

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2019

CORAM

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P.NO.34659 OF 2019

D.Selvakumar

... Petitioner

Vs.

1. Inspector General of Registration
Santhome High Road
Chennai - 600 028.
2. The District Registrar
Namakkal
Namakkal District.
3. The Sub-Registrar
Moganoor
Namakkal District.
4. M.Rajam
5. M.Anand
6. Suresh
7. Anuradha
8. K.Viswanathan

... Respondents

Petition filed under Article 226 of the Constitution of India, for issue of Writ of Mandamus, directing the Respondents to consider the Petitioner's representation dated 02.11.2019 consequently remove the sale agreement endorsement dated 18.08.1995 reflected in the encumbrance with respect to the petitioner's property bearing S.Nos. 15/1A, 15/1C, 15/1H, 15/2D, 110/3A, 15/1G, Arur Village, Mohanur Taluk, Namakkal District.

For Petitioner : Mr.S.N.Subramani

For Respondents: Mr.T.M.Pappiah (For R1 to R3)
Special Government Pleader

O R D E R

Heard Mr.S.N.Subramani, Learned Counsel for the Petitioner, Mr.T.M.Pappiah, Learned Special Government Pleader, who takes notice for the First to Third Respondents and perused the

materials placed on record, apart from the pleadings of the parties.

2. According to the Petitioner, his Vendor in respect of the property bearing S.Nos. 15/1A, 15/1C, 15/1H, 15/2D, 110/3A, 15/1D, 15/1G, Arur Village, Mohanur Taluk, Namakkal District had entered into agreement of sale dated 18.08.1995 with certain third parties, who had instituted a suit for specific performance in O.S. No. 255 of 2001 in the Sub Court, Namakkal and the relief claimed was granted by judgment and decree dated 03.11.2015, but on appeal in A.S. No. 11 of 2016 before the Principal District Court, Namakkal, the same was set aside by judgment and decree dated 03.06.2019 and the suit was dismissed. The said decree of the Appellate Court is said to have been registered with the Third Respondent as Document No. 2259 of 2019. The Petitioner had purchased the property from his Vendor by Sale Deed dated 11.12.2017 which has been registered as Document No. 2081 of 2017 before the Third Respondent. The grievance sought to be ventilated by the Petitioner in this Writ Petition is that he had made a representation dated 02.11.2019 to the Third Respondent to remove the entries regarding the registration of the agreement of sale dated 18.08.1995, but the Third Respondent has not taken any action in that regard.

3. Learned Special Government Pleader appearing for the First to Third Respondents contends that there is no provision under any law enabling the Registering Authority to delete the entries of registration of documents made in the records and as such, the question of considering the representation of the Petitioner does not arise. That apart, it is not in dispute that the registered agreement of sale dated 18.08.1995 in respect of the property, has not fructified into a sale and the suit that had been filed for its enforcement has been eventually dismissed, which decree has also been registered and reflected as another entry in the encumbrance certificate and would suffice to allay the apprehensions of the Petitioner in the matter.

4. In this context, reference may be made to the dictum laid down by the Hon'ble Supreme Court of India in Director of Settlements, A.P. -vs- M.R. Apparao [(2002) 4 SCC 638], in which it has been held as follows:-

"17.One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding

legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. "Mandamus" means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (Kalyan Singh v. State of U.P. [AIR 1962 SC 1183]). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law...."

Having regard to this legal position viz-a-viz the aforesaid submission made by the First to Third Respondents which deserve acceptance, there is no necessity for them to take any action on the representation dated 02.11.2019 made by the Petitioner.

5. Accordingly, the Writ Petition is dismissed with the aforesaid observations. Consequently, the connected Miscellaneous Petition is closed. No Costs.

Sd/-

सत्यमेव जयते Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

maya/dm

To

1. Inspector General of Registration
Santhome High Road
Chennai - 600 028.

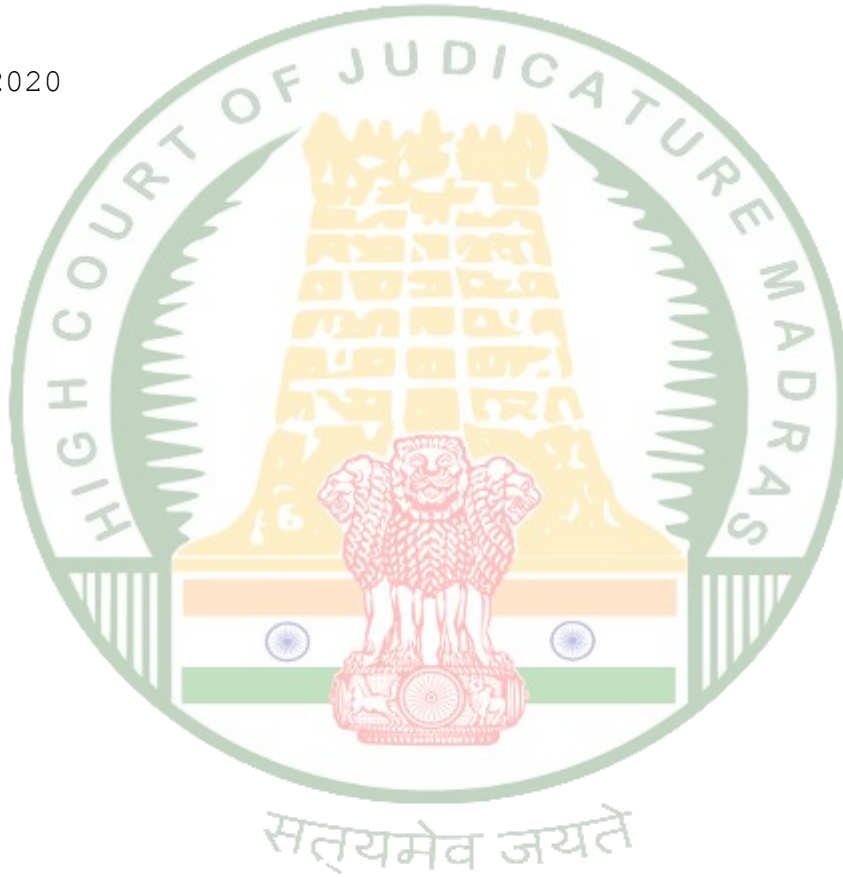
2. The District Registrar
Namakkal
Namakkal District.

3. The Sub-Registrar
Moganoor
Namakkal District.

+1cc to Mr.S.N.Subramani, Advocate, S.R.No.104402
+1cc to the Government Pleader, S.R.No.104897

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RSI (CO)
CS/04/02/2020



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