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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2021

CORAM

THE HONOURABLE Mr. JUSTICE G.K.ILANTHIRAIYAN

WP.No.7842 of 2021 and
WMP.No.8370 of 2021

1.K.Subramani
2.K.Vigneshwari

...Petitioners

Vs

1.The District Registrar,
Chennai South,
Nandanam, Chennai 600 035.

2.The Tahsildar,
Sholinganallur Taluk,
No.1, Rajiv Gandhi Salai,
1st Cross Street,
Sholinganallur, Chennai 600 119

3.The Sub Registrar - Neelankarai,
O/o The Sub Registrar,
2/92, SH 49, Kazura Garden,
Neelankarai, Chennai 600 041

4.A.K.Karunakaran

5.A.K.Kumaran

...Respondents

Prayer :-

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the first respondent in 19156/E2/2018 dated 07.05.2018, consequential impugned entry made by the third respondent in the encumbrance certificate with respect to document No.7218 of 2014 dated 13.10.2014 as well as document No.7532 of 2014 dated 28.10.2014, quash the same as ultra vires, illegal and arbitrary.



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For Petitioners : Mr.G.Rajkumar
for Mr.C.Balasubramanian

For Respondents
For R1 & 3 : Mr.Yogesh Kannadasan,
Special Government Pleader

For R2 : Mr.P.Baladhandayutham,
Special Government Pleader

For R4 : Mr.S.L.Sudarsanam

ORDER

This writ petition is filed to issue a Writ of Certiorari calling for the records of the first respondent in 19156/E2/2018 dated 07.05.2018, consequential impugned entry made by the third respondent in the encumbrance certificate with respect to document No.7218 of 2014 dated 13.10.2014 as well as document No.7532 of 2014 dated 28.10.2014, quash the same as ultra vires, illegal and arbitrary.

2. Heard, Mr.G.Rajkumar, the learned counsel for the petitioners, Mr.Yogesh Kannadasan, Special Government Pleader appearing for the respondents 1 & 3, Mr.P.Baladhandayutham, Special Government Pleader appearing for the second respondent, and Mr.S.L.Sudarsanam, the learned counsel for the fourth respondent.

3. The case of the petitioners is that the first petitioner purchased the property comprised in survey No.79/45 to an extent of 6406 sq.ft. by the registered sale deed dated 28.10.2014 vide document No.7532 of 2014. Thereafter, the first petitioner had settled a portion of the said property admeasuring 3230 sq.ft. in favour of his wife i.e. the second petitioner herein by the registered settlement deed dated 25.02.2015 registered vide document No.1454 of 2015. Thereafter, the subject property was sub divided as 79/45A and 79/45B and accordingly they were issued patta Nos.5110 and 5270 in favour of the petitioners. While being so, the fourth and fifth respondents were trying to trespass into the subject property and thereafter, they lodged complaint before the first respondent against the power of attorney executed by their vendors i.e. Jayanthi and Srihari in favour of one, B.Shankar and also challenged the subsequent sale deeds. On receipt of the same, the first respondent conducted enquiry without even issuing notice to the petitioners' vendors or their power holder or to the purchasers i.e the petitioners and passed the impugned order dated 07.05.2018, thereby annulled the deed of power of



attorney dated 13.10.2014 registered vide document No.7218 of 2014 as fraudulent one.

4. On perusal of the impugned order, the first respondent referred only the complaint lodged by the fourth and fifth respondents and there is no reference with regards to issuance of notice to the power holder or to the principals i.e. Jayanthi and Srihari. It amounts to violation of principles of natural justice and as such the impugned order cannot be sustained and liable to be set aside.

5. In view of the above, the impugned order dated 07.05.2018 is set aside and the complaint lodged by the respondents 4 & 5 is remanded back to the first respondent for fresh consideration. The first respondent is directed to issue notice to the respondents 4 & 5, the petitioners' vendors i.e. Jayanthi and Srihari, the power holder Mr.B.Shankar and the petitioners and, after giving them opportunity of hearing, pass orders on merits and in accordance with law within a period of twelve weeks from the date of receipt of copy of this order. After the impugned order dated 07.05.2018, the third respondent entered about the nullity of the power of attorney document in the register. Hence, the third respondent is directed to enter this order also in the encumbrance. It is also made clear that the petitioners shall not encumber the subject property till the disposal of the complaint by the first respondent.

6. With the above directions, this writ petition is allowed. Consequently, connected miscellaneous petition is closed. No order as to costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The District Registrar,
Chennai South, Nandanam, Chennai 600 035

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3.The Sub Registrar - Neelankarai,
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+2ccs to Mr.C.Balasubramanian, Advocate SR. No.67217
+1cc to Government Pleader SR. No.68279
+1cc to Mr.S.L.Sudarsanam, Advocate SR. No.66912

WP.No.7842 of 2021

SR(CO)
PR (06/01/2022)