



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.10.2019

CORAM :

WEB COPY

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P(MD).No.8056 of 2019

Kannan

... Petitioner

Vs.

1.The Superintendent of Police,
Trichy District.

2.The Inspector General of Registration,
Santhome, Chennai.

3.The District Registrar,
Office of the District Registrar Office,
Trichy.

4.S.Suresh Kumar

5.The Commissioner of Police,
Thiruchirappalli City Commissioner Office,
Thiruchirappalli.

... Respondents

(R5 impleaded vide order dated 13.09.2019 made in WMP.(MD)No.16167 of 2019 in WP(MD)No.8056 of 2019 by GKIJ)

Prayer : Writ Petition filed under Article 226 of the constitution of India, praying for issuance of Writ of Mandamus to take immediate action against the fourth respondent for his illegal acts and acquiring immovable properties without prior permission in accordance with Regulation 7 of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 (vide RBI notification No. FEMA 21 / 2000 RB dated 03.05.2000 and also by following letter No. SR III / 1688 / -2 / 2003 dated 13.11.2003 issued by the Secretary to Government, Public S.C. Department, Tamilnadu within the time stipulated by this Court.

For Petitioner : Mr.B.Jameel Arasu

For R1 to R3 & R5 : Mr.K.Sumbulinga Bharathi
Government Advocate (Cr1.Side)

For R4 : Mr.T.Senthil Kumar



O R D E R

This petition has been filed to direct the respondents 1 to 3 and 5 to take immediate action against the fourth respondent for his illegal acts and acquiring immovable properties without prior permission in accordance with Regulation 7 of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 (vide RBI notification No. FEMA 21 / 2000 RB dated 03.05.2000 and also by following letter No. SR III / 1688 / -2 / 2003 dated 13.11.2003 issued by the Secretary to Government, Public S.C. Department, Tamilnadu within the time stipulated by this Court.

2. The learned counsel for the petitioner would submit that the fourth respondent is a Srilankan refugee. He purchased so many properties in his name in and around Trichy. He has no permanent residence in India and he purchased the property in the year 2014 from one R.Nanthakumar and the same has been vide document No.928/2014 registered in the Office of the Sub Registrar Joint Nos.1 and 2, Tiruchirapalli. He further submitted that the property has been registered contrary to the Section 7 of the provisions of Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations 2000, which was issued by the Reserve Bank of India. He further submitted that the properties acquired by Srilankan tamils in Tamilnadu are registered only if they have obtained the prior permission from the Reserve Bank of India for such acquisition. He further submitted that the fourth respondent produced bogus I.D proof, while purchasing the property, as if he is a resident of India. In this regard, so many complaints are pending before the official authorities. Finally, the petitioner sent a complaint to the respondents 1 to 3 but no action has been taken on the same.

3. Per contra, the learned counsel for the fourth respondent filed a counter and submitted that the petitioner has no locus to file this writ petition and this writ petition is not maintainable and it is liable to be dismissed at the outset devoid of merits. Initially the ancestors of the fourth respondent were lived in India. Thereafter, his parents went to Srilanka for their livelihood where he was born. Again, his family shifted back to India in the year 1983 and he is also residing in India since 1983. In fact, he got married in India. His wife and children are all of Indian Citizens. He further submitted that the fourth respondent is an Income Tax Assesse and he has been regularly paying taxes to the Indian Government since 1989. He has been disclosing his complete income sources to the Government of India. He also became an Overseas Citizen Of India (OCI) card holder, which was introduced in the year 2005 and accords special status and privileges to the person of Indian Origin and is the step towards the Dual Citizenship as envisaged by the Government of India.



4. He further submitted that the fourth respondent was also issued Overseas Citizen Of India (OCI) card in the year 2009 itself. Thereafter, in the year 2014, he purchased a Flat No.5 C, Ram Maris Apartments situated at No.1, Lawsons Road, Trichy with all his hard earned money so far in the interest of the future of his children and his family. In fact, this also disclosed before the Income Tax authorities. In this regard, there is a dispute between the vendor and the flat promoters in respect of occupy the common area of the purchased Apartment. Therefore, the petitioner filed a frivolous writ petition as a name lender for the said Nandakumar arraying wrong respondents. Mr.Nandakumar was the original owner of the said apartment. Thereafter, it was handed over to the builder. Then the fourth respondent purchased the above said flat and he is in possession and enjoyment the apartment.

5. He further submitted that that there is a specific provision for the OCI holders which has been stated in the Notification No. FEMA 21 (R)/2018-RB which is issued in the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018 and is presently the law in force that clearly states as follows:

6. Therefore the fourth respondent further submitted that the present writ petition itself has been filed with malicious intention only in order to harass him by suppressing the present law which is prevalent in the land.

7. He further submitted that the petitioner has come forward with the present writ petition with not only on correct, suppressed material facts and mala fide intention with ulterior motive but he has also putforth and arrayed the police respondents who do not have any powers as per the FEMA Act and the District Registrar was also well within his powers to register the sale document as per the Registration Act. It is only the petitioner who has filed a frivolous writ petition as a name lender for the said Nandakumar arraying wrong respondents and trying to threaten him for extorting money and putting him under pressure.

8. He further submitted that the petitioner has filed a frivolous litigation since respondents 1 to 3 and 5 are not competent persons to initiate any plenary action for non compliance of FEMA Rules and regulations. The FEMA Act has specifically envisaged Authorised Person to take steps against the violation of FEMA guidelines and the present respondents are no way competent to be Authorised Persons and the prayer itself is devoid of merits and the Writ Petition is liable to be dismissed on this ground alone. Therefore, in view of the above, he prayed to dismissal for the petition.

9. Heard Mr.B.Jameel Arasu, learned counsel appearing for the petitioner and Mr.S.Sumbulinga Bharathi, learned Government Advocate



(Crl.Side) appearing for the respondents 1 to 3 & 5 and Mr.T.Senthil Kumar, learned counsel appearing for the fourth respondent.

10. The learned Government Advocate (Crl.Side) appearing for the respondents 1 to 3 & 5 would submit that the petitioner sent a representation through RPAD only and he never appeared before the respondents 1 to 3. The petitioner is not a resident of Ram Maris Apartment Promoters. The fourth respondent purchased a Flat No.5C, Ram Maris Apartment situated No.1, Lawsons Road, Trichy. The original owner of the said property entered into an agreement with the builder viz., Mr.R.Nandhakumar for developing the same. Thereafter, the petitioner purchased a Flat and in respect of common area, there is a dispute between the vendors and the original owners. It is also seen that there are so many complaints on the instructions of the original owner of the property.

11. The present writ petition has been filed by the petitioner without any locus to question the fourth respondent nationality as well as purchase of property. It is seen from the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations 2018 that the overseas citizen of India can purchase property in India. The relevant portion of the Regulation 3 is as follows:-

"3. Any person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan, or persons of Hong Kong, Macau or Democratic People's Republic of Korea, and including persons from aforesaid countries having a place of business in India in a manner permissible under FEMA, will not be permitted to acquire or transfer any immovable property in India in their individual capacity, without the prior approval of the RBI, other than on lease not exceeding five years. However, such restriction would not apply where such person is an OCI."

12. Admittedly, the fourth respondent is a Overseas Citizen of India, as such, there is no prohibition on acquisition or transfer of immovable property in India by citizens of certain countries. Therefore, the present writ petition is nothing, but, clear abuse of process of law. Hence, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar (CS)



To

1.The Superintendent of Police,
Trichy District.

2.The Inspector General of Registration,
Santhome, Chennai.

3.The District Registrar,
Office of the District Registrar Office,
Trichy.

4.The Commissioner of Police,
Thiruchirappalli City Commissioner Office,
Thiruchirappalli.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.SENTHIL KUMAR, Advocate (SR-91242[F] dt.04/10/2019)

+1 CC to M/s.B. JAMEEL ARASU, Advocate (SR-91460[F] dt.04/10/2019)

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JMN(11.11.2019) 5P : 8C