IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.7428 of 2004
and
WPMP.No.8789 of 2004

Rajaram ... 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.

4. The Sub-Registrar,
   Thirumayam Taluk,
   Pudukottai District.

5. Panchayat President,
   Meiyapuram Panchayat,
   Thirumayam Taluk,
   Pudukottai District. ... Respondents

Writ Petition is 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 and quash the same.

For Petitioners : Mr.R.Hariharan

For Respondents : Mr.M.Elumalai
Government Pleader

O R D E R

This Writ Petition is 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.121/2 (62 cents) and 121/2B (7 acres and 90 cents) in Shanmuganathapuram, Neivasal, Meiyapuram Village, Konapattu, Thirumayam Taluk, Pudukkottai District, in the Sub-Registration District of the fourth respondent and he approached the President of Panchayat Town for No Objection Certificate, and the same had been refused by the said authority on the ground that the second respondent has issued orders vide Na.Ka.A3/3821/2003 dated 15.12.2003 which prohibits the Panchayat President from issuing the No objection certificate. Further the petitioner has stated that the order of the second respondent is contrary to the Circular dated 09.09.2003 issued by the third respondent which clearly states that the Panchayat is the appropriate authority to issue such certificate. In fact, the circular also makes it clear that the order of the Collector prohibiting the Panchayat Presidents from issuing No objection certificate is to be treated as withdrawn. It is pertinent to point out here that the Circular of the third respondent also draws attention to the fact that since there is no amendment to the Panchayat Act, it is the duty of the Panchayat Presidents to issue No objection certificate, as per the Provisions of the said Act. It is also stated by the petitioner is that although his plots are ready for sale, purchaser is not willing to buy the same in the absence of a No objection certificate and therefore, he prays to quash the order passed by the second respondent and before this Court.

3. The petitioner herein has also raised the grounds that he has been denied a No Objection Certificate from the local authority viz., The Panchayat President, as contemplated in Rule 3 of the Tamilnadu Panchayat Building Rules, 1997, owing to the order of the second respondent, which order is in violation of the circular issued by the third respondent. 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.

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

5. 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 herein to get approval from the Town and Country Planning Authorities for issuing no objection certification and 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.

6. 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.
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> (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:
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> 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:

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

7. In view of above Judgment passed by this Court, this Writ petition is 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 panchayat president for issuing No objection certificate. Elected period of panchayat president is over and there is no elected representatives for the administration of the panchayat now, hence, the concerned officer, whoever is in charge of the affairs of the concerned department in the panchayat, has to issue no objection certificate as per law, after verifying the necessary documents and after satisfying that everything is in order. The fourth respondent herein 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 petition is 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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