

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	15.11.2018
Orders pronounced on	8.2.2 019

CORAM

THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.2879 of 2011 and M.P.No.1 of 2011

1. Dr.R.Alauddin
2. Zohural Begum
3. Razia Begum
4. Azeema Begum
5. Madina Begum
6. Zaibunnissa Begum
7. Shamshad Begum
8. R.Ameeruddin
9. Sirajunnissa Begum
10. Akthar Begum
11. Ifther Begum
12. R.Rafiquddin
13. K.Razack
14. Md.Zubair
15. Zeheka

.... Petitioners

Vs.

- 1 The Commissioner,
Corporation of Chennai,
Rippon Building, Chennai 600 003.
- 2 The District Revenue Officer,
Land and Estate Department,
Corporation of Chennai,
Chennai 600 003.
3. The Revenue Officer,
Corporation of Chennai,
Chennai 600 003.

.... Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for all the records of the respondents culminating into the impugned proceedings of the first respondent No.Ni.ma.utha. na.ka.No.1e8/2620/2005, dated 17.11.2010 and quash the same and consequently direct the respondents to execute and register the sale deed of the property bearing Plot No.31, comprised in R.S.No.38/1 & 40 part; T.S.No.17 of an extent of 1 ground 1028 sq.ft. in favour of the petitioners who are the legal heirs and legal representatives of late P.A. Rahiman Sheriff without insisting for any further sale consideration.

For Petitioner : Mr.M.K.Hidayatullah
For Respondents : Mr.S.Saravanan
Standing Counsel

O R D E R

According to the petitioners, writ petitioners' father late P.A.Rahiman Sheriff joined the services of Corporation of Chennai as an Assessor in the Revenue department w.e.f. 16.8.1940 and retired as Revenue Officer on 22.5.1966. During his tenure, the land and building was allotted under lower Income Group Housing Scheme on hire purchase scheme in Plot No.31, Old door No.8, Present door No.23, 4th Cross street, East Shenoy Nagar, Chennai 30 bearing Plot No.32, comprised in R.S.No.38/1 & 40 Part; T.S.No.17, of an extent of one ground 1028 sq.ft. He was put in possession on 2.6.1962 and from the date of possession, he paid property tax, metro water tax and other tax pertaining to the said property regularly. The property was allotted to the petitioner on 19 years annuity basis and the price of the property was paid by our father in monthly instalments. According to the petitioner, the entire sale consideration was paid by the petitioner's father and the last payment was made under receipt No.58, dated 16.11.1981 for a sum of Rs.165.25. Petitioner's father made representation to the respondent to execute sale deed in favour of the petitioner's father. In support of the contention, the communication, dated 16.11.1981 also enclosed with the typed set of papers. In the meantime, the writ petitioner's father died on 18.6.1983. After his death, the legal heirs of the petitioners' father viz., wife, daughters and sons are in joint possession and enjoyment of the property allotted to the petitioners' father. The petitioner No.1 and 10 have made representation to the respondents on 7.8.2003 and 21.7.2004 respectively, along with relevant documents including last payment receipt, property tax receipts, Metro water tax receipts, Electricity bills, etc. Since there is no positive response, the petitioner has filed a writ petition in W.P.No.2538 of 2006 for issuance of writ of Mandamus against the respondents to execute and register sale deed of the subject matter of the property. This Court by an order, dated 3.3.2010, given liberty to the petitioner, to make further representation along with a copy of the order, in continuation of the earlier representation, dated 12.12.2005 to the first respondent and the same shall be considered and disposed of on merits by the first respondent within a period of six weeks from the date of receipt of such representation. After several notice, the respondent has passed the impugned order by directing the petitioner to Rs.2000/- per sq.ft. as per the guideline value, by deducting the

amount already paid for execution of the sale deed. Hence, the petitioners have approached this Court for the aforesaid prayer.

2. According to the petitioners, the demand made by the first respondent in the impugned order is arbitrary, illegal and without jurisdiction. The entire sale consideration fixed on the date of sale agreement, has been paid by the writ petitioners' father. Therefore, the impugned order passed by the first respondent is without jurisdiction.

3. The learned Standing counsel appearing on behalf of the respondents strongly opposed and disputed the contention of the petitioner. According to the learned Standing counsel, petitioners' father is not entitled to sale deed since the land in question is a Corporation land and the petitioners failed to prove their right over the subject matter of the property. The petitioners have not produced any original documents such as agreement with terms and conditions, registered sale indenture entered into between the Chennai Corporation and allottee, to claim right over the property. The Chennai Corporation has passed a resolution directing the petitioners to pay Rs.2000/- per sq.ft. as per the guideline value. The allotment made in favour of the petitioners and the payment of instalment amount are disputed fact and therefore, the writ petition is not maintainable.

4. Heard the learned counsel for the petitioners, learned Standing counsel appearing for the respondents, and perused the materials available on record.

5. On perusal of the records, the allotment of subject matter of the plot was made by the Chennai Corporation in favour of the petitioners' father. By communication, dated 12.2.1974, it was informed to the petitioners' father that a sum of Rs.163.86 shall be paid towards balance amount for full settlement as on 31.10.1973. Pursuant to the said communication, petitioners' father paid a sum of Rs.162.86 to the Chennai Corporation. Petitioners' father also made a representation on 16.11.1981 to register the sale deed in favour of the petitioners' father. Thereafter, petitioners' father died. Therefore, the petitioners made a request on 4.6.2001 to register the sale deed in favour of the petitioners. Again, the petitioners made representation on 7.8.2001 and 7.8.2003 to the Chennai Corporation. Thereafter, the petitioners made a request to the respondent Corporation on 12.12.2005. This Court by order, dated 3.3.2010, given liberty to the petitioner, to make further representation to the first respondent, along with a copy of the said order, in

continuation of the earlier representation, dated 12.12.2005, wherein no relief was granted in favour of the petitioners. Therefore, on the basis of the earlier order passed by this Court on 3.3.2010, the writ petitioner cannot claim as of right to seek direction to the respondent Corporation, for execution of the sale deed in favour of the petitioners. The communication received by the petitioners' father and the receipt for the payment of instalments and the representation also have been enclosed along with the typed set of papers. The respondent Corporation disputed the allotment made in favour of the petitioners' father. The petitioners have not produced any original documents to substantiate their claim.

6. Therefore, this Court is of the view that the documents relied on by the petitioners are disputed by the respondent Corporation. Even in the reply affidavit, the first petitioner himself stated that his father was put in continuous possession of the property in question from 2.6.1962 itself and by enjoyment of the property, the petitioners have right of ownership by adverse possession. Therefore, this Court under Article 226 of the Constitution of India cannot decide the title of the property in question in the writ petition. According to the petitioners, on the basis of allotment made by the respondent Corporation, the petitioners' father paid the entire consideration within the time. However, the petitioners have not approached the authority for execution of the sale deed. Therefore, the petitioners have to approach competent civil Court seeking appropriate remedy. Hence, there is no merit in the writ petition and the same is deserves to be dismissed.

7. Accordingly, the writ petition is dismissed. No costs. Taking note of the pendency of the writ petition from the year 2011, it is open to the petitioner to approach competent civil Court for appropriate relief. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1 The Commissioner,
Corporation of Chennai, Rippon Building,
Chennai 600 003.

2 The District Revenue Officer,
Land and Estate Department,
Corporation of Chennai, Chennai 600 003.

3. The Revenue Officer,
Corporation of Chennai, Chennai 600 003.

+1cc to Mr. M.K.Hidayatullah, Advocate SR.No. 11255

W.P.No.2879 of 2011
and M.P.No.1 of 2011

A.SK(04/03/2019)



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