IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2016

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THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.6701 of 2016
and
W.M.P.Nos.5940 & 5941 of 2016

G.S.Senthilnathan ... Petitioner

Vs.

1. The Deputy Superintendent of Police,
   Economic Offices Wing-II,
   Namakkal, Namakkal District.

2. The Inspector of Police,
   Economic Offences Wing-II,
   Crime No.1 of 2015,
   Namakkal Unit.

3. The Sub-Registrar,
   O/o.The Sub-Registrar,
   Thathaiyangarpet,
   Musiri Taluk,
   Trichy District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned orders in C.No.43/DSP/EOW-II/NKL/2015, dated 25.03.2015 and C.No.105/DSP/EOW-II/NKL/2015, dated 09.07.2015 issued by the 2nd respondent, C.No.105-11/DSP/EOW-II/NKL/2015, dated 22.09.2015 passed by the 1st respondent and the consequential order passed on the Inspection Note dated 30.12.2015 issued by the 3rd respondent, and to quash the same and consequently, to direct the 3rd respondent to register the documents on presentation for registration, relating to the lands comprised in S.Nos.138/1A, 1B, 1C, 1D and 138/2 of Karikali Village, Musiri Taluk, Trichy District.

For Petitioner : Mr.N.Manokaran

For respondents : Mrs.P.Rajalakshmi,
Government Advocate

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ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned orders in C.No.43/DSP/EOW-II/NKL/2015, dated 25.03.2015 and C.No.105/DSP/EOW-II/NKL/2015, dated 09.07.2015 issued by the 2nd respondent, C.No.105-11/DSP/EOW-II/NKL/2015, dated 22.09.2015 passed by the 1st respondent and the consequential order passed on the Inspection Note dated 30.12.2015 issued by the 3rd respondent, and to quash the same and consequently, to direct the 3rd respondent to register the documents on presentation for registration, relating to the lands comprised in S.Nos.138/1A, 1B, 1C, 1D and 138/2 of Karikali Village, Musiri Taluk, Trichy District.

2.The brief facts, which are necessary to dispose of the writ petition, are as follows_

2-1.According to the petitioner, the property measuring to an extent of 8.93 acres comprised in S.No.138/1A, 1B, 1C, 1D and 138/2 of Karikali Village, Musiri Taluk, Trichy District was owned by one S.Manivannan, K.M.Varichandran and R.Chandrasekar by virtue of a Sale Deed dated 05.09.2012 (Doc.No.1589/2012). They sold the said property to the petitioner and one S.Periyasamy under a Sale Deed dated 12.06.2013 (Doc.No.984/2013). Right from the date of purchase, the petitioner has been in joint possession and enjoyment of the said property, along with the said S.Periyasamy. Subsequently, the petitioner and the co-owner Periyasamy had also entered into an Agreement of Sale dated 21.09.2015 (Doc.No.1477/2015) with one D.Duraisamy. But, subsequently, in order to sell a portion of his share, the petitioner has decided to cancel the above said registered Sale Agreement dated 21.09.2015. Accordingly, the petitioner and the co-owner Periyasamy and the agreement holder D.Duraisamy have entered into a Deed of Cancellation of the Sale Agreement dated 30.12.2015. When it was presented of registration, it was returned with an Inspection Note dated 30.12.2015 stating that the 2nd respondent has sent a communication dated 25.03.2015, directing the 3rd respondent not to entertain any document for registration in respect of the subject property. Simultaneously, the petitioner has presented a Sale Deed dated 30.12.2015 for registration before the 3rd respondent to sell an extent of 1.00 acre out of his undivided portion of 4.46 ½ acres, in the name of one Mr.A.Ayyappan. The said Sale Deed was also returned along with the Inpection Memo dated 30.12.2015 on the same ground. On perusal of the communication sent by the 2nd respondent, the petitioner came to know that the said proceedings in an internal communication between the respondents and it has nothing against the petitioner's interest.

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2-2.On enquiry, the petitioner was informed that his vendors were arrested on 24.03.2015 in connection with a case in Crime No.1 of 2015 pending investigation on the file of the 2nd respondent, for the alleged offence under Section 5 of the TNPID Act, 1997 r/w Section 120-B, 406 and 420 IPC. After completion of the investigation, the 2nd respondent filed a final report and it was taken on file in C.C.No.16 of 2015 on the file of the Special Judge for TNPID Act cases at Coimbatore. In fact, in the said case, trial has commenced, witnesses were examined. On further verification, the petitioner came to know that the property purchased by the petitioner has not been attached. In the absence of any attachment order issued by the State Government in exercise of the powers conferred under the provisions of the TNPID act, 1997, it may not be fair and proper on the part of the 2nd respondent to send the impugned communications to the 3rd respondent, not to entertain any document for registration. Hence, the petitioner has come forward with the present writ petition for the relief as stated supra.

3.Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents and perused the materials available on record.

4.It is the submission of the learned Government Advocate that based on the communications sent by the 2nd respondent, the impugned order dated 30.12.2015 came to be passed by the 3rd respondent directing the petitioner to obtain No Objection Certificate from the 1st respondent, to register the document.

5.But, it is the submission of the learned counsel appearing for the petitioner that the 2nd respondent, by couching the impugned communication dated 25.03.3015, in a camouflaged language, has indirectly attached the property of the petitioner, which is not permissible in law. Further, if at all the 2nd respondent has any reason to believe that the property in question belonging to the petitioner was procured from and out of the fund misappropriated from the defacto-complainant, he ought to have taken steps to send a report to the Government for initiating action under Section 3 of the Criminal Law (Amendment) Act, 1944 and therefore, the 2nd respondent cannot by himself be empowered to prohibit the transaction of the property, by sending the communication to the concerned Sub-Registrar Office and thereby interfere with the petitioner's right to property. Thus, the learned counsel for the petitioner sought for quashing the impugned orders. In support of his contentions, the learned counsel for the petitioner relied upon a decision rendered by this Court in "V.Sundaram versus The Deputy Superintendent of Police, Economic Offences & Wing, Kancheepuram District" vide order, dated 27.07.2015 in W.P.No.11221 of 2015.

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6.As per Section 3 of the Criminal Law (Amendment) Act, 1944, if a person is involved in an offence under Section 406 or 420 IPC and the victim is a private person, proceedings can be invoked for attaching the properties of the offender where it is believed that such properties have been procured from and out of the fund misappropriated by the offender. The Act provides certain procedure to effect attachment. It is only the State Government that can initiate action by approaching the District Judge of the jurisdiction where the offender ordinarily resides or carries on business. In fact, the police officer or investigating agency has no role to paly in this regard. They can, at the most, submit a report to the State Government, requesting the State Government to initiate action for attaching the property of the offender under the provisions of the Act.

7. In the present case, as could be seen from the impugned communications, the 2nd respondent has identified the property of the petitioner to initiate action for attachment under the provisions of the Act. But even prior to the Government passed necessary order, the 2nd respondent sent a communications, dated 25.03.2015 & 09.07.2015 to the 3rd respondent stating that the registation in respect of the property of the petitioner should be undertaken only on the clearance of the Court. If at all the 2nd respondent feels it appropriate in order to safeguard the interest of the defacto-complainant who was cheated by the petitioner's vendors and to ensure that the petitoner shall not derive benefits from the property, which he procured by means of misappropriated funds, he could very well take steps by sending a report to the State Government seeking to intiate action under Section 3 of the Act for attaching the property. Therefore, as rightly contended by the learned counsel appearing for the petitioner, the 2nd respondent cannot arrogate to himself the power to issue such a veiled threat to the Sub-Registrar/3rd respondent and thereby prohibit the transaction in respect of the property. In this regard, it is worthwhile to refer the decision of this Court rendered in very similar circumstances, in "V.Sundaram versus The Deputy Superintendent of Police, Economic Offences & Wing, Kancheepuram District" vide order, dated 27.07.2015 in W.P.No.11221 of 2015, wherein, after following the decisions of the Full Bench of Bombay High Court and the Kerala High Court, it has been held as under in para 12 and 13:

> "12. This Court is in complete agreement with the law laid down by the Full Bench of the Bombay High Court and the Kerala High Court with regard to the power of the police office to seize immovable properties under Section 102 Cr.P.C. The Deputy Superintendent of Police, by couching the impugned

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communication in a camouflaged language, is in fact, indirectly attaching the properties of the accused via the backdoor, which is not permissible. If the Deputy Superintendent of Police is desirous of safeguarding the interest of the depositors, he should have immediately taken steps to send a report to the Government for initiating action under Section 3 of the Criminal Law Amendment Ordinance and not through such a subterfuge.

"13. The order impugned is indeed arbitrary exercise of power and is therefore, violative of Article 14 of the Constitution of India. It is always open to the Investigating Officer to call for the information from the Sub Registrar about the property holdings of an accused. He can also ask the Sub Register to inform him, if any transaction concerning the properties of the accused is registered. He cannot prohibit the Registrar from registering a document."

8. In view of the above discussion, I am of the view that the impugned communications of the 2nd respondent are liable to be quashed.Further,if a document is presented for registration in compliance with the provisions under the Registration Act, the Sub-Registrar cannot deny the registration of the same unless there is interim order from the competent Court restraining him from registering the document and he is empowered to deny the registration of the document within the frame of provisions of the Registration Act and Rules framed thereunder, particularly, on the grounds enunciated under Rule 55, viz.,if the document is forged, impersonation by the parties,if the executing party is a minor or a lunatice, etc. Therefore, in the absence of any interim order from the competent Court nor any of the grounds available under Rule 55,the Sub Registrar cannot deny the registration.

The Writ Petition is allowed and the impugned communications of the respondents as well as the 3rd respondent are hereby set aside. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

1. The Deputy Superintendent of Police,
   Economic Offices Wing-II,
   Namakkal, Namakkal District.

2. The Inspector of Police,
   Economic Offences Wing-II,
   Crime No.1 of 2015,
   Namakkal Unit.

3. The Sub-Registrar,
   O/o.The Sub-Registrar,
   Thathaiyangarpet,
   Musiri Taluk,
   Trichy District.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.11680
+1cc to the Government Pleader, S.R.No.11777

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