IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.33770 of 2007
and
M.P.No.1 of 2007

Tmt.S.Rajalakshmi ... Petitioner

Vs

1. The State of Tamil Nadu,
   Rep.by its Secretary,
   Revenue Department,
   Fort Saint George,
   Chennai-600 009.

2. The Inspector General of Registration,
   No.100, Santhome High Road,
   Chennai.

3. The Sub-Registrar,
   Office of the Sub-Registrar,
   Vallam Village & Post,
   Gingee Taluk.

4. Gnanmbikai.
5. Sangunthala. ... Respondents

Prayer :-

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a writ of mandamus, directing the Respondents to pay compensation to the tune of Rs.70,000/- to the petitioner.

For Petitioner : Mr.P.Dinesh Kumar for
Mr.T.R.Rajaraman

For R1 to R3 : Mr.Richardson Wilson
Government Advocate

ORDER

This Writ Petition has been filed to issue a writ of mandamus, directing the respondents to pay compensation to the tune of Rs.70,000/- to the petitioner.

2. The case of the petitioner is that she purchased the property, comprised in survey No.9/1 ad-measuring 20 cents, in survey No.10/2 ad-measuring 28 cents, in survey No.10/4 ad-measuring 19 cents and in survey No.12/6 ad-measuring 63 cents, situated at Marudheri Village, Vallam, Gingee Taluk, from the fourth and fifth respondent herein. The petitioner purchased the said property for valid consideration to the tune of Rs.93,000/- (Rupees Ninety Three Thousand only) and on the date of purchase itself, the possession of the entire property was handed over to the petitioner by a registered sale deed dated 02.08.2007 vide document No.1931 of 2007. Before purchase of the property, the petitioner obtained Encumbrance Certificate from the third respondent dated 31.07.2007.

3. A perusal of the Encumbrance Certificate reveals that the petitioner's father applied for Encumbrance Certificate in respect of the properties comprised in survey Nos.4/22A, 4/22B, 9/1, 10/2, 10/4, 10/18 and 12/6 for the period from 01.01.1987 to 30.07.2007. On verification of the Encumbrance Certificate, the father of the petitioner found that the property, which was purchased by him, was free from all encumbrance.

4. While being so, one Palani and Suresh claimed that they were the lawful owners of the said property. They claimed that they purchased the said property from one Ponnammal under a registered sale deed dated 14.04.1998 for a total sale consideration of Rs.20,000/- in respect of the property comprised in survey Nos.9/1, 10/1 and 10/2 and claimed that they were in possession and enjoyment of the subject property. Thereafter, the petitioner verified the said sale deed dated 14.04.1998, it was executed by the mother of the fourth and fifth respondent herein and the same was registered vide document No.528 of 1998. The transaction of the sale deed was not entered in the Encumbrance Certificate. Therefore, the sale deed is valid only in respect of property, comprised in survey No.12/6 ad-measuring 63 cents, situated in Marudheri Village, Vallam, Gingee Taluk. The remaining properties comprised in survey No.9/1 ad-measuring 20 cents, in survey No.10/2 ad-measuring 28 cents and survey No.10/4 ad-measuring 19 cents are now in dispute by the said Palani and Suresh.

5. The learned counsel for the petitioner would submit that the failure and omission on the part of the third respondent to enter the registered sale deed dated 14.04.1998 is reckless, negligent and gross deficiency of service. Though the Registering Officers are not liable for a thing bonafide done or refused in his official capacity as contemplated under Section 86 of the Registration Act, the third respondent committed negligence and due to which the petitioner sustained loss to the tune of Rs.70,000/- as sale consideration of the subject property, registration charges, stamp duty and mental agony. In support of his contention, he relied upon the Judgment reported in 2002 (2) LW 590 in the case of R.Ravichandran Vs. The State of Tamil Nadu, etc.,

6. Per contra, the learned counsel for the respondents filed a counter stating that the respondents 4 and 5, without disclosing the earlier transaction done by the father of the said Palani and Suresh in respect of some of the properties were purchased by the petitioner. Therefore, the petitioner has to claim only as against the fourth and fifth respondent. Without doing so, the third respondent is not at all liable for any damages.

7. That apart, under Section 86 of the Registration Act, no Registering Officer shall be liable to any suit, claim or demand by reason of anything in good faith, done or refused in his official capacity. Herein, the petitioner did not even whisper about the mala fide action while issuing Encumbrance Certificate. Due to work pressure and inadvertent, the third respondent failed to make an entry in the Encumbrance Certificate with regard to the earlier sale deed dated 14.04.1998, which was executed by the mother of the respondents 4 and 5 in favour of one Palani and Suresh. Therefore, the writ petition is devoid of merits and prayed for dismissal of the writ petition.

8. Heard, Mr.P.Dinesh Kumar, learned counsel appearing for the petitioner and Mr.Richardson Wilson, learned Government Advocate appearing for the respondents 1 to 3.

9. The only point for consideration in this Writ Petition is that whether the petitioner is entitled for compensation as claimed by him as against the respondents 1 to 3 for not entered the transaction of the sale deed dated 14.04.1998. Admittedly, the petitioner purchased the property, comprised in survey No.9/1 ad-measuring 20 cents, in survey No.10/2 ad-measuring 28 cents, in survey No.10/4 ad-measuring 19 cents and in survey No.12/6 ad-measuring 63 cents, situated at Marudheri Village, Vallam, Gingee Taluk, from the fourth and fifth respondent herein by a registered sale deed dated 02.08.2007 vide document

No.1931 of 2007 on the file of the third respondent herein. Before purchase of the property, the father of the petitioner applied for Encumbrance Certificate to verify the title over the property and earlier transaction for the period from 01.01.1987 to 31.07.2007 for the proprietary bar. It does not contain the transaction of the sale deed dated 14.04.1998.

10. A perusal of the sale deed dated 14.04.1998 reveals that the mother of the respondents 4 and 5 herein executed a sale deed in favour of one Palani and Suresh in respect of the property comprised in survey No. 9/1 to an extent of 20 cents, in survey No.10/2 to an extent of 28 cents and survey No.10/4 to an extent of 19 cents . In respect of the property, comprised in survey No.12/6 ad-measuring 63 cents, the sale deed executed by the fourth and fifth respondents herein in favour of the petitioner is valid. The third respondent, though stated that due to pressure and inadvertent, he failed to make entry with regard to the sale deed dated 14.04.1998, the negligence on the part of the third respondent is proved.

11. In this regard, the learned counsel for the petitioner relied upon the Judgement reported in 2002 (2) LW 590 in the case of R.Ravichandran Vs. The State of Tamil Nadu, etc., this Court held as follows :-

> "20. A registering authority/officer is public servant within the meaning of Indian Penal Code- Section 86 provides that no registering officer shall be liable to any suit, claim or demand by reasons of anything in good faith done or refused in his official capacity. Section 91 provides for inspection and copies of such documents.
>
> 21. Section 69 provides for framing of Rules by the Inspector of General of Registration. Rule 127 of the Rules provides for an application to be made to a Registering Officer for a search or a copy shall be made in writing to get the certified copy of the encumbrance certificate. Rule 128 provides for an application for a search or for a copy of an entry in Books I to IV may be received and complied with through the medium of post, the postage charges being borne by the applicant. On collection of the prescribed search fee and a sum of Rs.2/- as an advance for copying, charges. The Sub-Registrar shall cause a search to be made in the indexes, shall endorse on the application, number and year of the documents, the particulars of the volume and the pages thereof containing the copy of the document and shall forward a copy of the application so

endorsed with the stamp and other papers to the Registrar concerned who shall cause copy to be prepared and furnished. On receipt of the copy and the bill the Sub-Registrar shall deliver or transmit the copy to the party.

32. Further, in terms of the statutory provisions, at least two persons in the Registrar Office have to independently check or verify the entries in respect of the property in question. Merely because a note has been appended to the encumbrance certificate, be it a Certificate of Encumbrance or Nil Encumbrance Certificate, the omission to set out the entry of sale in the encumbrance certificate issued in the present case is not immune from the present proceedings as it is a patent negligent act on the part of the registering authority, namely, respondent 4 herein. It is the statutory duty, which the respondents have failed and it is not a omission simpliciter as claimed by the respondents 3 and 4, but it is a negligence and such negligence had caused serious prejudice to the petitioner. Despite the statutory provisions and the rules which are mandatory it is rather extraordinary to admit that there is a omission by oversight. The suggestion that it is a omission by oversight or that it is due to overwork or under staff also cannot be accepted and such an explanation is too puerile to be entertained. It is clear that the omission is not a omission simpliciter but it is per se and ipso facto patent negligence and there could be no possible explanation such omission reflects very much on the procedure followed in registration indexing and maintenance of statutory books.

64. In the present case, it cannot be stated that the omission is a bona fide one. It there had been some attempt to verify the entries by two persons independently as prescribed by the statutory rule referrred to above this omission could have been easily avoided as the entries are indexed immediately after registration. It is not as if the certificate has been applied for immediately after the registration of the sale in favour of the 6th respondent. For this negligence, this Court with a view to render substantial and ultimate justice awards a compensation of Rs.60,000/- which will be fair and reasonable and the same will result in

rendition of justice and also check omissions on the part of the respondents 1 to 4 or their subordinates, identically placed. It is made clear that it is open to the respondent to recover the said amount from the erring subordinates after fixing the individual's liability.”

12. This Court held that it is the statutory duty, which the officials have failed and it is not a omission simpliciter as claimed by the officials, but it is a negligence and such negligence had caused serious prejudice to the petitioner. Despite the statutory provisions and the rules which are mandatory it is rather extradinary to admit that there is a omission by oversight. The suggestion that it is a omission by oversight or that it is due to over work or under staff also cannot be accepted and such an explanation is too puerile to be entertained. Therefore, it is clear that the omission is not a omission simpliciter but it is per se and ipso patent negligence and there could be no possible explanation such omission reflects very much on the procedure followed in registration and indexing and maintenance of statutory books. Therefore, the above Judgment is helpful to the case on hand.

13. In this regard, it is relevant to extract the provision under Section 86 of the Registration Act, which reads as follows :

> “ 86. Registering Officer not liable for thing bonafide done or refused in his official capacity :- No registering officer shall be liable to any suit, claim or demand by reason of anything in good faith done or refused in his official capacity”.

Accordingly, no registering officer shall be liable to any suit or claim, they factually done. Whereas, in the case on hand, the third respondent as stated supra had failed to enter the transaction with regard to the sale deed dated 14.04.1998. Due to which, the petitioner purchased those properties, which were already sold out by the mother of the respondents 4 and 5 in favour of one Palani and Suresh. Therefore, the omission by oversight or work pressure or inadvertent cannot be accepted. It is not a omission simpliciter but it is per se and ipso facto patent negligence on the part of the third respondent. The petitioner is entitled for compensation for the damages caused due to the negligent act of the third respondent herein.

14. Considering the above, the * **third** respondent is directed to pay compensation to the tune of Rs.70,000/- with interest at the rate of 6% per annum from the date of writ of petition i.e., 23.10.2007, to the petitioner, within a period of

four weeks from the date of receipt of a copy of this order.

15. In the result, the Writ Petition is allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VII)
(22/10/2021)

***Corrected as per the order of this court dated 12.01.2022 made in Wp.No.33770/2007**
Sd/-
Assistant Registrar(CS VII)
20.01.2022

//True Copy//

Sub Assistant Registrar

Lpp

To

1. The Secretary,
   State of Tamil Nadu
   Revenue Department,
   Fort Saint George,
   Chennai-600 009.

2. The Inspector General of Registration,
   No.100, Santhome High Road,
   Chennai.

3. The Sub-Registrar,
   Office of the Sub-Registrar,
   Vallam Village & Post,
   Gingee Taluk.

***To be substituted to the order already despatched on 29.11.2021**

+1 cc to Government Pleader Sr.NO. 40052
+1 cc to Mr.D.Ravichandar, Advocate Sr.NO. 40255

W.P.No.33770 of 2007
and
M.P.No.1 of 2007

RLD(CO)
A.SK(27.10.2021)
SSI(CO)
PM/21/01/2022