

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

Writ Petition No.2829 of 2017

R.V.Mahesh

... Petitioner

vs.

1. The District Registrar,
O/o. District Registrar,
No.3, Vignesh Complex,
1st Floor, East Tiruppur,
Postal Colony,
Sivan Theatre opposite,
Tiruppur - 641 607

2. Dinesh

3. Gopalakrishnan

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondent to conduct enquiry regarding the fake Sale Deeds in Document No.1030/2006, dated 20.07.2006 and 2287/2006, dated 24.11.2006, based on the Circular No.67 of the Inspector General of Registration, dated 03.11.2011 and file the Report on considering the petitioner's representation, dated 02.12.2016.

For Petitioner : Mr.R.Shanmugam

For 1st Respondent: Mr.A.Kumar
Special Government Pleader

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O R D E R

The petitioner has come up with this Writ Petition seeking a direction to the respondent to conduct enquiry regarding the fake Sale Deeds vide Document No.1030/2006, dated 20.07.2006 and 2287/2006, dated 24.11.2006, based on the Circular No.67 of the Inspector General of Registration, dated 03.11.2011 and file a Report, on considering his representation, dated 02.12.2016.

2. According to the petitioner, he is the owner of the properties to an extent of 13.37 acres comprised in Survey Nos.211, 207/B, 215/2, 207/B, 212/1, 213/1A and 213/1B situated at Ne.Mukkoodu Jellipatti Village, Udumalaipet Circle, Komangalam Sub Registrar District, Tiruppur. It is his case that he was a member of Arjun Amaravathi Chit Private Limited and due to loss in his business, he failed to pay two monthly instalments. On the advise of one Sridhar, Branch Manager of the said Chit Company, the petitioner paid Rs.300/-, Rs.500/- and Rs.1000/- on daily basis and credited the due amount in the Pass Book. While so, when the petitioner went to Chennai, showing an arrest warrant against him, the benami of Amaravathi Chit Company, by name, Gopalakrishnan got the petitioner's sister's son Balaji's property measuring an extent of 3.24 acres, illegally executed in his favour vide Document No.1030/2006 on 20.07.2006, without paying any sale amount to the petitioner and Balaji. In this regard, the petitioner lodged a complaint in Crime Branch, Coimbatore and a case has been registered in Crime No.61 of 2011 against them. Since no further action was taken by the respondents, the petitioner made a representation to the respondents on 02.12.2016 to conduct an enquiry regarding the said fake Sale Deed, based on the Circular No.67 of the Inspector General of Registration, dated 03.11.2011. Since no reply is forthcoming, the petitioner is before this Court by way of the present Writ Petition.

3. Heard the learned counsel on either side and perused the material documents available on record.

4. The petitioner has earlier approached this Court in W.P.No.33000 of 2016 seeking a writ of mandamus directing the 1st respondent therein to cancel the fake Sale Deed registered vide Document No.1030/2006, dated 20.07.2006 in respect of his property, on considering his representation dated 22.08.2016. He has also stated therein that he had lodged a criminal complaint with the Police. This Court, by an order dated 21.09.2016 disposed of the said Writ Petition and the relevant portion is extracted hereunder:

"4. In any event, if the petitioner's grievance is that the document is a fake document, he has to work out his remedies either before the competent Civil Court or before the District Registrar by invoking his powers under Circular No.67.

5. With the above liberty, the writ petition is disposed of. No costs.'"

5. Though this Court has clearly directed the petitioner to either work out his remedy before the competent Civil Court or the District Registrar, the petitioner has conveniently

suppressed the disposal of the said Writ Petition and sent a representation to the 1st respondent on 02.12.2016 seeking to cancel the fake Sale Deed based on the Circular No.67 of the Inspector General of Registration. Without awaiting the reply of the 1st respondent, the petitioner has once again approached this Court hastily, with a prayer to conduct enquiry regarding the fake Sale Deeds by considering his representation, dated 02.12.2016. In short, the order dated 21.09.2016 passed in the earlier Writ Petition is given a go-by and the petitioner now seeks a fresh order to be passed to consider his stale claim. Such unusual act of the petitioner has to be condemned. This is nothing but abuse of process of law.

6. In this context, this Court wishes to follow the decision of a Division Bench of this Court in the case of M.Ingaci Vs. The Commissioner, Devakottai Municipality, Sivagangai District, reported in 2010 2 Law Weekly 785, in which I am also a party, wherein the Division Bench held that there are several instances where unscrupulous petitioners have misused the direction issued to "consider". It was further held that there are large-scale misuse of the orders "to consider". The Division Bench also relied on the decision of the Hon'ble Supreme Court reported in the case of A.P.SRTC Vs.G.Srinivas Reddy (2006)3 SCC 674=2006, 3 Law Weekly 170, wherein in Para Nos.18 to 20, it was held as under:-

"18. We may also note that sometimes the High Court dispose of the matter merely with a direction to the authority to 'consider' the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the court to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to 'consider' the matter afresh. Be that as it may.

19. There are also several instances where unscrupulous petitioners with the connivance of 'pilable' authorities have misused the direction to 'consider' issued by Court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches

the High Court with an innocuous prayer to direct the authority to 'consider' and dispose of the representation. When the court disposes of the petition with a direction to 'consider' the authority grants the relief, taking shelter under the order of the court directing him to 'consider' the grant of relief. Instances are also not wanting where authorities unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order 'to consider' as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to 'consider' may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of the court's direction 'to consider' the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily-wagers seeking regularisation/absorption in to regular service is a species of cases, where there has been large-scale misuse of the orders 'to consider'.

20. Therefore, while disposing of the writ petition with a direction 'to consider', there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The court should also normally fix a time-frame for consideration and decision. If no time frame is fixed and if the authority does not decide the matter, the direction of the court becomes virtually infructuous as the aggrieved petitioner will have to come again to court with a fresh writ petition or file an application for fixing time for deciding the matter."

7. In view of the above, this Court holds that what cannot be considered cannot be directed to be considered. Since the petitioner has cleverly suppressed the earlier order of this Court in the pleadings and has made a further representation to the respondents seeking to consider his claim, this Court imposes costs of a sum of Rs.5,000/- (Rupees Five Thousand only) on the petitioner. The petitioner is directed to pay the said sum to the Mediation and Conciliation Centre attached to this Court within a period of one week from today, failing which, the parties shall appear before this Court.

This Writ Petition is dismissed with the above direction.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Aeb
To:

1.The District Registrar,
O/o. District Registrar,
No.3, Vignesh Complex,
1st Floor, East Tiruppur,
Postal Colony,
Sivan Theatre opposite,
Tiruppur - 641 607.

2.The Assistant Registrar,
TamilNadu Mediation and Conciliation Centre,
High Court, Madras.

+1cc to Mr.R.Shanmugam, Advocate Sr.7278
+1cc to the Government Pleader Sr.7810

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