

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.07.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.40814 of 2016

and

W.M.P.No.34796 of 2016

M/s.G-7, Investments Private Limited,
Represented by its Managing Director,
M.Jehanathan
No.86, Gokul Towers,
M.S.Ramaiah Salai,
Bengaluru - 560 054.

..Petitioner

vs

1.Morava Infrastructures Private Limited,
Rep.by its Director,
Mrs.G.S.Nandhini,
W/o.Senthil Rajan,
Office Address No.1343, 10th Main Road,
Judicial Layout, Elahanga,
G.K.V.K.Taluk,
Bangalore - 560 065,
Karnataka.

2.Morava Infrastructures Private Limited,
Rep.by its Director,
Mrs.G.K.Senthil Rajan,
S/o.Gunasekaran,
Office Address No.1343, 10th Main Road,
Judicial Layout, Elahanga,
G.K.V.K.Taluk,
Bangalore - 560 065,
Karnataka.

3.N.T.Bharath

4.M/s.Kubera City Developers,
Rep.by its Managing Director,
Mr.N.R.N.Needhimohan,
S/o.N.R.Nathan,
Office Address No.21, Kamal Nagar,
Mannargui Town and Munsif.

5.Minor Maga Prabhu
Rep.by his mother and natural guardian
Mrs.Amudha,

W/o.Manoharan,
Thendaval 6th Street,
Mannargudi Town and Munsif.

6.S.Sivasubramanian

7.V.Baskaran

8.S.Vinayagam

9.The Sub Registrar,
O/o.Sub Registrar,
Gandhi Road,
Mannargudi Town and Munsif,
Thiruvarur District.

10.The District Collector,
Thiruvarur District,
Thiruvarur.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the respondent herein from receiving/registering any documents, in respect of the properties subject matter of O.S.No.36/2016, on the file of the District Munsif Court, Mannargudi, contrary to the undertaking granted by the respondent in the above suit and pass such further orders.

For Petitioner : Mr.Vijayan, Senior Counsel
for M/s.K.M.Vijayan Associates

For Respondents : Mr.B.Jawahar for R1 to R3
Mr.M.V.Deenadayalan for R4 to R6, R8
Mr.T.M.Pappiah, Spl GP for R9
M/s.A.Srijayanthi, Spl GP for R10

O R D E R

The relief sought for in this writ petition is for a direction to forbear the respondent herein from receiving/registering any documents, in respect of the properties, which are the subject matter of O.S.No.36/2016, on the file of the District Munsif Court, Mannargudi, contrary to the undertaking granted by the respondent in the above suit and pass such further orders.

2.The learned Senior Counsel appearing on behalf of the writ petitioner made a submission that the Civil Suit was already

instituted before the District Munsif Court, Mannargudi, in O.S.No.36 of 2016. The parties to the present lis are also parties in the Civil Suit. The learned Senior Counsel contended that the Civil Suit was dismissed for non-prosecution and an appropriate petition had already been filed and the Civil Court has to pass orders, restoring the original suit filed before the District Munsif Court, Mannargudi. The present writ petition has been filed based on the undertaking given by the Sub-Registrar, Mannargudi before the District Munisif Court, Mannargudi in O.S.No.36 of 2016, giving an assurance that the Sub-Registrar will not register any document or instrument in respect of the properties, which all are the subject matter of the Civil Suit now instituted before the District Munsif Court, Mannargudi. Relying on the said undertaking given by the Sub-Registrar, Mannargudi, the learned senior counsel is of an opinion that the public official is bound by the undertaking given before the Court and they are not supposed to register any documents during the pendency of the Civil Suit. However, attempts are taken to register the documents, contrary to the undertaking given. Thus, the writ petitioner is constrained to move the present writ petition for appropriate relief.

3.The learned counsel appearing on behalf of the respondents 1 to 3 opposed the contentions by stating that the writ petition itself is not maintainable. The Civil Suit was instituted by the respective parties before the competent Civil Court of Law. The suit was dismissed for default. The petition for restoration is also pending. Thus, as of now, no suit is pending before any Court. This apart, the said undertaking given by the Sub-Registrar, Mannargudi was submitted before the District Munsif Court in O.S.No.36 of 2016, which cannot constitute a cause of action for the purpose of moving a writ petition under Article 226 of the Constitution of India. Thus, the writ petition itself is not maintainable and liable to be rejected in limini.

4.The learned Special Government Pleader also sailed along with the arguments advanced by the learned counsel appearing on behalf of the respondents 1 to 3. The learned Special Government Pleader also insisted that, as of now, no suit is pending and therefore, the undertaking cannot be relied upon by the writ petitioner. The suit has not yet been restored and the petition for restoration filed by the writ petitioner is still pending. Thus, the writ petition cannot be maintained and accordingly, liable to be rejected.

5.This Court is of an opinion that the disputed complex question of facts can never be decided in a writ proceedings under Article 226 of the Constitution of India. The undertaking given by the Sub-Registrar before the District Munsif Court, Mannargudi in Civil Suit cannot be adjudicated in writ

proceedings and the factual circumstances, the powers of the Sub-Registrar under the provisions of the Registration Act and rules are to be examined by the competent Civil Court in a suit already instituted by the respective parties.

6. On a perusal of the said undertaking given by the Sub-Registrar is enclosed in Page No.19 of the typed set of papers filed along with the writ petition. It is unambiguous that the said undertaking was submitted before the District Munsif Court, Mannargudi in O.S.No.36 of 2016. Thus, if at all, the petitioner wants to get any relief from and out of the said undertaking, they are at liberty to approach the competent Civil Court, where the Civil Suit has been instituted. This apart, the Civil Suit filed in O.S.No.36 of 2006 was already dismissed for default and as on today, no suit is pending. Thus, the petitioner's undertakings or any pleadings submitted in the Civil Suit cannot be a ground for instituting a writ proceedings before this Court.

7. This Court is of an opinion that the civil disputes relating to certain properties and during the proceedings before the Civil Court, if any undertaking or compromise memo or any other document has been filed. Such documents, undertakings or compromises cannot constitute a cause of action for the purpose of filing the present writ petition under Article 226 of the Constitution of India. This apart, the writ petitioners have got an appeal remedy even under the Code of Civil Procedure.

8. Thus, even in case of any grievances, they are bound to approach the appropriate Appellate Court under the provisions of the Code of Civil Procedure. However, writ jurisdiction cannot be invoked under these circumstances and accordingly, the writ petition is devoid of merits and stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

सत्यमेव जयते
Assistant Registrar (CS IV)

//True Copy//

To

Sub Assistant Registrar

1. The Sub Registrar,
O/o. Sub Registrar,
Gandhi Road,
Mannargudi Town and Munsif,
Thiruvarur District.

2.The District Collector,
Thiruvarur District,
Thiruvarur.

+1cc to Mr.B.Jawahar, Advocate, S.R.No.48158

+1cc to Mr.K.M.Vijayan Associates, Advocate, S.R.No.46939

+1cc to the Government Pleader, S.R.No.48035 & 47617

W.P.No.40814 of 2016

GSP (31/07/2018)



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