

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 29.03.2016

Pronounced on : 02-06-2016

Coram

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition No. 3708 of 2016

D. Vijayalakshmi ... Petitioner in person

Versus

1. State represented by,
The Chief Secretary/Vigilance Commissioner,
Fort St. George,
Secretariat, Chennai - 600 009.
2. The Secretary,
Personnel and Administrative Reforms Department,
Fort St. George,
Secretariat, Chennai - 600 009.
3. The Secretary,
Revenue Department,
Fort St. George,
Secretariat, Chennai - 600 009.
4. The District Collector,
Coimbatore District,
Coimbatore - 18.
5. The Regional Divisional Officer,
State Bank Road,
Coimbatore District,
Coimbatore - 18.
6. The District Revenue Officer,
State Bank Road,
Coimbatore District,
Coimbatore - 18.
7. The Village Administrative Officer,
Karuppa Gownder Street,
Coimbatore - 1.

8. The Revenue Inspector,
Karuppa Gownder Street,
Coimbatore - 1.

9. The Commissioner,
Police Commissioner Office,
Coimbatore - 18.

10. The Tahsildar,
Coimbatore South Thaluk Office,
Coimbatore - 18.

11. N. Bikash Ch bera

12. N. Tutun Bera ... Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus directing the respondents 1 to 10 to consider and to take necessary actions on the representation letter dated 20.12.2015 on the persons and officers who involved and helped in this illegal act of transferring the name in the town survey registry.

For Petitioner : Mrs. D. Vijayalakshmi
Petitioner-in-Person

For Respondents: Mr. V. Jayaprakash Narayanan
Special Government Pleader
for RR1 to 10

ORDER

The petitioner seeks for issuing a Writ of Mandamus directing the official respondents 1 to 10 to take appropriate action against the persons mentioned in her representation dated 20.12.2015 in accordance with law for having transferred their name in the town survey registry.

2. The Petitioner-in-Person would contend that she was in possession of the premises bearing Old Door Number 31/105, New Door No.288/291 along with other tenants therein. According to the petitioner, the total extent of the property mentioned above measures 5 cents and 205 square feet which originally belonged to Mrs. Lingammal. During her life time, Mrs. Lingammal executed a registered Will in favour of her son Mr. T. Gopalasamy, who is the brother of the petitioner. During the life time of Mrs. Lingammal, she has filed RCOP Nos. 58, 60, 94 and 96 of 1983 on the file of District Munsif Court, Coimbatore as against the tenants. Out of the four Rent Control Original Petitions, RCOP Nos. 56, 60 and 94 of 1983 were ordered and the

tenants were evicted. As far as RCOP No. 96 of 1983 is concerned, it was filed against Mr. Dharmalingam, one of the tenants in the above said property. After the death of Mrs. Lingammal, the Will came into effect and Mr. Gopalasamy was in possession of the above said property without any disturbance and he also prosecuted the RCOP No. 96 of 1983 against Dharmalingam. Ultimately, eviction was ordered in the above RCOP No. 96 of 1983 as against the tenant Mr. Dharmalingam. In the meantime, Mr. Gopalasamy has executed a registered Will dated 23.11.2000 respect of a portion of the property in favour of the petitioner and another Will dated 04.06.2013 whereby he executed the remaining property in favour of the petitioner's son Nithyanandam. Thus, according to the petitioner, by virtue of the above said Will dated 23.11.2000 and 04.06.2013, the petitioner and her son have become exclusive owners of the property aforesaid. By virtue of such ownership, the petitioner and her son have also impleaded themselves in the Execution Petition filed in the above RCOP No. 96 of 1983. It appears that the legal heirs of the above said Gopalasamy made a rival claim over the property. According to the petitioner, at the time of execution of the decree passed in RCOP No. 96 of 1983, the above said legal heirs, in collusion with the advocate commissioner appointed by the Court, have illegally demolished the property of the petitioner and her son with an ulterior motive thereby they were dispossessed. Immediately, the petitioner and her son have filed Civil suit in O.S. Nos. 269 and 455 of 2010 on the file of Sub-Court, Coimbatore. In the meantime, the above said property was fraudulently purchased by the respondents 11 and 12 herein and they have also mutated the revenue records and obtained patta in their name. Therefore, the petitioner and her son have impleaded the respondents 11 and 12 herein as parties in the above said suits in O.S. Nos. 269 and 455 of 2010. According to the petitioner, the suit in O.S. Nos. 269 and 455 of 2010 are pending adjudication before the Civil Court. It is the specific case of the petitioner that even as on date, the name of the petitioner is incorporated as assessee in the property tax demand register and she is continuously paying the same to the authorities concerned. Highlighting the above aspects, the petitioner has given a representation dated 20.12.2015 to the respondents 1 to 10 herein to take action against the officials who are responsible for mutation of revenue records in the name of the respondents 11 and 12. According to the petitioner, as the respondents 1 to 10 did not take any action on her complaint, she has come up with this writ petition.

3. The petitioner-in-person would contend that fraud has been committed by the respondents 11 and 12 and they have fabricated documents of title and mutated the revenue records in their favour. It is further stated that the petitioner has given a detailed representation to the respondents 1 to 10 to

take action against the offenders with reference to changing the name in the revenue records, however, so far no action has been taken. Therefore, the petitioner-in-person prayed for issuing appropriate direction to the respondents 1 to 10 to pass orders on her representation dated 20.12.2015 within a specified time limit to be fixed by this Court.

4. The learned Special Government Pleader appearing for the respondents 1 to 10, relying on the counter affidavit filed by the fifth respondent-District Collector, Coimbatore, would contend that the petitioner has approached this Court with unclean hands and she has suppressed many material particulars. According to the learned Special Government Pleader, the property in question originally belonged to Lingammal. During her life time, Lingammal has filed four Rent Control Original Petitions viz., RCOP Nos. 58, 60, 94 and 1983 before the District Munsif Court, Coimbatore. Out of the four cases, three cases were allowed and eviction was ordered. The case in RCOP No. 96 of 1983 against Dharmalingam alone was pending as Dharmalingam expired. On the death of Dharmalingam, the original tenant, another son of Lingammal namely Aiyasamy forcibly inducted a tenant namely Ponnusamy in the shop occupied by the deceased Dharmalingam. Therefore, Ponnusamy was impleaded in the RCOP No. 96 of 1983. During the pendency of RCOP No. 96 of 1983, even the said Ponnusamy died and his wife Karpagavalli was impleaded in RCOP No. 96 of 1983. Ultimately, RCOP No. 96 of 1983 was ordered and thereafter, Gopalsamy, who had serious differences with his wife and son, has executed the Will in favour of the petitioner. The petitioner, by virtue of the Will, taken possession of the shop premises covered in RCOP No. 96 of 1983 by filing EP No. 16 of 2004. Thereafter, the wife and son of Gopalsamy, aggrieved by the execution of Will in favour of the petitioner and her son, directed the petitioner and her son to prove the genuineness of the Will before the Civil Court. This prompted the petitioner and her son to file OS Nos. 269 and 455 of 2010 before the II Additional Sub Court, Coimbatore. In these circumstances, by claiming that the petitioner and her son have no right under the Will, the wife and son of deceased Gopalsamy, with the help of Advocate Commissioner, demolished the entire property on 13.03.2010. As regards the mutation of the revenue records, the learned Special Government Pleader would submit that the taxes and electricity service connection relating to the property in question still stands in the name of the petitioner. Neither the name transfer was effected in the electricity service connection nor the property right has been transferred in the name of any third person. It is also true that suppressing the suit filed by the petitioner and her son, the wife of T. Ayyasamy namely Mrs. Nagammal and her son have sold the entire property to the respondents 11 and 12. The learned Special Government Pleader further reiterated that the name transfer has not been effected

in the revenue records. If the petitioner has any grievance against such name transfer, she ought to have filed an appeal as contemplated under Section 14 of the Tamil Nadu Patta Pass Book Act, 1983 (Act 4 of 1986) and this writ petition is not maintainable. In the guise of seeking a direction to the official respondents to dispose of her representation, the petitioner is attempting to claim title over the property in question. When the petitioner has consciously filed civil suit, she has to work out her remedy only in the suit. The learned Special Government Pleader therefore prayed for dismissal of the writ petition.

5. I heard the Petitioner-in-Person and the learned Additional Government Pleader appearing for the respondents 1 to 10. I had perused the material records placed before this Court. The grievance of the petitioner is that she was forcibly dispossessed from the property in question and the property was also clandestinely sold in favour of the respondents 11 and 12 by the son of the testator, who had executed the Will in favour of the petitioner and her son. Hence the petitioner and her son have filed OS Nos. 269 and 455 of 2010 before the II Additional Sub Court, Coimbatore for declaring the genuineness of the Will executed in their favour in which the respondents 11 and 12 were also impleaded. When the suits are pending, alleging that the official respondents have carried out mutation of the revenue records in favour of the respondents 11 and 12, the petitioner has submitted a representation to initiate action against the official respondents who had allegedly colluded in the mutation of revenue records in favour of the respondents 11 and 12. In such a situation, the only question that arises for consideration is that whether this Court can give a direction to the official respondents, in exercise of powers under Article 226 of The Constitution of India, to the respondents 1 to 10 to consider the representation of the petitioner, which was given to take action against the official respondents for allegedly mutated the revenue records in favour of a third party.

6. In the present writ petition, the main grievance of the petitioner is that the respondents 11 and 12 have illegally purchased the property in question from a person who has no saleable right and on the basis of such ownership, the respondents 11 and 12 have mutated the revenue records. This is denied by the official respondents in the counter by stating that even as on date, the revenue records stand in the name of the petitioner. Further, the petitioner has not filed any document to show that the revenue records in respect of the property has been transferred in the name of the respondents 11 and 12. While so, no relief could be granted in favour of the petitioner in this writ petition. As rightly pointed out by the learned Special Government Pleader for the official respondents, even if the revenue records were mutated and/or transferred in

favour of any third party, the only recourse open to the petitioner is to prefer an appeal as contemplated under the Section 14 of the Tamil Nadu Patta Pass Book Act, 1983 (Act 4 of 1986). When such an alternative and effective remedy is available to the petitioner, invocation of Article 226 of The Constitution of India and filing this writ petition is unwarranted. Therefore, I hold that the present writ petition itself is not maintainable.

7. The petitioner-in-person seeks for a direction to the official respondents to pass orders on the representation dated 20.12.2015. In the representation, the petitioner seeks to punish those who have clandestinely sold the property in question in favour of the respondents 11 and 12. Such a relief cannot be granted by this Court for more than one reason. Even if a direction is issued to the official respondents, they cannot pass any order to restore the title on the petitioner. As mentioned above, the petitioner has to approach the Civil Forum and to get her title declared by the Civil Court. Unless the petitioner gets her title declared, the petitioner cannot make any grievance as regards the mutation of revenue records. In fact, the official respondents have made it clear that the revenue records have not been transferred and they still stands in the name of the petitioner. While so, even the direction sought for by the petitioner, in my view, need not be granted.

8. For all the reasons mentioned above, the writ petition is dismissed as devoid of merits. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

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Coimbatore - 18.

+1cc to M/S.D.Vijayalakshmi, Party in Person, Sr.29412
+1cc to The Government Pleader sr.29509

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srg 17/06/2016