

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.11.2019

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Writ Petition No.22239 of 2018

and

W.M.P.Nos.26065 and 26066 of 2018

and

W.M.P.No.27195 of 2018

V.Radhika

...

Petitioner

Versus

1. The District Collector,
Thiruvallur District,
Thiruvallur.

2. The Tahsildar,
Poonamallee Taluk,
Thiruvallur District.

3. A.Perumal

4. S.Saroja

[R4 impleaded vide order dated 26.03.2019,
made in W.M.P.No.9567/19 in W.P.No.
22239/18 by KRCBJ]

Respondents

COMMON PRAYER:-Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the 1st respondent in Na.Ka.No.22/2018/Kanimam-2 dated 28.07.2018 and to quash the same and consequently direct the 1st respondent to grant renewal of registration of Brick Chamber/Kiln viz., M/s.Revathi Brick Works located in S.No.158/4B & 159/4 Sithukadu Village, Poonamallee Taluk, Thiruvallur District having registration No.95/2006, within a time frame to be fixed by this Court.

For Petitioner .. Mr.G.Sankaran

For R1 & R2 .. Mr.J.Purushothaman,
Government Advocate

For R3 & R4 .. Dr.R.Sampath Kumar

O R D E R

The petitioner herein has filed this Writ Petitions seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the 1st respondent in Na.Ka.No.22/2018/Kanimam-2 dated 28.07.2018 and to quash the same and consequently direct the 1st respondent to grant renewal of registration of Brick Chamber/Kiln viz., M/s.Revathi Brick Works located in S.No.158/4B & 159/4 Sithukadu Village, Poonamallee Taluk, Thiruvallur District having registration No.95/2006.

2. Heard the learned counsel appearing for the petitioner and the learned counsel for the respondents 1&2 and the private respondents 3&4 are represented by the counsel.

3. The petitioner herein is the wife of one Veeran who died on 20.04.2012. During his lifetime, he was running a Brick Chambers/Kiln in the name and style of "M/s.Revathi Brick Works" in S.No.158/4B & 159/4 Sithukadu Village, Poonamallee Taluk, Thiruvallur District. After the death of Veeran, the wife and mother of deceased Veeran namely the petitioner Radhika and the fourth respondent Saroja has entered into an agreement regarding the property left by Late.Veeran and registered a release deed dated 28.11.2013. As per the release deed, the petitioner herein has succeeded the property in S.No.158/4B and 159/4. Thus, the land in which the Brick Kiln running in the name of the petitioner.

4. While so, later one Perumal has filed a suit in O.S.No.401/16 before the District Munsif Court, Poonamallee, passed on a sale agreement dated 25.05.2012 entered with Saroja in respect of the 1/2 share to the said property and to declare the release deed dated 28.11.2013 as null and void. The said suit is pending.

5. In the said circumstances, when the petitioner herein has sought for renewal of the licensee to run the brick works, it was objected by Perumal, the third respondent stating the pendency of the suit. In view of the said objection, the first respondent has refused to grant license to the petitioner to run the brick works.

6. The learned counsel for the respondents 3 and 4 would vehemently submit that when the title regarding the property is under cloud and subject matter of the Civil Suit pending, the petitioner herein is not entitled for any license to run brick kiln in the said land. Further, the learned counsel for the

respondents 3 and 4 would circulate the order passed by the Tahsildar on 11.02.2019 directing the petitioner to close down the brick kiln which is functioning without license.

7. As far as, the first respondent is concerned in the counter affidavit, it is submitted as follows:-

"7.....Tmt.Radhika W/o.Late Veeran has applied for the renewal of brick chamber Reg.No.95/2006, as such the Tahsildar, Poonamallee has been requested to submit her report regarding the person entitled for the ownership of the above brick chamber comprised in respect of S.No.158/4 and 159/4 respectively of Sithukkadu Village of Poonamallee Taluk as well as to conduct necessary enquiry pertaining to the O.S.No.401/2016 filed by one Thiru.A. Perumal so as to take further action in this regard. The Tahsildar, Poonamallee has submitted her report to the District Collector, Tiruvallur in R.C.No.563/2018/A1, dated 22.02.2018, wherein she has stated that S.Nos.158/4B (0.25.0 Hecters) and S.No.159/4 (1.33.5 Hectares) of Sithukkadu village are registered in the name of Radhika W/o.Veeran under patta No.6814 and obtained patta for them, wherein Revathi Brick works is functioning in the above lands and they are under her enjoyment. In this connection, the Tahsildar, Poonamallee has stated that, a relative of the petitioner one Thiru.Perumal S/o.Abaranji has filed O.S.No.401/2016 before the District Munsif Court, Poonamallee and enquiry reveals that the said O.S.No.401/2016 is pending before the District Munsif Court, Poonamallee as such Revathi Brick works registration may be renewed after the above Original Suit is disposed of by the Court. The Deputy Tahsildar, Geology and Mining, Tiruvallur has submitted his report, that as per the above report of the Tahsildar, Poonamallee, Revathi Brick Works registration may be renewed after the District Munsif Court, Poonamallee passes orders. In view of the reports submitted by the Tahsildar, Poonamallee and Deputy Tahsildar, Geology

and Mining, Tiruvallur necessary endorsement in this office R.C.No.22/2018/G&M-2, dt.28.07.2018, that it is not possible at present to issue renewal certificate to the above brick chamber and action will be taken in this regard when the District Munsif Court, Poonamallee finally passes order in O.S.No.401/2016."

8. The bone of contention in this case is whether the petitioner has right to run the brick kiln during pendency of the suit filed by the third respondent in O.S.No.401/16 on the file of the District Munsif Court, Poonamallee.

9. This Court on perusing the record finds that the brick kiln in the subject land was functioning till the husband of the petitioner was alive and license was under the name of the petitioner's husband. After his death, the family members have agreed to divide the estate of the deceased Veeran and by release deed dated 28.11.2013, the property on which the brick kiln functioning was given to the petitioner herein. Now, after three years of the said arrangement, one Perumal has filed suit based on an unregistered sale agreement within an intention to nullify the release deed.

10. If Perumal -third respondent is able to succeed in the suit, he can get back the property. Till then for proper utilization of the property which at present in the name of the petitioner, the pendency of the suit cannot be a impediment. Therefore, this Court directs the first respondent-Collector to re-consider his earlier order dated 28.07.2018 and grant temporary license to the petitioner herein to run the brick kiln provided the other requirements are fulfil. Any order shall be subject to outcome of the Civil Suit pending between the petitioner and the third respondent-Perumal regarding the title of the suit.

11. In the result, this Writ Petition is disposed of. No costs. Consequently, connected W.M.P. is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

nvi

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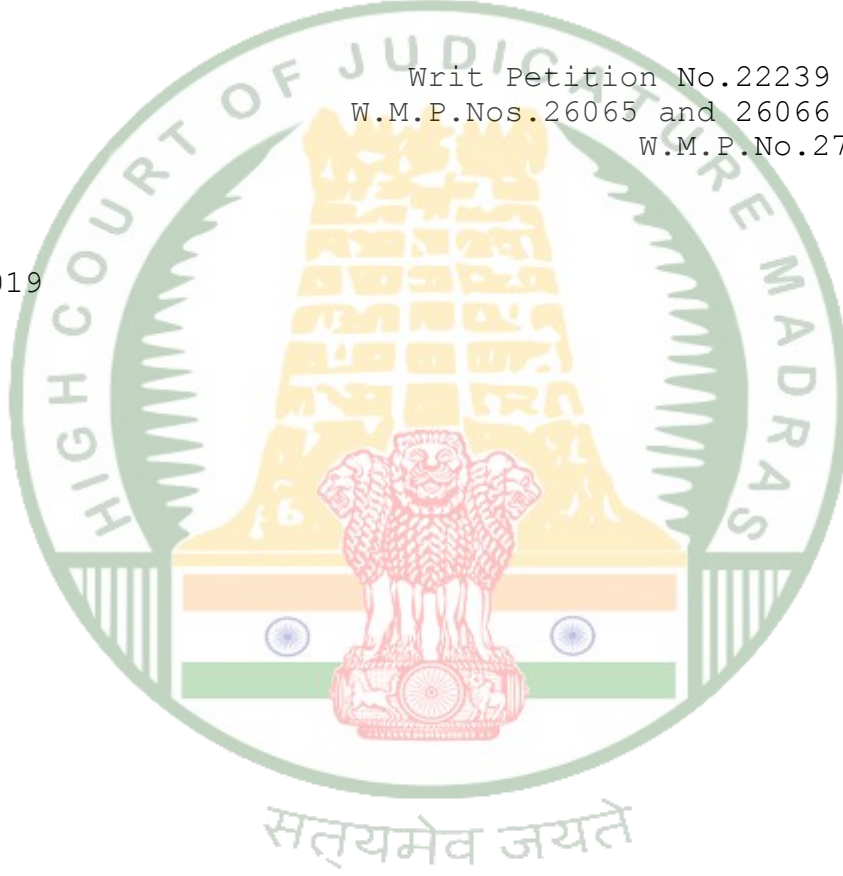
To

1. The District Collector,
Thiruvallur District,
Thiruvallur.
2. The Tahsildar,
Poonamallee Taluk,
Thiruvallur District.

+1 cc to Government Pleader sr93382
+1 cc to M/s.G.Sankaran Advocate sr93500

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