

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2019

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAIWAMY

W.P. No.22875 of 2018 and
W.M.P.Nos.26745 & 26746 of 2018

B.V.Nagaraj

.. Petitioner

Vs.

1.The State

rep by its Principal Secretary,
Housing and Urban Department,
Fort St.George,
Chennai - 600 011.

2.The Commissioner,

Salem Municipal Corporation,
Salem - 636 001.

3.The Assistant Commissioner,

Salem Municipal Corporation,
Block - 10, Ward AD,
Salem - 636 007.

4.The Director General of Police,

Law and Order, Beach Road,
Mylapore, Chennai - 600 004.

5.The District Collector,

Salem District, Salem - 636 001.

6.The Commissioner of Police,

Salem City, Salem - 636 002.

7.The Deputy Commissioner of Police,

Law and Order, Salem City,
Salem - 636 002.

8.The Deputy Commissioner of Police,

Traffic and Crime, Salem City,
Salem - 636 002.

9.The Assistant Commissioner of Police,

Traffic, Sevvapettai,
Salem - 636 002.

10.The District Revenue Officer,
Salem District, Salem - 636 001.

11.The Tahsildar,
Salem - 636 007.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus to call for the records in connection with the proceedings of the 5th respondent in ROC 9348/2017/E1 dated 06.10.2017 and quash the same and further direct the 5th respondent to strictly comply with the orders of this Court passed in W.P.No.3598 of 2017 in true letter and spirit.

For Petitioner : Mr.S.Prabhakaran, Senior Counsel
for M/s.P.S.Amalraj

For Respondents: Mr.S.R.Rajagopal,
Additional Advocate General
assisted by
Mr.V.Jayaprakash Narayanan,
Government Pleader (i/c) (R1, R4 to R11)

Mrs.K.Bhuvaneswari (R2 & R3)

O R D E R

(Order of the Court made by the Hon'ble Chief Justice
and M.Duraiswamy, J.)

The petitioner has filed the above Writ Petition to issue a Writ of certiorarified mandamus to call for the records in connection with the proceedings of the 5th respondent dated 06.10.2017 and to quash the same and further direct the 5th respondent to strictly comply with the orders of this Court passed in W.P.No.3598 of 2017 in true letter and spirit.

2.According to the petitioner, he is a co-owner of the property situated in Block No.10, Survey No.16 measuring an extent of 30,400 sq.ft. along with Raju, Lenin Kumar and Prakash. The petitioner contended that originally the property belonged to one Rathinasamy Pillai and after his demise, the property devolved on his son Adhisiyam Pillai. Further, the petitioner contended that the said Adhisiyam Pillai executed a registered General Power of Attorney dated 10.09.1958 in favour of one B.R.Raju Iyer. The said document was registered as Doc.No.84 of 1958. Thereafter, on 20.12.1981, the said B.R.Raju Iyer executed a Will in favour of his sons

P.R.Thirumalai Iyer and Venkatachalapathy, giving life interest to Venkatachalapathy and absolute right to his grand son B.V.Nagaraj, who is the Writ Petitioner. Further, it is the contention of the petitioner that the 9th respondent has illegally put up construction in the petitioner's property in Survey No.16 and constructed the building without any sanctioned and approved plan.

3.Earlier, the petitioner filed a Writ Petition in W.P.No.3598 of 2017 to issue a writ of mandamus directing the respondents 2 & 3 to demolish the illegal, unauthorized construction put up by the 9th respondent in Survey No.16 without obtaining necessary plan approval from the appropriate authorities and exemption from the Government. The 9th respondent submitted that the Police Station was constructed in the year 2003-04 in the land allotted to the Police Department by the Tamil Nadu Police Housing Corporation and the construction was duly approved in G.O.Ms.No.107 Home (Modern) Department, dated 08.02.2002. This Court by order dated 27.03.2017 in W.P.No.3598 of 2017 directed the District Collector, Salem to consider the relevant documents to be produced by the petitioner and take a final decision in the matter. Further, this Court also observed that if the District Collector comes to the conclusion that the property in question is a private property of the petitioner, then the District Collector can take steps to acquire the property.

4.Thereafter, the 5th respondent, by order dated 06.10.2017, passed a detailed order considering all the documents and also the case of both the parties. The petitioner and three others have also participated in the enquiry. After considering the case of the parties as well as the documents produced by them, the 5th respondent concluded that the land measuring an extent of 30,400 sq.ft. in T.S.No.16, Block No.10, Ward AD (previously Ward G), Periyeri Village, Salem Taluk is part and parcel of the land acquired in R.Dis.No.85/1907 dated 16.03.1907 of the Deputy Collector, Salem and it is a Government property and not a private property. Challenging this order, the petitioner has filed the Writ Petition.

5.Mr.S.R.Rajagopal, learned Additional Advocate General appearing for the respondents 1, 4 to 11 submitted that the very description of the property mentioned in the General Power of Attorney dated 10.09.1958 itself would falsify the case of the petitioner for the reason that the property mentioned in the said Deed is to the North of Manimutharu (river), West of M.S.No.5602, South of Police Thar Road and

Christianpet Mission Girls School, East of Fort Bungalow Street.

6.On a perusal of the plan produced by the learned Additional Advocate General, it could be seen that the said description of the property is on the Eastern side of the property in Survey No.16, Block - 10. That apart, on the South of the Survey No.16, there are number of plots and we do not find any river (Manimutharu) running on the South of T.S.No.16. Apart from that, Christianpet Mission Girls School is also not on the South of T.S.No.16, whereas, it is on the South of T.S.No.98, 99, etc Block - 12. Even the description of the property also falsify the case of the petitioner. Apart from this, originally the property belonged to Rathinasamy Pillai and after his demise the property devolved on Athisiyam Pillai. The said Athisiyam Pillai executed a registered General Power of Attorney dated 10.09.1958 registered a Doc.No.84 of 1958 in favour of B.R.Raju Iyer.

7.On a perusal of the said Power of Attorney, it is clear that B.R.Raju Iyer has not paid any consideration to the principal viz., Athisiyam Pillai for the execution of the Power of Attorney.

8.It is settled position that unless the title of the property is transferred to a particular person, the said person shall not derive right or title over the said property.

9.By virtue of the Power of Attorney executed by Athisiyam Pillai, the Power Agent shall not derive any title or right over the property. After the demise of Athisiyam Pillai, the Power of Attorney Deed executed by him in favour of B.R.Raju Iyer will come to an end. While that being the position, the said B.R.Raju Iyer erroneously executed a registered Will in favour of his sons, giving absolute right to one son viz., P.R.Thirumalai Iyer and giving life interest to another son by name Venkatachalapathy and after his life time, giving absolute right to his grand son B.V.Nagaraj, who is the Writ Petitioner.

10.When B.R.Raju Iyer had no title or right over the property in dispute, the beneficiaries under the said Will shall not derive any right or title over the said property. The beneficiaries under the Will shall have no better title than the Testator. The Will executed by B.R.Raju Iyer, based on the Power of Attorney executed by Athisiyam Pillai, shall not give any title or right to him. That apart, the petitioner has not produced any document to show that he has got valid title over the

property.

11.The learned Additional Advocate General also produced the original files with regard to the acquisition of the land in T.S.No.16 in the year 1907 for the purpose of constructing the Police Quarters. We have perused the files and we are satisfied that the land in T.S.No.16 was acquired for the purpose of constructing the Police Quarters as early as in the year 1907.

12.The petitioner is trying to unsettle the settled things by filing this Writ Petition, by creating a cloud over the title of the property, when he himself has no right or title over the same.

13.In these circumstances, we do not find any ground to interfere with the order passed by the 5th respondent. The Writ Petition is liable to be dismissed. Accordingly, the same is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal Secretary,
Housing and Urban Department,
Fort St.George, Chennai - 600 011.
- 2.The Commissioner,
Salem Municipal Corporation,
Salem - 636 001.
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Salem District, Salem - 636 001.

11.The Tahsildar,
Salem - 636 007.

+1cc to M/s.P.S.Amalraj , Advocate SR.No.8898
+1 CC TO GOVERNMENT PLEADER SR.NO. 7854

W.P.No.22875 of 2018 and
W.M.P.Nos.26745 & 26746 of 2018

A.SK(25/02/2019)