



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.06.2018

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THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.(MD) No.11823 of 2018

K.Ramasamy

... Petitioner

-vs-

1. The Inspector General of Registration
No.100, Santhome High Road,
Mylapore, Chennai-600 028.

2. The Sub Registrar,
Office of the Teppakulam Sub Registrar,
Integrated Registrar Officer,
Y.Othakadai, Madurai-625 107.

3.M.Sureshkumar

... Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India to issue a writ of Mandamus, directing the 2nd respondent not to register any deeds / documents / instruments in respect of Plot Nos.6, 7, 10, 11 & 12 Joshniya Garden in survey No.20/2B1C, Kalikappan 1st bit Village, Madurai East before the conclusion of the enquiry proceedings in pursuant to his notice dated 12.05.2018.

For Petitioner : Mr.D.Sivaraman

For R1 & R2 : Mr.M.Murugan
Govt. Advocate

O R D E R

This writ petition has been filed, seeking a direction to the 2nd respondent not to register any deeds / documents / instruments in respect of Plot Nos.6, 7, 10, 11 & 12, Joshniya Garden in S.No.20/2B1C, Kalikappan 1st bit Village, Madurai East before conclusion of the enquiry proceedings in pursuance of his notice dated 12.05.2018.

2. Mr.M.Murugan, learned Government Advocate takes notice for the respondents 1 & 2. Notice to R3 is dispensed with, in view of the nature of disposal of this case. By consent on either side, this writ petition is taken up for final disposal at the admission stage itself.

3. It is the case of the petitioner that he is a Mason, <https://hservices.courts.gov.in/hservices/> and he entered into an agreement of sale dated 30.07.2016 in respect of five plots out of 12 plots,



with the 3rd respondent, who has formed a layout in the name of "Joshniya Garden" for a total sale consideration of Rs.56,58,976/-. A sum of Rs.3,00,000/- was also paid as advance by the petitioner to the third respondent.

3.1. It is the further case of the petitioner that even though the petitioner was ready and willing to pay the balance amount, pursuant to the ban in registration of sale deeds, the sale deed could not be registered in terms of the agreement. However, the third respondent has been periodically receiving the part of sale consideration in the interregnum period and as per his request, the loan liability in respect of the said plots was also discharged from the Indian Bank. Out of total sale consideration, the petitioner had already paid Rs.51,58,976/- to the 3rd respondent and the same was also admitted by the 3rd respondent and an undertaking was also given for execution of sale deed after receipt of the balance amount of Rs.5,00,000/-.

3.2. It is the grievance of the petitioner that even after regularization of the layout issues, the third respondent did not come forward to execute sale deeds and also evaded from receipt of payment of the balance amount of Rs.5,00,000/- from the petitioner, which forced the petitioner to lodge a criminal complaint against him and before the Police, he had agreed to execute sale deeds on or before 10.05.2018, but did not keep his words.

3.3. It is the submission of the petitioner that he had duly submitted his statement before the 2nd respondent for enquiry, whereas no document was presented on the side of the 3rd respondent so far and therefore, no enquiry has been conducted by the 2nd respondent till now. At last, the petitioner, having found no other efficacious remedy, has approached this Court, seeking for the above direction.

4. Per contra, learned Government Advocate would contend that this petition is not at all maintainable before this Court, as the petitioner, instead of filing civil suit, has filed the present petition by invoking writ jurisdiction under Article 226 of the Constitution of India and therefore, this petition is liable to be dismissed in limine.

5. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for R1 & R2 and also perused the material documents available on record.

6. At the first blush, though the averments made in the petition seem to be appealing, when seen in depth, it could be concluded that in respect of civil disputes,



a writ court is not the proper forum. Admittedly, a sale agreement was entered into between the petitioner and the 3rd respondent on 30.07.2016 and some part amount was also paid in terms of the said agreement. Subsequently, pursuant to the refusal on the part of the 3rd respondent in honouring the agreement, there were criminal complaint, enquiry before the 2nd respondent etc.

7. A Hon'ble Division Bench of this Court, while dealing with such similar issue in the case of *Sri Sudha Constructions vs I.T.I. Limited*, decided on 21.08.2017 has held as follows:

"10.....A distinction had always been drawn between the public duties enforceable by mandamus that are statutory and duties arising merely from contract. Contractual duties are enforceable as matters of private law by ordinary contractual remedies such as damages, injunction, specific performance and declaration. In the Administrative Law (Ninth Edition) by Sir William Wade and Christopher Forsyth, (Oxford University Press) at page 621, the following opinion is expressed:

"A distinction which needs to be clarified is that between public duties enforceable by mandamus, which are usually statutory, and duties arising merely from contract. Contractual duties are enforceable as matters of private law by the ordinary contractual remedies, such as damages, injunction, specific performance and declaration. They are not enforceable by mandamus, which in the first place is confined to public duties and secondly is not granted where there are other adequate remedies. This difference is brought out by the relief granted in cases of ultra vires. If for example a minister or a licensing authority acts contrary to the principles of natural justice, certiorari and mandamus are standard remedies. But if a trade union disciplinary committee acts in the same way, these remedies are inapplicable: the rights of its members depend upon their contract of membership, and are to be protected by declaration and injunction, which accordingly are the remedies employed in such cases."

8. In *State of Bihar v. Jain Plastics and Chemicals Ltd.* reported in (2002) 1 SCC 216, a two-Judge Bench reiterating the exercise of power under Article 226 of the Constitution in respect of enforcement of contractual obligations has stated:-

"3.....It is to be reiterated that writ petition under Article 226 is not the proper proceedings for adjudicating such disputes. Under the law, it was open to the respondent to approach the court of competent



jurisdiction for appropriate relief for breach of contract. It is settled law that when an alternative and equally efficacious remedy is open to the litigant, he should be required to pursue that remedy and not invoke the writ jurisdiction of the High Court. Equally, the existence of alternative remedy does not affect the jurisdiction of the court to issue writ, but ordinarily that would be a good ground in refusing to exercise the discretion under Article 226."

9. In view of what is stated hereinabove and upon perusal of the judgments referred to above, it goes without saying that disputes relating to agreement / contractual obligations cannot be agitated under Article 226 of the Constitution of India. It has been so held in the cases of *Kerala SEB v. Kurien E. Kalathil* reported in (2000) 6 SCC 293, *State of U.P. v. Bridge & Roof Co. (India) Ltd.*, reported in (1996) 6 SCC 22 and *Bareilly Development Authority v. Ajai Pal Singh* reported in (1989) 2 SCC 116. Hence, this Court is of the view that this petition, being devoid of merits, is liable to be dismissed.

10. Accordingly, finding no merits in this writ petition, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar

To:

1. The Inspector General of Registration
No.100, Santhome High Road,
Mylapore, Chennai-600 028.

2. The Sub Registrar,
Office of the Teppakulam Sub Registrar,
Integrated Registrar Officer,
Y.Othakadai, Madurai-625 107.

+1cc to Mr.D.SIVARAMAN, Advocate, SR.No. 66486

+1cc to M/s.Special Government Pleader, SR.No. 66546

W.P. (MD) No.11823 of 2018
01.06.2018

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