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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2019

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P. No.23243 of 2016

Don Bosco Matriculation School
rep. by its Managing Trustee
Mr.K.Saramma

.. Petitioner

-vs-

1.The Chairman,
Tamil Nadu Housing Board,
No.493, Anna Salai,
Nandanam,
Chennai-600 035.

2.The Managing Director,
Tamil Nadu Housing Board,
No.493, Anna Salai,
Nandanam,
Chennai-600 035.

3.The Chief Engineer,
Tamil Nadu Housing Board,
No.493, Anna Salai,
Nandanam,
Chennai-600 035.

4.The Executive Engineer &
Administrative Officer,
Anna Nagar Division,
Tamil Nadu Housing Board,
TNHB Shopping Complex,
1st Floor, Thirumangalam,
Chennai-600 101.

5.Manager (Marketing & Service),
Anna Nagar Division,
Tamil Nadu Housing Board,
Thirumangalam,
Chennai - 600 101.

.. Respondents

Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus to call for the records ending with order of 5th respondent made in Lr.No.ANA II-3/2505/85 dated 10.06.2016 and



to quash the same and consequently to direct the respondents to execute the rectification deed in the name of petitioner in respect of registered Sale Deed Doc. No.1291/2016 dated 01.03.2016 on the file of SRO Madhavaram.

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For Petitioner :: Mr.K.Doraisami,
Senior Counsel for
Mr.Muthumani Doraisami

For Respondents:: Mr.R.Bharath Kumar,
Standing Counsel

ORDER

The writ petition has been filed challenging the impugned letter Lr.No.ANA II-3/2505/85 dated 10.06.2016 issued by the fifth respondent and seeking a direction to the respondents to execute the rectification deed in the name of the petitioner in respect of registered Sale Deed Doc. No.1291/2016 dated 01.03.2016 on the file of the Sub Registrar Office, Madhavaram.

2.Mr.K.Doraisami, learned senior counsel appearing for the petitioner would submit that the Tamil Nadu Housing Board, while forming a layout known as Kodungaiyur Phase I through lot system, had earmarked a Primary School Site measuring 10 grounds 15 sq.ft. in S.No.169/1 in Kodungaiyur Village. As the School cannot be represented by itself, Sister Mary Stanislaus on and behalf of Social Welfare Research Society, Yerunkancheri, Chennai-53, sought allotment of Primary School Site under Application No.10387. Pursuant thereto, the Executive Engineer of Tamil Nadu Housing Board, by letter dated 23.09.1985 had informed that the said Application No.10387 has been accepted by the Sites and Service Committee and that the site with the building allotted, should be used only for running a primary school as per Educational Rules in force of the Government of Tamil Nadu and the above said communication dated 23.09.1985 had also mentioned the mode of payment of costs of the plots, besides the documents required to be executed in that regard. Since the entire payment towards the costs of the land in question was made by the Trust out of the funds of Don Bosco Matriculation School in installments over a period of 10 years, the said school site was handed over to the society represented by Sister Mary Stanislaus on 15.10.1985 and the transfer charge certificate pertaining to the Primary School Site was given in the name of Sister Mary Stanislaus showing as representative of Social Welfare Research Society as evidenced by letter dated 15.10.1985.

3.Learned senior counsel appearing for the petitioner, referring to two of the Cheques dated 10.02.2016 issued by the petitioner K.Saramma, the Manager and Correspondent of St. Paul's Education and Charitable Trust, MKB Nagar, Don Bosco



Matriculation School for the sum of Rs.7,49,788/- & Rs.7,500/- in the name of the Executive Engineer & Administrative Office, Tamil Nadu Housing Board, Anna Nagar, Chennai, would submit that the entire costs of the land was borne by the trust from the fund of Don Bosco Matriculation School. However, a second plot bearing Plot No.R43 adjoining the first plot measuring to an extent of 1 ground 2240 sq.ft. comprised in S.No.162/1B part, was also allotted to Pope John Paul Primary School by letter dated 09.10.1991 and the possession of the same was also handed over on 13.10.1992 and payment was made by the Trust out of the funds of Don Bosco Matriculation School towards the costs of the plot and the transfer charge certificate pertaining to Plot No.R43 had been issued in the name of Sister Mary Stanislaus showing as representative of Social Welfare Research Society as evidenced by letter dated 12.10.1992. In the meanwhile, in view of expanded educational activities, Father K.P. Joseph has promoted St. Paul's Education and Charitable Trust on 01.05.1992 which was registered under the Indian Trust Act on 24.10.1994 as Document No.1110/1994 and therefore, the erstwhile Primary School, became Don Bosco Matriculation School which has been duly recognised by the Government of Tamil Nadu and as a result the Don Bosco Matriculation School was brought under the administrative control of St. Paul's Educational and Charitable Trust.

4.Learned senior counsel further submitted that even in the Trust Deed, it has been clearly mentioned as to how the lands allotted by the respondents were vested with St. Paul's Educational and Charitable Trust by the Social Welfare Research Society. In the meantime, Sister Mary Stanislaus, due to her old age and ill health, relinquishing all her connections and service from the institution during October 2000, had duly executed a power of attorney in favour of Father K.P.Joseph under a registered deed dated 30.10.2000 bearing Doc. No.1797 / 2000. After the exit of Sister Mary Stanislaus, Father K.P.Joseph has taken over the administration of the trust and the school. All these facts and circumstances clearly show that Sister Mary Stanislaus was only representing the Society for all administrative purposes including receiving the land in question allotted by the Tamil Nadu Housing Board. Therefore, the Tamil Nadu Housing Board the respondents herein having accepted the Application made by the petitioner School for allotment of the land, had earmarked a primary school site measuring 10 grounds 15 sq.ft. in S.No.169/1 in Kodungaiyur Village. In the meanwhile, as there was a delay in execution of the sale deed, the petitioner came to this Court with W.P. No.28703 of 2013 for issuance of writ of mandamus directing the respondents to deliver to the petitioner all the documents pertaining to the Primary School Plot and Plot R43. During the pendency of the said writ petition, a letter dated 13.11.2014 was addressed to the Executive Engineer, Tamil Nadu Housing Board, the fourth respondent herein by the petitioner to execute the sale deed in the name of institution viz. Don Bosco Matriculation School



which is under the administrative control of St. Paul's Educational Charitable Trust, but, even after receipt of the said letter, there is no response from the fourth respondent. Subsequently, the petitioner was advised to withdraw the writ petition as a condition precedent for executing the sale deed. Pursuant to the same, the fourth respondent had executed a sale deed in respect of Primary School Plot and Plot R43 in the name of Sister Mary Stanislaus on 01.03.2016 and registered as Document No.1291/2016. Thus, in lieu of erstwhile Primary School, Don Bosco Matriculation School came into existence and had been duly recognised by the Government of Tamil Nadu and the Don Bosco Matriculation School was brought under the administrative control of St. Paul's Educational and Charitable Trust.

5.Learned senior counsel appearing for the petitioner would further submit that as the land allotted was a Primary School Site, the sale deed ought to have been issued in the name of the School. However, the respondents, without applying their mind, have executed the sale deed dated 01.03.2016 bearing Doc. No.1291 of 2016 in the name of Sister Mary Stanislaus, who was representing the Social Welfare Research Society, Yerukancheri. This was also admitted by the respondents in the impugned order dated 10.06.2016 which shows that the allotment of the plot was made only to the Social Welfare Research Society, Yerukancheri, represented by Sister Mary Stanislaus. For the reason that the application was made in the name of Sister Mary Stanislaus on 17.08.1985, the respondents have executed the sale deed in the name of Sister Mary Stanislaus, who was representing the Social Welfare Research Society, Yerukancheri. In view of the fact that Sister Mary Stanislaus, due to her old age and ill health has relinquished all her connections and service from the institution during October 2000, after the exit of Sister Mary Stanislaus, the plot allotted in the name of Sister Mary Stanislaus should be shown in the name of the petitioner Society. Therefore, rectification application has been filed on 13.05.2016 to rectify the mistake committed in the sale deed in respect of the name of the purchaser, but, the Manager (Marketing & Service), fifth respondent herein has sent a reply dated 10.06.2016 stating that the rectification sale deed in line of registered document No.1291/2016 dated 01.03.2016 is not feasible. When the plot originally allotted to the Social Welfare Research Society, Yerukancheri, represented by Sister Mary Stanislaus would be facing legal issues, a direction be issued to the respondents for execution of rectification deed in the name of the petitioner.

6.Learned senior counsel appearing for the petitioner, referring to Clause 11 of the Sale Deed, would submit that there is a specific clause mandates that the purchaser shall use the property hereby conveyed only for the purpose for which it was allotted namely School/institutional use zone. Again referring to the letter dated 31.12.2015 addressed by K.Saramma, Managing



Trustee, learned senior counsel submitted that in the said letter, it has been specifically mentioned that the sale deed should be executed in favour of Educational Society. Referring to the Power of Attorney deed executed by Sister Mary Stanislaus in favour of Saramma Koshy, learned senior counsel indicated that the said Saramma Koshy, D/o. Mr.K.A.Koshy, Trustee, aged about 48 years residing at Ward No.33, Door No.11, Mahakavi Bharathi Nagar, 7th Cross Street, Vyasarpadi, Chennai-39 will be the lawful Attorney to act in the name of Sister Mary Stanislaus and the schedule 'B' property was annexed with Schedule 'A' property and new buildings were constructed for running the school and the name of the school was changed from Pope John Paul to Don Bosco Matriculation School and the said school was managed and administered by St. Paul Educational and Charitable Trust and founded by Father K.P.Joseph till his life time. Therefore, when Sister Mary Stanislaus has given Sworn Affidavit for executing Rectification Deed showing the name of the owner of the plot declaring that she had made an application for allotment of land only for and on behalf of the institution which is running the school namely, Don Bosco Matriculation School and not for any other purpose by stating that she has no objection in issuing the sale deed in favour of the Trust. Viz. St. Paul's Educational and Charitable Trust, which is running the Don Bosco Matriculation School, duly represented by the present Managing Trustee Ms.K.Saramma, the respondents cannot raise any objection for executing the rectification deed.

7.A detailed counter affidavit has been filed by the second respondent. Learned Standing counsel appearing for the respondents, raising objection and supporting the impugned order contended that the request of the petitioner to rectify the mistake committed in the sale deed in respect of the purchaser as St. Paul's Educational and Charitable Trust' in the name of K.Saramma is not feasible for the simple reason that when the petitioner has moved an application for allotment of plot in question, it was made only in the name of Sister Mary Stanislaus. Therefore, the allotment order was made only in her name. As the initial payment was paid by the said allottee, namely, Sister Mary Stanislaus and the Sale Agreement was also executed by her with the Board, the Primary School Site with fittings and furniture were handed over to her on 15.10.1985. Further, as per willingness shown by the said Sister Mary Stanislaus, the lease cum sale agreement was also executed by the allottee on 28.09.1992. Subsequently, the additional land was handed over on 12.10.1992. This apart, the original allottee Sister Mary Stanislaus has also requested in the year 2012 to issue the sale deed in respect of site, Plot No.R-43, Block No.6 in Survey No.169/1B2 of Kodungaiyur Phase-I, Chennai. After accepting all the above, the allottee filed Writ Petition No.28703 of 2013 before this Court to execute the sale deed in favour of K.Saramma, D/o.K.a.Koshi, Managing Trustee of St. Paul's Educational and Charitable Trust, Correspondent, Don Bosco Matriculation School Kodungaiyur, Chennai. Later, the writ



petition was dismissed as withdrawn on 30.06.2015. Thereafter, K.Saramma has submitted a copy of General Power of Attorney executed in favour of her by the original allottee Sister Mary Stanislaus vide document No.121/5 dated 06.03.2015 on the file of the Sub Registrar Office, Ernakulam and based on which, pucca sale deed was executed in favour of Sister Mary Stanislaus and handed over to the representative of K.Saramma, the General Power of Attorney of the original allottee Sister Mary Stanislaus and the same was registered in the Sub Registrar Office, Madhavaram vide Document No.1291 of 2016 dated 01.03.2016. Thereafter, on 13.05.2016, the petitioner K.Saramma has sent a letter to the Board to execute a rectification deed to sale deed dated 01.03.2016 rectifying the purchaser name as St. Paul's Educational and Charitable Trust in the place of K.Saramma. As the original allotment order has been issued in the name of Sister Mary Stanislaus, the request of the petitioner to execute the rectification deed is wholly untenable and unjustifiable. Therefore, it was refused and the impugned order cannot be questioned legally.

8. But this Court is unable to accept the submissions made by the learned Standing Counsel appearing for the respondents. The reasons being that the Tamil Nadu Housing Board while forming a layout known as Kodungaiyur Phase I through lot system for the purpose of imparting education to the downtrodden people in and around Mahakavi Bharathy Nagar and Kodungaiyur area, a Social Welfare Research Society was formed by Father K.P. Joseph. Since the said school could not be represented by itself, Sister Mary Stanislaus on and behalf of the Social Welfare Research Society, Yerunkancheri, Chennai-53 has sought allotment of Primary School Site under Application No.10387. Pursuant to the same, the Executive Engineer of Tamil Nadu Housing Board, by letter dated 23.09.1985 informed that the said Application was accepted and the site with the building allotted should be used only for running a primary school as per Educational Rules in force. Thereafter, entire costs of the land towards the plot was borne by the Trust. Therefore, on receipt of the entire money paid by the Trust through Sister Mary Stanislaus, the respondents have issued the allotment order dated 23.09.1985. It is relevant to extract para 5 of the said allotment order as under:

'The site with building allotted to you should be used only for running a primary school as per the educational rules in force of the Tamil Nadu Government.'

9. It is relevant to mention that the mode of payments were made by the petitioner Trust through cheques dated 10.02.2016 for the sum of Rs.7,49,788/- & Rs.7,500/- issued by K.Saramma, the Manager and Correspondent of St. Paul's Educational and Charitable Trust, MKB Nagar, Don Bosco Matriculation School in the name of Executive Engineer & Administrative Office, Tamil Nadu Housing Board, Anna Nagar,



Chennai. When the entire amount has been borne by the Trust and that the allotment order issued with a specific purpose that the land with the building allotted to Sister Mary Stanislaus, who was representing the petitioner's Trust, should be used only for running a primary school as per Educational Rules in force of the Government of Tamil Nadu, the respondents could have executed the Rectification deed in the name of the petitioner Trust which has not been done. After the sale deed was executed on 01.03.2016 in the name of Sister Mary Stanislaus, who has initially made an application on 19.07.1985, due to her old age and ill health, she relinquished from the service and institution even in the year 2000.

10. Since the said Sister Mary Stanislaus relinquished her connections and service from the institution even during the month of October 2000 and a letter dated 13.11.2014 sent through registered post to the Executive Engineer, Tamil Nadu Housing Board clearly mentioning that the petitioner had applied for sale deed in the name of K. Saramma, Managing Trustee duly represented by its Correspondent and they have also completed the payment of land costs, the respondents ought not to have issued the sale deed in the name of Sister Mary Stanislaus. Therefore, the petitioner, apprehending that the legal heirs of Sister Mary Stanislaus may create some legal issues, have been writing letters to the respondents to execute Rectification deed in the name of Don Bosco Matriculation School represented by its Correspondent which has not been done. Finally, the impugned order issued clearly shows that the original allotment was made to Social Welfare Research Society, Yerukancheri, represented by Sister Mary Stanislaus. Since Sister Mary Stanislaus represented by Social Welfare Research Society, Yerukancheri has admittedly relinquished all her connections and service from the institution during October 2000, the respondents are directed to execute the Rectification Deed in the name of Don Bosco Matriculation School represented by its Managing Trustee/Correspondent within a period of eight weeks from the date of receipt of a copy of this order. Accordingly, the writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

vga



To

1.The Chairman,
Tamil Nadu Housing Board,
No.493, Anna Salai,
Nandanam,
Chennai-600 035.

2.The Managing Director,
Tamil Nadu Housing Board,
No.493, Anna Salai,
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1st Floor, Thirumangalam,
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5. The Manager (Marketing & Service),
Anna Nagar Division,
Tamil Nadu Housing Board,
Thirumangalam,
Chennai - 600 101.

+1cc to Mr.Muthumani Doraisami, Advocate SR.No.87600

+1cc to Mr.R.Bharath Kumar, Advocate SR.No.88153

W.P. No.23243 of 2016

NRJK (CO)
GMY (26/12/2019)