



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.03.2017

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THE HON'BLE MR.JUSTICE P.N.PRAKASHW.P.(MD) No.23995 of 2016 and
WMP(MD) No.17311 of 2016

S.Martin

... Petitioner

-vs-

1. The Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.2. The Inspector of Police,
Woraiyur Police Station,
Tiruchirappalli-3.3. M.Muthuramalingam
4. Salini

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Mandamus, directing the respondents 1 and 2 to vacate the 4th respondent, her men or agents or any other persons, claiming under her from the C2 Flat in III Floor of Glorisa Tower situated at No.33, Salai Road, Woraiyur, Tiruchirappalli-620 003 and deliver the vacant physical possession of the same to the petitioner.

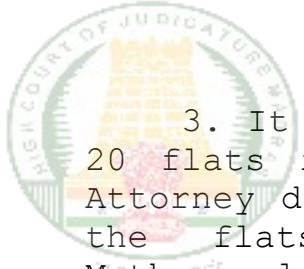
For Petitioner : Mr.Shangar Murali
For R1 & R2 : Mr.T.S.Mohammed Mohideen,
Addl. Govt. Pleader
For R3 : Mr.A.Thirumurthy
For R4 : Mr.T.M.Madasamy

Reserved on	Pronounced on
20.03.2017	28.03.2017

O R D E R

This petition has been filed, seeking to direct the respondents 1 and 2 to vacate the 4th respondent, her men or agents or any other persons, claiming under her from the C2 Flat in III Floor of Glorisa Tower situated at No.33, Salai Road, Woraiyur, Tiruchirappalli-620 003 and deliver the vacant physical possession of the same to the petitioner.

2. For the sake of convenience, the parties will be referred to by their names.



3. It is the case of Martin / petitioner herein that he built 20 flats in Glorisa Tower, Trichy and had executed a Power of Attorney dated 04.02.2013 to Muthuramalingam / R3 for disposal of the flats. The further allegation of Martin is that Muthuramalingam did not properly account for the sale of flats and therefore, he cancelled the Power of Attorney on 21.08.2014. On the complaint of Martin, a criminal case in Thillai Nagar Police Station Crime No.455 of 2014 was registered against Muthuramalingam, who was arrested by Police and remanded to custody and later released on bail. Now, it is the allegation of Martin that Muthuramalingam had illegally permitted Salini / R4 to occupy C2 Flat in III Floor of Glorisa Tower and that she should be vacated by Police.

4. Heard the learned counsel for the petitioner, learned Additional Government Pleader appearing for the respondents 1 & 2, learned counsel for R3 and also learned counsel for R4.

5. Learned counsel for Martin placed strong reliance on the judgment of the Hon'ble Supreme Court in the case of Tukaram Kana Joshi and others vs. Maharashtra Industrial Development Corporation and others, reported in (2013) 1 SCC 353 and submitted that mandamus as prayed for by the petitioner should be issued.

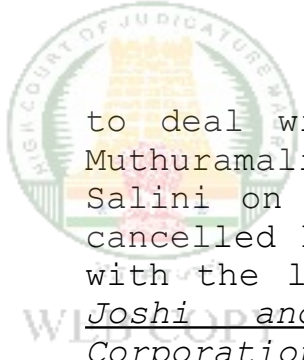
6. Per contra, learned counsel appearing for Salini submitted that she had purchased C2 Flat in III Floor of Glorisa Tower on 18.10.2013 for valuable consideration and that the sale deed was executed by Muthuramalingam as Power Agent of Martin. Admittedly, the Power of Attorney was cancelled by Martin only on 21.08.2014.

7. Learned Additional Government Pleader submitted that Salini gave a complaint to the Police, alleging that she had purchased C2 Flat in III Floor of Glorisa Tower and that she is being prevented by Martin from occupying the said flat and therefore, the Police conducted enquiry and when they found that she was being illegally denied entry, they gave her Police protection.

8. This Court gave its anxious consideration to the rival submissions made on either side.

9. According to the learned counsel for Martin, Muthuramalingam had cheated him and had acted beyond the scope of the Power, that was given to him under the Power of Attorney dated 04.02.2013. Learned counsel took this Court through various documents and submitted that the sale of flat by Muthuramalingam to Salini itself is sham and nominal. Learned counsel further submitted that he has initiated proceedings before the Registrar for cancelling the sale deed on the ground of fraud.

10. Presently, there are disputes between Martin and Muthuramalingam with regard to the transaction in question. Martin had given the Power of Attorney to Muthuramalingam on 04.02.2013



to deal with flats. On the strength of the Power of Attorney, Muthuramalingam sold Flat No.C2, III Floor of Glorisa Tower to Salini on 18.10.2013. Only thereafter, the Power of Attorney was cancelled by Martin on 21.08.2014. This Court can have no quarrel with the law laid down in the aforesaid judgment in Tukaram Kana Joshi and others vs. Maharashtra Industrial Development Corporation and others (cited supra), but on the facts and circumstances of the case, it is apparent that Martin wants to use Police force to dispossess Salini, who is in occupation of Flat No.C2, III Floor of Glorisa Tower, after she having purchased it on 18.10.2013 and in the considered opinion of this Court in the case of this nature, mandamus as prayed for by Martin cannot be granted.

11. In the result, this petition is devoid of merits and the same is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To:

1. The Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.
2. The Inspector of Police,
Woraiyur Police Station,
Tiruchirappalli-3.

+One cc to Mr.Shangar Murali, Advocate, SR.No.18418
+One cc to The Special Government Pleader, SR.No.18860
+One cc to Mr.A.Thirumurthy, Advocate, SR.No.18279
+One cc to Mr.T.M.Madasamy, Advocate, SR.No.18255

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RL/7C/3P/SKN/RSK/10.4.2017

PRE-DELIVERY ORDER IN
W.P. (MD) No.23995 of 2016

28.03.2017