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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2018

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THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.(MD)No.14021 of 2018
and
W.M.P(MD)No.12720 of 2018

S.Panchavarnam

... Petitioner

Vs.

1.The District Collector,
Collectorate Office,
Dindigul District.

2.The Commissioner,
Dindigul Municipal Corporation,
Dindigul City,
Dindigul.

3.The Kongunadu Infrastructure LLP,
rep. by its Director,
9/119A, Kolli Hills Main Road,
Vazhaithottam, Sendhamangalam,
Kalappanaickenpatti,
Namakkal – 637 404.

4.R.Prabhakaran

(R4 is impleaded vide Court order
dated 18.09.2018 made in WMP(MD)No.17225/18)

...Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the 1st and 2nd respondent to pay compensation with interest for Rs.1,31,00 000/- (Rupees One Crore and Thiry One Lakhs Only) (being the present guideline value) for illegally converting the petitioner's absolute vacant property measuring 19,600 Sq.ft. (140 Sq.ft x 140 Sq.ft) in Old T.S.No.1954/1 in New Sub Division T.S.No.56 / 1A1, Anna Nagar West Block.No.47, Dindigul Town, 6th ward, Dindigul, within the Joint-1 Sub Registrar office, Dindigul District, into Municipal Park.

For Petitioner : Mr.M.S.Sureshkumar
For Respondents : Mr.S.Anagappan
Govt. Advocate (for R1)

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Mr.J.Lawrance (for R2)
Mr.N.Balamuralikrishnan (for R4)
No appearance (for R3)

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O R D E R

The case of the petitioner is that the property measuring about 7 Acres and 32,234 sq.ft., in T.S.No.1954/1 in Dindigul Town, 6th Ward, Block No.47, Anna Nagar West, was originally belonged to one Santhanakonar Vagaiyarah. As per the release deed dated 05.09.1941 registered as document No.3182/1941, the said property was allotted jointly to the petitioner's father, namely, Vellaichamy and his grandfather, namely, Santhanakonar. Thereafter, a portion of the land has been allotted to one P.Deivendran, by way of settlement deed dated 10.09.2013, and the said P.Deivendran being the relative of the petitioner had given Power of Attorney to the petitioner to manage the property on 24.11.2015 and the document was also registered as Document No.3315/2015 at the Joint – 1, Sub-Registrar Office, Dindigul. While so, in 2016-2017, the petitioner came to know that the second respondent Corporation started cleaning the land which is covered in the Power of Attorney given to the petitioner, for the purpose of providing Park at Vivekananda Nagar under AMRUT Scheme.

2.According to the petitioner, the land belongs to his principal and therefore, the second respondent corporation has no right to put up a park in the said place and in that regard, a representation was submitted on 11.06.2018. Since no reply was forthcoming, the petitioner is before this Court seeking issuance of a Writ of Mandamus directing the respondents 1 and 2 to pay compensation with interest for Rs.1,31,00,000/- being the guideline value for illegally converting the private property into the public park in the subject property.

3.This Court is unable to appreciate as to how the writ is maintainable, since from the averments and the materials as disclosed in the affidavit, no specific cause of action has been pleaded except saying that the second respondent corporation has put up a public park in the land belongs to the petitioner. No materials have been produced to show that the petitioner was remotely connected with the property much less about his ownership the said property. The affidavit does not contain any specific details as to how the title has been derived by the petitioner himself and the affidavit is full of bald averments and appears to be a speculative one in order to gain undue monetary gain by filing the present writ petition.

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4.In any event, when the matter is taken up for hearing, the learned counsel appearing for the third and fourth respondents

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stoutly opposed the maintainability of the writ petition on the ground that earlier, the same writ petitioner approached this Court in W.P(MD)No.10346 of 2016 and the same was dismissed as having become infructuous on the submission made by the counsel appearing on behalf of the present petitioner. The order was passed by this Court on 06.12.2017. In the said writ petition, the petitioner challenged the order of the District Registrar, dated 05.05.2016, rejecting the petitioner herein to take action against the persons for fraudulent transaction on the ground that the petitioner was unable to point out any discrepancy in the transaction. The said order dated 05.05.2016 was put to challenge in the above writ petition and ultimately the writ petition was dismissed as having become infructuous.

5.Moreover, the learned counsel appearing for the respondents would submit that in the above writ proceedings, a counter affidavit was filed on behalf of the Deputy Registrar, Dindigul and in paragraph 5 of the counter affidavit, it has been averred as below:-

> "5.I submit that the writ petitioner seeks a remedy in order to cancel the gift deed executed by one Mr.Rengasamy Chettiar in favour of the Commissioner, Dindigul Municipality which was registered as Document No.1586 of 1992. After a lapse of around 30 years, the writ petitioner is seeking the remedy by way of filing the writ petition before this Hon'ble Court by invoking Circular No.67 issued by the 1st Respondent dated 3.11.2011. Even though the Circular was issued by the 1st Respondent during the year 2011 which was upheld by this Hon'ble Court as per judgment reported in Ramasamy vs. State of Tamil Nadu 2014(4) CTC 627, the writ petitioner wants to annual the document registered during the year 1992 which cannot be countenanced. Apart from that, the writ petitioner has raised several disputed question of facts since she has not impleaded the necessary party namely one Mr.Rengasamy Chettiar, who is the Executant of the Gift Deed bearing Registration No.1586 of 1992. This Respondent cannot conduct a roving enquiry with regard to the ownership of the disputed property. These aspects can be agitated before the Civil Forum only. Under the above said circumstances only, I have passed the proceedings in OMU No.(Aa3)2396/2016 dated 05.05.2016 directing the Petitioner to approach the Civil Court for necessary relief."

6.From the above, it could be seen that the petitioner had been approaching authority with his vexatious claim in order to achieve certain collateral purpose with oblique motive. However, the present writ petition was filed notwithstanding the fact that the earlier writ petition for the same property has been dismissed as having become infructuous at the instance of the petitioner himself. It is further to be seen that without disclosing the said filing of

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the writ petition, the present writ petition has been filed for the same cause of action, but with different averments. In fact, even in the present writ petition, a detailed counter affidavit has been filed on behalf of the second respondent resisting the claim of the petitioner.

7. From the averments as contained in the writ affidavit and also the above stated facts, it appears that the writ petitioner has been taking the jurisdiction of this Court for granted for achieving certain extraneous purpose. In fact, this writ petition has to be dismissed on the ground of non-disclosure of material facts, namely, the filing of the earlier writ petition by the petitioner himself in W.P(MD)No.10346 of 2016. However, even on merits, how the compensation towards damages to be claimed in writ jurisdiction, which would involve adjudication of disputed question of facts and such adjudication is not possible in writ jurisdiction of this Court.

8.In any event, from the pleadings and the materials placed on record, the petitioner has not approached this Court with clean hands and therefore, he is not entitled to any relief, much less the relief as prayed for. Therefore, this Court is of the view that both on the ground of maintainability as well as merit, the petitioner has no case at all and therefore, the writ petition stands dismissed as being completely devoid of merits and substance. In view of the non-disclosure of the material facts of approaching the Court earlier by the same petitioner in respect of the same grievances as projected in the writ petition in W.P(MD)No.10343 of 2016, this Court in the fitness of things imposes exemplary cost of Rs.5000/- (Rupees Five Thousand only) on the petitioner. The said cost shall be paid by the petitioner to the High Court Legal Services Authority (Madurai Bench), within a period of two weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar(cs-I)

To
1.The District Collector,
Collectorate Office,
Dindigul District.

2.The Commissioner,
Dindigul Municipal Corporation,
Dindigul City,
Dindigul.

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COPY TO
The Officer Incharge,
High Court Legal Service Authority,
Madurai Bench.

1 CC TO Mr.V.Karthikeyan , ADVOCATE IN SR No. 87104.

1 CC TO Mr.J.Lawrance , ADVOCATE IN SR No. 86938.

1 CC TO Mr.M.S.Sureshkumar , ADVOCATE IN SR No.86850.

1 cc to Special Government Pleader, SR.No.87167.

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