



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.06.2021**

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD).No.7964 of 2021

and

W.M.P.(MD)No.6073 of 2021

S.Ponnarasi.

... Petitioner

Vs.

1.The Joint Sub-Registrar-I,
Tuticorin,
Tuticorin District.

2.The Executive Engineer/
Administrative Officer,
Tamilnadu Housing Board,
Thirunelveli Housing Division,
Thirunelveli District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the first respondent dated 01.03.2021 made in Refusal Check Slip RFL/1 No Joint Sub-Registrar Tuticorin/22/2021, quash the same and consequently directing the first respondent to register the petitioners document presented on 01.03.2021 in respect of S.F.No.124/1B1A1, Plot No.17 to an extend of 960.3 Sqft at Sankaraperi village, Tuticorin Taluk and District.

For Petitioner : Mr.P.Murugesan

For Respondents : Mr.M.Lingadurai
Government Advocate for R1

: Mr.Mahaboob Athiff for R2

ORDER

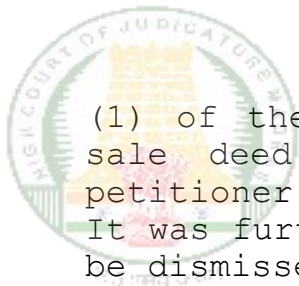
This Writ Petition has been filed challenging the impugned refusal check slip issued by the first respondent dated 01.03.2021, wherein the petitioner has been directed to get a no objection certificate from the second respondent and thereafter, present the document for registration.



2. The case of the petitioner is that the property stood in the name of one Josephine Samuel, who had purchased the same, by virtue of a registered sale deed, dated 19.05.2009. The petitioner and his sister wanted to purchase this property from the said Josephine Samuel and hence, they did a legal due diligence and also verified the encumbrance certificate. When the sale deed was executed in favour of the petitioner and his sister on 01.03.2021, the same was presented for registration before the first respondent. The first respondent has issued the impugned check slip dated 01.03.2021, refusing to register the document and directed the petitioner to get a no objection certificate from the Tamil Nadu Housing Board. Aggrieved by the same, the present Writ Petition has been filed before this Court.

3. Learned counsel for the petitioner submitted that the subject property that was proposed to be purchased is plot No.17 in S.F.No.124/1B1A1, measuring an extent of 960.3 sq. ft. Learned counsel further submitted that a similar stand was taken by the first respondent, when the property in Plot Nos.18, 19, 20 and 21 were sought to be sold and the same became a subject matter of challenge before this Court in W.P.(MD)Nos.23870 and 23871 of 2017. Learned counsel further submitted that these writ petitions were allowed by this Court, by an order dated 07.06.2018 and the first respondent was directed to register the documents. According to the learned counsel for the petitioner, the benefit of the above order will also equally apply to the petitioner. It was further submitted that even though the property was acquired by the Government, since the physical possession was not taken, the entire acquisition has lapsed as per Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Learned counsel further submitted that the impugned check slip issued by the first respondent requires the interference of this Court and directions must be issued to the first respondent to register the document.

4. Per contra, the learned Standing counsel appearing on behalf of the second respondent submitted that it is an admitted case that the property was acquired by the State and the Housing Board was the requisitioning body. That apart, even the award was passed in the year 1988 and thereby, the property stood vested with the Government under Section 16 of the Land Acquisition Act, 1894. Learned counsel submitted that once the property stood vested and was handed over to the Housing Board, no one can be permitted to deal with the property and the first respondent was perfectly right in insisting for a no objection certificate from the Housing Board. Learned counsel submitted that the contention raised to the effect that the proceedings have lapsed is un-sustainable, since the said declaration has not been sought for by the petitioner. The learned counsel concluded his argument by submitting that any sale that



(1) of the Land Acquisition Act, 1894 is void and therefore, the sale deed that was executed in favour of the vendor of the petitioner in the year 2009 is void and *non est* in the eye of law. It was further contended that the present Writ Petition is liable to be dismissed by this Court.

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5. The learned Government Advocate appearing on behalf of the first respondent submitted that under Section 22A(1)(i) of the Registration Act, 1908, where the property belongs to the Government, the Registering Officer has to necessarily refuse to register the document. The learned Government Advocate further submitted that the acquisition had taken place for the benefit of the Housing Board and the property has vested with the Housing Board and therefore, the petitioner has to necessarily get the no objection certificate from the second respondent, failing which, the first respondent can refuse to register the document.

6. This Court has carefully considered the submissions made on either side and the materials available on record.

7. In the present case, there is no dispute with regard to the fact that the property in question forms part of the acquisition proceedings that was initiated by the Government, on the requisition made by the Housing Board and which culminated in an award that was passed in the year 1988. Once an award is passed, the property automatically vests with the Government under Section 16 of the Land Acquisition Act, 1894. Thereafter, the title will shift to the Government and the original owner of the property will lose the title. The petitioner wants this Court to assume that the acquisition proceedings has lapsed, by virtue of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. This ground has been taken by the petitioner on the premise that the possession has not been taken over. In the considered view of this Court, after the judgment of the Constitution Bench of the Hon'ble Supreme Court of India in ***Indore Development Authority vs Manoharlal and others*** reported in **2020 SCC Online SC 316**, and which was subsequently followed by this Court in *K.Saraswathi and others Vs. The State of Tamil Nadu and others* reported in **2020 (2) WritLR 345**, it is mandatory to fulfil both the conditions viz., taking possession and payment of compensation. Therefore, the premise on which, the petitioner is claiming that the acquisition proceeding has lapsed is not sustainable in view of the Constitution Bench judgment. Even other wise, the acquisition proceedings getting lapsed under Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is not a matter of assumption and it has to be declared so by the Court.

8. The next contention that has been made by the petitioner is that the sale deed that was executed in favour of the vendor of the



petitioner in the year 2009 was entertained by the first respondent and therefore, the vendor of the petitioner has the title to convey the same in favour of the petitioner and his sister. This ground raised by the learned counsel for the petitioner also does not have any legs to stand. Any Conveyance that takes place after a notification issued under Section 4(1) of the Acquisition Act, 1894, is null and void. This position has been reiterated by the Hon'ble Supreme Court in ***Shiv Kumar Vs. Union of India*** reported in ***2020-4-L.W. 509***. In view of the same, the sale deed executed in favour of the vendor of the petitioner will be *non est* in the eye of law and the vendor cannot convey any title to the petitioner and his sister.

9. Insofar as the earlier orders passed by this Court in W.P. (MD)Nos.23870 and 23871 of 2017, dated 07.06.2018, all these issues were not brought to the notice of the learned single Judge and the only issue that was projected was that the document was already registered and it was refused to be returned back. Under such circumstances, this Court, directed the document to be returned back to the concerned petitioners. This order cannot be taken as a precedent, since there was no occasion for this Court to go into the core issue as to whether the vendor of the petitioner can even register the sale deed in favour of the petitioner and his sister in the absence of title. After the coming into force of Section 22A of Registration Act, 1908, with effect from 20.01.2016, the Registering Officer can refuse to register the document, where it is found that the property belongs to the Government. In the present case, the property is vested with the Government and it has been handed over to the Housing Board and therefore, the first respondent was perfectly right in insisting for no objection certificate from the second respondent Housing Board.

10. In view of the above discussion, this Court does not find any ground to interfere with the impugned refusal check slip issued by the first respondent.

11. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsm



Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Joint Sub-Registrar-I,
Tuticorin,
Tuticorin District.

2.The Executive Engineer/
Administrative Officer,
Tamilnadu Housing Board,
Thirunelveli Housing Division,
Thirunelveli District.

+1 CC to M/s.SPL GP (SR-19911[F] dated 22/06/2021)

W.P. (MD) .No.7964 of 2021
and W.M.P. (MD) No.6073 of 2021
21.06.2021

mj (CO)
TR(01.07.2021) 5P 4C