

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 12.11.2019

Pronounced on: 20.11.2019

Coram::

The Honourable Dr.Justice G.Jayachandran

Writ Petition No.17233 of 2019
& W.M.P.No.16772 of 2019

M.Narayanasamy,
S/o.Munusamiappa,
No.80A, Rathna Mahal,
Appavu Nagar, Thali Road,
Hosur - 635 109,
Krishnagiri District.

... Petitioner

/versus/

1. The District Registrar,
District Registrar Office,
Krishnagiri District,
Krishnagiri.

2. Muthusamy,
S/o.Muthu Gounder,
Kalapalayam Village,
Alampalayam Post,
Erode, Erode District - 538 008.

.... Respondents

R2 impleaded vide order dated 19.07.2019 made in
W.M.P.No.20000/2019, in W.P.No.17233 of 2019, by Dr.GJJ.

Prayer: Writ Petition is filed under Article 226 of the
Constitution of India, to issue Writ of Certiorari, to call for
the records in No.782/U/2018 dated 12.11.2018 passed by the
Respondent and quash the same.

For Petitioner : Mr.K.Chandrasekaran,

For R1 : Mr.T.M.Pappiah,
Special Government Pleader

For R2 : Mr.M.Ramamoorthi,
for M/s.Jayasudha

O R D E R

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents 1 & 2.

2. The Petitioner herein has purchased the property measuring to an extent of 8 acres 60 cents situated in the town of Hosur, from one Venkatesamoorthy through his Power Agent Ramaiah vide sale deed dated 29.08.1991. In the year 1996, suits were filed in the Sub-Court, Hosur, for declaration and injunction in respect of portion of the said property by one Chellamuthu, Muthusamy and Rajendran in O.S.Nos.315, 316 and 317 of 1996. These suits were dismissed on 21.02.2003. The decree passed in this suit was challenged in A.S.Nos.78, 79 and 80 of 2003 on the file of District Judge, Dharmapuri, same was also dismissed on 30.11.2005, against which three Second Appeals were preferred before this Court in S.A.Nos.549, 1004 & 1005 of 2006, these appeals was also dismissed on 17.02.2017.

3. While so, the petitioner filed W.P.No.20857 of 2018 seeking Mandamus to consider the representation to register any type of document with regard to his property situated at S.Nos.184, 185, 186A & 186 C in Hosur Village, based upon the order passed in Review Application taken out by Chellamuthu, Muthusamy and Rajendran in respect of the common judgment passed in S.Nos. 549, 1004 & 1005 of 2006. This Writ Petition was disposed by this Court on 21.08.2018 without going into the merits or otherwise of the matter, directing the respondents to consider the representation of the petitioner dated 02.07.2018 and pass orders in accordance with law, within a period of six weeks, from the date of receipt of a copy of this order.

4. The District Registrar had considered the said representation of the petitioner and passed orders on 12.11.2018 stating that the Hon'ble High Court in S.A.Nos.549, 1004 & 1005 of 2006 vide common judgment dated 17.02.2017 has held that the land which has been acquired for a particular purpose, if not utilised for the said purpose, it cannot be reconvenyed to the erstwhile owner but same has to be auctioned in public and the sale proceeds should be used for public purpose. Therefore, the land been vested with the Tamil Nadu Housing Board, any document presented for registration by the third parties cannot be registered contrary to Section 22-A of the Registration Act.

5. The said order is challenged in this Writ Petition on the ground that, the respondents have misconstrued the observation of the High Court and there is a categorically finding by the District Court in the First Appeal that, the Land

Acquisition proceedings have not completed and possession was not taken. This finding of the 1st Appellate Court has been approved by the High Court in the Second Appeal.

6. The Petitioner herein contends that the Housing Board has dropped the Acquisition Proceedings and reconveyed the property back since it was reconveyed to the Power Agent and not to the original owner, this Court has nullified the Act of reconveyance. Therefore, the land should revert back to the original land owner. Hence, the sale deed, dated 29.08.1991 executed by the original land owner in favour of the petitioner through his power agent gets revived. Therefore, the petitioners are entitled to convey the property as he wish.

7. The petitioner contention is that, after the acquisition proceedings, reconveyance and pending disposal of the Second Appeal, the property has been sold to several persons and buildings have been erected. In such circumstances, the impugned order of the 1st respondent is bad in law.

8. The 2nd respondent has taken out an application to implead himself as a party in this Writ Petition, disclosing his interest in the proceedings. He has filed counter, wherein, it is stated that, in the common judgment rendered by this Court in S.A.Nos.549,1004 and 1005 of 2006, dated 17.02.2017, this Court has held that reconveyance was bad in law and the suit property is vested with Tamil nadu Housing Board. After disposal of the Second Appeal, when the 2nd respondent came to know that the properties are been alienated to various other persons suppressing the finding of the High Court. The 2nd respondent has filed a Review Application to clarify about the vesting of the land with the Tamil Nadu Housing Board. In the said Review Petition, this Court observed that the vesting is implicit in the order and no further clarification is required. While so, the petitioner herein has no right to alienate the property claiming as the owner of the property.

9. The 2nd respondent state that the Writ Petitioner attempt to make wrongful gain by alienating the subject property and creating encumbrances. This cannot be entertained since it will be against the spirit of common decree and judgment passed by this Court in S.A.Nos.549, 1004 and 1005 of 2006.

10. The 1st respondent in his counter, narrating the history of the litigation, has submitted that, since the title of the property held by Tamil Nadu Housing Board has not been annulled by the High Court. Section 22-A of the Indian Registration Act applies and therefore, no document can be registered in respect of subject property presented by the petitioner or any other person. The 1st respondent has only

reproduced and relied the order of the High Court for refusing registration. The respondents cannot interpret the verdict of the High Court. Hence, the Writ Petition has to be dismissed.

11. The property which is the subject matter of the present Writ Petition was subject matter of the Second Appeal (S.A.Nos.549, 1004 and 1005 of 2006) which was disposed by this Court on 17.02.2017 and the Review Application filed subsequently was disposed on 25.07.2018.

12. The brief history of the property is that, the land originally belongs to one Venkatesamoorthy. The Tamil Nadu Housing Board vide notification dated 13.06.1980 initiated acquisition proceedings under Section 4(1) of the Tamil Nadu Land Acquisition Act, 1894. The Writ Petition filed by Venkatesamoorthy in W.P.No.1753 of 1983 was dismissed by this Court on 08.01.1991 and reached finality. Thereafter, award in the acquisition proceedings was passed on 30.10.1992, and the land owner has received the award amount. While so, one Ramaiah, claiming himself as Power of Agent of Venkatesamoorthy started creating documents of sale deeds to various persons and also managed to get order from the Government, reconveyance of the acquired land. In the Second Appeal, this Court, after scrutinizing the record had held that, reconveyance deed executed by Tamil Nadu Housing Board is bad in law more particularly in favour of Ramaiah who was neither the landlord nor the power agent of the original landlord on the date of reconveyance.

13. Relying upon Section 43 of Transfer of Property Act, 1882 and the judgment of the Hon'ble Supreme Court in Jumma Masjid Vs. Kodimaniandra Deviah reported in 1962 SC 847, this Court held that, the transactions of Ramaiah are bad in law. Further, relying upon the judgment of the Hon'ble Supreme Court in State of Kerala & Ors Vs. M.Baskaran Pillai reported in 1997 SC 2703, this Court has held that, if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose for which the land is needed or dispose the same by way of sale through public auction.

14. The Petitioner herein claim right based on the sale deed dated 29.08.1991 which was executed by Ramaiah on behalf of Venkatesamoorthy. The said Venkatesamoorthy, who is the original owner of the land had challenged the acquisition proceedings, lost his case challenging the acquisition proceedings and received the award amount. Therefore, on 29.08.1991 when the petitioner purchased the land, it was land acquired by Tamil Nadu Housing Board. Therefore, whether the Tamil Nadu Housing Board is interested in proceeding with the project or not, the Housing Board is the title holder of the property. Hence, the petitioner herein through the sale deed

executed by Ramaiah as Power Agent of Venkatesamoorthy or any other persons for that purpose, can have no right to alienate the same. If some of the third parties have constructed building, it is done on her own risk, without ascertaining the title and the petitioner herein cannot take advantage of the same.

15. So far no one has challenged the Second Appeal finding before Apex Court and it has become final. Therefore, the Housing Board is the actual owner of the property, in fact, when some alienations of the property after disposal of the Second Appeal, was brought to the notice of this Court by way of Review Petition, this Court has made clear in the Review Petition that, there is no ambiguity in the common judgment passed on 17.02.2017, pointing out that the clarification sought by the petitioner is inbuilt in the judgment itself.

16. The Hon'ble Supreme Court judgment rendered in M.Baskaran Pillai reported in 1997 SC 2703 has been reiterated by this Court in Second Appeal judgment and that principle holds good and it cannot be circumvented. No one can deviate the principle laid down by the Hon'ble Supreme Court. Hence, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

bsm
To

The District Registrar,
District Registrar Office,
Krishnagiri District,
Krishnagiri.

+1 CC to The Govt. Pleader sr 97592.
+1 CC to Mr.K.Chandrasekaran, Advocate sr 96888
+5 Ccs to M/s.K. Jaya Sudha, Advocate sr 96749.

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PA(CO)
SP(09/12/2019)