



WMP.No.18352 of 2022
WP.No.5939 of 2022

**WMP.No.18352 of 2022 in
WP.No.5939 of 2022**

WEB COPY

Dr.ANITA SUMANTH,J.

This WMP has been filed by the fifth respondent in W.P.No.5939 of 2022 alleging suppression of facts by the petitioners. The petitioner in WMP/R5 is specifically aggrieved by an observation made by this Court in paragraph 7 of order dated 16.03.2022.

2.Order dated 16.03.2022 is extracted in full below, in order to set the context in which the present order is passed.:

'Mr.C.Jayaprakash, learned Government Advocate accepts notice for R1 to R3 and is armed with instructions to proceed with the matter finally. Learned counsel for the petitioner makes an endorsement that the petitioner is not pressing this Writ Petition as against R4. Hence, this Writ Petition is dismissed as against R4.

2. In light of order passed in the paragraphs to follow, no notice is thought necessary to R5 at this juncture. Hence, by consent of learned counsel for the petitioner and learned Government Advocate, this Writ Petition is disposed finally even at the stage of admission.

3. The petitioner and R5 were related, P1 and R5, being husband and wife till they obtained a divorce by mutual consent in the year 2007. P2 is their daughter. They are all medical doctors. Since there are disputes in regard to the title to the property at No.78, Nethaji Road, Manjakuppam, Cuddalore – 607 001 (property in question), a suit had been filed in O.S.No.135 of 2010 on the file of I Additional Subordinate Court, Cuddalore, which had come to be decreed in favour of P1 on 08.02.2011. The decree has attained finality and had not been disturbed thereafter and hence, title to the property in question vests absolutely in P1.

4. While this is so, R5 appears to have obtained a certificate of registration for clinical establishment from R3/Joint Director of Medical Rural Health Services and Family Welfare, which operates to the effect that Sujatha Hospital, an entity which is stated to be a proprietary entity, R5 being the sole proprietor thereof, is authorised to operate



from the premises in question.

5. Since the premises in question vests in the petitioners, they allege that the certificate has been obtained by suppression of the decree in the original suit. They thus seek a mandamus directing the second respondent/Director of Medical and Rural Health Services to initiate proceedings as against R5 cancelling the registration in terms of the procedure set out under Section 5 of the Tamil Nadu Private Clinical Establishments (Regulation) Act, 1997 (in short 'Act').

6. Mr.Jayaprakash has obtained instructions and draws attention to Section 5 of the Act that provides for a comprehensive procedure in this regard. Upon initiation of a complaint, either suo motu or at the instance of the complainant, notice to show cause is to be issued to the alleged defaulter, as to why registration that has been granted under the Act not be suspended or cancelled.

7. In light of the prima facie position established by the petitioners in regard to the ownership of the property in question vesting in P1, I am of the considered view that an enquiry must be made by R2 and a proper decision arrived at in regard to the veracity or otherwise of the certificate dated 28.06.2019.

8. Instead of filing a request before the competent authority in this regard, the petitioner has issued a legal notice. The petitioner is permitted to follow the procedure as set out under the Act, specifically Section 5 thereof and make a representation/complaint before the competent authority. Such complaint, if and when filed, within a period of two (2) weeks from today, shall be disposed by R3 by passing of a speaking order after hearing the petitioner and R5 and taking note of all/any material that may be filed by the parties.

9. This Writ Petition is disposed as above. No costs. Connected Miscellaneous Petition is closed.'

3. There are, at paragraphs 5 read with 7 observations to the effect that, as on that date the petitioners held a decree in their favour and hence a prima facie position had been established by them in regard to the ownership of the property in question vesting in them.

4. It is now brought to the Court's notice that in fact O.S.No.242 of 2021 had been filed by R5 pending before the First Additional Sub Court, Cuddalore



WMP.No.18352 of 20
WP.No.5939 of 2022

seeking a declaration that the exparte decree made in O.S.No.135 of 2010 was void and unenforceable as the same had been obtained by the first petitioner by playing fraud on the Court. The petitioners are well aware of the pendency of the aforesaid suit insofar as, admittedly, a written statement has been filed by them in that suit. In such circumstances, intervention is called for.

5.Paragraph 7 will now read as follows and will stand substituted for paragraph 7 as it stood:-

'The fifth respondent has filed O.S.No.242 of 2021 before the First Additional Sub Court, Cuddalore, wherein a declaration has been sought that the exparte decree made in O.S.No.135 of 2010 void and unenforceable as the same had been obtained by the first petitioner by playing fraud on the Court. I am of the considered view that an enquiry must be made by R2 and a proper decision arrived at in regard to the veracity or otherwise of the certificate dated 28.06.2019.'

6.Order dated 16.03.2022 remains unaltered otherwise.

7.That apart, in light of the admitted position that the petitioners in the writ petition have come to Court with unclean hands, they have put to terms and shall remit a sum of Rs.25,000/- as costs to the Cancer Institute, Adyar, Chennai-600 020, within a period of four (4) weeks from today.



WEB COPY



WMP.No.18352 of 2022
WP.No.5939 of 2022

Dr.ANITA SUMANTH,J.

8.Miscellaneous Petition is ordered.

18.11.2022

VS

**WMP.No.18352 of 2022
in
WP.No.5939 of 2022**