

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P. No.15505 of 2010 &
M.P.No.1 of 2010

S.Janaki

.. Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. by its Secretary,
Home Department, Fort St. George,
Chennai - 600 009.

2.The Commissioner,
Corporation of Chennai,
Rippon Buildings, Chennai - 600 003.

3.The Commissioner of Police,
Greater Chennai-Egmore,
Chennai - 600 008.

4.The Deputy Commissioner of Police,
K-4 Police Station, Anna Nagar,
Chennai - 600 102.

5.The Inspector of Police,
K-3, Aminjikarai Police Station,
Chennai.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the respondents to restore possession of the petitioner's premises at No.2-B, Ponnuvel Pillai Thottam, Aminjikarai, Chennai - 600 029, and to reinstall Dr.Ambedkar Statue in the former place from where it was removed with adequate police protection.

For Petitioner : M/s.R.Vijaya

For Respondents : Mr.B.Anand
Government Advocate for R1, R3 to R5

Mr.C.Ravichandran
Standing Counsel for R2

ORDER

The petitioner has come forward with this Writ Petition seeking direction to the respondents to restore possession of the petitioner's premises at No.2-B, Ponnuvel Pillai Thottam, Aminjikarai, Chennai - 600 029, and to reinstall Dr.Ambedkar Statue in the former place from where it was removed with adequate police protection.

2. According to the petitioner, the land measuring 2 cents bearing Door No.2B of Ponnuvel Pillai Thottam was originally owned by one Dhamodharan. The petitioner's mother purchased the property through an unregistered sale deed in the year 1998 and after the purchase the thatched roof was removed and put up a tiled house and got electricity service connection.

3. The petitioner would further state that her mother was paying the property tax to the Corporation of Chennai since 1997. While so, one Thangamma-Joseph claiming to be the owner of the property alleged that the petitioner had encroached upon her property. So, the petitioner instituted a suit in O.S.No.390 of 2010 for permanent injunction.

4. The grievance of the petitioner is that pursuant to the order passed in the Writ Petition in W.P.No.5253 of 2008, the second respondent without giving any notice to the petitioner had demolished the building and the statue. So he gave a representation dated 28.06.2010. Since no order was passed, the present Writ Petition.

5. Heard Ms.R.Vijaya, learned counsel for the petitioner, Mr.B.Anand, learned Government Advocate for the respondents 1 & 3 to 5 and Mr.C.Ravichandran, learned Standing Counsel for the second respondent and perused the records.

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6. The learned counsel for the petitioner submitted that the petitioner was paying property tax to the Corporation and purchased the property through a sale deed and therefore, the respondents cannot claim that the petitioner has encroached upon the property. It is further contended that

the respondents ought to have passed orders on the representation of the petitioner.

7. Per contra, the learned Standing Counsel for the second respondent submitted that the petitioner is an encroacher and the encroachment was removed based on the order of this Court dated 05.10.2009 in W.P.No.5253 of 2008. The learned counsel has also produced photographs to show that the petitioner had put up the construction preventing the access of the writ petitioner in W.P.No.5253 of 2008.

8. A perusal of the order passed in W.P.No.5253 of 2008, it is seen that not only the petitioner and others have encroached the road side land and this Court in W.P.No.4308 of 2007 issued directions to remove the encroachment. Complaining that the encroachment of the petitioner caused obstruction to the ingress and egress of the house of Thangamma Joseph, W.P.No.5253 of 2008 was filed. This Court, by an order dated 05.10.2009 directed the respondents to take action in the light of the earlier order passed in W.P.No.4308 of 2007.

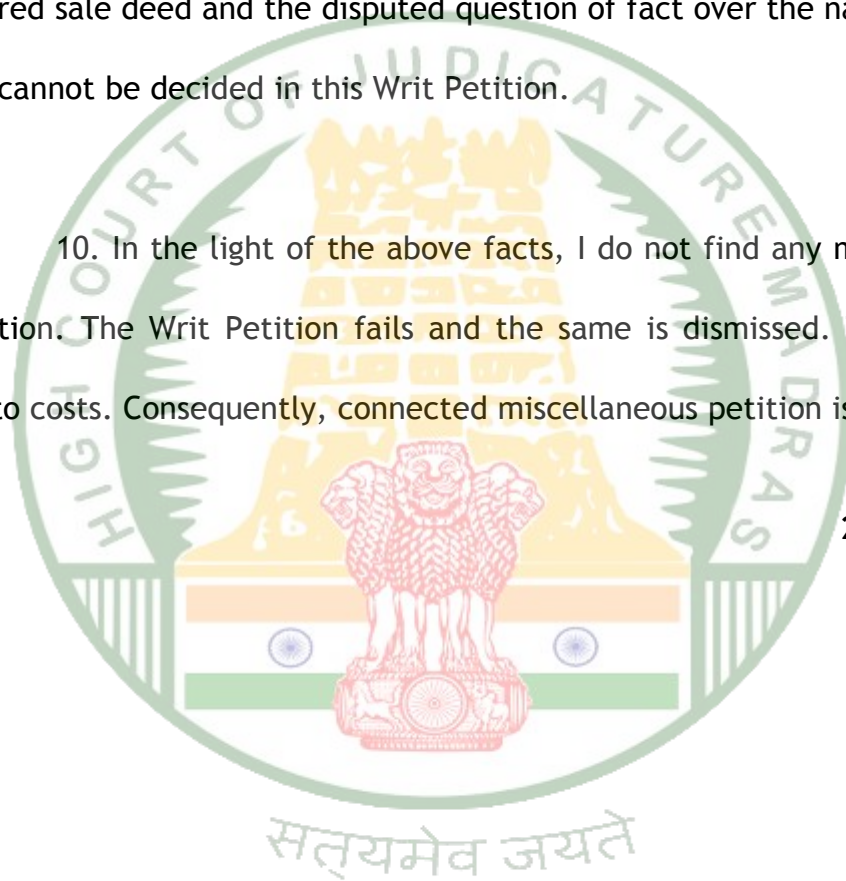
9. In the instant case, even according to the petitioner, her mother purchased the property through an unregistered sale deed in the year

1998. From the perusal of the sale deed, it is seen that the property was sold for Rs.3,000/-. It is settled law that if the value of the property is more than Rs.100/-, the document requires compulsory registration as per Section 17 of the Registration Act, 1908. So, the claim of the petitioner, based on the unregistered sale deed and the disputed question of fact over the nature of the property cannot be decided in this Writ Petition.

10. In the light of the above facts, I do not find any merit in this Writ Petition. The Writ Petition fails and the same is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

25/01/2018

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K.KALYANASUNDARAM, J.

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To

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