

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.32601 of 2018
and
W.M.P.No.37796 of 2018

S.Subramaniam

..Petitioner

Vs

1. The Municipal Commissioner,
Namakkal Municipality, Namakkal District.
2. The Branch Manager,
Corporation Bank, Paramathi Road, Namakkal District.
3. Balamurugan
4. Bhoopathi
5. Anuratha

...Respondents

Prayer:- This Writ Petition is filed, under Article 226 of Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records of the 1st respondent in Na.Ka.No.9153/2018/F1, dated 26.09.2018 and to quash the same as illegal and also forebearing the 2nd respondent to disburse the loan amount to the 4th and 5th respondent.

For Petitioner : Mr.S.Muthukrishnan

For Respondents : Mr.M.Raja Mathivanan for R1
Mr.S.Sethuraman for R2
Mr.I.Abdar Md Abdullah for R3
Mr.V.K.Gowtham for R4 & R5

WEB COPY
ORDER

By consent of both sides, this Writ Petition is taken up for final disposal.

2 Writ Petition is filed praying to issue a writ of Certiorarified Mandamus, calling for the records of the 1st respondent in Na.Ka.No.9153/2018/F1 dated 26.09.2018 and to

quash the same as illegal and also to forebear the 2nd respondent from disbursing the loan amount to the 4th and 5th respondent.

3 The grievence expressed by the petitioner is that he had borrowed a sum of Rs.1,00,000/- from one Dharmalingam for the purpose of his employment in the gulf countries. The said Dharmalingam asked the petitioner to execute a mortgage deed with respect to the property in question for the loan borrowed from him. Accordingly, on 25.02.1994, he had executed a mortgage deed in favour of Dharmalingam and the same was registered on 02.03.1994 in the Sub Registrar Office, Namakkal.

4 It is the further case of the petitioner that he went abroad for the purpose of his employment and returned back to India in the month of January, 1997. After returning back to India, he had paid the loan amount of Rs.1,00,000/- together with interest to the said Dharmalingam on 15.01.1997. However, he did not receive the mortgage deed and the original documents of his property, which he had mortgaged for availing the loan, from Dharmalingam.

5 Thereafter, in the year 2012, the petitioner wanted to avail a loan from a nationalized bank for constructing a house in the mortgaged plot. Hence, he approached Dharmalingam to get back the Original Deed of the property in question. But, Dharmalingam refused to return the original documents of the property. Then only the petitioner came to know that Dharmalingam has fraudulently created Sale Deed in his name on 02.03.1994 under the guise of mortgage deed. Thereafter, Dharmalingam has executed two sale deeds, with respect of the property in question, in favour of one Naga Sundar and another in favour of one Balamurugan.

6 Thereafter, the petitioner filed a Civil Suit in O.S.No.329 of 2016, to set aside the fraudulent sale deed created by Dharmalingam before the District Munsif Court, Namakkal. Pending the Suit, the said Balamurugan executed a sale deed, with respect to the property in question, in favour of the fourth and fifth respondent herein.

7 In further, the fourth and the fifth respondents have obtained approval from the 1st Respondent to construct a building in the mortgaged plot and the Second Respondent has also sanctioned loan for the same. Challenging the same, the present Writ Petition.

8 The learned counsel for the first respondent submitted that in the approval granted by the first respondent, it is observed that the approval granted to the fourth and the fifth Respondent, is subject to the outcome of the final

Judgment, to be passed in the Civil Suit and therefore, at this stage the petitioner's request cannot be acceded. Hence, the Writ Petition is liable to be dismissed.

9 By considering the submissions of the learned counsel for the first respondent and on perusal of the impugned order passed by the first respondent in Na.Ka.No.9153/2018/F1, dated 26.09.2018, wherein, it is stated that the approval granted to the fourth and the fifth respondents is subject to the outcome of the final Judgment to be passed in O.S.No.329 of 2016 and as rightly pointed out by the learned counsel for the first respondent, the right of the petitioner has been protected in the Impugned order.

10 In the result, the Writ Petition is dismissed with the above observations. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

tsg

To

1. The Municipal Commissioner,
Namakkal Municipality, Namakkal District.
2. The Branch Manager,
Corporation Bank, Paramathi Road,
Namakkal District.

+1cc to Mr. M.Rajamathivanan, Advocate, S.R.No. 22840
+1cc to Mr. S.Seturaman, Advocate, S.R.No. 23264
+1cc to the Government Pleader, S.R.No. 23178

WP.32601/2018
and

W.M.P/37796/2018

AK (CO)
GN(06/05/2019)