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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.NO.21530 OF 2021

AND

W.M.P.NOS.22743 & 22744 OF 2022

J.Rajasekar

... Petitioner

.Vs.

1. The Principal Secretary
to the Government of Tamil Nadu,
Registration Department,
Fort St. George,
Chennai - 600 009.
2. The Inspector General of Registration,
Santhome High Road,
Mylapore, Chennai - 600 001.
3. The District Registrar,
Coimbatore District,
Collectorate Campus,
Coimbatore.
4. The Sub Registrar,
Office of the Sub Registrar,
Kinathakavadu,
Coimbatore District.
5. The Royal Land and Nest
Cooperative Housing Society,
AP 8073, D.No.11, 2nd Street,
H Block, 12th Main Road,
West Anna Nagar, Chennai.
6. Nachiyappan
7. V.Bragaleeshwarar
8. A.Arulanandam

... Respondents



PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the letter of the 2nd respondent in No.24289/C1/2018 dated 04.08.2021 and quash the same and consequently direct the 4th respondent to cancel the registered sale agreements and the sale deed executed by the 5th respondent in the name of the 6th, 7th and 8th respondent in Doc.No.5959/2021 dated 11.08.2021, Doc.No.5858/2021 dated 11.08.2021 and Doc.No.5962/2021 dated 11.08.2021.

For Petitioner : Mr.K.Sathyabal

For Respondents : Mr.R.Neelakandan
Additional Advocate General
Assisted by
Mr.Yogesh Kannadasan
Special Government Pleader
For R1 to R4

Mr.S.L.Sudarsanam
For R5

Mr.S.Arivazhagan
For R6 to R8

ORDER

It is the case of the petitioner that he is in the business of real estate and he had purchased the lands comprised in S. Nos.314, 315, 318 and 319 in Nellatipalayam Village, Pollachi Taluk, Coimbatore District to an extent of 9.90 acres from the owners of the property through the registered power of attorney K.Srinivasan by a registered sale deed in Document No.2486/2018 on the file of the Sub Registrar, Kinathukadavu.

2. It is the further case of the petitioner that during the year 2013, the Chairman of the 5th respondent had entered into sale transactions for the very same property through the power of attorney K.Srinivasan, which sale deed was presented before the 4th respondent for registration, but was held for non-payment of requisite stamp duty and non-payment of full sale consideration to the vendors. It is further averred by the petitioner that due to non-compliance of the sale transaction, the vendors approached the petitioner, who, acceding to purchase the property, as aforesaid, had paid the requisite stamp duty



and the sale deed was entered into through the Power of Attorney K.Srinivasan.

3. It is the further averment of the petitioner that coming to know of the said transaction, the 5th respondent had filed W.P.No.13195/2018 for return of document and this Court was pleased to direct the release of the unregistered document by the 4th respondent to the 5th respondent. Therefore, the petitioner filed a suit in O.S.No.93/2020 on the file of the District Munsif court, Pollachi for permanent injunction against the vendors and the 5th respondent and counter suit was filed in O.S.No.239/2020 by the 5th respondent to declare the sale deed in Document No.2486/2020 as sham and nominal.

4. Further, the petitioner filed W.P.No.10915/2020 to forbear respondents 2 and 4 from registering the sale deed entered into between the vendors and the 5th respondent in which this Court had passed certain clarifying orders clarifying the order passed in W.P.No.13195/20. However, inspite of the said order, the sale deed presented by the 5th respondent was registered by the 4th respondent in Doc.No.4211/2020.

5. Thereafter, the petitioner sent representation to respondents 1 to 4 and also filed W.P.No.15921/21 to quash the registration of the sale deed, which was disposed of by this Court vide order dated 3.8.2021 with a direction to the District Registrar. Pending consideration of the representation, the 5th respondent had entered into certain sale transactions with various persons by creating further encumbrance on the property. The 3rd respondent, on the basis of the order passed by this Court, the 3rd respondent considered the representation of the petitioner and passed the impugned proceedings directing the 4th respondent to cancel the sale deed in Dco.No.2486/2020 as fraudulent document and to mark the sale deed in Doc.No.4211/2020 of the 5th respondent as genuine. Challenging the said proceedings and the consequential impugned order marking the sale deed of the petitioner as fraudulent, the present petition has been filed.

6. Learned counsel appearing for the petitioner submits that though the sale deed of the petitioner is earlier in point of time with regard to registration as the sale deed by the 5th respondent, which document of the 5th respondent was not registered for non-payment of requisite stamp duty, the vendors, in collusion with the 5th respondent had entered into the sale deed with the 5th respondent without divulging the fact that the petitioner had paid the deficit stamp duty to the tune of Rs.23,00,000/- payable by the 5th respondent.



7. It is the further submission of the learned counsel that when the suit in O.S.No.93/20 and 293/20 are pending adjudication, the direction of the 3rd respondent to the 4th respondent to cancel the sale deed executed by the petitioner and his vendor as a fraudulent one is wholly impermissible. It is only the civil court which can decide on the title relating to the property between the petitioner and the 5th respondent and the 3rd respondent has no authority to pass any direction to cancel the sale deed entered into between the petitioner and his vendors.

8. It is the further submission of the learned counsel that the MoU alleged to have been entered into between the 5th respondent and the vendors were produced before the Court without the knowledge of the petitioner and the court was pleased to record the affidavit, while passing the order holding that the matter has been amicably resolved among the parties as per the MoU. All the aforesaid aspects have not been considered in proper perspective while passing the impugned order, which requires interference at the hands of this Court.

9. Per contra, learned counsel for the contesting 5th respondent, based on the counter, submitted that the whole sale transaction between the petitioner and the power of attorney, who represented the vendors is a collusive act, as the Power of Attorney is none other than the father-in-law of the petitioner. It is the further submission of the learned counsel that the petitioner is a habitual fraudulent realtor against whom three cases are pending in which the petitioner is facing trial. It is the further submission of the learned counsel that while a previous sale deed was in existence, in collusion with the power of attorney, the petitioner has entered into the alleged fraudulent sale transaction to the detriment of the vendors.

10. It is the further submission of the learned counsel that the collusive act of the petitioner would be evident from the fact that though the original value of the property was more than Rs.3.37 Crores, yet, the fraudulent document, which is alleged to have been entered into between the petitioner and the Power of Attorney, the sale consideration has been shown only as Rs.25,00,000/=, which clearly shows the intent of the petitioner to cheat the vendors.

11. It is the further submission of the learned counsel that the petitioner is non only the son-in-law of the power of attorney, but is also a witness to the previous document in Pending Document No.P23/2013 entered into between the 5th respondent and its vendors. This would clearly prove the intention of the petitioner to cheat the 5th respondent, which has resulted in the execution of the fraudulent document.



12. It is the further submission of the learned counsel that the fraudulent document has been entered into between the petitioner and the power of attorney with the consent of the actual land owners and that the signature of the land owners have been forged in their life certificates for which a criminal complaint has been given before the District Crime Branch, Coimbatore, which is pending investigation.

13. It is the further submission of the learned counsel that the petitioner filed anticipatory bail application in CrI.O.P.No.15093/21 which was dismissed by this Court with a direction to file an FIR. It is further submitted that the District Registrar, Coimbatore conducted enquiry after providing opportunity to all the parties and based on the relevant documents and statement produced, passed the order holding that the sale transaction of the petitioner is a fraudulent one. It is further submitted that the then Sub Registrar, Kinathukidavu was also held to be in connivance with the petitioner in executing the fraudulent document, which was revealed in the enquiry based on which action has also been initiated against the said official.

14. It is the further submission of the learned counsel that the vendors and the 5th respondent had filed various suits at different points of time seeking certain reliefs, which has reached its logical end except for the two suits in O.S.No.93 and 293/20 pending before the District Munsif Court, Pollachi. It is therefore the submission of the learned counsel that the 3rd respondent, on consideration of all the materials has passed the order directing the 4th respondent to cancel the document and to make certain entries, which has resulted in the proceedings of the 4th respondent, which does not call for any interference.

15. Counter affidavit has been filed by respondents 6 to 8, in essence, traversing on the lines projected before this Court by the 5th respondent and it is submitted that the respondents 6 to 8 are bona fide purchasers and that having gone through the entire records, provided by the 5th respondent, have entered into the agreement of sale. Learned counsel appearing for respondents 6 to 8, adopted the arguments submitted on behalf of the 5th respondent and submitted that the writ petition deserves to be dismissed.

16. Learned Addl. Advocate General appearing for the official respondents submitted that the 3rd respondent, upon careful consideration of the orders passed by this Court and the directions contained therein and proper appreciation of the materials placed before him and after affording proper opportunity to all the parties involved in the lis has passed the impugned order and there is no illegality, arbitrariness or



perversity in the said order and, therefore, the same does not warrant any interference.

17. Reply affidavit has also been filed by the petitioner disputing the contentions with regard to payment of sale consideration to the vendors. Many other issues have been placed in the reply, which, according to this Court, are not necessary for deciding the issue before this Court as the issue in the present case pertains to the duty performed by the 3rd respondent on the orders of this Court in considering the representation of the petitioner and to pass orders in accordance with law.

18. This Court gave its undivided attention to the contentions placed before this Court by the learned counsel appearing for the parties and also perused the materials available on record as also the different orders passed by this Court.

19. Admittedly, suits in O.S. No.93 and 293/20 are pending adjudication before the District Munsif Court, Pollachi, between the petitioner and the 5th respondent for various reliefs relating to title and also with regard to injunction to forbear entering upon the property. All those issues are disputed questions, which have to be tried in the suit, which is pending and, therefore, this Court is not entering into any of the said issues. The issue that is to be decided by this Court is the legality of the order passed by the 3rd respondent based on which the impugned proceedings has been issued by the 4th respondent.

20. On a careful perusal of the materials available on record, case file, it transpires that though issue has been made out by the petitioner that sale consideration has not been passed on from the 5th respondent to its vendors, however, there is no quarrel with regard to non-payment of sale consideration by the 5th respondent to the principal owners while entering into the sale transaction in the year 2013. May be the said sale deed was kept pending for want of requisite stamp duty, but the same was registered on the directions of this Court in the year 2020, on the file of SRO, Kinathukadavu.

21. The main contention of the petitioner is that the pending suit, the 3rd respondent ought not to have passed the said order terming the sale transaction as fraudulent, which is wholly unsustainable. It is the further stand of the petitioner that the order of this Court has not been appreciated in proper perspective in letter and spirit while considering the case.



22. Though the aforesaid contentions have been raised, as pointed out above, there is no requirement for the 3rd respondent to await the orders in the suit before passing any order, as there was no interim order granted in the suit in favour of one or the other party. Further it is to be pointed out that any decree that is granted in the suit to either party is enforceable and at such point of time, the successful party could very well claim the benefit under the said decree. Therefore, the order of the 3rd respondent, pending suit, does not suffer any illegality.

23. Further, a perusal of the impugned order reveals that the 3rd respondent has taken into consideration all the materials, including the valuation of the property and the sale consideration which has been said to have passed on to the vendors under the sale deed entered into by the petitioner and the power of attorney and also taking note of the fact that there has been collusion between the petitioner and the then Sub Registrar, Kinathukadavu, which has been proved in the departmental enquiry initiated and conducted by the DIG (Registration), which has clearly rendered a finding that collusion between the petitioner and the officials of the Sub Registrar stood established and further, on the basis of the opinion of the Government Advocate attached to this Court, which formed the basis of the registration of the document of sale submitted by the 5th respondent and also the very many orders passed by this Court in the petitions filed by one or the other party, has come to the definitive conclusion that the sale transaction of the petitioner is purportedly fraudulent on the basis of the materials and that the sale between the 5th respondent and its vendor is not genuine, but also based on the orders of this Court in W.P.No.13195/18 and appreciating all the materials in proper perspective, has passed the order, impugned herein.

24. Further, the order passed by the 3rd respondent also reveals that enquiry was undertaken by the respondent authority and reasonable opportunity has been afforded to the parties before arriving at a finding that the petitioner is not a bonafide purchaser and that he had colluded with the power of attorney as well as the then SRO, Kinnathukadavu to the detriment of the purchase already made by the 5th respondent from the lawful owners of the property by paying valid sale consideration. A careful perusal of the order impugned shows that the said order in no way suffers the vice of any illegality, arbitrariness or perversity and is based on sound reasoning based on admissible materials. Therefore, this Court is of the considered view that no interference is warranted with the said order.



25. Accordingly, for the reasons aforesaid, this writ petition stands dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary
to the Government of Tamil Nadu,
Registration Department,
Fort St. George,
Chennai - 600 009,
2. The Inspector General of Registration,
Santhome High Road,
Mylapore, Chennai - 600 001.
3. The District Registrar,
Coimbatore District,
Collectorate Campus,
Coimbatore.
4. The Sub Registrar,
Office of the Sub Registrar,
Kinathakavadu,
Coimbatore District.

+1cc to Mr.K.Sathyabal, Advocate, S.R.No.26573
+1cc to Mr.S.L.Sudarsanam, Advocate, S.R.No.26572
+1cc to Mr.S.Arivazhagan, Advocate, S.R.No.26642
+1cc to the Government Pleader, S.R.No.27313

W.P.NO.21530 OF 2021

JPL(CO)
PBS/13/06/2022