

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2019

CORAM

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

W.P.No.32593 of 2018

Ozone Homes Private Limited
rep. by its Authorized Signatory Mr.K.Krishnan,
No.63, G N Chetty Road,
T.Nagar, Chennai - 600 017.

.. Petitioner

Vs.

1. The Inspector General of Registration,
Registration Department,
No.100, Santhome High Road,
Chennai-600 004.

2. The District Registrar,
Anna Nagar,
Chennai-40.

3. TASC Jawahar Ayya @ Jawher Anand **

.. Respondents

** R3 impleaded vide order dated 23.01.2019
in WMP No.39292/18 in WP No.32593/2018

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Prayer :

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the second respondent to complete the registration formalities in respect of the pending documents 82, 84 87, 90, 92, 110, 123 and 132 of 2018 on the file of the second respondent and release the registered documents without insisting the Life Certificate of the Principal in the prescribed format.

* * *

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel
for M/s.BFS Legal

For Respondents: Mr.T.M.Pappiah,
Special Government Pleader for RR 1 & 2

Mr.K.Pattabhi for R3

O R D E R

This writ petition has been filed by the petitioner seeking for a Mandamus to the second respondent to complete the registration formalities in respect of the pending documents 82, 84, 87, 90, 92, 110, 123 and 132 of 2018 on the file of the second respondent and release the registered documents without insisting the Life Certificate of the Principal in the prescribed format.

2. The petitioner and the third respondent entered into a Joint Development Agreement dated 19.11.2010 (in short "JDA") for the development of the land belonging to the third respondent in Shanthi Colony, Anna Nagar, Chennai. The petitioner paid Rs.20 Crores towards refundable Security Deposit (SD). As per the JDA, the land owner/third respondent was entitled to 65% of the Gross Margin and the Developer/petitioner was entitled to 35%. The land developer/ petitioner was given a Power of Attorney dated 08.12.2010, which was duly registered as Document No.1353 of 2010 at Sub Registrar Office, Anna Nagar. The said Power of Attorney is an absolute one with full power of alienation and is said to be valid as on date. The project is also registered with the Tamil Nadu Real Estate Regulatory Authority (in short "RERA") and the land owner/third respondent is a co-developer and he has a statutory obligation to register the sale deed and handover the units to the individual customers.

3. It appears that there were income tax dues on the part of the land owner/third respondent, being a partner in a firm called RJK Investments to the tune of Rs.5 Crore. The income tax Department had attached 2058 sq. ft. of Undivided Share (UDS) of the land out of the Project land and a writ petition in W.P.No.7456 of 2016 was filed and the attachment order was modified. There is also borrowal by the third respondent from private financiers and he has been facing litigation before various Courts.

4. The petitioner contended that it was unable to sell the units, in view of various attachment orders over the property. While so, the third respondent moved this Court in O.P.No.283 of 2017 and sought for appointment of an Arbitrator, as per the JDA and an Arbitrator was also appointed and the proceedings are in progress, which has reached the trial stage.

5. A circular dated 02.02.2013 was issued by the Inspector General of Registration/first respondent directing the registering authorities to insist upon the production of Life Certificate of the Principal, at the time of registration of documents, whenever presented through the agent. However, if the

General Power of Attorney was registered on or before 01.02.2013, the said Life Certificate is not required. But it was subsequently clarified by yet another circular dated 09.10.2018 that even for those Power of Attorney documents registered prior to 01.02.2013, "proof as to Principal is alive" is to be filed.

6. As mentioned earlier, the dispute between the Principal and the Agent is being resolved in the arbitral proceedings. However, the petitioner is also contractually bound to execute the sale deeds in favour of the customers, who have booked the units. It is stated that document Nos.82, 84, 87, 90, 92, 110, 123 and 132 of 2018 are pending before the second respondent/Sub Registrar. The petitioner had requested the Principal to issue a life certificate. But as the Principal is refusing to issue the same because of the arbitration proceedings, the petitioner has approached this Court seeking for the above said relief for directing the second respondent to register the documents without insisting on the life certificate from the Principal.

7. Learned counsel appearing on behalf of the petitioner submitted that before the Arbitrator, who is a retired Judge of this court, the Principal/the third respondent has deposed in person and also signed the cross-examination on 18.09.2018 and admittedly, the Power of Attorney is not cancelled in the manner known to law and the said Power of Attorney dated 08.12.2010 is valid and in force till today. It is submitted that due to the non-production of the life certificate of the Principal, the bona fide purchasers from the Project are put to hardship, as they have parted with their hard-earned money and also borrowing from the financial institutions. Hence, it is submitted that the second respondent may be directed to complete the registration formalities in respect of the pending documents and release the same without insisting the Life Certificate of the Principal.

8. Learned counsel for the third respondent contended that the very conduct of the petitioner in initiating the arbitration proceedings itself would automatically bring the Power of Attorney to an end, though the Power of Attorney dated 08.12.2010 was not cancelled in the manner known to law. He has submitted that the arbitration proceedings are pending. It is also stated in the counter that the dispute is pending and the petitioner is not entitled for the life certificate, which, if given, would amount to signing for the sale.

9. In the given circumstances, the question that remains to be determined is whether the petitioner is entitled for the relief as prayed for, when the Principal and the agent are at loggerheads.

10. As long as the Power of Attorney is in force, the Principal is duty bound to perform his part of the contract and he cannot shirk his responsibility. The Prima facie case of the third respondent/Principal is that the accounts are not furnished by the petitioner for the sale of the properties. When the said issue is being adjudicated upon before the Arbitral Tribunal, he cannot desist from performing his part of the contract by not co-ordinating with the agent in completing the transactions.

11. It is only the circular issued by the first respondent, which is a procedural one, delays the registration. The very procedure was introduced only to avoid any Power of Attorney Agent misusing the power, it is being done even after the expiry of the Principal. In the instant case, admittedly, the Principal/third respondent is conducting his case before the Arbitral Tribunal. He has also appeared before the Tribunal and subjected himself for examination and he filed his vakalatnama thorough his counsel before this Court, which goes to show that he is still alive.

12. It is relevant to advert to the decision of a Division Bench of this Court in M.Murugesan V. The Inspector General of Registration, Chennai reported in 2014-5-L.W. 911 which discussed the object of the circular insisting on the life certificate in the following manner :

"4. The intention of the above circular is to protect innocent purchaser from being taken for a raid by person dealing with properties as agents. Ever so many cases have come up before this Court, where the agents sell away the properties, even after the power of attorney is cancelled. Unfortunately, as per the Registration Rules, the documents of conveyance such as sale deeds are registered in Book-1. The deeds of power of attorney are registered in Book-4. Whenever, an encumbrance certificate is applied, it does not use to get reflected in the encumbrance certificate previously. This has created lot of difficulties where unscrupulous persons were taking for a raid innocent purchasers in respect of huge properties. Therefore, the object of the circular is laudable. The power of the Inspector General to issue any such circular is not questioned on any legally tenable grounds by the petitioner. The only ground raised by the petitioner is as to how could a life certificate be taken to be valid for 30 days, when nobody can guarantee the life span of any individual. Human life is so temporary and transient that no one would know the date and time of the final call. Therefore, it is contended by the

learned counsel for the petitioner that such a prescription that the life certificate is valid for 30 days, is completely ridiculous.

5. As a point of philosophy what the petitioner says is correct. But man always lives in hope. Everyday we adjourn several cases to a future date promising to hear them on that date. This also falls under the same category as projected by the petitioner. Therefore, we do not see any reason to entertain this writ petition."

13. The Division Bench categorically observed that the object of the circular is laudable and the said circular is not questioned on any legally tenable grounds by the petitioner. It is also observed that men always live in hope. In the instant case, as stated earlier, the third respondent appeared before the Tribunal and he filed his vakalatnama thorough his counsel even before this Court, which goes to show that he is still alive. Hence, the object of the circular is met with.

14. In the absence of a lawful cancellation of the Power of Attorney, any deed that the agent does or performs in pursuance of the same has to be ratified by the Principal. It appears that there are about eight documents, which are pending registration before the second respondent for want of the said life certificate of the Principal.

15. In such circumstances, as the dispute is only revolves around the sharing of the sale proceeds, the second respondent is directed to register the documents based on the Power of Attorney without insisting on the life certificate of the Principal within a period of thirty days from the date of receipt of a copy of this order.

16. This order would be confined only to the above mentioned pending documents and the same cannot be extended to any other document, that may be presented by the petitioner in future.

17. This writ petition is ordered to the extent indicated above. There shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector General of Registration,
Registration Department,
No.100, Santhome High Road,
Chennai-600 004.

2. The District Registrar,
Anna Nagar,
Chennai-40.

+1cc to M/s.BFS Legal, Advocate, S.R.No.15034

+1cc to Mr.K.P.Promodh Kumar, Advocate, S.R.No.15384

+1cc to the Government Pleader, S.R.No.15614

W.P.No.32593 of 2018

KS (CO)
CS/26/03/2019



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