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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2021

CORAM:

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.NO.25689 OF 2017

AND

W.M.P.NOS.27105 & 27106 OF 2017

Abishek Mundhra

... Petitioner

.Vs.

1. The Sub-Registrar,
Velachery Sub-Registration Office,
Velachery, Chennai - 600 042.

2. Mr.K.Balu,
Presently Sub-Registrar,
Kundrathur Sub-Registration Office,
Kundrathur, Chennai - 600 069.

3. Abdul Jabar

4. B.Nagarajan

... Respondents

PRAYER:-

Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned Notice dated 21.04.2017 in Refusal No.2 of 2017 of the 1st respondent and quash the same and to consequently direct the 1st respondent to register the Sale Deed in Pending Document No.27 of 2016, on its file.

For Petitioner : Mr.Muralikumaran
For Mr.R.Sriram

For Respondents 1 to 3 : Mr.Richardson Wilson
Government Counsel

For Respondents 4 : No appearance



ORDER

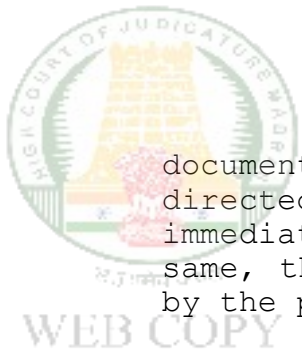
The prayer sought for herein is for a writ of certiorarified mandamus to call for the records pertaining to the impugned Notice dated 21.04.2017 in Refusal No.2 of 2017 of the 1st respondent and quash the same and to consequently direct the 1st respondent to register the Sale Deed in Pending Document No.27 of 2016, on its file.

2. In respect of some properties at Madipakkam which belong to the third respondent herein, he executed a power in favour of the fourth respondent on 26.04.2016 and the fourth respondent having negotiated with the petitioner for selling of those properties have concluded the negotiation, by which, a sale deed has been entered into between the petitioner and the respondents 3 and 4 on 09.05.2016. When the sale deed was presented before the first respondent office for registration, it seems that, there has been some deficit stamp duty, which was sought to be paid and accepting the same, the petitioner had paid the deficit stamp duty also on 09.05.2016. However, the said document, according to the petitioner, had been kept pending as a pending Document No.27/2016. Thereafter, according to the petitioner, though several attempts had been made with the first respondent office to register the same, the same had not been registered by stating one reason or other, for which, no written communication seems to have been issued by the first respondent.

3. When that being so, on 21.04.2017 the first respondent has issued communication to the petitioner stating that, the said pending Document No.27/2016 presented on 09.05.2016 had been kept pending for sometime on the ground that, the original parent documents had not been produced and despite the communication had been given to the petitioner to produce the original parent documents, since the same has not been produced, the document cannot be registered and therefore, the Sub Registrar i.e., the first respondent has refused to register the same. Aggrieved over the said communication dated 21.04.2017 issued by the first respondent refused to register the document in question, the petitioner has filed the present writ petition with the aforesaid prayer.

4. Since some allegations have been made by the petitioner against the then Sub Registrar, who was occupying the office of the first respondent, the second respondent who was the then Sub Registrar at the office of the first respondent, has been arrayed in his personal capacity as second respondent in this writ petition.

5. Heard Mr.Muralikumaran, learned counsel appearing for the petitioner who would submit that, at the time of presenting the



document on 09.05.2016, since the then Sub Registrar had directed to pay the deficit stamp duty, that has been immediately paid by the petitioner and in order to establish the same, the receipt to that effect dated 09.05.2016 had been filed by the petitioner in the typed set of papers.

6. Thereafter, according to the petitioner, no communication whatsoever has been received from the first respondent for stating any reason much less the present reason stated in the impugned order that the original parent documents were required.

7. Had this been asked to the petitioner at the time of presenting the documents, certainly, the petitioner would have been in a position to produce the same, whatever that was available with him and without having given any such communication or notice requiring the original parent documents, first time it has been asked only through the impugned order that was passed on 21.04.2017. Therefore, it is a clear afterthought on the part of the first respondent for finding a reason as to why the document in question was not registered even though it was presented only with proper stamp duty. Hence, the learned counsel appearing for the petitioner would submit that, the second respondent when he was working as the first respondent, for the reason best known to him, has not registered the document in question, therefore, the impugned order for the reasons stated therein itself is liable to be quashed and a direction can be issued to the first respondent to register the document, he contended.

8. On the other hand, Mr. Richardson Wilson, learned Government Counsel appearing for the first respondent, on instruction, would submit that, the sale deed in question dated 09.05.2016, no doubt, was presented by the petitioner to the first respondent office and the said sale was executed by the fourth respondent on behalf of the third respondent as the third respondent being the owner of the property concerned, had executed a power in favour of the fourth respondent on 26.04.2016 and the same was registered as Document No.2471/2016 and pursuant to the said Power of Attorney only, sale deed has been executed on 09.05.2016 to and in favour of the petitioner, which was presented before the first respondent office, where initially there was a deficit stamp duty which was pointed out by the first respondent and the same had been rectified by the petitioner and subsequently, it was found by the first respondent that, the original parent documents were not available that were asked to be presented and therefore, the petitioner had taken sometime and thereafter, since had not come forward to produce the original parent documents, the first respondent had no other option except to pass the impugned order stating the reason that, for want of production of original



documents since had not been produced at the time of presenting the document and also subsequently, the documents in question could not be produced, in order to establish the same, as of now, no other documents had been filed on behalf of the respondents to state that, even prior to the passing of the impugned order dated 21.04.2017 there had been written communication from the first respondent to the petitioner to produce the original parent documents.

14. When that being so, this Court have to necessarily draw adverse inference to state that, before the impugned order dated 21.04.2017, no other communication had been issued by the first respondent required the petitioner to produce the original parent documents. When that being so, keeping the document dated 09.05.2016 till the impugned order is passed i.e., on 21.04.2017 as a pending document and at last give the said reason, in the considered opinion of this Court, may not be justifiable and sustainable, therefore, on that ground, this Court feels that, the impugned order is liable to be interfered with.

15. In that view of the matter, since the sale has been effected on 09.05.2016 and on the said date, there has been a valid and subsisting Power of Attorney from the third respondent to the fourth respondent dated 26.04.2016 and the said power was admittedly cancelled only on 07.09.2016 i.e., after executing the sale deed dated 09.05.2016, this Court prima facie view that, there can be no impediment for the Registering Authority to accept the document in question for registration, provided, if the petitioner comes forward to produce the available original parent documents as required by the Registering Authority.

16. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

(i) That the impugned order is set aside and the matter is remitted back to the first respondent for reconsideration. While reconsidering the same, the first respondent is directed to pass orders within a period four weeks from the date of receipt of a copy of this order. It is open to the petitioner to produce the original parent documents pertaining to the land in question or document in question to the first respondent office and on production of the same, after having verified of those documents, the first respondent shall proceed to register the document in question, if it is otherwise in order.



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(ii) It is made clear that, in this regard, the subsequent development taken place that, the power was cancelled on 07.09.2016 and subsequent encumbrance had been taken place on 08.06.2017, since had been not the concern for the first respondent, he shall accept and register the document dated 09.05.2016, in view of the fact that on 09.05.2016 there has been a valid Power of Attorney from the third respondent to the fourth respondent, as the same is an admitted fact, there cannot be any impediment for the first respondent to accept and proceed with the document for registration. The needful as indicated above shall be undertaken and final orders with regard to the registration shall be passed by the first respondent thereafter within four weeks.

17. With these directions, this Writ Petition is ordered accordingly. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Sgl/MR

To

The Sub-Registrar,
Velachery Sub-Registration Office,
Velachery, Chennai - 600 042.

+1cc to Mr.R.Sriram, Advocate, S.R.No.35904
+1cc to the Government Pleader, S.R.No.36274

W.P.NO.25689 OF 2017

SR-II(CO)
PBS/28/09/2021