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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2020

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THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.17970 of 2013
and M.P.No.1 of 2013

M.Purushothaman

...Petitioner

Vs.

1.M.Vasumathy
2.M.Padmanaban
3.M.Vijayalakshmi
4.Master S.Athithar
Represented by Father and
Natural Guardian Dr.Selvaraj

5.The Chairman,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration, to declare that the transfer of property vide sale deed document No.203/2004 dated 23.01.2004 with respect of scheduled mentioned property viz. Plot No.H16, Block No.26 (now known as door No.10, 97th Street, 15th Sector, K.K.Nagar, Chennai-600078) in favour of the 1st respondent is void and consequently the settlement made by the 1st respondent in favour of the 4th respondent registered as Document No.1026/13 dated 23.04.2013 is also void.

For Petitioner : Mr.A.Kothandaraman

For Respondents

R1 to R3 : No appearance
R4 : Mr.P.Saravanan
R5 : Mr.R.Bharath Kumar
Standing Counsel



O R D E R

Heard Mr.A.Kothandaraman, learned counsel appearing for the petitioner, Mr.M.Purushothaman, petitioner who appeared in person before this Court, Mr.P.Saravanan, learned counsel appearing for the 4th respondent and Mr.R.Bharath Kumar, learned Standing Counsel appearing for the 5th respondent.

2.This writ petition has been filed praying for issuance of writ of declaration to declare the sale executed by the Tamil Nadu Housing Board dated 23.01.2004 registered as Document No.203/2004 in respect of the subject property in favour of the first respondent as void and consequently, the settlement executed by the first respondent in favour of the 4th respondent as invalid and void. So far as declaration of the sale deed as null and void is concerned, the Court cannot exercise jurisdiction under Article 226 of the Constitution of India to declare a registered instrument as null and void. However, the Court can examine as to whether the Tamil Nadu Housing Board had rightly executed the sale deed in favour of the first respondent. The relationship of the parties in the writ petition is very relevant. The petitioner, the respondents 1 to 3 are brothers and sisters and the 4th respondent is the grandson of the first respondent, since deceased. The respondents 1 and 2 are now more and the third respondent is very much available at Chennai. However, it may not be necessary to bring the legal heirs of the respondents 1 and 2 as parties in the writ petition for the reasons which are to be assigned in the later part of this order.

3.The property was allotted to the petitioner's mother Mrs.M.R.Pushpabai. After her demise, the first respondent sought for transfer of the allotment in her favour. The respondent Housing Board did not agree to the same and therefore, she filed a writ petition in W.P.No.302 of 2000 to direct the Housing Board to transfer the allotment in her favour. The Housing Board took a stand stating that there are five legal heirs of the original allottee and unless and until all of them give an undertaking to transfer jointly, the Housing Board cannot transfer the property in the name of the first respondent as the only the legal heir. This submission was accepted by the Court and rejected the relief sought for. However, made an observation that consent letters of declaration can be filed before the Housing Board which can be considered by the Housing Board. The operative portion of the order reads as follows:



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"3.Heard Mr.K.Marinath, learned counsel appearing for the petitioner, Mr.S.Kasikumar for Mr.Chelladurai, learned counsel appearing for the respondents 2 and 3 and Mr.Patti B.Jegannathan, learned Special Government Pleader appearing for the first respondent.

4.A detailed counter affidavit has been filed by the respondents 2 and 3. As seen from the counter affidavit, the petitioner is one of the legal heirs of the original allottee M.R.Pushpa Bai. It is also stated by the respondents that the petitioner's brother M.Purushothaman, who had initially consented for the transfer had subsequently withdrawn his consent letter. That apart, the petitioner's father passed away in the meanwhile and in respect of that also the brother M.Purushothaman had objected to the transfer as he has claimed interest.

5.In view of the civil dispute between the parties, the respondents had not rightly transferred the allotment in favour of the petitioner. It cannot be stated that the respondents acted illegally or there is no justification at all for the respondents to keep the allotment in the name of the original allottee. As there are number of heirs, the allotment should be transferred in favour of all the heirs of the deceased/original allottee and in case, if other heirs give necessary consent by way of declaration as prescribed by the respondents, there can be a mutation of allotment in favour of one of the legal heirs.

6.In the present case, admittedly, one of the brothers of the petitioner has objected to the transfer applied for by the petitioner. Hence, the respondents are justified in declining to transfer the allotment in favour of the petitioner. If the petitioner has got an exclusive right, it is open to the petitioner to establish the same.

7.At this stage, the learned counsel for the petitioner represents that he will get the required consent letter from all the legal heirs of M.R.Pushpa Bai, the original allottee, who died on 10.05.1981 and thereafter, more the third respondent for transfer of the allotment in her favour. It is recorded.

8.It is needless to add that on the production of the required consent letters of declaration from all the legal heirs of the deceased allottee, the



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respondents may consider the petitioner's application for mutation and pass orders according to law.

9.Writ Petition is dismissed with the above directions. No costs."

4.Though the Housing Board stated the correct legal position in the counter affidavit which was accepted by the Court and the writ petition filed by the first respondent was dismissed, unfortunately, the officials of the Housing Board presumably for certain other reasons executed sale deed in favour of the first respondent which document is now sought to be declared as null and void. The first respondent during her lifetime has settled the property in favour of the fourth respondent, her grandson which is also sought to be declared as null and void. The action of the Tamil Nadu Housing Board was found to be prima facie illegal by this court when the Court heard the matter earlier on 14.02.2020 while condoning the delay in filing the petition for restoration. Thereafter, upon direction being issued, the original files were produced, from which, it is seen that after the dismissal of the writ petition filed by the first respondent, namely, W.P.No.302 of 2000 dated 01.08.2000, no fresh consent declarations were filed by the legal heirs. Therefore, the Housing Board committed a gross error in executing the sale deed solely in favour of the first respondent. As rightly submitted by the learned Standing Counsel for the Housing Board, if all the owners have not given consent for jointly transferring the property and if any document is executed in favour of the first respondent alone, at best, it can be taken as the first respondent is the nominee of the original allottee, her mother M.Pushpabai and she cannot claim exclusive right because on the date of demise, the petitioner, respondents 1 to 3 and their father M.Murugesan were alive and they were all legal heirs of Pushpabai. That apart, in the original files produced by the Housing Board, certain affidavits find place which are construed as No Objection Certificates/Declarations. However, on perusal of the so called declaration given by the petitioner M.Purushothaman, it is clear that it is conditional and he has not given any unconditional consent to transfer the property in favour of the first respondent. In fact, he has stated that the first respondent may stay in the property till her lifetime. In any event, the Housing Board committed a gross error in transferring the property exclusively in favour of the first respondent by executing the sale deed. That apart, the petitioner has now filed a suit for partition in O.S.No.4974 of 2014 now pending on the file of the 17th Additional City Civil Court, Chennai. Thus, the petitioner can place this order before the Civil Court and



put forth his submission as this Court has held that the first respondent M.Vasumathy had no independent right to claim exclusive title to the property in question.

5. In the result, the writ petition is disposed of by holding that the Housing Board could not have executed the sale deed in the individual name of the first respondent and at best, her status is only as a nominee who has received the sale deed for and on behalf of all the legal heirs of M.R.Pushpabai, the original allottee. The status quo with regard to the possession of the property prevailing as on date, shall continue. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

cse

To

The Chairman,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.

+2 ccs to Mr.A.Kothandaraman Advocate sr16254
+1 cc to Mr.P.Saravanan Advocate sr16103
+1 cc to Mr.R.Bharath kumar Advocate sr16881

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mp(co)
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