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W.P.No.23788/2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
29.03.2022	19.04.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.23788 OF 2004

AND

W.P.M.P. NO. 1702 OF 2008

M/s.Mahaveer Metal Industries
Rep. by its Partner, Mr.Champalal
No.182, Mint Street
Chennai 600 003.

.. Petitioner

- Vs -

1. The Competent Authority
Special District Revenue Officer (LA)
National Highways
Kancheepuram & Thiruvallur Districts
@ Kancheepuram.

2. Mr. Shanthilal

3. Canara Bank
Karanodai Branch
Karanodai, Chennai.

.. Respondents

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 from the file of the 1st respondent in RC7/2001A/NH-5/TVR dated 29.03.04 in respect of the lands situated in Madhavaram Village bearing Survey No.1280/1B and Survey No.1318/1B and quash the impugned order in RC7/2001A/NH-5/TVR dated 29.03.04 and consequently directing the 1st respondent to deposit the total compensation amount of Rs.1,45,98,353/- into a Civil Court for adjudication of the rights of the petitioner.



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For Petitioner : Mr. T.R.Rajagopalan, SC, for
M/s. C.V.Vijayakumar

For Respondents: Mr.A.Anandan, GA for R-1
Mr. T.V.Ramanujun, SC, for
M/s. T.V.Krishnamachari for R-2
Mr. N.Nithianandam for R-3

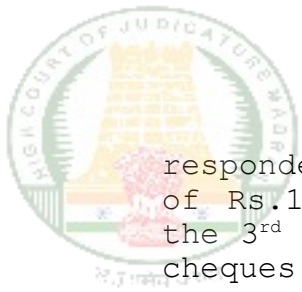
ORDER

The writ petition, at the instance of the petitioner, is filed assailing the order in and by which the compensation for the lands acquired by the 1st respondent were paid to the 2nd respondent, though it is alleged that the lands were purchased out of the funds of the partnership firm of which the 2nd respondent was a partner on the date of purchase.

2. It is the case of the petitioner that the 2nd respondent was one of the partners in the petitioner's firm, which is a partnership firm. It is the further averment of the petitioner that on 25.10.1966, the property, which has since been acquired, was purchased from the funds of the partnership firm in the name of one of the partners, viz., the 2nd respondent herein. It is the further averment of the petitioner that patta was granted in the name of the 2nd respondent and that the original patta as also the original sale deed in and by which the property was purchased, are in the custody of the petitioner. It is the further averment of the petitioner that the 2nd respondent, on 4.5.1989, executed a release deed retiring as partner from the partnership firm.

3. It is further averred by the petitioner the 1st respondent had caused public notice on 3.12.2002 for the purpose of acquisition of lands for the purpose of National Highways. Vide communication dated 17.2.03, the petitioner firm had addressed the 1st respondent not to entertain any claim from the 2nd respondent and the petitioner firm preferred claim for compensation as owner of the land from the 1st respondent. It is the further averment of the petitioner that a sum of Rs.37,43,167/- was issued to the 2nd respondent by way of cheque by antedating the receipt of the petitioner's claim as 19.2.03.

4. It is the further averment of the petitioner that the 1st respondent acknowledged the receipt of the communication of the petitioner dated 17.2.03, but in view of the payment of compensation to the 2nd respondent, the petitioner preferred W.P. No.6438/03 seeking a restraint order from payment of compensation in which this Court had restrained the 1st respondent from making compensation to the 2nd respondent, vide order dated 27.2.03. However, inspite of the said order, the 1st



respondent, vide cheque dated 27.2.03, issued a cheque for a sum of Rs.1,08,55,186/- in favour of the 2nd respondent. However, the 3rd respondent permitted the 2nd respondent to encash both the cheques for a total sum of Rs.1,46,02,353/ on 3.3.03.

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5. It is the further averment of the petitioner that order was passed in the writ petition, W.P. No.6438/03 directing the 1st respondent to consider the representation of the petitioner and pass orders, which resulted in a series of litigations between the petitioner, the 1st and 3rd respondents upto the stage of contempt appeal and finally the contempt petition was closed, with which this Court is not concerned.

6. It is the further averment of the petitioner that the funds with which the property was purchased belonged to the partnership firm and, therefore, the property would legally be the property of the petitioner and the 2nd respondent cannot claim any right over the said property even if it had been purchased in his individual name. In the light of the aforesaid facts, the present petition has been filed along with a miscellaneous petition for a direction to the 1st respondent to deposit the total compensation amount of Rs.1,45,98,353/- into Court deposit for adjudication of the rights of the parties to the said amount.

7. Learned senior counsel appearing for the petitioner, mainly contended that the 2nd respondent is a permanent resident of Mumbai and had produced a copy of the sale deed dated 25.10.66 averring that he had lost the original sale deed at a Tea Shop at Ponneri on 23.2.2003 and had sought for issuance of a certified copy of the sale deed. However, part of the compensation to the tune of Rs.37,43,167/- had been paid by the 1st respondent to the 2nd respondent vide cheque dated 17.2.03. It is the submission of the learned senior counsel for the petitioner that without even verifying the title of the 2nd respondent to the property, which is sought to be acquired, part compensation has been paid to the 2nd respondent.

8. It is the further submission of the learned senior counsel for the petitioner that the complaint has been given by the 2nd respondent before the Sub Inspector, Ponneri, with regard to the loss of the original sale deed and on the very same day, Non-Traceable Certificate has been issued to the 2nd respondent and based on the said certificate, certified copy of the sale deed has also been issued by the Sub Registrar on the same day and the 2nd cheque has been issued to the 2nd respondent on 27.2.2003 within a period of four days on the basis of the legal opinion obtained from the Government Pleader dated 27.2.2003. It is therefore the submission of the learned senior counsel that the whole sequence of events right from the lodgement of



the complaint to the issuance of the cheque, which had taken place within a period of four days creates a grave doubt and in that scenario, the prudent approach for the 1st respondent would have been to have followed the restraint order passed by this Court in W.P. No.6438/03. But without following the said order, the 1st respondent has gone ahead and released the whole compensation amount, which clearly shows that there has been a nexus between the various stakeholders with regard to the said transaction.

9. It is the further submission of the learned senior counsel that the property having been purchased from the funds belonging to the petitioner, as held by the Courts in a catena of decisions, the property would belong to the petitioner and it cannot be claimed as the individual property of the 2nd respondent, even if it is registered in the individual name of the 2nd respondent. When the petitioner has raised a contention questioning the title of the 2nd respondent to the property, the 1st respondent ought to have relegated both the petitioner and the 2nd respondent to agitate their rights with regard to title before the civil court and, thereafter, to have released the compensation amount on the basis of the said judicial adjudication. However, without following the prudent procedure, the 1st respondent had released the entire compensation amount in favour of the 2nd respondent, which not only smacks of mala fides, but the entire exercise as sketched above, clearly reveals that all is not well and, therefore, necessitates interference at the hands of this Court.

10. Per contra, learned senior counsel appearing for the 2nd respondent submitted that no iota of evidence has been filed by the petitioner to show that the fund of the partnership firm was used in the purchase of the property. It is the submission of the learned senior counsel that the subject property was purchased in the year 1966, but the partnership firm was established only in the year 1973 and, re-established in the year 1979 as per the documents. It is the further submission of the learned senior counsel for the 2nd respondent that no document evidencing the establishment of the firm during the period when the property is alleged to have been purchased.

11. It is the further submission of the learned senior counsel that the acquisition proceedings were notified in September, 2001, but no objection has been submitted with the time prescribed u/s 3-C of the National Highways Act. It is also the further submission of the learned senior counsel that the title document, the patta and the encumbrance certificate all stand in the name of the 2nd respondent and there is not even a single document, which avers the property to be in favour of the petitioner. Further, the recitals in the sale deed does not



WEB COPY speak about the subject property being purchased from the funds of the petitioner and the release deed in this regard is also silent on this aspect. That being the factum, the documents, placed before the 1st respondent with regard to the title of the property have been appreciated in proper perspective and the 1st respondent has paid the compensation in favour of the 2nd respondent, which does not require any interference.

12. This Court paid its undivided attention to the submissions advanced by the learned senior counsel appearing on either side and perused the materials available on record.

13. It is trite that under the extraordinary jurisdiction of this Court, disputed questions of fact cannot be adjudicated. However, where the facts are undisputed, this Court is clothed with powers to adjudicate the said dispute. With the above proposition in mind, this Court will analyze the materials placed before it to arrive at a solution.

14. The whole crux of the case of the petitioner falls within a narrow compass, in that the petitioner claims that the subject property, which has since been acquired, were purchased in the name of the 2nd respondent by utilising the funds of the petitioner firm and, therefore, according to the petitioner, the compensation should come to the coffers of the petitioner firm.

15. It is the case of the petitioner that the firm was established in the year 1959 and in the year 1963 the 2nd respondent was inducted as one of the partners of the firm. According to the petitioner, the firm is a registered partnership firm. However, it is disputed by the 2nd respondent stating that the firm was started only in the year 1973. Therefore, the genesis of the formation of the firm itself is shrouded under dispute and any property purchased prior to the formation of the firm would be the individual property of the 2nd respondent. In this regard, the 2nd respondent places much emphasis on the non-placement of the partnership deed in the typed set of documents. However, it is to be pointed out that it is not as if no material has been placed to show the existence of the firm during the period in question, viz., 1966. The alleged ledger book signed by the auditor has been filed in the typed set of documents. However, it is to be pointed out that though such a material is filed, the authenticity of the same cannot be adjudicated by this Court, as there is a dispute with regard to the existence of the firm during the period in question. The said documents have to be put to test before it is to be accepted and relied upon in evidence.

16. Be that as it may. The 1st respondent has paid the compensation to the 2nd respondent on the basis of the certified



copy of the sale deed, which has been issued by the Sub Registrar and also on the basis of the patta and the revenue records, which bears the name of the 2nd respondent as the owner of the property. It is not in dispute that the 2nd respondent is shown to be the purchaser of the subject property. As stated above, the only question relates to the source of funds for the purchase of the property. Both the parties to the lis claims that the source is from their own. This again is a disputed question as there is a dispute with regard to the source of funds, which can be adjudicated only before the competent civil court by submitting oral and documentary evidence and authenticating the same. It would not be right on the part of this Court, under Article 226 of the Constitution of India, to enter into the said domain and adjudicate the source of funds.

17. In the aforesaid scenario, the issue that befalls for consideration before this Court is the act of the 1st respondent in releasing the compensation amount in favour of the 2nd respondent. True it is that multiplicity of proceedings have been taken up by the parties, upto the level of contempt, which was ultimately rejected by this Court stating that no case arises for having committed contempt. The 1st respondent has paid the compensation to the 2nd respondent on the strength of the certified copy of the sale deed, the encumbrance certificate and the patta. It is not disputed even by the petitioner that the sale deed and the patta stands in the name of the petitioner. Further, the revenue records also shows the name of the petitioner as the owner of the property.

18. It is to be pointed out that the 1st respondent has to adjudicate and satisfy himself as to the person holding title to the property and also the patta to the property and the name as reflected in the revenue records with regard to the person holding title to the property before releasing the compensation for the lands acquired. As stated above, it is not in dispute that the revenue records relating to the property, which is the subject matter of issue, contain the name of the 2nd respondent as the title holder of the property and the patta also stands in the name of the 2nd respondent and the encumbrance certificate also ends with the 2nd respondent. Satisfying that the 2nd respondent, as on the date of payment of compensation, is the owner of the property, the 1st respondent has paid the compensation amount to the 2nd respondent. True it is that the petitioner has made an objection to the 1st respondent about the rival claim made with regard to the disputed property. However, the petitioner has placed only the original documents, viz., the sale deed and patta before the 1st respondent claiming compensation. But the said documents, as stated above, evidences the name of the 2nd respondent as the owner of the property. In such a scenario, prudence warranted the release



of the compensation in favour of the 2nd respondent, which the 1st respondent has done and rightly so.

19. It is to be stated that the procedure followed by the 1st respondent cannot be faulted with. After ascertaining the ownership of the property with the relevant records, the 1st respondent has released the amounts in favour of the 2nd respondent. The 1st respondent is not clothed with any power to adjudicate the source of funds for the purchase of the property, as the said authority is not vested with the judicial power, so vast, for adjudicating the validity of the purchase made by the 2nd respondent and the source of funds for obtaining the property. Only the competent civil court is clothed with jurisdiction to decide on the validity of the purchase in the name of the 2nd respondent.

20. The whole fabric of the petitioner's case is made to rest on the act of the 2nd respondent in obtaining a Non-Traceable Certificate with regard to the loss of the original sale deed from the law enforcing agency on the very same day of submission of the complaint. Not only was a Non-Traceable Certificate issued on the very same day of the complaint, on the basis of the said certificate, the 2nd respondent has also obtained the certified copy of the sale deed, which was produced before the 1st respondent for claiming the balance compensation. The above act of the 2nd respondent in obtaining the Non-Traceable Certificate and the certified copy of the sale deed on the very same date, leaves a sour taste in the mouth of this Court, but that act alone would not be sufficient to hold that the 2nd respondent is not the lawful owner of the property. Though the petitioner claims that all along it was in possession of the sale deed and that the claim of the 2nd respondent as to loss of the said original sale deed at a tea stall, is a fabrication made only for the purpose of obtaining the certificate and the certified copy of the sale deed for claiming the compensation, however, this Court, sitting under Article 226 of the Constitution is not inclined to appreciate the said contention, as it could only be decided by submitting necessary oral and documentary evidence. The act of the 1st respondent in releasing the compensation on the basis of the above documents cannot be said to be legally unjustified.

21. It is to be pointed out that the 1st respondent had issued the notification u/s 3-A of the National Highways Act for acquisition of the property and after following the other provisions of law with regard to hearing of objections u/s 3-C, the 1st respondent has followed Section 3-E and 3-G of the Act insofar as taking possession of the lands and payment of compensation while scrupulously following Section 3-H (3) of the Act. The act of the 1st respondent in adhering to the



provisions of law in the matter of acquisition and payment of compensation does not in any manner traverse on the path of illegality. Merely because there is a dispute between the petitioner and the 2nd respondent with regard to the subject property, in which the petitioner claims that purchase of the same came from the funds of the firm, that would not be a ground for the 1st respondent to withhold the compensation to the 2nd respondent, more so, when the contempt petition alleging disobedience of the interim orders relating to payment of compensation has ended in rejection of the contempt petition. That being the case, the compensation awarded by the 1st respondent to the 2nd respondent cannot be put in issue before this Court seeking the relief as sought for in the present petition.

22. If really the petitioner is aggrieved by the payment of compensation to the 2nd respondent, the course open to the petitioner is only to agitate its right before the competent civil forum by putting the issues raised herein to test before the civil court. It is not justifiable on the part of the petitioner to seek the indulgence of this Court to adjudicate disputed questions of fact and it also would not be right on the part of this Court to enter into the realm of disputed questions, when the questions raised herein are all disputed. Therefore, this Court is not inclined to grant any relief much less the relief of a direction to the 1st respondent to deposit the amount of Rs.1,45,98,353/- in a civil court of competent jurisdiction.

23. For the reasons aforesaid, the questions being raised are disputed in nature, this Court is not inclined to entertain this writ petition and, accordingly, the same is dismissed. However, liberty is granted to the petitioner to go before the appropriate civil court to agitate its rights with regard to the subject property in a manner known to law. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-
Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

GLN



To

The Competent Authority
Special District Revenue Officer (LA)
National Highways
Kancheepuram & Thiruvallur Districts
@ Kancheepuram.

+1cc to Mr.N.Nithianandam, Advocate SR.No.26892

+1cc to Mr.T.R.Rajaraman, Advocate SR.No.26854

+1cc to Mr.T.V.Krishnamachari, Advocate SR.No.26830

+1cc to Government Pleader SR.No.27159

W.P. NO.23788 OF 2004

PL(CO)
GMY(28/04/2022)