In the High Court of Judicature at Madras

Dated : 18.2.2020

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.26747 of 2017 & WMP.No.28430 of 2017

V.Saroja ...Petitioner

Vs

1. The Government of Tamil Nadu, rep.by its Secretary, Municipal Administration & Water Supply Department, Secretariat, Chennai-9.

2. The Commissioner, Ranipet Municipality, Ranipet, Vellore District.

3. The Sub-Registrar, Walajah Taluk, Walajah, Vellore District. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the respondents in connection with the impugned proceedings bearing Reference No.7494/94/A3 dated 19.9.2017 issued by the 2nd respondent, quash the same and further direct the 2nd Respondent to execute the sale in favour of the petitioner and her children (legal heirs of late Sri.M.Arumugam) for 6 cents of land allotted in respect of residential quarters at No.29, Municipal Quarters LIG, Ranipet, Vellore District-632401 at the guideline value for residential premises as obtained on 29.8.2013.

For Petitioner : Mr.V.Prakash, SC for Ms.M.Ezhilarasi
For Respondent-1 : Mrs.A.Sri Jayanthi, SGP
For Respondent-2 : Mr.P.Siva Shanmuga Sundaram
For Respondent-3 : Mr.P.P.Purushothaman, GA

ORDER

I have heard Mr.V.Prakash, learned Senior Counsel appearing on behalf of Ms.M.Ezhilarasi, learned counsel on record for the petitioner, Mrs.A.Sri Jayanthi, learned Special Government Pleader appearing for the first respondent, Mr.P.Siva Shanmuga Sundaram, learned Standing Counsel appearing for the second respondent and Mr.P.P.Purushothaman, learned Government Advocate appearing for the third respondent.

2. The petitioner has filed this writ petition seeking to quash the order passed by the second respondent - Municipality dated 19.9.2017.

3. Before this Court ventures to consider the contentions advanced by the learned Senior Counsel appearing on behalf of the petitioner, it needs to be pointed out that the petitioner's attempt in this writ petition is to re-litigate an already concluded issue.

4. This is so because earlier the petitioner's husband one Mr.M. Arumugam filed a writ petition in W.P.No.27819 of 2014 seeking to quash the notice dated 09.9.2014 issued by the second respondent - Municipality and for a direction to remit the sale amount as per the prevailing guideline value as on 05.9.2011 in respect of the residential premises in Ward B, Block No.23, House No.29, Ranipet Municipal Quarters, Walajah Taluk within Ranipet Municipality, Vellore District and consequently to direct the second respondent - Municipality to execute the sale deed in favour of the petitioner in respect of the aforesaid property within a time to be stipulated by this Court.

5. After elaborately hearing the learned counsel for the parties, the said writ petition was partly allowed on 17.3.2015 and the second respondent - Municipality was directed to intimate the guideline value of the property as on 29.8.2013 and grant reasonable time to the petitioner to remit the amount in one single instalment together with other charges and duties, if any and thereafter the sale deed was directed to be executed and registered in the name of the petitioner's husband.

6. The relevant portions of the said order dated 17.3.2015 made in W.P. No.27819 of 2014 read as follows :

> "7. The issue which falls for consideration in this Writ Petition is regards the cost payable by the petitioner to enable him to become the owner of the property in question.
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> 8. Admittedly, the property in question was a residential quarters allotted to the petitioner, while he was in service as a Secondary Grade Teacher in the Municipal School. The petitioner is in occupation of the quarters from 1970 onwards. After the Municipal schools were taken over by the Government, the petitioner continued to retain the quarters and applied under a

Scheme framed by the Government to provide Housing to the 'Low Income Group'.

9. It is not in dispute that the petitioner was eligible to be considered under the said scheme. In the interregnum, the second respondent attempted to sell the property and direction was issued to vacate and hand over possession, which necessitated the petitioner to approach the Tamil Nadu Administrative Tribunal by filing O.A.No.346 of 1995, which was transferred to this Court and renumbered as W.P.No.27336 of 2006, which was disposed of, by order dated 21.06.2007. In spite of the order, the second respondent issued notice calling upon the petitioner to vacate the quarter and Contempt Petition No.1061 of 2011, was filed and subsequently, orders were passed by the Government acceding to the request of the petitioner and permitting the Municipality to sell quarters in occupation of the petitioner at prevailing rates as per the orders in force. There would not have been any difficulty if the Government Order had been implemented in 2011 and sale deed executed at the rate prevailing at the relevant time, namely on the date of execution of the sale deed which would be relevant. The petitioner blames the second respondent Municipality for being negligent and not taking any action pursuant to the Government Order for nearly nine months. However, from the facts placed in the counter affidavit, it is seen that it is the petitioner who delayed the implementation of the Government Order, since he submitted a representation on 12.12.2011, soon after G.O.(3D).No.9, was issued by the Government to permit him to pay the sale consideration in monthly instalments. It was well open to the second respondent Municipality to have rejected the petitioner's request. However, they took a humanitarian approach and informed the petitioner that only after getting necessary orders from the Government, request for payment in monthly instalments can be considered. By letter dated 29.08.2013, the petitioner was informed that the permission to pay in monthly instalments cannot be granted.

Therefore, the petitioner either should have challenged the order dated 29.08.2013, or should have paid the amount and registered the sale deed in his favour. He did neither, but filed one more representation on 21.01.2014, to reconsider his case. This request was rejected and intimated to the petitioner by communication dated 18.02.2014 and subsequently, by another communication, dated 09.09.2014, which is impugned in this Writ Petition. Therefore, the petitioner alone has to be blamed for causing the delay. The Government Order dated 05.09.2011, is explicitly clear permitting the sale of the property to the petitioner at the prevailing rates as per the orders in force and it was an one time concession and cannot be quoted as a precedent. The Government Order did not provide for payment of the sale consideration in monthly instalments. Therefore, the second respondent Municipality ought to have out rightly rejected the petitioner's request dated 12.12.2011, since it was beyond the scope of G.O.(3D).No.9. However, they thought fit to inform the petitioner that he will be intimated after getting necessary orders from the Government and the matter was pending with the second respondent from 2011 till 29.08.2013. This delay from December 2011 to August 2013, cannot be solely attributable to the Writ Petitioner, but also to the second respondent.

10. As already pointed out that the word 'prevailing rate' as mentioned in the Government Order shall connote the prevailing rate on the date of execution and registration of the sale deed. This alone would be the correct interpretation to the term otherwise, the benefit of this one time concession given to the petitioner becomes meaningless.

11. Assuming for the sake of argument, the petitioner's case has to be accepted, then it would mean that the petitioner will continue to be in possession, will not remit any rent to the Municipality, but as and when he decides to purchase the property, he would exercise his option and claim that the sale consideration should be fixed at the

rate prevailing at the time of issuance of the Government Order. This cannot never be a reasonable interpretation of a Government Order, which itself is in the nature of a one time concession.

12. The petitioner relied upon the decision of the Hon'ble Division Bench of this Court in the case of V.Sivakumar & Ors., vs. Inspector General of Registration, reported in (2011) 5 MLJ 30, for the proposition that the stamp duty has to be paid as per the prevailing guideline value as on the date of registration and the stamp duty is liable to be paid as on the date of registration of the instrument. The decision of the Hon'ble Division Bench fully supports the conclusion arrived at by this Court, since it has been factually found that it is the petitioner who was the reason for the delay in execution of the sale deed, since he sought for payment of the sale consideration in monthly instalments, which was not feasible of consideration by the Municipality, however, the second respondent Municipality chose to entertain that request and keep it pending for nearly two years. Therefore, to that extent, the Municipality is also to be blamed. Hence, this Court is of the view that the 'prevailing rate' in the facts of the present case shall be the guideline value, which was prevailing as on 29.08.2013.

13. From the facts stated above, it is clear that the petitioner was the person, who delayed the implementation of the Government Order at the first instance, since he sought for remittance of sale consideration in monthly instalments, which was not provided under the Government Order. The second respondent Municipality is also partially to be blamed for entertaining such a request and keeping the matter pending for nearly two years i.e., till 29.08.2013, when they intimated the petitioner i.e., request is not feasible for consideration. However, the petitioner did not challenge this communication dated 29.08.2013 or the subsequent communication dated 18.02.2014, but approached this Court challenging the communication dated 09.09.2014. Thus,

considering the entire facts of the case, this Court is of the view that the petitioner is entitled to purchase the property, pursuant to the Government Order on payment of the sale consideration calculated at the #prevailing rate# as on 29.08.2013, and such remittance shall be in one single instalment.

14. Accordingly, the Writ Petition is partly allowed and the second respondent is directed to intimate the petitioner as to the guideline value of the property as on 29.08.2013 and grant reasonable time to the petitioner to remit the amount in one single instalment together with other charges and duties if any and thereafter, the sale deed shall be executed and registered in the name of the petitioner."

7. After the dismissal of the said writ petition, the petitioner's husband filed M.P.No.1 of 2015 to modify the order dated 17.3.2015 passed in the said writ petition by directing the second respondent - Municipality to accept the guideline value as on 29.8.2013, which relates to the residential premises in the locality.

8. The said miscellaneous petition was heard and the same was disposed of by order dated 21.7.2015 by directing the second respondent - Municipality to adopt the guideline value of the property as on 29.8.2013 as applicable to residential premises and thereafter grant time to the petitioner to remit the amount in accordance with the directions already issued in the said writ petition.

9. The relevant portion of the said order dated 21.7.2015 in MP.No.1 of 2015 reads as follows :

"Now, the grievance of the petitioner is that instead of adopting the guideline value for residential premises, the second respondent is adopting the guideline value for commercial area. It has to be pointed out that in paragraph 8 of the order dated 17.3.2015 in W.P.No.27819 of 2014, a finding has been rendered to the effect that the property in question was a residential quarters allotted to the petitioner, while he was in service as a secondary grade teacher in the municipal school and therefore, the question of applying commercial value to the suit property does not arise. Even assuming that any proceedings have been issued by the second respondent to that effect, it has to be necessary to hold that such proceedings are not tenable. Furthermore, the respondents appeared to have accepted the said finding and have not preferred any appeal against the said order. Therefore, the second respondent has to adopt the guideline value of the property as on 29.8.2013 as applicable to the residential premises and thereafter issue time to the petitioner to remit the amount in accordance with the direction already issued."

10. Though the said miscellaneous petition was disposed of on 21.7.2015 issuing specific directions to the petitioner's husband to comply with the order dated 17.3.2015, he chose to file a contempt petition in Cont.P.No.1306 of 2016 alleging willful disobedience of the order and directions issued in the said miscellaneous petition.

11. It needs to be pointed out that at the time of filing the said contempt petition, the petitioner's husband engaged a different counsel. This Court distinctly remembers that the new counsel, who was engaged by the petitioner's husband, had elaborately argued the matter and in fact, attempted to re-argue the matter before this Court. However, by order dated 08.8.2016, the said contempt petition was closed. In the said order dated 08.8.2016, this Court took note of the materials placed by the second respondent - Municipality and made an observation that if the petitioner's husband wants the property, he should accept the guideline value, which was prevailing as on 29.8.2013. This Court was well justified to dismiss the said contempt petition. However, taking note of the fact that the petitioner's husband was an aged person, he was granted three weeks' time to make necessary payments so that the sale deed could be executed in his favour.

12. The relevant portions in the order dated 08.8.2016 in Cont.P.No. 1306 of 2016 read as follows :

"4. The Commissioner, Ranipet Municipality filed WMP.No.21652 of 2016 seeking to modify the order dated 21.7.2015 made in M.P.No.1 of 2015 in W.P.No.27819 of 2014 and to pass a conditional order fixing time limit for registration. From the affidavit, it is stated that the writ petitioner is not coming forward to get the sale deed registered, but only insisting

> registration at the rate of Rs.100/- per sq.ft. As pointed out earlier, the guideline value, based on which, the stamp duty has to be remitted, is the guideline value as on 29.8.2013. This was not only specifically fixed in the order dated 17.3.2015, but also clarified at the instance of the writ petitioner in the order dated 21.7.2015. Therefore, if the petitioner wants the property, he should accept the guideline value, which is prevailing as on 29.8.2013.
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> 5. Hence, the writ petitioner shall appear before the respondent Municipality within a period of three weeks from the date of receipt of a copy of this order and make necessary payments, so that the sale deed can be executed in his favour.
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> 6. With the above direction, the contempt petition is closed."

13. Even thereafter, in spite of such indulgence granted by this Court by closing the said contempt petition, the petitioner's husband did not utilize the directions issued, but chose to file a sub-application in the said contempt petition in Sub.A.No.26 of 2017 seeking to direct the second respondent to accept the guideline value at the rate of Rs.100/- per sq.ft. This sub-application was elaborately heard and ultimately, it was held that the petitioner's husband could not reopen the said contempt petition and that the same was not permissible. The said sub-application was closed on 14.7.2017 wherein the relevant portions read thus :

> "This sub-application has been filed by the petitioner in the main contempt petition praying for a direction upon the second respondent to accept the payment of a sum of Rs.3,60,000/- as sale consideration calculated at Rs.100/- per sq.ft., and to execute and register sale deed in his favour.
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> 2. The respondent/Municipality has produced before this Court a copy of the certificate issued by the Sub-Registrar, Walaja Nagar dated 17.11.2016 stating that the area in question has been classified as commercial area and therefore, the guideline value is Rs.1,800/- per sq.ft., as on 29.8.2013 fixed in the order dated 08.8.2016 in Cont.P.No.1306 of 2016. Further, the learned counsel for the second respondent has produced before this Court the sale deed

> executed in favour of the neighbour of the contempt petitioner dated 26.6.2015 for identical property for a sum of Rs.63,02,160/-.
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> 3. Thus, the present attempt of the petitioner appears to be to extend the scope of the writ petition as well as the direction issued in the contempt petition. The contempt petition having already been closed, the present attempt of the contempt petitioner to reopen the same by way of this sub-application is not permissible.
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> 4. For the aforesaid reasons, this sub-application stands closed. However, this will not, in any way, prevent the petitioner (contempt petitioner) from moving appropriate forum for necessary relief."

14. Even thereafter, neither the petitioner nor her husband approached the Authorities, but submitted representations stating that the guideline value should be taken as Rs.100/- per sq.ft. This has been rejected by the impugned order clearly setting out the reason as to why the case of the petitioner should not be accepted.

15. In the present writ petition, as narrated above, the petitioner seeks a direction to the second respondent to accept the guideline value as Rs.100/-. This attempt of the petitioner to re-agitate the settled proceedings cannot be permitted. Mere change of counsel will not change the facts and circumstances of the case. The orders passed in the earlier writ petition filed by the petitioner's husband bind the petitioner. Therefore, the petitioner is estopped from maintaining this writ petition and this would be sufficient to dismiss the same. However, since this Court elaborately heard the learned Senior Counsel for the petitioner, certain observations and findings are required to be rendered to show that the petitioner is not entitled to the relief sought for.

16. The sheet anchor of the argument of the learned Senior Counsel for the petitioner is by relying upon the guideline value published in the official website of the Registration Department for the Vellore Zone, Sub-Registrar Office, Walajah, Karai Village. He further submits that in the website, the guideline value for S.F.No.4 with various sub-divisions has been given, that the maximum guideline value for such sub-division is Rs.325/- per sq.ft and that the minimum is Rs.120/- per sq.ft. Hence, it is submitted that the guideline value has to be accepted at Rs.100/- per sq.ft.

17. Unfortunately, the petitioner is confused with regard to survey number with that of the town survey number. The guideline value, which has been adopted for the area in question is Rs.1,800/- per sq.ft., as could be seen from the document filed by the second respondent – Municipality certified by the Sub-Registrar, Walajah. In fact, there is a distinction between a survey number and a town survey number and it is not clear as to whether it is a deliberate mistake or an inadvertent mistake.

18. Be that as it may, the guideline value for survey No.4 cannot, in any manner, improve the case of the petitioner. Further, the second respondent – Municipality, by a subsequent communication dated 30.10.2017, clearly informed that the value is Rs.1,800/- per sq.ft., and there is no different guideline value for commercial and residential buildings. In any event, all these points were canvassed by the petitioner in the earlier round of litigation not once, but thrice and the same were not accepted by this Court. Therefore, the petitioner cannot set up a new case on the same set of facts.

19. The third respondent filed a counter affidavit wherein it has been stated that the second respondent – Municipality requested to furnish the guideline value for the property at door No.29, Municipal Quarters LIG, R.R. Road, Ranipet as on 29.8.2013. The third respondent informed the second respondent – Municipality that the market value for the land in R.R.Road as on 29.8.2013 is Rs.1,800/- per sq.ft., that there is no separate guideline value for residential and commercial buildings and that the entire R.R.Road is classified as commercial and even if the property in question is a residential one, the guideline value of Rs.1,800/- per sq.ft., alone will be applied.

20. By placing reliance on the decision of the Hon'ble Supreme Court in the case of State of Rajasthan Vs. M/s.Khandaka Jain Jewellers [Appeal (Civil) No.5273 of 2007 dated 16.11.2007], it has been stated in the counter filed by the third respondent that the Collector shall determine the valuation of the instrument on the basis of the market value of the property on the date when the document is presented for registration.

21. Though the third respondent is right in contending that the market value has to be calculated taking into consideration the date of execution and presentation of the sale deed for registration, in the instant case, because of the earlier orders, the guideline value as on 29.8.2013 has to be reckoned.

22 That apart, in the counter affidavit filed by the second respondent – Municipality, it has been pointed out that one of the legal heirs of the said Mr.M.Arumugam, who passed away on

20.9.2017, namely his wife challenged the present impugned order and it appears that there are other legal heirs, who are not parties to the present writ petition. In any event, the petitioner has not made out any grounds to interfere with the order impugned.

23. For all the above reasons, the writ petition is dismissed. No costs. Consequently, the connected WMP is also dismissed.

24. After the order is dictated, the learned Senior Counsel for the petitioner submits that a direction may be issued to the petitioner to approach the second respondent - Municipality for executing the sale deed in her favour.

25. In view of the said submission, the petitioner is permitted to approach the second respondent - Municipality for execution of the sale deed in terms of the direction originally issued in the earlier writ petition by accepting the guideline value of Rs.1,800/- per sq.ft.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To
1.The Secretary to Government of Tamil Nadu, Municipal Administration &
Water Supply Department, Secretariat, Chennai-9.

2.The Commissioner, Ranipet Municipality, Ranipet, Vellore District.

3.The Sub-Registrar, Walajah Taluk, Walajah, Vellore District.

+1 CC to M/s.M. Ezhilarasi, Advocate sr 14406.
+1 CC the Govt. Pleader sr 14675, 14233.

WP.No.26747 of 2017&
WMP.No.28430 of 2017

BP(CO)
SP(19/05/2020)