



WEB COPY



W.P.No.12732 of 20__

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.11.2022

Coram

The Honourable Mr.Justice M.DHANDAPANI

W.P.No.12732 of 2022

M/s.Sri Sreenivasa Constructions
represented by its
Authorised Signatory
Mr.N.Raveendra Kumar Reddy
having registered office at DSR Tranquil,
Plot No.901, No.201,
Ayappa Society Main Road,
Hyderabad – 500 081.

...Petitioner

Versus

1.The Inspector General of Registration,
100, Santhome High Road,
Mylapore,
Chennai, Tamil Nadu – 600 028.

2.The Sub Registrar,
Neelankarai,
No.2/92, SH 49, Kazura Garden,
Neelankarai, Chennai – 600 041.

3.Mr.Mahendra Shanmuganathan

4.Mrs.Shyamala Kumari

5.Mr.Vijayendra Shanmuganathan

...Respondents



W.P.No.12732 of 20__

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records pertaining to Refusal Check Slip in RFL/Neelankarai/17/2022 dated 29.04.2022, passed by the second respondent and quash the same and direct the second respondent herein to register the Sale Deed dated 20.04.2022 presented vide T.P.No.TP/117320082/2022 pertaining to 508.3 square feet of undivided share of land in measuring an extent of 1.04 Acres comprised in Survey Nos.138/1 (Part) and 138/2A (Part) situated at Rajiv Gandhi Salai (OMR), Semmencherry Village, Shollinganallur Taluk, Chennai District (earlier Kanchipuram District) within the sub registration district of Neelankarai and registration District of Chennai South.

For Petitioner	:	Mr.Prabudoss
For Respondent – 1 & 2	:	Mr.G.Krishnaraja, Additional Government Pleader
For Respondent – 3	:	No Appearance
For Respondents – 4 & 5	:	Ms.P.Srividya

ORDER

With the consent of both sides, this writ petition is taken up for final disposal.



WEB COPY

2. The relief sought by the petitioner in this writ petition is to call for the records pertaining to Refusal Check Slip in RFL/Neelankarai/17/2022 dated 29.04.2022, passed by the second respondent and quash the same and direct the second respondent to register the Sale Deed dated 20.04.2022 presented vide T.P.No.TP/117320082/2022 pertaining to 508.3 square feet of undivided share of land in measuring an extent of 1.04 Acres comprised in Survey Nos.138/1 (Part) and 138/2A (Part) situated at Rajiv Gandhi Salai (OMR), Semmencherry Village, Shollinganallur Taluk, Chennai District (earlier Kanchipuram District), within the sub registration district of Neelankarai and registration District of Chennai South.

3. The brief facts of the case are as follows:

The petitioner is a partnership firm carrying on real estate business. It got acquainted about the lands comprised in Survey No.138/1 measuring to an extent of 63 Cents owned by one Mr.K.R.Ataullah Basha and Survey No.138/2 measuring to an extent of 45.5 Cents owned by fourth respondent situated at Chemencherry Village, presently Sholinganallur Taluk, Chennai



District within the Registration District of Chennai South and Sub Registration District of Neelankarai. The said lands are hereinafter referred to as subject property. The said Attaullah Basha and fourth respondent entered into a Joint Development Agreement (JDA) dated 20.09.2012 on area sharing basis. As per the terms of said Agreement, they executed a Power of Attorney (POA) dated 20.09.2012 in favour of one Mr.V.Krishna Reddy, which was registered as Document No.1102 of 2012 Book – IV on the file of second respondent. Thereafter, the petitioner firm along with said Attaullah Basha and fourth respondent have entered into a Supplementary Agreement dated 20.10.2012.

3.1. While so, the fourth respondent without consulting the petitioner firm, settled various properties (including the subject property) owned by her in favour of her two sons viz., Mr.Mahendra Shanmuganathan (3rd respondent herein) and Mr.Vijayendra Shanmuganathan (5th respondent herein) by way of Settlement Deed dated 23.03.2017 which was registered as Document No.1066 of 2017 on the file of Sub Registrar Office, Adyar.

3.2. Subsequently, respondents 3 & 5 executed a Supplementary

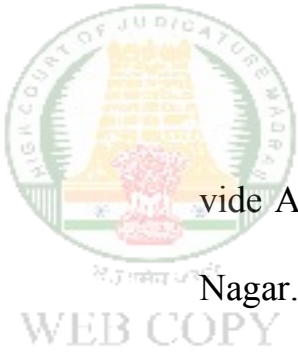


WEB COPY

Agreement dated 16.11.2017 in favour of petitioner firm, categorically admitting the aforesaid JDA dated 20.09.2012 and binding themselves to the terms of said JDA, thereby, recognizing and accepting the right of petitioner firm under said JDA and POA dated 20.09.2012.

3.3. Pursuant to the aforesaid Supplementary Agreement dated 16.11.2017, the said Attaullah Basha, petitioner firm, respondents 3 and 5 entered into a Flat Allocation Agreement dated 16.11.2017, whereby, allocation of the respective apartment along with correspondent undivided share of land out of subject property was allocated.

3.4. The petitioner firm vide Planning Permit No.11197 dated 28.02.2018 in Proceedings No.C/PP/MSB/09 (A to F)/2018 file No.C3(5)/4318/2014 and building permission No.CEBA/WDCN15/00129/2018 dated 09.05.2018, obtained permission for constructing basement, stilt floor, with first floor to eighth floor, ninth floor part consisting of 118 dwelling units in the first floor level at the subject property. The third respondent executed a Power of Attorney dated 12.03.2018 in favour of one Mr.B.Vishnu Sashankar which was adjudicated



vide Adjudication No.39 of 2018 on the file of Sub Registrar Office, Ashok Nagar. The fifth respondent executed a Power of Attorney dated 07.09.2018 in favour of aforesaid Mr.V.Krishna Reddy which was registered as Document No.6199 of 2018 on the file of second respondent.

3.5. The petitioner firm registered the project/development in the subject property before the Tamil Nadu Real Estate Regulatory Authority vide Certificate No.TN/01/Building/0241/2018. The petitioner firm commenced registration in favour of the prospective purchasers with regard to apartments forming part of its allocation.

3.6. The fourth respondent under the guise of rectifying the Settlement Deed executed a Rectification Deed dated 08.05.2020 which was registered as Document No.2576 of 2020 on the file of Sub-Registrar Office, Neelankarai, whereby, certain portions of Settlement Deed were amended/rectified including 'D' Schedule Property, whereby, 40% undivided share of land was entirely settled only in favour of fifth respondent. Therefore, the petitioner firm filed an application in O.A.No.242 of 2020 before this Court, seeking an injunction restraining the respondents 4 & 5



from in any manner acting on the basis of Rectification Deed dated 08.05.2020 contrary to the terms of JDA dated 20.09.2012 and consequential Supplementary Agreement dated 16.11.2017 pending disposal of Arbitration proceeding. This Court vide order dated 07.09.2020 allowed the said O.A.No.242 of 2020 with a direction to the petitioner firm to initiate arbitration proceedings within a period of three months from the date of that order. As per the above direction of this Court, the petitioner firm issued notice dated 15.06.2020 invoking arbitration proceedings.

3.7. The fifth respondent issued a legal notice dated 25.08.2020 to the petitioner firm claiming to deliver him 16.8% share in the 21 flats together with 23 car parking. In the meanwhile, the third respondent filed a suit in O.S.No.152 of 2020 before the Additional District Court, Chengalpet for declaration of title for 22.34 Cents out of 45.5 Cents comprised in Survey No.138/2, Chemmancherry Village, Sholinganallur Taluk, Chengalpet District and for permanent injunction against the fifth respondent and the petitioner firm.

3.8. On the other hand, the fifth respondent filed a suit in O.S.No.188



of 2020 before the District Munsif Court, Alandur for declaring the Settlement Deed dated 23.03.2017 as invalid, inoperative and non-est and for permanent injunction restraining the third respondent and petitioner firm. During the pendency of the aforesaid proceedings, petitioner firm, respondents 4 and 5 have entered into a Memorandum of Understanding dated 17.12.2020.

3.9. Under such circumstances, the third respondent attempted to revoke/cancel the Power of Attorney dated 12.03.2018. Hence, the petitioner firm filed an application in O.A.No.200 of 2021 before this Court, praying for injunction restraining the respondents 3 & 5 from revoking and cancelling the Power of Attorney dated 12.03.2018 and Power of Attorney dated 07.09.2018. The said application was disposed of by this Court vide order dated 01.07.2021. Aggrieved over the order passed in O.A.No.200 of 2021, the petitioner firm preferred an appeal in O.S.A.(CAD) No.63 of 2021. The Division Bench of this Court vide judgment dated 25.08.2021 disposed of the said appeal by observing as follows:

“3. Accordingly, O.S.A. (CAD) No.63 of 2021 is disposed of by leaving the appellant free to apply under Section 17 of the Act before the Arbitrator, whereupon, the Arbitrator may proceed to consider the same as expeditiously as possible and completely



uninfluenced by the judgment and order impugned herein.”

WEB COPY 3.10. In pursuance to the above observation of the Division Bench of this Court, petitioner firm has initiated the arbitration proceedings. The respondents 3 to 5 have also contested the arbitration proceedings. The learned Arbitrator vide award dated 06.04.2022 ordered that the petitioner firm is entitled to 60% of undivided share in the subject property. The petitioner firm has sold the apartments out of its allocation share to several customers and registered the several sale deeds to their respective customers as on award dated 06.04.2022.

3.11. Thereafter, on 29.04.2022, the petitioner firm has presented the Sale Deed dated 20.04.2022 which was executed by it in favour of one Mr.Yogeswaran Mathavan, before the second respondent for registration. However, relying on the Circular No.189/C1/2019 dated 02.02.2013 issued by the first respondent, the second respondent vide Refusal Check Slip in RFL/Neelankarai/17/2022 dated 29.04.2022, refused to register the said Sale Deed for the reason that the petitioner firm has not produced the Life Certificate for said Attaullah Basha, respondents 3 and 5. Hence, the



aggrieved petitioner firm has filed the present writ petition before this Court for the reliefs stated *supra*.

4. The learned counsel for the petitioner submitted that the said Attaullah Basha, respondents 3 and 5 are very much alive. Since the third respondent is residing at Australia, service of notice was effected on him by way of e-mail and whatsapp. Though the petitioner firm asked the respondents 3 & 5 to give fresh Life Certificate, however, they refused to give the same for registration of Sale Deed dated 20.04.2022. He therefore prayed that this writ petition may be allowed and the impugned order may be set aside.

5. Despite the service of notice, none appeared on behalf of the third respondent.

6. The learned Additional Government Pleader appearing for the respondents 1 & 2 submitted that under the Rectification Deed 08.05.2020, fourth respondent has modified the Settlement Deed dated 23.03.2017, by making settlement of the land in S.No.138/2 measuring to an extent of 45.5



Cents situated in Semmancherry Village to the fifth respondent, in and by which, 40% undivided share of subject property was settled in favour of fifth respondent alone. He further submitted that as per Circular No.189/C1/2019 dated 02.02.2013 issued by the first respondent, the second respondent cannot register the Sale Deed without the production of Life Certificate of the Principals. Moreover, it is clearly stated in the counter affidavit that the second respondent has no authority to satisfy whether the said Attaullah Basha, respondents 3 and 5 are alive through some other means other than the production of their Life Certificates issued by a Medical Practitioner or Grade A Officer.

7. The learned counsel appearing for the respondents 4 & 5 submitted that the respondents 4 & 5 are very much alive. It is to be noted that 60% share of the subject property is with the petitioner firm and the remaining 40% share of the subject property is with the respondents 3 to 5. She also submitted that the respondents 4 & 5 have no objection for Sale Deed dated 20.04.2022 being registered by the second respondent.

8. Heard the learned counsel on either side and perused the materials



W.P.No.12732 of 20__

placed before this Court.

WEB COPY

9. Considering the facts and circumstances of the case and also, having regard to the submissions made by the learned counsel on either side, this Court is inclined to quash the order which is impugned herein and allow this writ petition.

10. Accordingly, the Refusal Check Slip issued by the second respondent in RFL/Neelankarai/17/2022 dated 29.04.2022 is hereby quashed and this writ petition is allowed with a direction to the second respondent to register the Sale Deed dated 20.04.2022, after the receipt of necessary Stamp Duty and Registration Charges, within a period of six weeks from the date of receipt of a copy of this order. It is also made clear that the second respondent shall register the said Sale Deed, without insisting the petitioner to produce the Life Certificate of Attaullah Basha, respondents 3 and 5. No costs.

23.11.2022

mrr

Index : Yes/No

12/14



W.P.No.12732 of 20__

Speaking Order (or) Non-Speaking Order

WEB COPY

Copy to

- 1.The Inspector General of Registration,
100, Santhome High Road,
Mylapore,
Chennai,
Tamil Nadu – 600 028.
- 2.The Sub Registrar,
Neelankarai,
No.2/92, SH 49, Kazura Garden,
Neelankarai,
Chennai – 600 041.



WEB COPY



W.P.No.12732 of 20__

M.DHANDAPANI, J.

mrr

W.P.No.12732 of 2022

23.11.2022