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WP(MD)No.19208 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED : 05.02.2021

ORDER PRONOUNCED : 19.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. (MD) No.19208 of 2020

M.Shanavas Khan

.. Petitioner

vs

1.The District Collector,
Collectorate,
Kanyakumari District at Nagercoil.

2.The Revenue Divisional Officer,
Revenue Divisional Office,
Nagercoil Division,
Collectorate Complex,
Nagercoil 629 001.

3.The District Registrar,
District Registrar Office,
Kanyakumari District,
Registration Department,
SLB South Road,
Nagercoil.

4.The Joint Sub Registrar No.1,
Joint Sub Registrar No.1 Office,
Kanyakumari District Registrar's Office,
SLB South Road,
Nagercoil.

5.The Tamilnadu Housing Board,
represented through its Executive Engineer,
Tirunelveli Division,
Anbu Nagar,
Kamarajar Salai,
Tirunelveli.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the 2nd respondent herein to issue No objection Certificate to the 3rd and 4th respondents herein for registering sale deeds/conveyance deed in respect of land comprised in Re.Survey No.L5/1 - 5 and L5/1 - 6 to



an extent of 20 Ares (50.8 cents), Vadiveeswaran South Village, Agastheeswaram Taluk, Kanyakumari District by considering the petitioner's representation dated 02-05-2019 in view of the order dated 24-02-2000 passed in WP.No.12193/1993 on the file of this Court.

For Petitioner : Mr.V.Meenakshi Sundaram
Counsel

For R1 & R2 : Mr.V.P.M.Vaishnavi
Government Advocate

For R3 & R4 : Mr.K.Sathiya Singh
Additional Government Pleader

For R5 : Mr.Mahaboob Athiff

ORDER

The brief facts which are necessary for adjudication of the writ petition are stated hereunder:

2.The land comprised in Re.S.Nos.L5/1-5 and L5/1-6, to an extent of 20 aces (50.8 cents), Vadiveeswaram South Village, Agastheeswaram Taluk, Kanyakumari District, originally belongs to one Dr.Uma Lakshmanan and others and they have been in possession and enjoyment of the same. The lands were subjected to 4 (1) notification under Land Acquisition Act, 1894, dated 13.07.1990. The lands were sought to be acquired for the use of Tamilnadu Housing Board Scheme. The original owner of the lands challenged the acquisition proceedings before this Court in W.P.No.12193 of 1993 and W.P.No.12193 of 1993 was allowed and the acquisition proceeding was set aside on a procedural infirmity. However, liberty was granted to the authority to proceed afresh in the matter. This Court passed the order on 24.02.2000 in the said writ petition has by the same order dismissed another W.P.(MD) No.12194 of 1993, which challenged vires of Housing Board (Amendment and Validation Act, 1992).

3.This Court, while entertaining those writ petitions, had initially granted an order of interim stay for the acquisition proceedings and finally quashed the entire acquisition proceedings in respect of the above stated survey numbers. The operative portion of the order of this Court passed in W.P.(MD) No.12193 of 1993 reads as follows:-

".....5.Without going into any other question,

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respondent is sufficient to quash the proceedings. The proceedings are quashed. The writ petition is allowed. However, it is open to the authorities to start from the stage of 5-A enquiry, if they are so advised....."

4. According to the petitioner, despite liberty granted to the acquisition authorities, no further proceeding initiated by them thereafter. Therefore, the lands continued to be in possession of the original owner, Dr. Uma Lakshmanan and others and through their power agents, the lands had been subsequently sold to the family members of the petitioner by way of sale deed Nos. 3642 of 2013 and 604 of 2014 dated 29.11.2013 and 21.02.2014 respectively. Both the sale deeds were registered on the file of the 4th respondent herein. After the purchase of the said lands, the petitioner and his family members have been continuing possession and enjoyment of the property without any interference. The revenue records were also mutated in their names and the patta was also transferred, after the sale of the property in favour of the petitioner and his family members. The petitioner and his family members have executed a power of attorney, dated 06.08.2014 for the purpose of developing the land and the power, according to the averments in the affidavit, is still in force.

5. The petitioner and his family members have decided to sell the properties and in that regard, they made enquiry with the respondents 3 and 4, but they were informed by the Registering Authority that they need to obtain a No Objection Certificate from the official concerned, since the lands, which were sought to be sold had been subjected to acquisition proceedings for Housing Board Scheme. According to the petitioner, acquisition proceeding has been admittedly quashed by this Court in W.P.(MD) No.12193 of 1993 on 24.02.2000 and no action was initiated for proceeding with the acquisition proceedings afresh after the year 2000 and the lands continued to be vested in the original owner, Dr. Uma Lakshmanan. According to the petitioner, as of now, there is no encumbrance to the property, prohibiting the petitioner from selling the same. By virtue of the sale transaction, which had taken place in 2013-2014, the petitioner has become the lawful owners of the property. According to the petitioner, information was obtained by him under Right to Information Act stating that the properties indeed were subjected to the acquisition proceedings, which was ultimately quashed by this Court and the same has become final.

6. In view of the insistence of the Registering Authority for production of No Objection Certificate from the official concerned for registering the documents relating to the lands owned by the petitioner, the petitioner is before this Court seeking issuance of writ of mandamus.

7. Mr. V. Meenakshi Sundaram, learned Counsel appearing for the
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petitioner would reiterate the above facts and in support of his contention, he would refer to a reasoned decision of this Court reported in **2020 (2) CWC 548 (J.Siluvai Lazar Arokkiarajan Vs. Secretary to the Government, Housing and Urban Development Department, Chennai)**. In the said decision passed in W.P.Nos.8633 to 8636 of 2020, dated 31.07.2020, the learned Judge has clearly held as follows:-

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

10. It is true that initially acquisition proceedings were initiated and 4(1) notification was issued in the year 1975. The subject property in all the writ petitions forms part of 4(1) notification. This Court by an order dated 01.07.1999 made in W.P.No.18379 of 1991, quashed the 4(1) notification published on 11.06.1975 and even gave liberty to the Government to proceed afresh if the acquisition is necessary for public interest. However, no fresh acquisition proceedings were initiated. However, the Tahsildar was insisting for NOC from Housing Board in order to process patta applications from the concerned owners.

11. The previous order passed by this Court which has been extracted supra clearly establishes the fact that this Court on more than one occasion had held that the Housing Board has no right over the lands and the Tahsildar should not insist for getting No Objection Certificate from the Housing Board. This Court also proceeded to issue directions to the Tahsildar to grant patta without insisting for No Objection Certificate from the Housing Board.

12. The above order squarely covers the facts of the present case also.

13. In view of the above discussion, the impugned proceedings of the third respondent dated 25.02.2020 is hereby quashed and there shall be a direction to the fifth respondent to process the applications submitted by the petitioners seeking for patta without insisting for an NOC from the Tamil Nadu Housing Board and necessary orders shall be passed strictly in accordance with law within a period of six weeks from the date of receipt of copy of this order.

14. In the result all the writ petitions are allowed with the above directions. No cost. Consequently, connected miscellaneous petitions are closed."

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the Registering Authority for production of No Objection Certificate is illegal and invalid and therefore, the learned Senior Counsel implored this Court for issuance of writ of mandamus as prayed for.

9.The learned counsels appearing for the respondents would not dispute the legal position and also the fact that the acquisition proceedings have come to end, as far as the subject lands are concerned. In fact, the learned counsel appearing for the 5th respondent would fairly concede that in view of the acquisition proceedings being set aside by this Court, No Objection Certificate may not be insisted upon and the Housing Board has no interest over the subject land as on date.

10.From the above narrative, it is clear that the respondents 3 and 4 cannot insist on production of No Objection Certificate in respect of the registration of any documents pertaining to the subject properties. When the very acquisition proceeding has been set aside by this Court as early as on 24.02.2000 and the authority had not initiated any fresh action once again and no appeal had been preferred against the order passed by the learned single Judge of this Court, dated 24.02.2000, the Registering Authority cannot insist on No Objection Certificate for registering the document, as such pre-condition is without the authority of law.

11.The latest ruling of the learned single Judge of this Court, which extracted supra, has clearly held that in such matters, there is no requirement of any No Objection Certificate for the purpose of considering the request for granting patta. In fact, the possession of the petitioner, which is in favour of the petitioner, has not been actually disputed by the learned counsel for the respondents and in fact, one of the counsels would submit that there is no legal necessity for obtaining any No Objection Certificate from the official concerned. In the absence of any legal necessity to produce the No Objection Certificate either from the Board or from the Revenue Officials, the respondents 3 and 4 are under a legal obligation to register the documents presented by the petitioner herein/actual land owner, if the same is in order, otherwise.

12.In that view of the matter, this Court has no hesitation in allowing the writ petition as prayed for.

13.In the above circumstances, the writ petition stands allowed with a direction as under:-

The respondents 3 and 4 are directed to register the document pertaining to the property owned by the petitioner as described in the prayer sought in this writ petition, if the same are otherwise in order, without insisting on the No Objection Certificate either



from the Revenue Official or from the Board, after duly verifying the extent of properties, which are covered by the order passed by this Court, dated 24.02.2000 in W.P.(MD) No.12193 of 1993.

14.No costs.

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Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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,
Collectorate,
Kanyakumari District at Nagercoil.
- 2.The Revenue Divisional Officer,
Revenue Divisional Office,
Nagercoil Division,
Collectorate Complex,
Nagercoil 629 001.
- 3.The District Registrar,
District Registrar Office,
Kanyakumari District,
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- 4.The Joint Sub Registrar No.1,
Joint Sub Registrar No.1 Office,
Kanyakumari District Registrar's Office,
SLB South Road,
Nagercoil.

+2 CC to M/s.GP (SR-3734[F] dated 08/02/2021)
(SR-3732[F] dated 08/02/2021),12789

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+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-12697[F] dated
22/03/2021)

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19.03.2021

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