



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.[MD]No.174 of 2016 & C.M.P.(MD)No.885 of 2016

S.Muthulakshmi

... Appellant/Petitioner

Vs.

The Commissioner,
Madurai Corporation,
Madurai - 625 002.

... Respondent/Respondent

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent, against the order dated 11.06.2015, made in W.P.(MD) No.20657 of 2014.

Prayer in WP(MD) . 20657/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the respondent bearing NO. MA.VA1/023434/2012 dated 22.11.2014 and quash the same and consequently direct the respondent to execute the sale deed in favour of the petitioner in respect of the petitioner's property bearing in S.F No. 68, Ward NO. 14, Zone NO.1, Door NO. 82 Gnanavolipuram Municipal Colony, Mela Ponnagaram 6th Street, Madurai District in a fair and proper manner and pass such further or other orders.

For Appellant : Mr.K.Samidurai
For Respondent : Mr.R.Murali

JUDGMENT

[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

This appeal is directed against the order dated 11.06.2015, passed in W.P.(MD)No.20657 of 2014, filed by the appellant.

2.The said Writ Petition was filed challenging the order passed by the respondent, dated 22.11.2014 and for a consequential direction to execute the sale deed in favour of the appellant in respect of the petitioner's property in S.F.No.68, Ward No.14, Zone No.1, Door No.82, Gnanavolipuram Municipal Colony, Mela Ponnagaram 6th Street, Madurai District.

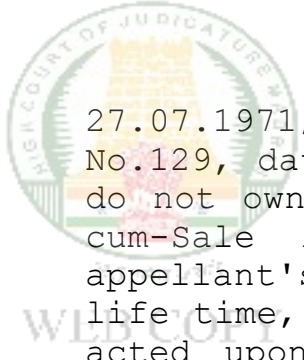


3.The case of the appellant is that her father was working as Junior Assistant in the Electricity Department of the Madurai Corporation and on 27.07.1971, the respondent Corporation allotted the subject property in favour of the appellant's father and Lease-cum-Sale Agreement was entered into, in which, the price was fixed at Rs.7,508/-, the appellant's father was remitting the monthly installments, while so, he died in harness on 18.06.1984. Thereafter, the appellant approached the respondent Corporation for execution of the sale deed, he was directed to pay a sum of Rs.47,381/- towards the interest at the rate of 4.5% p.a. for the arrears amount and that was paid. Subsequently, since the sale deed was not executed, the appellant approached this Court by filing W.P.(MD)No.17700 of 2013. The said Writ Petition was disposed of by directing the representation of the appellant to be considered. Pursuant to that, an order was passed on 22.11.2014 setting out the reasons as to why, the sale deed cannot be executed in her favour. This order was put to challenge in the present Writ Petition and the Writ Petition was dismissed and the appellant is before this Court by way of this Writ Appeal.

4.The only reason assigned by the respondent for rejecting the appellant's request is by referring to Government Order in G.O.Ms.No.730, Rural Development and Local Administration Department, dated 14.04.1976 and Government Letter No.183, dated 25.07.1987, in and by which, the resolution passed by the Council of the respondent Corporation was set aside.

5.The Government Order in G.O.Ms.No.730, dated 14.04.1976, was issued pursuant to imposing a ban on disposing the properties owned by local bodies. In the said Government Order, in Paragraph 7, it has been stated that under Section 93 of the Madurai City Municipal Corporation Act, 1971, the Madurai City Municipal Corporation Council is competent to dispose of immovable properties belonging to the City Municipal Corporation and the Government cannot impose a ban on disposal of the immovable properties belonging to the Madurai City Municipal Corporation Council and the Commissioner was requested to place the decision of the Government before the Special Officer in Council and request him to pass a special resolution imposing a ban on disposal of the immovable properties belonging to the Madurai City Municipal Corporation to be in conformity with the policy decision taken by the Government and send a report to the Government. In furtherance of the said direction, the Council has passed Resolution No.781, dated 12.11.2014, imposing a ban.

6.The question would be as to whether the Government Order, dated 14.04.1976, can be put against the appellant to non-suit her. Admittedly, the then Corporation Council has taken a decision to sell the houses belonging to it on the conditions mentioned in the Resolutions in Resolution No.330, dated



27.07.1971; Resolution No.653, dated 25.11.1971; and Resolution No.129, dated 31.05.1972, to the employees of the Corporation, who do not own a house of their own. Pursuant there to, the Lease-cum-Sale Agreement was entered into on 12.11.1973 and the appellant's father was in possession of the property and after his life time, the appellant is in possession. The terms of lease was acted upon and payments were effected, though there might have been a delay in remitting the total cost, for which interest has been collected by the Respondent Corporation. Thus, the subsequent decision of the Government taken on 14.04.1976 cannot nullify the decisions already taken by the Corporation Council and even in G.O.Ms.No.730, dated 14.04.1976, the Government made it clear that it cannot impose a ban in respect of the disposal of the immovable properties owned by the Madurai City Municipal Corporation and wanted the Council pass a Resolution to that effect noting the policy decision taken and this Resolution was passed only on 12.11.2014. Therefore, the said Resolution cannot take away the accrued right in favour of the appellant/her father, pursuant to the Lease-cum-Sale Agreement executed in favour of her father.

7.It is a matter on record that the appellant's father was allotted the house and the appellant has cleared the entire outstanding and the similarly placed employees of the Corporation, who have paid the monthly installments, are now owners of the properties and sale deeds have been executed in their favour. Therefore, we see no reason why the same course should not be adopted in the appellant's case.

8.Thus, for all the above reasons, this Writ Appeal is allowed and the order passed by the learned Single Judge, dated 11.06.2015, in W.P.(MD)No.20657 of 2014 is set aside. The respondent is directed to execute the sale deed in favour of the appellant in respect of the property in question at the cost of the appellant, within a period of three months from the date of receipt of a copy of this Judgment. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar.

To
The Commissioner, Madurai Corporation, Madurai - 625 002.
+1CC to M/S.R.Murali, Advocate, SR.No. 53197
+1CC to M/S.K.Samidurai, Advocate, SR.No. 53337

JUDGMENT MADE IN
W.A.[MD]No.174 of 2016
20.04.2017