

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P.s 5892, 5893 & 13273 of 2013
and
W.M.P.s 1 of 2013

E.Palani

... Petitioner in
W.P.5892/2013

E.Bhaskaran

... Petitioner in
W.P.5893/2013

G.Gomathi

... Petitioner in
W.P. 13273/2013

Vs.

1. The Corporation of Chennai,
Zone-7, rep. By Zonal Officer,
Ambattur, Chennai-600 053.
2. The Ambattur Oragadam Co-operative
Building Society Ltd. (J5 310)
rep. By Special Officer,
Old No.87-A, New No.44/2,
Oragadam Road, Venkatapuram,
Ambattur, Chennai-600 053.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, forbearing from evicting the petitioner's peaceful possession from the Plot No.1, Eastern Part measuring 2360 sq.ft. in S.No.773/2B2 (New Sub-division No.773/2B2A) East Balaji Nagar, Korattur Village, morefully described in the B schedule of the property.

For Petitioners : Mr.K.Chandru
For Respondents : Mr.S.Saravanan,
Standing Counsel for R-1
: Mr.L.P.Shanmugasundaram,
Special Government Pleader
for R-2

O R D E R

1. The Writ Petitions have been filed seeking for a direction forbearing the respondents from interfering the petitioners possession and enjoyment of their property. Since the issues involved in the Writ Petitions are one and the same, the Writ Petitions are disposed of by way of common order.

2. According to the petitioner, they have purchased certain extent of property in Survey No.773/2B2, East Balaji Nagar, Korattur Village, Ambattur Taluk and they have purchased the property through a valid Sale deed dated 30.01.2002 from one Mrs.Janaki Joseph, represented by her Power Agent Mr.C.Chandran. According to the petitioner, a larger extent of property in the above said Survey No.773/2B2 measuring 4 acres 13 cents jointly belongs to several persons and all the original owners have executed an unregistered settlement deed executed in favour of one Mrs.Janaki Joseph. Thereafter, the petitioners have purchased a specific extent of property from that Janaki Joseph, represented by her power agent and they are in possession and enjoyment of the property from the date of purchase.

3. Now, the 1st respondent Corporation, who is no way connected with the said property is claiming the right over the property by virtue of gift deed executed by the 2nd respondent co-operative housing society on 20.08.2018 on the ground that earlier, the 2nd respondent co-operative housing society obtained a layout approval in the year 1965 in respect of survey No.773/2B2 and in the above layout, the present disputed property was reserved for public purpose. Subsequently, in the year 2010, the 2nd respondent has executed a gift deed in favour of the 1st respondent local body and based on the above gift deed, now the 1st respondent is taking steps to evict the petitioners. Hence, the present Writ Petition has been filed.

4. The 1st respondent has filed a counter affidavit stating that the 2nd respondent co-operative society has already executed a Gift deed in favour of the 1st respondent to an extent of 20874 sq.ft. in survey No.773/2B2 as OSR land for the purpose of children park and other public purpose and the petitioners have no right over the property. Apart from that, the petitioners have filed a civil suit before the District Munsif Court, Ambattur for the similar relief and the same is now pending. Hence, the Writ Petitions cannot be maintained.

5. The 2nd respondent has filed a detailed counter affidavit stating that the land in dispute has been originally belongs to the 2nd respondent co-operative society and the layout was approved by the Joint Director of Town Planning, Chennai on 01.03.1965 for the above said survey number. Subsequently, the respondents also allotted the land to its members and executed a Sale deeds. Thereafter, the 2nd respondent executed a gift deed in favour of Commissioner of Municipality, Ambattur, to an extent of 20874 sq.ft., which was reserved for children playground. Now, the petitioners are claiming right over the property based on the unregistered gift deed executed in favour one Janaki Joseph by some third parties, absolutely, there is no other material to establish that the petitioners are having the right over the property, the alleged settlement deed is a fictitious one and it does not create any right over the property to the petitioners.

6. I have heard Mr. K.Chandru, learned counsel appearing for the petitioner as well as Mr.S.Saravanan, Standing Counsel for 1st respondent and Mr.L.P.Shanmugasundaram, Special Government Pleader for 2nd respondent.

7. Admittedly, now the petitioners had approached the civil court, and filed a Suit seeking to set aside the gift deed executed by the 2nd respondent in favour of the 1st respondent and also sought for permanent injunction restraining the 2nd respondent from putting up any construction in the suit property and the suit is now pending. In the said circumstances, for the similar relief, the petitioners cannot initiate parallel proceedings by way of filing the Writ Petitions and sought for injunction restraining the respondents from interfering the peaceful possession of the property.

8. Apart from that, the case of the respondents is that the land belongs to the 2nd respondent and the layout was approved as early as in the year 1965 itself. Subsequently, the area, which was earmarked for public purpose also handed over to local body by way of registered gift deed. Now, the petitioners said to have purchased the land, which was earmarked for public purposes from a person, who has no right over the property. In the circumstances, the petitioners have to establish their right by letting evidence to show that their vendors have right over the property. Until the petitioners establish their right and title over the disputed property, the petitioners are not entitled to seek injunction restraining the respondents from interfering with the peaceful possession of the property.

9. Therefore, there is no merit in the Writ Petitions and hence, the Writ Petitions are dismissed. Consequently, the Writ Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(V)

// True Copy//

Sub Assistant Registrar

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To

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+3ccs to Mr.K.Chandru, Advocate SR.No.58059,58060,58061
+1cc to Mr.S.Saravanan, Advocate SR.No.58110

सत्यमेव जयते

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& 13273 of 2013
and
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RMP(19/09/2018)

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