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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2021

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P. NO. 35093 OF 2019 AND
W.M.P. NOS. 35920 OF 2019 AND 3611 OF 2020

M/s.Gokul Builders and Estates (Madras)
Private Limited,
Represented by its Director B.Gurubagiam,
No.18, C.V.Raman Road,
Alwarpet, Chennai - 600 018.

... Petitioner

-vs-

1. The Inspector General of Registration,
No.100, Santhome High Road,
Mullima Nagar,
Mandavelipakkam,
Raj Annamalai Puram,
Chennai - 600 028.
2. The District Assistant Registrar,
Office of the South Chennai District,
SIDCO Electronics Complex,
Thiru-vi-ka Complex,
Guindy, Chennai - 600 032.
3. The Revenue Divisional Officer,
Ambattur Division,
No.5-73, SH 112, Gandhi Nagar,
Anna Nagar West Extension,
Chennai - 600 040.
4. The Tahshildar,
Maduravoyal,
Office of the Maduravoyal,
Maduravoyal, Chennai.
5. The Sub Registrar,
Office of the Sub Registrar Office,
Manickam Salai,
N.S.K.Avenue,
Kundrathur, Chennai - 600 009.



6. The Commissioner,
Greater Chennai Corporation,
Rippon Buildings,
Chennai - 600 002.

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7. E.Revathy

... Respondents

(R7 impleaded as per order dated
09.01.2020 made in W.M.P. No. 36133
of 2019 in W.P. No. 35093 of 2019)

PRAYER : Writ Petition filed under Article 226 of the
Constitution of India, praying for issuance of Writ of Mandamus
directing the respondents to cancel the patta issued in favour
of E.Revathy dated November 2019.

For Petitioner	: Mr.Vedavallikumar
For Respondents	: Mr.K.M.D.Muhilan
	Government Advocate for R1 to R5
	Mr.Raja Srinivas
	Standing Counsel for R6
	Mr.S.R.Rajagopal for R7

O R D E R

The prayer sought for herein is for a Writ of Mandamus
directing the respondents to cancel the patta issued in favour
of E.Revathy during November 2019.

2. The case of the petitioner is that, the petitioner's
property is at Mount, Poonamalle Road at Gokul Gardens, New
No.88, Old No.182, Porur, Chennai measuring to an extent of 6.62
acres was purchased in a Court auction sale in Suit No. 113 of
1978 on the file of Calcutta High Court. In the said suit, joint
receivers were appointed and the entire sale consideration was
deposited with the receiver by M/s.Gokul Constructions. By an
order dated 29.01.1990, it had directed receivers who are
appointed by the Hon'ble High Court of Calcutta "to execute and
register the conveyance in one or more plots in favour of the
purchaser or its nominee or nominees as the case may be". The
unsuccessful bidder has requested the Hon'ble High Court of
Calcutta to consider their enhanced bid which forced M/s.Gokul
Constructions to improve the bid and accepted by the Hon'ble
High Court of Judicature at Calcutta and directed the receivers
to complete the formalities in conveying the property situated
at Porur and the plea of the unsuccessful bidder was rejected
and improved offer made by M/s.Gokul Constructions was confirmed
by the Hon'ble High Court of Calcutta by its order dated
28.02.1990 and that by an order dated 28.06.1990, the Hon'ble
High Court of Calcutta had reaffirmed the earlier orders dated



29.01.1990 and 28.02.1990 and directed the joint receivers to execute the conveyances and present it for registration.

3. It is the further case of the petitioner that with regard to sale consideration paid by the purchaser to the vendor, it has been clearly mentioned that the sale consideration should be deducted from the amount deposited by M/s.Gokul Constructions. The purchaser has also acknowledged that the sale consideration was made through M/s.Gokul Constructions from the date of purchase in 1990, the entire property was in possession and enjoyment of M/s.Gokul Constructions. At the time of purchase, the Company was in the name and style of M/s.Gokul Constructions and thereafter constituted as Gokul Builders and Estates (Madras) Private Limited. All the 17 nominees have given their lawful constituted Power of Attorney to M/s.Gokul Constructions represented by its Partner K.Balasigamani, with their respective lands and to develop the property and to sell the undivided share of lands to the prospective purchasers and subsequently got approval from CMDA for developing the entire property. The general Power of Attorney is executed by K.Periyasamy vide Document No. 405 of 1990 in the office of Sub-Registrar, Kuntrathur. When that being the case, the said Balasigamani was holding the said property as Power of Attorney and the said Periasamy was a nominee for the following property namely 49.4 cents in Survey No. 237/1 part and New Survey No. 237/1B in Porur Village, Madhuravoyal Taluk bounded on the North by: Survey No.236; South by: Survey No.245/1 part; East by : Survey No. 237 part; West by : Survey No.237/1 part within the Sub Registration District of Kunrathur.

4. It is further stated that M/s.Gokul Constructions had obtained planning permission from the CMDA under P.P. No. B/24882/331/A to G/97 dated 07.08.1997 for development of the said properties and also gifted 16.1 cents belonging to one Malathy, 37 cents belonging to one Sivagurunathan and 13 cents belonging to Thenmozhi infavour of the sixth respondent / Commissioner. Thereafter, M/s.Gokul Constructions have developed part of the said property by constructing flats consisting of 5 Blocks viz., B1, B2, B3, B4 and E and the constructed flats are completed and handed over to the allottees and the corresponding undivided share of the land have also been conveyed to the respective allottees of flats. The entire land have been developed and sold to several third parties based on the general Power of Attorney. The husband of the petitioner died on 28.12.2017 and K.Periyasamy, in whose name the property of 9 grounds which is form part to the said land which is developed. On 07.08.2019, a public notice was given stating that the original documents relating to the property was lost or misplaced. On 10.08.2019, a Police complaint was given which was



registered in C.S.R. No. 153 of 2019. On 18.08.2019, the Sub Inspector of Police had issued a certificate that the certificate could not be traced or found. On the basis of the said publication and not traceable certificate, Periyasamy executed a settlement deed in favour of his daughter, i.e., Revathy / seventh respondent herein in the office of Sub-Registrar, Kundrathur vide Document No. 15780 of 2019 dated 19.09.2019.

5. Therefore, on coming to know this fraudulent transaction the petitioner had represented before the fourth and fifth respondents. On 15.10.2019, the petitioner has also given a complaint before the City Police Commissioner and the same is pending. On 17.10.2019, an enquiry was conducted before the District Registrar. Thereafter, on 18.10.2019, a protest petition was filed. The fourth respondent herein issued a patta in favour of E.Revathy on 26.11.2019 and the petitioner has given a representation to the third respondent for cancellation of patta which was issued in the name of E.Revathy. Hence, with no other option, the petitioner has filed this Writ Petition with the above prayer.

6. The learned counsel for the seventh respondent by filing a detailed counter submits that, after having purchased the property on 10.10.1990 by the father of the seventh respondent under sale deed bearing Document No. 3677 of 1990, the father of the seventh respondent had been enjoying the property in his own rights as absolute owner of the property. The learned counsel further submits that, the settlement deed executed by the seventh respondent's father on 19.09.2019 to and in favour of the seventh respondent, the seventh respondent had applied for issuance of patta for the property in question to and in favour of her and the patta has rightly been issued in the name of the seventh respondent and as such there cannot be any grievance for the petitioner against the grant of patta for the seventh respondent's property as the petitioner was not the owner of the property at any point of time. The patta under Patta No. 7316 has been granted by the Competent Authority, i.e., fourth respondent for the property in question to and in favour of the seventh respondent and also Chitta and Adagal for the property also stands in the name of the seventh respondent. As such, all the revenue records pertaining to the property in question stands in the name of the seventh respondent and the perusal of the revenue records, sale deed, power of attorney document, settlement deed would make it very clear that the seventh respondent is the absolute owner of the property.

7. That apart, it is not only the land grabbing attitude of the petitioner that has been exposed in the allegations set out



in the affidavit and therefore, the petitioner cannot be permitted to say that the seventh respondent's father has played a fraud. Without any right over the property in question, the petitioner has chosen to file the above Writ Petition and with reference to the prayer in the Writ Petition, it can be certainly stated that the Writ Petition is not maintainable in law. The petitioner has chosen to misuse the process of the Court by filing the above Writ Petition under Article 226 of the Constitution of India.

8. Moreover, the learned counsel for the seventh respondent contends that the original sale deed pertaining to the property in question is in the custody of the petitioner and some how or other the petitioner has chosen to clandestinely take away the original title deeds from the holding of the seventh respondent's father of which the seventh respondent's father is not aware.

9. It is represented by the learned counsel for the seventh respondent that, the petitioner had no locus standi to make any complaint either against the seventh respondent's father or against the seventh respondent with reference to the property in question to the fourth respondent / Tahsildar nor the petitioner had any locus standi to address to any other person with regard to cancellation of patta. The petitioner has got no right to claim that the patta granted in favour of the seventh respondent is to be canceled.

10. The learned counsel for the seventh respondent states that, he has every rights to maintain the patta for the properties in the name of the seventh respondent. However, the petitioner has chosen to give a false police complaint against the father of the seventh respondent and the seventh respondent and since it was a false complaint, the Competent Authorities have not taken any action, thereby seeks dismissal of the Writ Petition and to vacate the interim order already granted by this Court in 09.01.2020 in W.M.P. No. 36133 of 2019.

11. Heard the learned counsel for the petitioner and the learned Government Advocate for the first to fifth respondents and the learned Standing counsel for the sixth respondent and also the learned counsel for the seventh respondent.

12. Admittedly, the sale deed stands in the name of the father of the seventh respondent and the petitioner claims benami transaction with respect to the property in question. Assuming but not admitting that the transaction was benami in nature, with reference to the mandatory provisions of the Benami Transactions Abolition Act, 1988, the petitioner's contention that he is the owner of the property, cannot be accepted.



13. The perusal of the power of attorney document would make it very clear that, the father of the seventh respondent is the absolute owner of the property in question and that the Power of Attorney agent by name K.Balasigamani, who was the Managing Director of the petitioner Gokul Builders Private Limited Company is very much aware of the contents of the Power of Attorney document and by virtue Power of Attorney agency given in favour of Balasigamani. As such all the revenue records pertaining to the property in question stand in the name of the seventh respondent and the perusal of the revenue records, sale deed, power of attorney document, settlement deed would make it very clear that the seventh respondent name shown as owner of the property.

14. On going through the averments made in the affidavit this Court cannot go into aspect of the dispute regarding the title over the property, whether the property was purchased by the Periyasamy or benami or nominee the same has to be decided only by the Competent Civil Court. The petitioner is at liberty to approach the Competent forum to redress his grievance. It is left open to the petitioner to workout the remedy in the manner known to law. With regard to the cancellation of patta, the respondents / authorities are not competent to decide the tile.

15. In view of the above facts and circumstances, this Court is not inclined to interfere and the Writ Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vji

Note: Registry is directed to issue order copy on 24.09.2021.

To

1. The Inspector General of Registration,
No.100, Santhome High Road,
Mullima Nagar,
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Chennai - 600 002.

+1cc to the Government Pleader, S.R.No.47195
+1cc to Mr.K.Raja Srinivas, Advocate, S.R.No.46980
+1cc to Mr.D.Raja, Advocate, S.R.No.47427
+2ccs to M/s.Vedavallikumar, Advocate, S.R.No.47022

W.P. No. 35093 of 2019 and
W.M.P. Nos. 35920 of 2019 and 3611 of 2020

PA (CO)
PM/24/09/2021