

WMP No.26221 of 2019

in

W.P.No.31636 of 2017

Dr.ANITA SUMANTH,J.

The petitioners seek modification of order dated 27.04.2019 ('order').

The facts in issue have been adverted to in detail in the order itself and I do not propose to repeat the same again for the sake of brevity. Suffice it to state that the writ petition was allowed in the following terms:

19. In fine, the 3rd respondent is directed as follows:

i) Return the amount of 10,89,000/- along with interest at the rate of 18% per annum from date of receipt till date of payment, OR

(i) identify an alternate site of comparable value in terms of the present prevailing market value of the property in question and hand over the same to the petitioners within a period of four weeks from the date of receipt of a copy of this order.

20. Though R3 is admittedly engaged in the development of plots at Villivakkam, learned counsel for R3 is unable to commit to the availability of plots therein even after sufficient time and opportunity was extended to enable him to obtain instructions in that regard. I thus leave it to R3 to identify and offer an appropriate plot in terms of my direction as above to the petitioners in exchange for the plot originally purchased by them.

2. Alternate reliefs as above were granted to the petitioners and the contesting respondent (R3) chose the second option of returning the sale consideration received, of an amount of Rs.10,89,000/- along with interest at the rate of 18% from date of receipt till date of payment as opposed to the first option of identifying a site of comparable market value in place of the site purchased by the petitioner.

3. To this end, two demand drafts bearing Nos.042993 and 042994, both dated 16.11.2019 and drawn on Axis Bank Ltd in favour of the petitioners for sums of Rs.20,42,044.50 and Rs.20,42,044.50 respectively were sent to the petitioners in compliance of the order. Both drafts were returned as unclaimed, since the petitioners were, according to their learned counsel, not available in the premises on the said date.

4. In the present proceedings, the petitioners would urge that the two reliefs granted by this Court be equal. They point out that while relief number (i) directs the refund of the amounts remitted by the petitioner along with interest at the rate of 18%, relief number (ii) directs R3 to identify and offer an alternate house site of equal value to the market value of the site in question to the petitioners. The market value of the site in question is, according to the petitioners, Rs.3,43,79,400/-, and the direction to R3 should thus, have been to pay the aforesaid amount and nothing less. Petitioners also state that no effort was made to identify a suitable house plot and offer the same to the petitioners. Incidentally, the understanding of the petitioners to the effect that the payment under direction (i) was only an interim payment (as stated in paragraph 11 of the modification application) does not flow from the directions issued, as direction (i) is self-contained and indicates a final payment.

5. R3, along with the counter has also supplied the details of available plots in on-going projects and in reply to the counter, the petitioner reiterates

the availability of several plots in the project titled '*Metro Grand City Kundrathur*'.

6. No appeal appears to have been filed by R3 to the order at the time when this petition was being heard. There is thus no dispute in regard to the findings in my order in regard to the transaction inter se R3 and the petitioners and the fact that R3 transferred to the petitioner land in excess of its holdings. This fact has come to the surface eleven years after the sale as the petitioner took steps only at that juncture to secure the property and build a wall around the property.

7. I have, in my order, directed the respondents to refund the sale consideration along with interest at the rate of 18%, which is far more than the prevailing rate of interest, bearing in mind that one of the petitioners is a senior citizen, or alternatively furnish a substitute plot to the petitioners, equal in market value to the plot originally sold. The alternates provided were conscious, bearing in mind the varied averments of the parties and I am not inclined to modify the directions, as prayed for. While the petitioner may well pursue the matter in further appeal, interference by modification or reviewing of the order has to satisfy the tests laid down under Order 47 of the CPC 1908, being (i) the discovery of new and important matters or evidence which, after the exercise of due diligence was not within their knowledge or could not be produced at the time when the decree was passed or order made, or (ii) some mistake or error apparent on the face of the record or (iii) for any

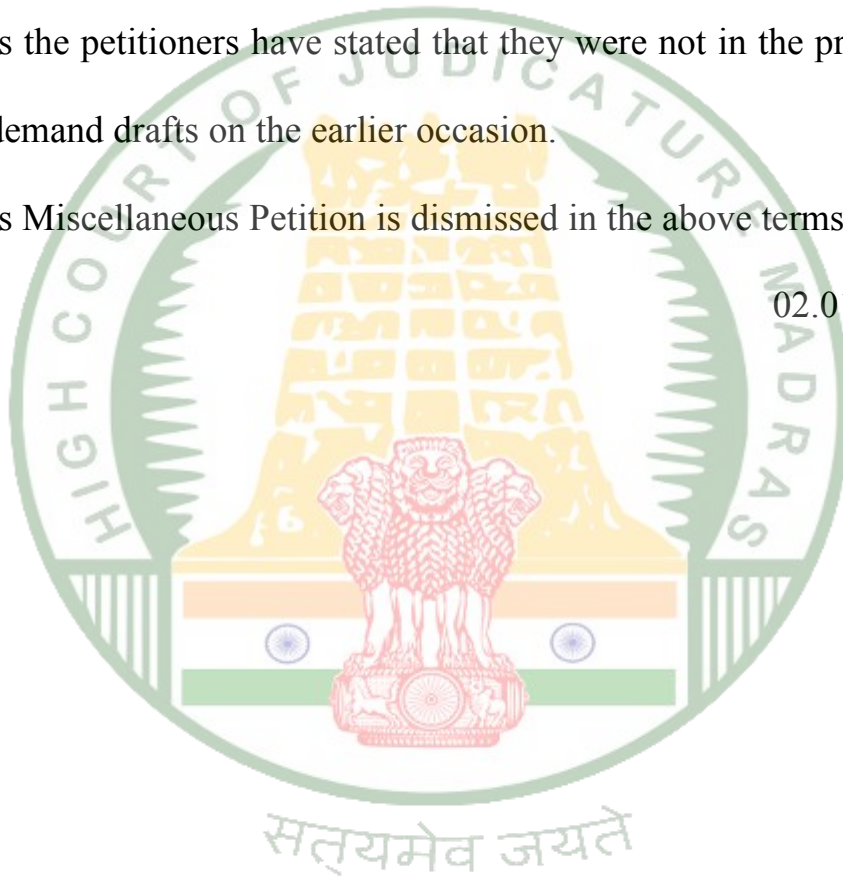
other sufficient reason. In my considered view order dated 27.04.2019 is not vitiated by any of the conditions or situations envisaged in Order 47.

8. The petitioners are at liberty to approach the third respondent for the demand drafts that have been returned as unclaimed and such request if made, if made, shall be immediately honoured by R3 with interest upto date of remittance as the petitioners have stated that they were not in the premises to receive the demand drafts on the earlier occasion.

9. This Miscellaneous Petition is dismissed in the above terms.

02.01.2020

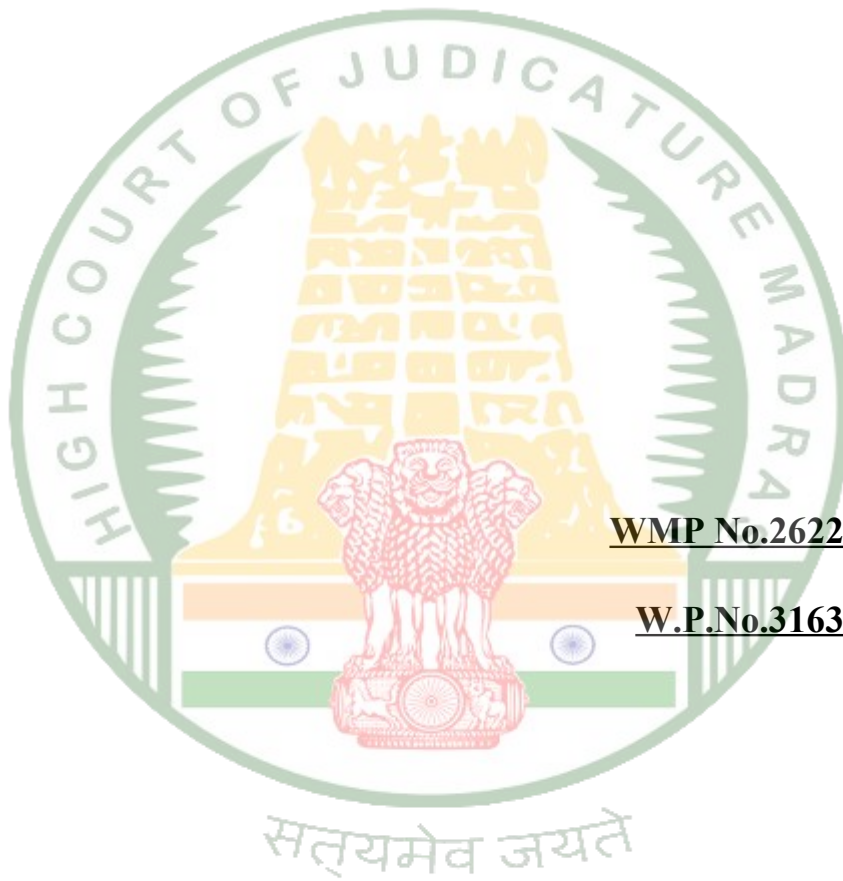
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