IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.Nos.7426 & 7427 of 2004
and
WPMP.Nos.8785 & 8787 of 2004

M.Vembayaa ... Petitioner

Vs.

1. State of Tamil Nadu rep. by
   Secretary to Government,
   Commercial Taxes, and
   Religious Endowments Department
   Chennai - 9.

2. The District Collector
   Inspector of Panchayats,
   Pudukkottai District,
   Pudukottai.

3. The Inspector General of Registration
   Santhome High Road, Santhome,
   Chennai. ...Respondents 1 to 3 in both petitions

4. The Sub-Registrar,
   Pudukottai Town
   Pudukottai District. ...4th Respondent in WP.No.7426/04

The Sub Registrar
Thirumayam Taluk
Pudukottai District ...4th respondent in WP.7427/04

Prayer in both WPs : Writ Petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the order of the second respondent passed in Na.Ka.A3/3821/2003 dated 15.12.2003 respectively and quash the same.

For Petitioners : Mr.R.Hariharan

For Respondents : Mr.M.Elumalai
Government Pleader

COMMON ORDER

These Writ Petitions have been filed to call for the records relating to the order of the second respondent passed in Na.Ka.A3/3821/2003 dated 15.12.2003 and quash the same.

2. The brief facts of the case stated by the petitioner is that the petitioner herein is the owner of the lands bearing Survey Nos.58/3 (3 acres and 1 cents) in Pudukkottai Union, Pudukkottai North, 58 (Old No.122/6) (3 acres and 5 cents), in Pudukkottai Union, Pudukkottai North, 204/4, 204/5 part, 207/5B-5C (1 acre and 7 cents) in Pudukkottai District, Kavinadu Keezavathi Panchayat Limits, 145/6 (1 acre and 21 cents) in Pudukkottai North, 208/8B (2 acres and 35 cents) in Kavinadu Keelavattam Village, 147/4 and 1417/2I (33 cents) in Pudukkottai North Village, 297/1B, 298/1E, 2A to 2J and 298/4A to 4D (7 acres and 48 cents) in Kulatur Taluk, Velanoor Village, Pudukkottai District, 105-1 (1 acres and 10 cents), 105-2 (44 cents) and d105-3 (1 acre and 88 cents) in Ilanchaur Village, Thirumayam Taluk, Pudukkottai District, in the Sub-Registration District of the fourth respondent.

3. It is stated by the petitioner herein that he approached the President of Panchayat Town for No Objection Certificate for developing his properties by submitting all the documents of the property, and the said village of Panchayat president had issued the No Objection Certificate by his proceedings dated 09.10.2003 and 14.12.2002. The petitioner has also stated that he paid necessary development fees to the said Panchayat after issuance of the No Objection Certificate. Despite when he presented one of the documents for registration with respect to the house sites bearing one of the above Survey Nos, the fourth respondent refused to register the said documents stating that the documents should be presented only after getting approval from the Town and Country Planning Authorities as directed by the District Collector, Pudukkottai, in his proceedings Na.Ka.A3/3821/2003 dated 15.12.2003. The rejection of the documents by the fourth respondent was against the circular of the third respondent and against the provisions of the Tamil Nadu Panchayat Act and Rules. It is stated by the petitioner herein that the provisions of Tamil Nadu Town Country Planning Act and Rules does not apply to the properties covered in the Panchayat area. Since the petitioner herein has received the entire sale consideration from the third party purchasers, the purchasers are pressing him to complete the registration.

4. The petitioners herein has also raised the grounds that he had obtained No Objection Certificate from the local authority viz., The Panchayat President, as contemplated in Rule 3 of the Tamilnadu Panchayat Building Rules, 1997. The fourth respondent had already registered the sale deed dated 31.12.2003 even after i.e., from the date of order of the second respondent (The District Collector). As per the Tamilnadu Panchayat Act and

Rules, enables the Village Panchayat President to issue No Objection Certificate for approving of lands and the provisions of Town and Country Planning Act do not apply to the area covered under the Panchayats. Therefore, he prayed to issue of No Objection Certificate. In the meanwhile, it is seen that this Court in W.P.M.P.No.8785 of 2004 in W.P.No.7426 of 2004 had granted Interim stay and notice. It is seen from the type set of papers that the order passed by the District Collector, Pudukkottai, in his proceedings dated 15.12.2003 in Na.Ka.A3/3821/2003, it is stated that the permission for No Objection Certificate granted by the village Panchayat President and the Registration Department should verify whether the vendors got approval from the Town and Country Planning Authorities. The registrars are restrained from registering the said documents without the approval granted by the said department of the Director of Town and Country Planning.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. By an order dated 15.12.2003 passed by the second respondent in Na.Ka.A3/3821/2003, the fourth respondent has insisted the petitioner to get approval from the Town and Country Planning Authorities for registration of the documents with respect to the house sites bearing the above said Survey Nos. The basis of the impugned order is a Circular issued by the Inspector General of Registration dated 09.09.2003, which in turn is based on the power conferred on the Inspector General under G.O.Ms.No.150, Revenue department, dated 22.09.2000.

7. The learned counsel appearing for the petitioner has submitted that the said Government Order relied upon by the fourth respondent in its order dated 22.09.2000 was already quashed by this Hon'ble Court in Captain Dr.R.Bellie Versus The Sub Registrar reported in 2007(3)CTC 513, the relevant portions of which are extracted hereunder:

> "22-A. Documents registration of which is opposed to public policy. - (1) The State Government may, by notification in the Tamil Nadu Government Gazette, declare that the registration of any document or class of documents is opposed to public policy.
>
> (2) Notwithstanding anything contained in this Act, the registering officer shall refuse to register any document to which a notification issued under Sub-Section (1) is applicable.
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> 5. Admittedly, no statutory rule or any other provision has been made by the Legislature of the State of Tamil Nadu defining "public policy" or "as opposed

to public policy". It is the Executive of the State Government vide G.O.Ms.No.150, Commercial Taxes, laid down guideline relating to documents/class of documents "as opposed to public policy", which reads as follows:

> In exercise of the powers conferred by Sub-section (1) of Section 22A of the Registration Act, 1908 (Central Act, XVI of 1908), the Governor of Tamil Nadu hereby declares the following documents as opposed to public policy, namely:
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> 1. Any instrument relating to
>
> i) Conveyance of properties belonging to the Government or the local bodies such as the Chennai Metropolitan Development Authority or Corporations, or Municipalities, or Town Panchayats, or Panchayat Unions or Village Panchayats; or
>
> ii) Conveyance or properties belonging to any religious institutions including temples, mutts, or specific endowments managed by the Hereditary Trustees/Non hereditary trustees appointed to any religious institution under a scheme settled or deemed to have been settled under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959) and mutts and temples including specific endowments attached to such of those temples managed by mutts; or
>
> iii) Conveyance or properties assigned to or held by
>
> a) The Tamil Nadu State Boodan Yagna Board established under Section 3 of the Tamil Nadu Bhoodan Yagna Act, 1958 (Tamil Nadu Act XV of 1958) or
>
> b) The Tamil Nadu Wakf Board unless a sealed No objection Certificate issued by the competent authority as provided under the relevant Act or the rules framed thereunder for this purpose an in the absence of any such provisions in any relevant Act or in the rules framed thereunder authority so authorised by the

Government, to the effect that such registration is not in contravention of the provisions of the respective Act, is produced before the Registering Officer;

2. Conveyance of lands, converted as house sites without the approved layouts unless a No objection Certificate issued by the authority concerned of such local bodies, namely, Corporations, or Municipalities or Town Panchayats, Panchayat Unions, or village Panchayats or Chennai Metropolitan Development Authority is produced before the Registering Officer;

3. Cancellation of sale deeds without the express consent of the parties to the documents"

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9. It has already been pointed out that the Legislatures' of the State has not laid down defining 'public policy' or documents which are 'as opposed to public policy'. The provision was made vide G.O.Ms.No.150, Commercial Taxes, dated 22.09.00, as quoted above, has also been set aside by this Court vide Judgment dated 20.03.06 in W.P.No.7237 of 2006. In view of the aforesaid fact, following the ratio laid down by the Supreme Court in the case of Basant Nahata (supra), we also declare the amended provision of Section 22-A as made vide Registration (Tamil Nadu Amendment) Act, 1994, unconstitutional and ultra vires Articles 14 and 245 of the Constitution of India.

10. Accordingly W.P.No.42945 of 2006 is allowed. The impugned order dated 22.09.06 passed by the learned single Judge in W.P.No.25407 of 2005 is set aside and the writ appeal is allowed. The case of the appellants, Capt. Dr.R.Bellie and another is remitted to the competent authority for registration of the documents in accordance with law without taking into consideration the provision of amended Section 22-A of the Act or G.O.Ms.No.150, Commercial Taxes, dated 22.09.00. There shall be no order as to costs".

8. In view of above Judgment passed by this Court, these Writ petitions are allowed. Accordingly, the order of the second respondent passed in Na.Ka.A3/3821/2003 dated 15.12.2003 is set aside with liberty to the petitioner to approach competent

authority for further proceedings for registration of the documents in accordance with law. The competent authority is directed to register the documents in accordance with the law without taking into consideration of the provision of amended Section 22-A of the Act vide G.O.Ms.No.150, Commercial Taxes, dated 22.09.00. 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
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