

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.04.2018

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WP.Nos.26856 to 26858 of 2017
and WMP.Nos.28593 to 28603/2017

1.A.M.Raju ..Petitioner in WP.No.26856/2017
2.Lenin Kumar ..Petitioner in WP.No.26857/2017
3.S.Prakash ..Petitioner in WP.No.26858/2017

Versus

1.The State rep.by its
Secretary to Government,
Revenue Department,
Fort St.George,
Chennai.

2.The District Collector,
Salem District,
Salem.

3.The District Revenue Officer,
Salem District,
Salem-636 001.

4.The Tahsildar,
Salem Taluk, Salem.

5.The Commissioner of Police,
Salem City, Salem-636 002.

6.The Deputy Commissioner of Police,
Law and Order,
Salem City,
Salem-636 002.

7.The Assistant Commissioner of Police,
Traffic Investigation,
Sevvapettai,
Salem-636 002.

.. Respondents in all WPs

COMMON PRAYER:- Writ petitions filed under Article 226 of the Constitution of India prays to issue a Writ of Certiorarified Mandamus to call the impugned proceedings of the 2nd respondent made in ROC.No.9348/2017/E1, dated 06.10.2017 and quash the same and forbearing the respondents from interfering with the possession and enjoyment of the property of the petitioner situated at Ward.AD, Block No.10, T.S.No.16/1, measuring an extent of 10 cents [WP.No.26 856/2017], 30 cents [WP.No.26857/2017] and 15 cents [WP.No.26858/2017], situated at Periyeri Village, Salem Taluk, Salem District.

For Petitioners in all WPs. :Mr.N.Anand Venkatesh

For Respondents in all WPs. :Mr.A.N.Thambidurai, Spl GP

COMMON ORDER

[Order of the Court was made by M.SATHYANARAYANAN,J.,]

By consent all the writ petitions are disposed of by this common order, since the issue involved and to be adjudicated is one and the same.

2 The petitioners claim that Mr.D.V.Nagarajan was the owner of the property admeasuring to an extent of 30,040 sq.ft in T.S.No.16/1, Block No.10, Salem town and his predecessors in title purchased the property in the year 1958 and by virtue of the Sale Deed dated 20.12.1981 executed by one Rajulu Iyer, the said property was bequeathed in favour of B.V.Nagaraj and he in turn, had entered into the Agreement of Sale, with A.M.Raju/petitioner in WP.No.26856/2017 and since he did not come forward to execute the Sale Deed, he filed suit in OS.No.699 of 2009, on the file of the II-Additional District Munsif, Salem, praying for the relief of specific performance and the suit came to be decreed exparte on 29.03.2010. Thereafter by filing Executive Petition, got executed the Sale Deed in favour of him vide registered Sale Deed dated 28.03.2011 and thus, he become owner of the property.

3 The petitioner in WP.No.26857 viz.,Lenin Kumar would further aver that he has also got Agreement of Sale from one Mr.B.V.Nagaraj dated 20.09.2006 for a total extent of 30 cents. Since Mr.B.V.Nagaraj failed to comply with the terms of the

Sale, the petitioner filed OS.No.657 of 2009 on the file of the II-Additional District Munsif, Salem, praying for the relief of specific performance and the suit came to be decreed exparte on 22.10.2009 and after filing the executive petition, he got registered Sale Deed dated 13.09.2011, executed in his favour.

4 The petitioner in WP.No.26858 viz., S.Prakash would aver that he has also got Agreement of Sale from one Mr.B.V.Nagaraj, dated 10.10.2008 for a total extent of 15 cents. Since Mr.B.V.Nagaraj failed to comply with the terms of the Sale, the petitioner filed OS.No.713 of 2009 on the file of the II-Additional District Munsif, Salem, praying for the relief of specific performance and came to be decreed exparte on 10.11.2009 and after filing the executive petition, he got registered Sale Deed dated 02.03.2011, executed in his favour.

5 The learned counsel appearing for the petitioners has drawn the attention of this Court to the voluminous typed set of documents containing the proceedings and title and would submit that Mr.B.V.Nagaraj filed WP.No.3598/2017 praying for issuance of a writ of mandamus, directing the Commissioner, Salem Municipal Corporation and the Assistant Commissioner, Salem Municipal Corporation to demolish the unauthorized construction put up by the 9th respondent/the Assistant Commissioner of Police (Traffic), Sevvapettai, Salem in Survey No.16 without obtaining planning permission from the appropriate authority and without obtaining exemption from the Government vide order dated 27.03.2017 and the writ petition was came to be disposed of by directing the petitioner therein to produce all the relevant records in respect of the property before the District Collector, Salem showing that he is the owner of the property and the said official, in turn was directed to consider, and if he comes to the conclusion that it is the private property, can take necessary steps for payment of compensation and accordingly, the 2nd respondent has done the said exercise and vide impugned proceedings dated 06.10.2017, has erroneously reached the conclusion that the said properties are Government properties and not private properties and directed the 4th respondent/the Tahsildar, Salem to carry out necessary changes in the revenue records and report compliance of the earlier order.

6 The primordial submission of the learned counsel appearing for the petitioners is that admittedly, the petitioners have got right, title and possession of the properties through the Sale Deeds executed by the Courts by executing the decrees for specific performance and since the Sale Deeds are not set aside in a manner known to law, it is not open to the Collector to pass the impugned order and thereby, impliedly cancelled the said Sale Deed. It is also the

submission of the learned counsel for the petitioners that the Collector / 2nd respondent has assumed the role of the Civil Court and passed the judgment without affording reasonable opportunity to the petitioners herein to put forth their defense and despite the fact that the petitioners are in uninterrupted possession of the property in question for very many years, their rights cannot be questioned through the impugned proceedings and prays for interference.

7 The learned Special Government Pleader appearing for the official respondents invited the attention of this Court to the typed set of documents and would submit that the documents were created and fabricated in connivance with the revenue officials and the lands in which, Mr.B.Nagaraj has got the right, title and possession, is altogether a Government land and the land was needed for public purpose and as on date, the Police Station is established and is functioning and would further add that since the matter in issue revolves around adjudication of the disputed question of fact, the petitioner has to file the comprehensive Civil Suit before the competent Forum and prays for dismissal of this writ petition with exemplary costs.

8 This Court has carefully considered the rival submissions and also perused the materials placed before it.

9 Though the attention of this Court was drawn to the voluminous typed set of documents which contain proceedings of the revenue officials, the decrees was passed by the Civil Courts, this Court is of the considered opinion that in exercise of jurisdiction under Article 226 of the Constitution of India, it cannot venture into adjudication of disputed questions of fact. The Division Bench of this Court while disposing of this WP.No.3598/2017, in Paragraph No.8 has also observed that there is a title dispute in respect of the property in question which cannot be decided in the writ petition. In the considered opinion of this Court, the same oncology would apply to the present case also.

10 This Court in the light of the above facts and circumstances permits the petitioner herein to file individual appeals before the Commissioner, Land Administration, Chepauk, Chennai-5 by enclosing the relevant and authenticated documents along with petitions for stay within a period of four weeks from the date of receipt of a copy of this order and the said official on receipt of the appeals, may entertain the same, if the papers are otherwise in order, without putting the issue of limitation and take up the petition for stay and give a disposal in accordance with law within a period of four weeks from the date of entertainment of the appeals and till such time, the

possession of the petitioners in respect of the properties in question shall not be dispossessed/disturbed by the respondents 2 to 6. It is also open to the Commissioner, Land Administration, Chepauk, Chennai-5 to take up the appeals and give a final disposal on merits and in accordance with law within a period of twelve weeks from the date of entertainment of the appeals and communicate the decision taken to the petitioners. It is also made clear that the petitioners till the disposal of the appeals by the Commissioner, Land Administration, Chepauk, Chennai-5, shall not create any third party rights in respect of the superstructure and site in question and shall not alter the physical features also.

11 With the above observation, the writ petitioners stands disposed of. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-iii)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Revenue Department,
Fort St.George,
Chennai.

2.The District Collector,
Salem District,
Salem.

3.The District Revenue Officer,
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Salem-636 001.

4.The Tahsildar,
Salem Taluk,
Salem.

5.The Commissioner of Police,
Salem City,
Salem-636 002.

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6.The Deputy Commissioner of Police,
Law and Order,
Salem City,
Salem-636 002.

7.The Assistant Commissioner of Police,
Traffic Investigation,
Sevvapettai,
Salem-636 002.

8.The Commissioner,
Land Administration, Chepauk, Chennai 5.

+3cc to Mr.N.ANAND VENKATESH, Advocate,
S.R.No.25061, 25060 & 25059

+1cc to the Government Pleader, S.R.No. 25654

WP.Nos.26856 to 26858 of 2017

RV(CO)
TR(16/05/2018)



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