



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.08.2021

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THE HONOURABLE MR.JUSTICE SETHILKUMAR RAMAMOORTHY

W.P(MD)No.14811 of 2021

and

W.M.P. (MD) .Nos.11707 & 11710 of 2021

WEB COPY

P.Jaganathan

... Petitioner

Vs.

1. The District Collector,
Madurai District.

2.The Executive Engineer / Administrative Officer,
Tamil Nadu Housing Board,
Madurai Housing Unit,
Ellis Nagar, Madurai-16.

3.R.K.Sridharan

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating with the Letter No.A3/6875/1988, dated 15.06.2021 issued by the second respondent and quash the same is arbitrary and illegal and in consequence to direct the second respondent to execute and register the sale deed relating with Flat H.I.G, RH-19, Ellis Nagar, Madurai, in the name of the allottee, the third respondent herein, after receiving the scrutiny fees and other cost if any from the petitioner and to release the same to the petitioner.

For Petitioner : Mr.R.Suriyanarayanan

For Respondents : Mr.R.Baskaran,

Counsel for State, For R1

: Mr.M.Mahaboob Athiff, For R2

ORDER

The petitioner challenges a communication dated 15.06.2021 of the second respondent, whereby the second respondent informed the third respondent herein that the representation submitted by such respondent, through his Power of Attorney Mr.P.Jeganathan, for execution and registration of the sale deed relating to Flat H.I.G, RH-19, Ellis Nagar, Madurai is rejected. The petitioner claims to be the agent of the third respondent under a registered power of attorney deed dated 23.02.2000 bearing



Document No.555/2000 on the file of the Joint-I Sub Registrar, Madurai.

2. The third respondent was allotted the above mentioned flat by the second respondent under allotment No.SD10/6875/88, dated 31.10.1988, under the Government servant quota. As stated earlier, as the agent of the third respondent, the petitioner claims that he has been authorized to handle all activities relating to the flat, including the execution of a sale deed in relation thereto. The petitioner also claims that such power of attorney is irrevocable because it is a power coupled with interest in terms of Section 202 of the Indian Contract Act, 1872. The petitioner also states that a registered sale agreement was executed in relation to the flat in favour of one Sivakami. Consequently, it is stated that the petitioner is under an obligation to execute a sale deed in her favour after getting a sale deed executed by the second respondent in favour of the third respondent.

3. When the second respondent was approached for the execution and registration of a sale deed, the impugned order dated 15.06.2021 was passed, whereby the request for registration was rejected on three grounds. The first ground of rejection was non-compliance with the requirement of a No Objection Certificate from the District Collector, Madurai, in view of the availment of financial assistance from the Government by the allottee. The second ground of rejection was the unlawful execution of an agreement of sale in favour of one Sivagami. The third ground of rejection was that the principal, namely, the third respondent herein had revoked the authorization in favour of the petitioner by a letter dated 06.11.2020. The present Writ Petition challenges the said order.

4. Learned counsel for the petitioner contends that the relevant provisions of the Tamil Nadu State Housing Board Act, 1961 and the Regulations framed thereunder permit the execution of a power of attorney by an allottee if such allottee is unable to handle the activities in relation to such allotment. He emphasizes that the power of attorney in his favour is not revokable and, therefore, he is entitled to maintain the present Writ Petition and challenge the impugned order of the second respondent. He also points out that the third respondent is merely a formal party.

5. On the other hand, Mr.Mahaboob Athiff, learned standing counsel for the second respondent, who accepts notice on behalf of such respondent, submits that the present Writ Petition has been filed by the agent in his individual capacity and not as an agent of the third respondent. Indeed, he contends that the



very fact that the third respondent has been arrayed separately indicates conclusively that the Writ Petition has not been filed in the capacity of agent of the third respondent. His second contention is that the allotment of the flat is non-statutory and, therefore, a Writ Petition does not lie. The third contention is that even if the allottee is aggrieved by the refusal to execute a sale deed in his favour, the appropriate remedy is by way of a suit for specific performance. The last contention is that the impugned order does not suffer from any infirmity as regards the decision making process. Given the fact that this Court is not sitting in appeal, the merits of the decision are not amenable to review under Article 226.

6. Mr.R.Baskaran, learned counsel for the State, accepts notice on behalf of the first respondent.

7. Upon consideration of the rival contentions, the first question that arises for consideration is whether the Writ Petition, as framed and filed, is maintainable. As correctly pointed out by learned Standing Counsel for the second respondent, the petitioner has filed the petition in his individual capacity and not as an agent of the third respondent. Therefore, the Writ Petition is not maintainable. In this connection, reference may be made to the earlier Writ Petition, W.P.(MD).No.10455 of 2021. The said petition has evidently been filed by the third respondent herein, albeit through his agent, namely, the petitioner herein.

8. In view of the conclusion that the Writ Petition is not maintainable, the merits of the matter are not being examined in these proceedings.

9. For the reasons aforesaid, W.P.(MD).No.14811 of 2021 is dismissed without any order as to costs. It is made clear that it will be open to the third respondent herein to challenge the impugned communication in accordance with law. Consequently, connected W.M.P.(MD).Nos.11707 and 11710 of 2021 are closed.

Sd/-

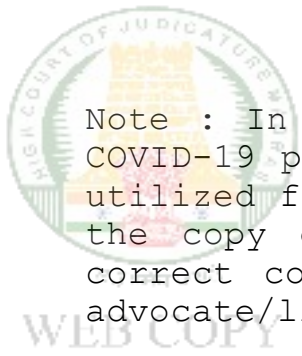
Assistant Registrar (CRL)

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/ /2021

Sub Assistant Registrar(CS)

Tsg



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 District Collector,
Madurai District.
2. The Executive Engineer / Administrative Officer,
Tamil Nadu Housing Board,
Madurai Housing Unit,
Ellis Nagar, Madurai-16.

+1 CC to M/s.SPL GP (SR-27160[F] dated 25/08/2021)

W.P (MD) No.14811 of 2021
23.08.2021

DJ(CO)
SB(01.09.2021) 4P 4C