

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2020

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.13975 of 2020

Ozone Homes Private limited,
Rep.by its Authorised 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.T A S C Jawahar Ayya @ Jawaher Anand ...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a writ of mandamus, directing the 2nd respondent to complete the registration formalities in respect of the Pending Sale Deed Document Nos.87 and 88 of 2020 on the file of the 2nd respondent dated 28.09.2020 respectively and release the registered documents without insisting the Life Certificate of the 3rd respondent / Principal in the prescribed format.

For petitioner : Mr.P.V.Balasubramaniam

For respondents : Mr.T.M.Pappiah

Special Government Pleader
for R1 & R2

ORDER

This writ petition has been filed for the issue of a writ of mandamus directing the second respondent to register the sale deed which is kept as pending document without insisting for life certificate and to release the document to the petitioner.

2. It is seen from records that the petitioner has already approached this Court by filing W.P.No.32593 of 2018 and W.P.No.19215 of 2018 for a similar prayer. It will be beneficial to extract the order passed by this Court in W.P.No.19215 of 2019 hereunder:

"2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

3. The grievance of the petitioner herein is that based on the Power of Attorney documents executed by land owner in favour of the petitioner he sought for Registration of the documents No. 37/19 and 117/19 before the 2nd respondent. The documents were not accepted for Registration. The 3rd Respondent who is the Principal of the petitioner due to subsequent misunderstanding between the petitioner and the 3rd Respondent has refused to give Life Certificate. Hence, the present Writ Petition seeking direction the nature of Mandamus, to direct the 2nd Respondent to complete the Registration formalities of the pending Sale Deeds Document No. 37/19 and 117/19 on the file of the 2nd Respondent dated 06.03.2019 and 01.07.2019 respectively.

4. The principal who is the 3rd Respondent herein has filed a counter objecting the Writ Petition on the ground that the Power of Attorney Deed is longer in force. By virtue of Section 207 of the Indian Contracts Act, the Power of Attorney Deed has been implicit revoked. Hence, the documents presented by the Agent has been rightly returned by the 2nd Respondent.

5. In support of his submissions, the learned counsel appearing for the 3rd respondent has relied upon the judgment rendered by the Panjab and the Haryana High Court reported in 1987 SCC online P&H 891 (Amrik Singh (deceased) Rep. By his L. Rs Darshan Singh & ors Vs. Sohan Singh (deceased) represented by his legal heirs Gurdev kaur and ors], wherein the Court has observed after considering the evidence on record held that revocation of power could be either expressly or impliedly as provided under Section 207

of the Indian Contracts Act. The material fact found is that case is extracted by the Court as below:-

"3. That learned counsel for the plaintiff-appellant contended that the finding of the trial Court has been reversed in appeal arbitrarily by the Lower Appellate Court. The evidence on the record, it was amply proved that both Sohan Singh and Karnail Singh were informed by Amar Singh deceased that he should not execute any deed on his behalf and the regular cancellation deed was going to be executed by him. Sohan Singh was the son of Amar Singh deceased whereas Karnail Singh defendant mortgagee also belongs to the same village and was residing about 40 yards away from the residence of Amar Singh. Thus, argued the learned counsel, the revocation may be expressed or may be implied in the conduct of the principal agent and, therefore, once Sohan Singh was informed of the intention of Amar Singh plaintiff, the Power of Attorney will be deemed to have been cancelled.

(Emphasis added)"

6. In response to this plea, the learned counsel for the petitioner would submit that earlier, when the Registrar refused to accept the documents presented by the petitioner, he approached this Court filing W.P.NO. 32593 of 2018, wherein the 3rd Respondent was a party and raised a similar objection. In that Writ Petition after considering the rival submissions, this Court has held that the Power of Attorney is in force and the principal is duty bound to perform is part of contract and cannot shirk responsibility.

7. In W.P.No. 32593 of 2018 between the parties, Court has held that the fact that the Principal has raised a dispute before the Arbitrator and participating in the Arbitration proceedings is a proof of his aliveness. The object of seeking Life Certificate very well get satisfy from the facts available and therefore, the 2nd Respondent need not insist for Life Certificate. The said judgment rendered in W.P.No. 32593 of 2018 binds the parties. The factual position still the same and no change in fact or law for this Court to take a different view.

8. The contentions of the learned counsel appearing for the 3rd Respondent that by preferring

Arbitration proceedings, the Power of Attorney has become revoked implicitly. Revocation of power can be inferred through conduct but she said the conduct must be explicit. Filing Arbitration Petition if so facts will not lead to an interference of revocation of Power of Attorney.

9. It is an admitted fact that till date, the 3rd respondent has neither caused any notice for revoking the Power of Attorney nor made explicit to the petitioner about his intention to revoke the Power of Attorney. Unlike, the facts of the case found in the judgment cited by the 3rd respondent. More particularly when Clause 28 of the Power of Attorney Deed specifically say that it is in irrevocable Power of Attorney Deed, there must be specific and explicit written document which could lead to an interference that by conduct the principal has revoked the Power of Attorney as contemplated under Section 207 of the Indian Contract Act. When there is nothing available for Court or to the respondent to interfere revocation of Power of Attorney and when there is ample material to interfere the principle is alive, in the peculiar facts of the case and in view of the earlier judgment of this Court in W.P.No. 32593 of 2018 dated 19.02.2019, the 2nd respondent need not insist for Life Certificate.

10. Accordingly, this Writ Petition is allowed and the 2nd Respondent shall release the document No. 37/19 and 117/19 prescribed by the petitioner which are pending with his for production of Life Certificate after collecting the necessary duty and registration charges. No costs.'

3. Heard Mr.P.V.Balasubramaniam, learned counsel for the petitioner and Mr.T.M.Pappiah, learned Special Government Pleader for R1 & R2.

4. The above order will squarely apply to the facts of the present case also. There is admittedly a dispute between the petitioner and the third respondent and arbitration proceedings are pending before the Tribunal. Already this Court has passed two orders directing the second respondent not to insist for life certificate for the purpose of registering the documents. The petitioner shall also file an affidavit before the second respondent to the effect that the Principal (third respondent) is alive.

5. In view of the above, there shall be a direction to second respondent to register the sale deed pending before it without insisting for production of life certificate after

collecting necessary stamp duty and registration charges.

6. This writ petition is disposed of with the above directions. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rli

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 , sr no.32926

+1cc to The Government Pleader, sr no.33072

W.P.No.13975 of 2020

SSI (CO)
RMP (07/12/2020)

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