

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2016

CORAM:

THE HON'BLE MR.JUSTICE B.RAJENDRAN

W.P.No.34824 of 2016

and W.M.P.No.29981 of 2016

K.Ramasamy

... Petitioner

Versus

1. The Inspector General of Registration,
Registration Department,
Santhome, Chennai.
2. The District Registrar,
Coimbatore,
Coimbatore District.
3. N.Padmavathy
4. D.Rathamani
5. S.Manoranjitham
6. G.Kaalaiyarasi

... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus, to call for the impugned Letter dated 11.08.2016 made in No.20379/UI/2016 on the file of the 1st respondent and quash the same and direct the first respondent to dispose the appeal dated 28.04.2016 filed by the petitioner in accordance with law.

For Petitioner : Mr.V.R.Appaswamee
For R1 and R2 : Mr.A.Kumar,
Special Govt. Pleader

ORDER

With consent of both parties, the present writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner has filed the present writ petition challenging the letter dated 11.08.2016 of the first respondent, informing the petitioner that as there was an interim stay on the circular with regard to registration, his petition could not be considered at this stage.

3. The case of the petitioner is that the petitioner and his relatives purchased the property measuring an extent of 5.11 Acres in S.F.No.590/1, 592 & 593, situate at Nanjundapuram Village, Coimbatore North division, Coimbatore District, from

one Perumalsamy in the year 2013, by way of registered sale deeds. Originally, the said property belonged to the ancestors of one Sampamoorthy. After inheriting the property, the said Sampamoorthy sold the property to his paternal uncle, namely, one Venkitrama Naidu. After the death of the said Venkitrama Naidu, his legal heir, namely, Duraisamy inherited the property and sold the same to one Perumalsamy. From the said Perumalsamy, the petitioner and his relatives have purchased the property and are in possession and enjoyment of the property.

4. While so, the daughters of the said Sampamoorthy, namely, respondents 4 to 6 executed a release deed in favour of their sister, namely, N.Padmavathi, 3rd respondent herein as if they had inherited the property from their father. Thereafter, respondents 4 to 6 executed a similar type of release deed in favour of the 3rd respondent, by changing the boundaries of the property. Based on the two forged documents, the third respondent executed a sale agreement in favour of one K.Muthu. Therefore, the petitioner filed a petition before the Divisional Officer, Coimbatore North, requesting him to remove the names of the respondents 3 to 6 from the patta in respect of the land in question. On receiving the petition, the Divisional Officer sent a notice to the respondents 3 to 6 and they had appeared through their advocate. After due enquiry, the Divisional Officer recommended the Revenue Divisional Officer, Coimbatore, to remove their names from the patta in respect of the said property. Aggrieved against the same, the 3rd respondent preferred an appeal to the Revenue Divisional Officer, Coimbatore. In the appeal, the Revenue Divisional Officer upheld the recommendation of the Divisional Officer and directed to remove their names in the patta and recommended to include the petitioner's name and other purchasers, who are the relatives of the petitioners. Aggrieved against the same, no appeal was preferred by the respondents 3 to 6. Thereafter, the petitioner sent a representation dated 27.08.2015 to the first respondent, seeking to cancel the fraudulent documents and remove entries in the encumbrance certificate and to take criminal action against the respondents 3 to 6. The said representation was forwarded to the second respondent for taking necessary actions. After receiving the said representation, the second respondent sent a notice for enquiry on 30.11.2015, but, it was not held on that day. Hence, the petitioner filed a writ petition in W.P.No.1066 of 2016, seeking direction against the second respondent therein to dispose of his representation dated 27.08.2015. This Court, by an order dated 12.01.2016, directed the second respondent to dispose the representation of the petitioner. Pursuant to the said order, the second respondent, by an order 28.12.2015, citing the pendency of the civil cases among the parties, dismissed the representation, by directing the petitioner to work out his remedy before the Civil Court.

Challenging the said order, the petitioner filed an appeal dated 28.04.2016 under Section 69 of the Registration Act before the Inspector General of Registration, first respondent herein. The first respondent, by a letter dated 11.08.2016, informed the petitioner that the appeal could not be taken up in view of the stay granted in M.P.No.1 of 2012 in W.A.No.1382/2012 dated 24.08.2012 and in W.P.No.26019 to 26021 of 2012 dated 26.09.2012. Aggrieved against the letter dated 11.08.2016, the present writ petition has been filed.

5. The learned counsel for the petitioner submitted that the petitioner came to understand that the Division Bench of this Court, by order dated 24.08.2012, granted interim stay of prosecution alone and there was no stay of the operation of circular No.67 dated 03.11.2011. The learned counsel for the petitioner further submitted that in an identical circumstances, this Court, by an order dated 01.03.2016, quashed the proceedings of the first respondent dated 16.12.2015, holding that there is no impediment for the first respondent to dispose of the appeal preferred by the petitioner therein as there was only an interim stay of prosecution. He also produced a copy of the order before this Court. Therefore, the learned counsel for the petitioner prayed this Court to issue direction to the first respondent to take up the statutory appeal preferred by the petitioner and to dispose it of on merits.

6. The learned Special Government Pleader appearing for the respondents 1 and 2 has no objection for such an order being passed by this Court.

7. In an identical matter, this Court, by an order dated 01.03.2016, passed the following order:

"The petitioner has come up with the present writ petition for a Certiorarified Mandamus, calling for the impugned letter dated 16.12.2015 made in No.55624/U1/2015 on the file of the 1st respondent and quash the same and direct the first respondent to take up the petitioner appeal dated 16.12.2015 filed before him against order dated 24.11.2015 made in No.4926/B1/2015 passed by the second respondent and dispose of the same in accordance with law within the stipulated time.

2. The petitioner has filed an appeal under Section 69 of the Registration Act, before the first respondent, against the order passed by the second respondent dated 24.11.2015, dismissing the petitioner's complaint to cancel the fraudulent documents executed by one Mr.Kandasamy in favour of Mr.Velkrishna, as per Section 83 of the Registration Act and Circular No.67 dated 03.11.2011. But, the 1st respondent, vide the impugned letter dated 16.12.2015,

informed the petitioner that the appeal and its proceedings have been stopped, in view of the stay granted by this Court in M.P.No.1 of 2012 in W.A.No.1382 of 2012 dated 24.08.2012 and in W.P.Nos.26019 to 26021 of 2012 dated 26.09.2012. Hence, aggrieved over the same, the present writ petition has been filed.

3. When the matter came up for hearing, learned counsel for the petitioner submitted that in M.P.No.1 of 2012 in W.A.No.1382 of 2012 dated 24.08.2012, only stay of prosecution has been granted and therefore, there cannot be any impediment for the 1st respondent to dispose of the appeal. The learned counsel for the petitioner also invited the attention of this Court, to the stay order passed by this Court in M.P.No.1 of 2012 in W.A.No.1382 of 2012, dated 24.08.2012. On perusal of the order, it is seen that the prosecution alone is stayed.

4. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents.

5. Therefore, this Court considers that there cannot be any impediment for the 1st respondent to dispose of the appeal filed by the petitioner. Hence, the impugned proceedings dated 16.12.2015 made in No.55624/U1/2015 issued by the 1st respondent is quashed. In view of the above, the first respondent is directed to take up the appeal dated 16.12.2015 filed by the petitioner, against the order dated 24.11.2015 made in No.4926/B1/2015 passed by the 2nd respondent and dispose of the said appeal, by affording an opportunity of personal hearing to the petitioner as well as the necessary parties and pass appropriate orders within eight weeks from the date of receipt of a copy of this order. It is made clear that this Court is not expressing any opinion with regard to the merits of the claim made by the petitioner and it is for the first respondent to pass appropriate orders purely on merits and in accordance with law.

6. Accordingly, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed."

8. Following the same, the present writ petition is disposed of with a direction to the first respondent to take up the statutory appeal preferred by the petitioner on merits and in accordance with law after giving notice to the parties concerned. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Inspector General of Registration,
Registration Department,
Santhome, Chennai.
2. The District Registrar,
Coimbatore,
Coimbatore District.

+2 ccs to Mr.V.R.Appaswamee Advocate sr 56754
+1 cc to the Government Pleader sr 56920

W.P.No.34824 of 2016

aa15/12/2016

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