

Reserved on : 14.06.2017

Delivered on : 30.06.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2017

CORAM

THE HON'BLE Mr. JUSTICE M.DURAI SWAMY

W.P.No.33393 of 2015 and
M.P.Nos.1 to 4 of 2015 and
W.M.P.Nos.202 & 203 of 2016

S.Chellappan

... Petitioner

Vs.

1. The State of Tamil Nadu
rep by its Secretary to Government,
Commercial Taxes and Registration Department,
St.George Fort, Chennai - 600 009.
2. The Inspector General of Registration,
Office of the Registration Department,
Santhome High Road, Mylapore,
Chennai - 600 004.
3. The District Registrar (South),
Administrative Incharge,
No.9, Jeenees Road, Saidapet,
Chennai - 600 015.
4. The Joint Sub Registrar-I,
Saidapet, South Chennai,
Chennai - 600 015.

5. Dr.V.P.R.Varadharajan

... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the 3rd respondent in relation to the impugned order dated 07.09.2015 vide No.10428/A3/2012 and quash the same and consequently, direct the 4th respondent to delete the entires with regard to the impugned order of the 3rd respondent dated 07.09.2015 vide No.10428/A3/2012 from the "A" Register maintained by the 4th respondent.

For Petitioner : Mrs.Chitra Sampath, Senior Counsel
for Mr.T.S.Baskaran

For Respondents : Mr.A.N.Thambidurai,
Special Government Pleader (R1 to R4)

Mr.AR.L.Sundaresan, Senior Counsel
for Mr.V.G.Suresh Kumar (R5)

O R D E R

The petitioner has filed the Writ Petition to issue a writ of certiorarified mandamus to call for the records of the 3rd respondent in relation to the impugned order dated 07.09.2015 and to quash the same and consequently, direct the 4th respondent to delete the entires with regard to the impugned order of the 3rd respondent dated 07.09.2015 from the "A" Register maintained by the 4th respondent.

2. The brief case of the petitioner is as follows:

(i) According to the petitioner, the father of the 5th respondent viz., V.P.Rama Pandiya Raj owned land measuring a total extent of 9.34 acres in S.No.223/2 at Thiruvananthapuram Village. The said V.P.Rama Pandiya Raj had formed a layout consisting of 48 plots. During the period 1961 to 1968, the 5th respondent's father V.P.Rama Pandiya Raj had sold all the Plots to various third parties under different Sale Deeds. During the year 1973, the Tamil Nadu Housing Board had acquired large extent of lands in S.No.223/2. As the purchasers of the plots from V.P.Rama Pandiya Raj had failed to effect name transfer in the revenue records, during the acquisition proceedings name of V.P.Rama Pandiya Raj had reflected as the land owner based on the revenue records. Subsequently, by a notification, land measuring 2.90 acres in S.No.223 was dropped from the acquisition proceedings. Based on the name found in the revenue records, the 5th respondent and other family members started making false claims over the lands for which acquisition proceedings were dropped.

(ii) The 5th respondent's father Dr.V.P.Rama Pandiya Raj and their family members had sold their entire land in S.No.223/2 and they had not retained any part of the property in the said S.No.223/2. However, the 5th respondent made a false claim that he is the owner in respect of the lands for which the acquisition proceedings were dropped. The 5th respondent filed a suit in O.S.No.4587 of 2000 on the file of the XVI Assistant Judge, City Civil Court, Chennai against the Government Officials for bare injunction alleging that he was in possession

of the Plot Nos. 1 to 3. In the said suit, the Tahsildar of Mylapore-Triplicane filed a detailed written statement stating the extent of land acquired and those dropped from the acquisition proceedings. Further, the Tahsildar had stated that the respondent's father had sold Plot Nos.1 to 3 under different Sale Deeds and these Plot Nos.1 to 3 were dropped from the land acquisition proceedings. However, the 5th respondent had not pressed the suit. Thus, it is clear that the 5th respondent had no semblance of right in the Plots, which were deleted from the acquisition proceedings by the Tamil Nadu Housing Board in S.No.223 of Thiruvananthapuram Village. Neither the 5th respondent nor his father retained any extent of land in S.No.223 and hence, had no right to the said Survey Number.

(iii) According to the petitioner, he is the absolute owner of the property in Plot Nos.1, 2 and 3 in S.No.223/2. Originally the said Dr.V.P.Rama Pandiya Raj, under a registered Sale Deed dated 21.07.1961, had sold a portion of Plot No.1 measuring an extent of 8 grounds and 2203 sq.ft., to one Mrs.Ranjana Prakash Mehta. The said Rajana Prakash Mehta had sold Plot No.1 Part in favour of one Krishnamoorthy under a Sale Deed dated 06.03.1967. Later from the legal heirs of Krishnamoorthy, the petitioner had purchased Plot No.1 Part under 5 registered Sale Deeds dated 21.06.1995. Under a registered Sale Deed dated 21.07.1961, the 5th respondent's father V.P.Rama Pandiya Raj had sold the remaining portion of Plot No.1 measuring an extent of 8 grounds 2237 sq.ft., to one H.C.Kothari, S/o C.M.Kothari Jain. The petitioner, representing his minor son C.Sathiyam, had entered into a registered Sale Agreement dated 27.11.2000 for the purchase of the half share of this property (i.e.) 4 grounds and 1118 sq.ft., from H.C.Kothari. The petitioner also entered into a registered Sale Agreement on the same day (i.e.) 27.11.2000 with H.C.Kothari. As per the terms of the Sale Agreement, the vendor had to appoint S.Ganesapandian as his Power of Attorney for executing the Sale Deed in favour of the purchaser. The Power of Attorney, S.Ganesapandian, under a registered Sale Deed dated 31.03.2008 conveyed the property of H.C.Kothari to the petitioner. Hence, the petitioner has become the absolute owner of the entire Plot No.1.

(iv) Similarly, Plot Nos.2 & 3, measuring 7 grounds and 1538 sq.ft., were sold by Dr.V.P.Rama Pandiya Raj to one Ajith Mehta on 21.07.1961. Under a Power of Attorney Deed dated 15.11.1996, one Balraj was appointed as Power Agent of Ajith Mehta. The said Power Agent Balraj, under various Sale Deeds dated 27.12.1999, sold the properties in favour of Jayalakshmi and 7 others. The said Jayalakshmi and 7 others appointed S.Ganesapandian as their Power Agent under a registered Power of Attorney dated 26.04.2001. The said S.Ganesapandian had executed a registered Sale Deed dated 31.03.2008 in favour of the petitioner. Thus,

the petitioner has become the absolute owner of Plot Nos.2 & 3.

(v) The remaining part of Plot Nos.3 & 4 measuring an extent of 7 grounds and 1538 sq.ft., were sold by the 5th respondent's father V.P.Rama Pandiya Raj to one Kantha Praveen Mehta under a registered Sale Deed dated 21.07.1961. The said Kantha Praveen Mehta had settled the property in favour of his son Kumar P.Mehta under a registered Settlement Deed dated 09.03.2010. Since Plot No.4 was acquired by the Tamil Nadu Housing Board, the petitioner had purchased the remaining Plot No.3 from Kumar P.Mehta under a registered Sale Deed dated 18.08.2010. Thus, the petitioner had purchased Plot No.3 Part measuring an extent of 2 grounds and 1613 sq.ft., under the said Sale Deed. In these circumstances, the petitioner has become the absolute owner of Plot Nos.1 to 3.

(vi) It is the case of the petitioner that during the lifetime of Dr.V.P.Rama Pandiya Raj, the father of the 5th respondent, he had sold the entire extent of lands to various 3rd parties and nothing remains to be enjoyed by his heirs. Hence, the 5th respondent is not an aggrieved person and he does not have the locus standi to challenge the Sale Deeds before the respondents 1 to 4.

(vii) The 5th respondent, who was not successful in claiming right over the suit property in the Civil Court, submitted a petition dated 13.01.2012 to the 3rd respondent praying for cancellation of Sale Deeds registered as Doc.Nos.2132/2008, 2133/2008 and 6083/2010 standing in the name of the petitioner as forged documents. The 5th respondent had also filed a Civil Suit in O.S.No.7049 of 2000 on the file of the VI Assistant Judge, City Civil Court, Chennai for bare injunction and the same is pending. The petitioner had also filed a Civil Suit in O.S.No.7816 of 2009 on the file of VII Assistant Judge, City Civil Court, Chennai. In the petition presented before the 3rd respondent, the 5th respondent raised the issues, which are already pending in the Civil Court. Based on the petition filed by the 5th respondent, the 3rd respondent called for an enquiry and issued notice to the petitioner to produce all the relevant documents in support of his claim over the property.

(viii) Since the 3rd respondent has no authority to enquire into the petition submitted by the 5th respondent, the petitioner filed a Writ Petition in W.P.No.11224 of 2012 challenging the notice issued by the District Registrar for enquiry. This Court ordered notice to the respondents. While the Writ Petition was pending, the District Registrar proceeded to conduct enquiry as there was no order of stay restraining them from conducting enquiry. Since the District Registrar proceeded with the enquiry, the petitioner participated in the enquiry proceedings.

and also submitted his reply along with all the title documents of the property. The petitioner submitted that the claim of the 5th respondent is false and the same is to be rejected. The 3rd respondent, without considering the petition made by the petitioner, passed final orders on 14.06.2012 holding that the vendor H.C.Kothari had died even in the year 1992 and hence, the Sale Deed vide Doc.No.2132/2008 is a forged document suppressing the fact of death of H.C.Kothari and directed cancellation of registration of the document.

(x) In respect of other 2 documents, viz., Doc.Nos.2133/2008 and 6083/2010, the 3rd respondent had held that the documents are valid. Aggrieved by the order of the 3rd respondent dated 14.06.2012, the petitioner preferred an Appeal before the 2nd respondent on 23.07.2012. The Appeal preferred by him before the 2nd respondent is still pending. However, the petitioner has not received any notice of hearing till today. In the meantime, the Writ Petition filed by the petitioner in W.P.No.11224 of 2012 came up for final hearing and this Court had dismissed the Writ Petition as not maintainable and directed the 3rd respondent to enquire further in this matter. As against the order passed in the Writ Petition, the petitioner preferred a Writ Appeal in W.A.No.765 of 2013. The Division Bench of this Court, by order dated 02.04.2013 granted an order of interim stay in M.P.No.1 of 2013 in W.A.No.765 of 2013. According to the petitioner, the Writ Appeal is still pending.

(xi) Prior to the filing of the present Writ Petition, some 3rd parties tried to trespass into the petitioner's property by trying to unload sand and other materials in the property. The petitioner successfully restrained them from entering into the property. Thereafter, the petitioner approached the police authorities and tried to give a complaint against the 3rd parties. At that time, the police officers enquired about the complaint and directed him to produce his title documents and also the Encumbrance Certificate. As the petitioner was not having the Encumbrance Certificate, he had approached the Sub Registrar's Office and applied for the Encumbrance Certificate. At that time, he was informed that his Sale Deeds vide Doc.Nos.2133/2008 and 6083/2010 were cancelled as per the order of the 3rd respondent made on 07.09.2015.

(xii) According to the petitioner, he was not aware of the impugned order passed by the 3rd respondent and he had not appeared for enquiry before the 3rd respondent after the order dated 14.06.2012. Further, he was not served with the copy of the impugned order. Immediately thereafter, he applied for the certified copy of the Sale Deed vide Doc.No.6083/2010 and the Sub Registrar's Office had issued the certified copy of the

document along with the impugned order passed by the 3rd respondent. On going through the order, the petitioner came to know that the 3rd respondent had passed the order based on the petition submitted by the 5th respondent on 28.05.2015 and without any notice to him. Further, the 3rd respondent, without conducting any enquiry, had passed the impugned order in violation of principles of natural justice. The conduct of the 3rd respondent in dealing with the matter and proceeding to pass the impugned order without notice to the persons concerned will clearly show her malafides and collusion with the 5th respondent in passing the impugned order. While the issue with regard to the jurisdiction of the 3rd respondent is the subject matter of the Writ Appeal in W.A.No.765 of 2013 and the order of stay granted in the Writ Appeal was in force, it amounts to contempt of Court. Aggrieved by the order of the cancellation of the Sale Deeds by the 3rd respondent by the impugned order dated 07.09.2015, the petitioner has filed the Writ Petition.

3. The 3rd respondent filed her counter justifying the order dated 07.09.2015 and discussing about the documents that were cancelled by her by order dated 07.09.2015. In spite of narrating the entire case of the 5th respondent, she has not stated anything about the issuance of notice to the petitioner prior to the passing of the impugned order dated 07.09.2015.

4. Similarly, the 5th respondent has also supported the order passed by the 3rd respondent, however, remained silent with regard to the issuance of notice to the petitioner prior to the passing of the final order.

5. Heard Mrs.Chitra Sampath, learned Senior Counsel appearing for the petitioner, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents 1 to 4 and Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the 5th respondent.

6. Mrs.Chitra Sampath, learned senior counsel appearing for the petitioner submitted that the 3rd respondent had passed the impugned order on 07.09.2015 even without issuing notice to the petitioner, which is clear violation of principles of natural justice. The learned senior counsel further submitted that the 3rd respondent has no authority to reverse the order passed by her predecessor and she cannot act as an Appellate Authority for the order passed by her predecessor. Further, the learned senior counsel submitted that when the Appeal filed by the petitioner is pending before the 2nd respondent viz., the Inspector General of Registration, the 2nd respondent should have treated the petition submitted by the 5th respondent before him as an Appeal and should have tried both the Appeals together and decided the matter in accordance with law, instead of directing the 3rd

respondent to conduct enquiry without setting aside the earlier order passed by the 3rd respondent.

7. In support of her contentions, the learned senior counsel relied upon a judgment reported in 2017 (1) CTC 635 [M.K.Stalin, Leader of Opposition and Member of Legislative Assembly (Kolathur Constituency), 25/9, Chitaranjan Salai, Cenotaph Road, Alwarpet, Chennai - 18 Vs. The Secretary, Tamil Nadu Legislative Assembly, Secretariat, Fort St.George, Chennai -9 and 4 others] wherein this Court held as follows:

"...

23. So far as the submission of the learned Counsel for the Petitioner that the impugned Order, dated 22.08.2016, does not contain any reasons except the two words "Administrative reasons" and subsequently, after the filing of the Writ Petition, the learned Senior Counsel for the Respondents 1 & 4 has supplemented/introduced several reasons stating that they are going to initiate Disciplinary proceedings against the Fifth Respondent back to the Department, is concerned, it has to be pointed out that there is an error apparent on the face of the impugned Order itself, since in the impugned Order, except stating the words "due to Administrative reasons", nothing more has been stated by the First Respondent and now, during arguments, the Respondents 1 & 4 are trying to improve the case, which in the opinion of this Court, is unjustified. In this regard, a reference could be placed to the Judgment of the Supreme Court in Mohinder Singh Mill vs. Chief Election Commissioner, 1978 (1) SCC 405, wherein the Apex Court held as follows:

"8. The second equally relevant matter is that when a Statutory functionary makes an Order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of Affidavit or otherwise. Otherwise, an order bad in the beginning may by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Commissioner of Police, Bombay V. Gordhandas Bhanji, AIR 1952 SC 16:

Public Orders, publicly made, in exercise of a Statutory Authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public Orders made by Public Authorities are meant to have Public effect and are intended to effect

the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the Order itself. Orders are not like old wine becoming better as they grow older"

24. On a reading of the above Judgment of the Supreme Court, it could be seen that when certain grounds were made by the Statutory functionary in an Order, he has to stick on only to the said reasoning given in the said Order and he cannot supplement anything by assigning different reasons thereafter."

8. Mr. A. N. Thambidurai, learned Special Government Pleader appearing for the respondents 1 to 4 re-iterated the contentions raised by the 3rd respondent in the counter affidavit and submitted that the order passed by the 3rd respondent is just and proper.

9. Mr. A. R. L. Sundaresan, learned senior counsel appearing for the 5th respondent submitted that the Writ Appeal in W.A.No.765 of 2013 has been dismissed by this Court on 29.06.2016 holding that the 3rd respondent has jurisdiction to conduct enquiry. However, the learned senior counsel fairly submitted that since no notice has been issued to the petitioner prior to the passing of the impugned order dated 07.09.2015, the impugned order may be set aside and the 2nd respondent viz., the Inspector General of Registration may be directed to consider the petition presented by the 5th respondent as an Appeal and further the 2nd respondent may be directed to decide the said Appeal in accordance with law.

10. When the 3rd respondent originally passed the order dated 14.06.2012 cancelling the registration of the Sale Deed registered as Doc.No.2132/2008 and rejecting the claim of the 5th respondent with regard to the Sale Deeds registered as Doc.Nos.2133/2008 and 6083/2010, the petitioner preferred an Appeal as against the cancellation of the registration in respect of the Sale Deed registered as Doc.No.2132/2008. The Appeal was preferred by the petitioner before the 2nd respondent on 23.07.2012. Similarly, the 5th respondent also presented a petition on 03.07.2012 before the 2nd respondent seeking for cancellation of the other 2 Sale Deeds registered as Doc.Nos.2133/2008 and 6083/2010. The 2nd respondent should have considered the petition presented by the 5th respondent as an Appeal and should have decided the same in accordance with law, instead, the 2nd respondent sent the petition given by the 5th respondent to the 3rd respondent, who had passed the earlier order dated 14.06.2012 for passing necessary orders. The 3rd respondent, without knowing her jurisdiction, had entertained

the petition and set aside the other two documents erroneously. The 3rd respondent, District Registrar, cannot sit as an Appellate Authority over the order passed by her predecessor.

11. It is settled law that only an Appellate Authority or an Appellate Forum can set aside the order passed by the original Authority. The impugned order dated 07.09.2015 passed by the 3rd respondent, reversing the earlier order passed by her predecessor dated 14.06.2012, cannot be supported by any means, whatsoever. However, the 3rd respondent had supported her own order in her counter taking untenable and erroneous stands. The 3rd respondent is not an Appellate Authority to reverse the order passed by her predecessor. That apart, the 2nd respondent, the Inspector General of Registration, erroneously sent the petition presented by the 5th respondent to the 3rd respondent to decide the issue, which was already decided by the District Registrar on 14.06.2012. Unless the earlier order dated 14.06.2012 is set aside by the Appellate Forum, the matter cannot be remanded to the original Authority for deciding the matter afresh.

12. Apart from this aspect, it is also proved by the perusal of the original records that the petitioner was not at all issued with any notice prior to the passing of the impugned order dated 07.09.2015. The necessity for reversing the order passed by the 3rd respondent's predecessor, even without notice to the petitioner, cannot be appreciated by this Court in any manner, whatsoever. The 3rd respondent had acted as a Civil Court and decided the issues which are already pending before the Civil Court in the Civil Suits. The act of the 3rd respondent is clear violation of principles of natural justice. On that ground alone, the impugned order dated 07.09.2015 is liable to be set aside.

13. In these circumstances, for the reasons stated above, the impugned order dated 07.09.2015 is set aside. Consequently, the 4th respondent is directed to delete the entries with regard to the impugned order of the 3rd respondent dated 07.09.2015 from the "A" Register maintained by the 4th respondent. It is open to the 5th respondent to file appropriate application before the 2nd respondent seeking for raising additional grounds in the Appeal and in the event of any such application is being filed by the 5th respondent, the same shall be decided in accordance with law by the 2nd respondent. The 2nd respondent, the Inspector General of Registration, is directed to treat the petition presented by the 5th respondent on 03.07.2012 as an Appeal and dispose of the same in accordance with law, after giving opportunity of hearing to both the parties as expeditiously as possible, in any event, not later than three months from the date of receipt of a copy of this order.

14. With these observations, the Writ Petition is allowed.

No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

va

To

1. The Secretary to Government,
State of Tamil Nadu,
Commercial Taxes and Registration Department,
St.George Fort, Chennai - 600 009.
2. The Inspector General of Registration,
Office of the Registration Department,
Santhome High Road, Mylapore,
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4. The Joint Sub Registrar-I,
Saidapet, South Chennai,
Chennai - 600 015.

+2cc to Mr.T.S.Baskaran, Advocate, S.R.No.45338
+2cc to Mr.V.G.Suresh Kumar, Advocate, S.R.No.45504
+1cc to the Government Pleader, S.R.No.42373

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CS/03/07/17