amicably. In the meanwhile, the first respondent had cancelled the enjoyment certificate without proper enquiry. There is no discussion to the effect that the petitioner and another have obtained certificate for enjoyment fraudulently. Without prior notice and comprehensive enquiry, the cancellation order was passed, which is not appropriate since the impugned order is in breach of Articles 14 and 21 of the Constitution of India. As such, the principle of natural

justice has been violated. Therefore, the learned counsel has prayed this Court to set aside the impugned order passed by the first respondent.

13. The learned Additional Government Pleader appearing for the respondents 1 and 2 has submitted that initially the first respondent had issued enjoyment certificate to the petitioner pertaining to the subject matter of the property. Subsequently, after knowing the factual position, he has cancelled the enjoyment certificate. Therefore, the learned Additional Government Pleader has prayed for dismissal of the writ petition.

14. The learned counsel appearing for the third respondent has submitted that the subject land is belonging to the third respondent and she is in physical possession and enjoyment of the same from the date of purchase i.e. 16.07.1999 from the Tamil Nadu Government Servants Co-operative Building Society. As such, the petitioner cannot claim any right over the subject land. Therefore, the power agent of the petitioner himself had levelled a complaint before the learned Judicial Magistrate, before whom the de facto complainant had proved her case and the learned Judicial Magistrate found prima facie case and referred the complaint to the second respondent to conduct a comprehensive enquiry and accordingly the second respondent had conducted an investigation and registered a case against the petitioner.

15. Further, the learned counsel has submitted that since the main issue involved in this case is with regard to title, the writ petition is not maintainable. The petitioner and others have created forged documents for their personal gain. Hence, the cancellation order was passed by the first respondent. Actually, the third respondent is the absolute owner of the subject land and she is in possession of title deeds of the subject land. Therefore, the learned counsel has prayed for dismissal of the writ petition.

16. On considering the facts and circumstances of the case, arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court is of the view that the impugned order has been passed even without comprehensive enquiry in the presence of the concerned parties and as such the first respondent has committed a shortcoming in passing the impugned order. Therefore, the impugned order is not sustainable under law since it is an one-sided order. The one-sided order can be set aside at any stage. As such, the writ petition has generated sufficient force to allow it and the same is being allowed.

17. In the result, the writ petition is allowed and the impugned order, dated 16.06.2006, passed by the first respondent, is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

krk

To:

1. The Tasildhar,
Tambaram,
Chennai-600 045.
2. The Inspector of Police,
Central Crime Branch,
St.Thomas Mount,
Chennai-600 016.

+1cc to Mr.B.Rabu Manohar, Advocate, S.R.No.2014
+1cc to Mr.K.A.Ravindran, Advocate, S.R.No.1493

W.P.No.37675 of 2007
and
M.P.No.2 of 2007

RSK(CO)
CA(11/02/2016)

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