

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2016

CORAM

The Honourable Mr.Justice R.SUBBIAH

W.P.No.5950 of 2016

and

M.P.No.5304 of 2016

C.V.Subramanian

.... Petitioner

...vs...

- 1.The Inspector General of Registration,
Santhome High Road,
Santhome, Chennai-600 028.
- 2.The Sub-Registrar,
Neelankarai Registrar Office,
Neelankarai,
Chennai-600 041.
- 3.The President,
Tamil Nadu Secretariat Staff Co-op.,
Housing Society, No.105,
(Upstairs) 1st Circle Road,
Secretariat Colony, Okkiyam Thoraikpakkam,
Chennai-97.

(R3 was impleaded as per order dt 29.02.2016
in WMP.5956/2016 in WP.5950/16

...Respondents

Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents to accept for registration and register the Settlement Deed being executed by the petitioner in favour of his daughter in relation to the property bearing Plot No.663, in Survey No.404/2B, 2C, under Okkiyam Thoraipakkam Housing Scheme by accepting the Letter of Allotment, Sale Agreement, Planning Permission, Building Permit and other documents and without insisting upon the production of the Original Sale Deed in favour of the petitioner.

For Petitioner : Mr.P.Seshadri

For Respondents : Mr.R.A.S.Senthilvel, AGP (For R1 & R2)

ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Mandamus, directing the respondents to accept for registration and register the Settlement Deed being executed by the petitioner in favour of his daughter in respect

of the property bearing Plot No.663, in Survey No.404/2B, 2C, under Okkiyam Thoraipakkam Housing Scheme by accepting the Letter of Allotment, Sale Agreement, Planning Permission, Building Permit and other documents, and without insisting upon the production of the Original Sale Deed in favour of the petitioner.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows:-

2-1.The petitioner served in Tamil Nadu Secretariat from the year 1967. On 02.12.2002, he was issued with a Letter of Allotment by the Tamil Nadu Secretariat Staff Co-operative Housing Society Ltd., allotting Plot No.663 measuring 1995 sq.ft in the Housing Scheme formulated by the said Society, in Okkiyam Thoraipakkam Village and approved by C.M.D.A. Pursuant to the said allotment letter, an Allotment-cum-Sale Agreement was entered into on 02.12.2002 by the said Society in his favour, in respect of the above property. The petitioner had paid the required consideration of Rs.51,870/- to the said Society. On 05.05.2005, Planning Permission was granted by the Okkiyam Thoraipakkam Panchayat Union by Order dated 23.05.2005 and Planning Permit was also issued, for which the petitioner had paid the development charges, building license fee etc. After availing loan, the petitioner started construction in the said plot with due plan approval and the same was completed during 2007-2008 measuring 1000 sq.ft in the ground floor. The petitioner has also obtained electricity service connection for the said property.

2-2.Due to certain administrative issues the Sale Deed for the various allottees in respect of the housing colony has not been issued and the same is under process. The petitioner has already applied for property tax assessment for payment of the property tax with retrospective effect. The petitioner is a Senior Citizen aged 68 years. To avoid any dispute over succession of his property, he wanted to execute a Deed of Settlement, out of natural love and affection, in favour of his daughter. When the petitioner approached the respondents for the purpose of registration of the settlement, he was merely informed that the Settlement Deed cannot be registered for want of Sale Deed or Patta for the property. The petitioner is in possession of the property with ground floor construction of about 1000 sq.ft.

2-3.On enquiry, the petitioner came to know that a Circular has been issued by the 1st respondent on 25.04.2012 to the effect that in respect of deeds involving transfer of immovable property including settlement, the registration authority should insist for the production of previous original deed by which the executant acquired right over the property, before registration of settlement, in order to find out that the executant has right over the property. The petitioner has all the original documents namely allotment letter, Sale Agreement, Planning Permission and other documents. The petitioner sent a letter to the 1st respondent on 05.02.2016 requesting the 1st

respondent to issue instructions to the 2nd respondent to register the proposed settlement deed to be executed by the petitioner in favour of his daughter by accepting the source of title. Since the petitioner's request was not considered by the respondents, the petitioner has come forward with the present writ petition before this Court.

3. The 2nd respondent has filed a counter, inter alia, contending that the 1st respondent herein vide Circular No.18339/C1/2002, dated 25.04.2012 has given the following instructions to all the registering officers_

"In respect of deeds involving transfer of immovable property, such as sale, gift, settlement, exchange or creation charge over the property such as Mortgage or power of Attorney, the registering officer should insist presentation of previous original deed/deeds by which the executants acquired right over the said property before registering the document and then verify the previous documents to satisfy himself that the executants have right over the property."

In view of the above instruction, it is absolutely essential for the petitioner to produce the original title deed under which he is claiming sole and exclusive right over the subject property. The owner of the subject property viz., Tamil Nadu Secretariat Staff Co-operative Housing Society Ltd., has not at all executed any transfer/sale deed in favour of the petitioner. As per Rule 162-A of the Registration Rules, no registration officer shall accept for registration any document or service agreement evidencing bonded labour or transaction constituting an offence under any law or opposed to public policy. It is further stated in the counter by the 2nd respondent that inasmuch as the property owned by the Tamil Nadu Secretariat Staff Co-operative Housing Society Ltd is being transferred by the petitioner in favour of his daughter, that too without obtaining the consent of the such Society, the said action by itself would constitute an offence in view of Rule 162-A of the Registration Rules. Hence, according to the 2nd respondent, the action of the registering authority in refusing to register the settlement deed executed by the petitioner in respect of the subject property, is very much in order. Thus, the 2nd respondent sought for dismissal of the writ petition.

4. I have carefully heard the submissions made on either side and perused the materials available on record.

5. Even as per the statement of the petitioner, no sale deed was executed by the Tamil Nadu Secretariat Staff Co-operative Housing Society Ltd in his favour in respect of the subject property. The petitioner is having only the allotment order. Unless sale deed is executed by the Tamil Nadu Secretariat Staff Co-operative Housing Society Ltd in favour of the petitioner, the petitioner cannot have title over the property.

When the title in respect of the subject property was not passed on in favour of the petitioner, the question of executing settlement deed by him in favour of his daughter does not arise. Under such circumstances, this Court cannot give any direction to the respondents as sought for by the petitioner in the writ petition. There is no merit in the writ petition and the same is liable to be dismissed.

In fine, the writ petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

ssv

To

- 1.The Inspector General of Registration,
Santhome High Road,
Santhome, Chennai-600 028.
- 2.The Sub-Registrar,
Neelankarai Registrar Office,
Neelankarai,
Chennai-600 041.
- 3.The President,
Tamil Nadu Secretariat Staff Co-op., Housing Society,
No.105, (Upstairs) 1st Circle Road,
Secretariat Colony, Okkiyam Thoraikpakkam,
Chennai-97.

+1cc to Mr.P. Seshadri Advocate, S.R.No.19756
+1cc to the Government Pleader, S.R.No.17395

SVI (CO)
EU(11/04/2016)

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