

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No. 33741 of 2015
and M.P.No. 1 of 2015

1. R.Krishnan
2. G. Kannan

...Petitioner

-VS-

1. The Union Territory of Puducherry,
Rep. by its Chief Secretary,
Govt. of Puducherry, Secretariat,
Puducherry.
2. The Inspector General of Registration,
Government of Puducherry, Puducherry.
3. The District Registrar,
Office of the District Registration Department,
Sakthi Nagar, Saram,
Pondicherry - 13.
4. Narmada @ Mahalakshmi
5. A. Rajendiran

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records of the 3rd respondent in his proceedings bearing DRP.No.3/2015/1096 dated 28.09.2015 quash the same.

For Petitioner : Mr.R.Kumar

For Respondents: Mrs.N.Mala,
Additional Govt. Pleader [R1 to R3]
Mr.C.Selvaraj, Senior Counsel
for Mr.A.Devnarendaran [R4 & R5]

ORDER

Heard Mr.R.Kumar, learned counsel for petitioner, Mrs.N.Mala, learned Additional Government Pleader for respondents 1 to 3 and Mr.C.Selvaraj, learned Senior Counsel for Mr.A.Devnarendaran, learned counsel for respondents 4 and 5.

2. With consent of learned counsel on either side, the writ petition itself is taken up for final disposal.

3. The petitioners pray for issuance of a Writ of Certiorari, to quash the order passed by the 3rd respondent, District Registrar, Pondicherry dated 28.09.2015.

4. The said order came to be passed on a petition filed by the 4th respondent herein. The 5th respondent is the husband of the 4th respondent. The 4th respondent contended that she is the owner of the property in R.S.No.257 of 2001 measuring an extent of 7500 sq.ft in Thattanchavadi revenue village having purchased the same from Philomena Francis Gerard Rajarattinam vide document dated 23.09.2010. The 4th respondent further stated that she had purchased the property from the plotted lay out, which was developed by Balasundaram and Seenuvasan during the year 1965 and the eastern property of the plot was a road as delineated in the lay out. The 4th respondent filed a petition before the District Registrar stating that the petitioners herein attempted to fence the area ear-marked as road and when she enquired the petitioners they have stated that they purchased the property from one Dr.A.Vasantha Kumari by sale deed dated 16.03.2015 registered as document No.1742 of 2015 and they have also obtained a No Objection letter from the Municipality to the effect that the road portion does not belong to the Municipality. According to the 4th respondent, the petitioners have created certain documents with a view to grab the property, which was ear-marked as road and notified as such and under the control of the Municipality. The 4th respondent also addressed the Municipality stating that No Objection letter should not have been granted in favour of the petitioners and based on such communication, the Municipality revoked the earlier No Objection letter granted in favour of the petitioners. With these allegations, the 4th respondent had filed the petition before the 3rd respondent. The 3rd respondent issued notice to all the parties including the writ petitioners, who had appeared before the 3rd respondent and stated that the petitioners have filed O.S.No.80 of 2015 before the learned Principal District Judge, Puducherry, for a declaratory relief and official respondents as well as respondents 4 and 5 are parties to the suit including vendors of the petitioner. It appears that on coming to know that a civil suit is pending, the 3rd respondent had kept the file pending without passing any order.

5. While so, the 4th respondent filed a writ petition before this Court in W.P.No. 27822 of 2015 praying for a issuance of a writ of mandamus to consider the representation given by her in accordance with circular issued by the Inspector General of Registration, Puducherry dated 18.03.2015. The writ petition was disposed of by order dated 04.09.2015 by directing the 3rd respondent to dispose of the 5th respondent's representation dated 19.03.2015 on merits and in accordance with law after due enquiry by calling the 5th

respondent as well as the present writ petitioners, if so required and pass appropriate final orders within a period of eight(8) weeks.

6. Pursuant to the direction issued in the said writ petition, the 3rd respondent had taken up the matter and considered at the first instant, as to whether the Registration Department can entertain such a petition filed by the 4th respondent. The 3rd respondent, after taking note of Section 68(2) of the Registration Act, 1908, held that it has got power to entertain the petition. The second question, which was considered was whether the 3rd respondent is empowered to rectify any mistake, fraud, fault committed in the Registration office. Once again, the 3rd respondent referred to Section 68(2) of the Act and pointed out that the Registrar has power to conduct enquiry, in the same manner as that of a Civil Court under Section 75(4) of the Registration Act, 1908.

7. The third question, which was considered by the 3rd respondent was as to what would be the scope of enquiry. It was observed that the scope of enquiry on a petition filed by the 4th respondent is very limited as also powers of Registrar not to go beyond the prayer made in the petition. In this case, the only prayer is that the so-called road portion of the lay out has been encroached by certain persons on the strength of questionable documents and if the documents presented for registration is accepted, it will create encumbrance on a land, which has been a road and deny access to the 4th respondent.

8. Further, the 3rd respondent pointed out that he is not investigating the antecedent documents to decide the title/enjoyment of either the 4th respondent or the present writ petitioners. Further referring to Section 82(a) and (d) of the Registration Act, 1908, the 3rd respondent has observed that he has been entrusted with the duty of taking penal action where false declaration is made and anything done contrary to the interests of public could be rectified by due application of law.

9. After taking note of the notification issued by the Municipality, the 3rd respondent referred to the decision of the Hon'ble Supreme Court in the case of P.T.Chel Ram Vashit Vs. Municipal Corporation of Delhi [reported in 1995 (1) ASCC 47] cancelling the sale deed dated 03.05.2005, the rectification deed dated 21.03.2005 and the sale deed dated 16.03.2015. The petitioner is aggrieved by the impugned order mainly on the ground that no opportunity was granted to the petitioner and no enquiry was conducted by the 3rd respondent before the impugned order was passed.

10. Further, it is submitted that initially the 3rd respondent had issued notice and an enquiry was conducted and

the petitioners appeared and collected the copies of the petition filed by the 4th respondent and thereafter, nothing was heard until the impugned order was passed. The petitioners would admit that what triggered the 3rd respondent is the order passed in W.P.No.27822 of 2015 dated 04.09.2015. The question would be as to whether an enquiry is required to be conducted as claimed by the petitioner. As could be seen from the order dated 04.09.2015 in W.P.No.27822 of 2015, the direction was issued to the 3rd respondent to dispose of the representation of the 5th respondent dated 19.03.2015 on merits and in accordance with law after due enquiry by calling 5th respondent as well as 3rd party if so required and pass appropriate final orders. Therefore, there was no mandate cast upon the 3rd respondent to issue notice to the 3rd parties, namely, the writ petitioners herein and that discretion was left to the 3rd respondent by this Court in its order dated 04.09.2015.

11. Therefore, in my considered view, the petitioners cannot claim that the impugned order is bad in law, merely because, no enquiry was conducted as directed by this Court in the earlier writ petition. As pointed out above, the Court had given discretion to the 3rd respondent to summon parties, if necessary.

12. Assuming the submission of the learned counsel for the petitioners is to be accepted, in the considered view of this Court, no useful purpose would be served by remanding the matter to the 3rd respondent to give an opportunity to the petitioners to put forth their submissions. This is so, for more than one valid reason. Firstly, the petitioner having approached the Civil Court and filed O.S.No.80 of 2015 can have no better case before the 3rd respondent because he has sought for a relief of declaratory. In the civil proceedings wherein not only the officials are defendants, but the vendors of the petitioners and 4th and 5th respondents herein are also defendants. Secondly, the documents, which have been produced by the petitioners are all having been executed after the lands in question have been informed as a road and this has been clearly brought out by the 3rd respondent in the impugned order. Thus, once a land was ear-marked as road for public purpose, it cannot be utilised for other purposes and no power vested with the Municipality. Therefore, in the considered view of this Court, affording an opportunity to the writ petitioner is a useless formality and nothing will turn out from the same. The documents filed by the private respondents in the form of typed set show that the land is a road. The Municipality has revoked the earlier order, which is purportedly to be a No objection granted in favour of the writ petitioner. Apart from that criminal case has also been registered. The Thasildar's report dated 26.03.2015 clearly damages the case of the petitioner and in fact, the Thasildar has recommended for action to be effected under Section 145 Cr.P.C, as the petitioners have been precipitating matter while enquiry was going on. Apart from that, a criminal case

has also been registered against the petitioner's vendor in Crime No.169 of 2014 on the file of the 'O' Nagar Police Station, Puducherry for offences under Sections 447, 427, 341 read with 34 I.P.C. In the background of all these facts, no relief can be granted to the petitioners in this writ petition.

13. For all the above reasons, the writ petition fails and stands dismissed and the interim order stands vacated. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Secretary,
Union Territory of Puducherry,
Govt. of Puducherry, Secretariat,
Puducherry.
2. The Inspector General of Registration,
Government of Puducherry, Puducherry.
3. The District Registrar,
Office of the District Registration Department,
Sakthi Nagar, Saram,
Pondicherry - 13.

+1cc to Mr.R.Kumar, Advocate, S.R.No. 43

+5cc to Mr.A.Devnarender, Advocate, S.R.No. 308

W.P.No.33741 of 2015
and M.P.No. 1 of 2015

MR(CO)
GN(26/02/2020)

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