

WMP.No.25937 of 2019 in WP.No.17970 of 2013

T.S.SIVAGNANAM,J

ORDER

I have heard Mr.M.Purushothaman – petitioner appearing in person, Mr.P.Saravanan, learned counsel appearing for the first respondent and Mr.R. Bharathkumar, learned counsel appearing for the fourth respondent.

2. There is a delay of 771 days in filing this petition to restore the writ petition, which was dismissed for default on 28.11.2016. The petitioner is a retired Provident Fund Commissioner, who had been working in various places in India. He filed the writ petition by appointing an advocate, who appeared to have fallen ill and had been traveling outside the country to meet his children. Consequently, the matter was not followed up properly and when the case was listed for hearing on 11.11.2016, there was no representation and therefore, the matter was directed to be listed on 28.11.2016 under the caption 'for dismissal'. Even on 28.11.2016, since there was no representation on behalf of the petitioner, the writ petition was dismissed for non prosecution.

3. The stand taken by the petitioner in the affidavit filed in support of the petition to condone the delay cannot be disbelieved because the advocate did not follow up the matter. However, for such a reason, the petitioner, who is now appearing in person before this Court, should not be put to prejudice. One other issue, which weighed in the mind of this Court is with regard to the

subject matter of the writ petition.

4. It may be true that while considering the petition to condone the delay, merits of the matter should not be gone into. Nevertheless, the Court will be entitled to examine as to whether there is a prima facie case made out by the petitioner. In the writ petition, the petitioner sought for a declaration to declare the transfer of property effected in favour of one Mrs.M.Vasumathy – the sister of the petitioner by sale deed dated 23.1.2004 as void and also to declare the consequential settlement deed dated 23.4.2013 in favour of one Master Athithar – the grandson of the said Mrs.M.Vasumathy as void.

5. The original owner of the property was the petitioner's mother – one Mrs.M.R.Pushpabai and she died on 10.5.1981 leaving behind five legal heirs, which included (i) one Mr.M.Murugesan – father of the petitioner; (ii) one Mr.M. Padmanabhan – brother of the petitioner; (iii) the petitioner; (iv) the said Mrs.P.Vasumathy – sister of the petitioner; and (v) one Mrs.M. Vijayalakshmi – another sister of the petitioner. The father of the petitioner passed away on 02.3.1987. The said Mrs.M.Vasumathy – sister of the petitioner died on 18.5.2014. The petitioner's elder brother – the said Mr.M. Padmanabhan is also no more. The petitioner's another sister – the said Mrs.M.Vijayalakshmi is residing in Chennai. According to the petitioner, the said Mrs.M.Vijayalakshmi would support the case of the petitioner.

6. Among the private respondents, the said Mrs.M.Vasumathy filed W.P. No.302 of 2000 seeking a direction to the Housing Board to transfer the

allotment of the said property in her favour by considering the representation dated 23.12.1982. In the said writ petition, the Secretary/Personnel Officer of the Tamil Nadu Housing Board filed a counter, in which, it has been stated that though initially the consent letter was signed by the petitioner agreeing to transfer the property in the name of the said late Mrs.M.Vasumathy, he had withdrawn his consent letter on 14.5.1985.

7. Apart from that, the petitioner's father also passed away on 02.3.1987. Therefore, the Housing Board took a stand that unless and until all of them execute a consent letter or a declaration, the transfer of allotment cannot be made in favour of the said late Mrs.M.Vasumathy. A learned Single Judge of this Court, after considering the stand taken on either side, by order dated 01.8.2000, dismissed W.P.No.302 of 2000. However, in the penultimate portion of the said order dated 01.8.2000, the learned Single Judge of this Court made the following observation :

"It is needless to add that on the production of the required consent letters or declaration from all the legal heirs of the deceased allottee, the respondents may consider the petitioner's application for mutation and pass orders according to law."

8. Thus, in terms of the above observation, if at all transfer had to be effected in favour of the said late Mrs.Vasumathy, all the legal heirs of the said late Mrs.M.R.Pushpabai, who are alive on and after 01.8.2000, should

have executed consent letters/declaration.

9. The original file has been produced by the Tamil Nadu Housing Board, from which, it is seen that the transfer of allotment had been effected based on the alleged consent letter of the petitioner dated 31.12.1982. There are other consent letters executed by other legal heirs all dated 23.12.1982. A perusal of the consent letter dated 31.12.1982 shows that it is not a consent to transfer the property, but a rider has been attached by the petitioner stating that his sister – the said late Mrs.M.Vasumathy could enjoy the property only during her life time without effecting transfer. Therefore, the Tamil Nadu could not have acted upon the consent letter dated 31.12.1982.

10. As of now, the file produced by the Tamil Nadu Housing Board does not contain any consent letter from the petitioner after 01.8.2000 when the W.P.No.302 of 2000 filed by the said late Mrs.M.Vasumathy was dismissed. The above factor has weighed in the mind of this Court to come to a prima facie conclusion that the matter requires to be adjudicated after the parties file their counter.

11. Having satisfied with the reasons given in the affidavit filed in support of this petition, the delay in filing the petition for restoration is condoned. Registry is directed to number the restoration petition.

14.2.2020

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