



W.P(MD)No.3001 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.3001 of 2011 and
MP(MD) No.1 of 2012

Perna Buildwell Private ltd,
RZE-668/15A, Gali No.18-C/1,
Sadh Nagar, Palam colony,
New Delhi – 45.
Represented through its
Authorized Representative
Mr.Arunkumar

... Petitioner

Vs.

- 1.The Inspector General of Registration,
Santhome, Chennai.
- 2.The Sub-Registrar,
Murappanadu Sub-Registrar Office,
Murappanadu,
Tuticorin.
- 3.The Joint Receiver,
Kalaimagal Sabha,
No.17(Old No.48),
North Usman Road,
T.Nagar, Chennai.



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4.BHS Decent Homes Builders Private Ltd,
Through its Authorized Signatory,
Mr.A.Mohandoss,
S/o A.Andavar,
2/245, Periyar Street,
Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorified Mandamus, to call the records of the impugned order rejecting of NOC by the third respondent, dated 14.01.2011 and the consequential order of the second respondent in his memo dated 01.03.2011 and quash the same and further direct the second respondent to register the sale deed, dated 28.02.2011, executed by the petitioner, in favour of the fourth respondent.

For Petitioner	: Mr.H.Arumugam
For R1 & R2	: Mr.John Rajadurai Government Advocate
For R3	: Mr.Raja Karthikeyan

ORDER

This writ petition is filed as against the orders passed by the second respondent/ Sub Registrar Office, Morappanadu, dated 01.03.2011 and the orders passed by the third respondent, dated 14.01.2011.

2.The petitioner is a company, registered under Companies Act, 1956 and engaging in the business of construction of residential houses,



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commercial buildings, flats and factories in and outside India. The petitioner Company has purchased a land to an extent of 1.61 acres in Survey No. 103/2B-2B at Chettimallanpatti Village from one Kamalesh, under a Registered sale deed, dated 06.08.2007. The petitioner's vendor Kamalesh purchased the property from one Vijaya, by a registered sale deed, dated 26.06.2007 and the said Vijaya purchased the same from one Santhanam, by a registered sale deed, dated 06.12.1996. The said Santhanam purchased the same from one Ravindran on 15.02.1996 and Ravindran purchased the same from the legal heirs of one Chittiraivel, namely, Velayutham and Arumugamby a registered sale deed, dated 09.06.1990.

3. According to the learned counsel for the petitioner, the land in Survey No.10B/2B was originally to an extent of 5.99 acres and the same was divided into two parts as to 2.35 acres on the western side of 3.64 acres on the eastern side. The western side of the property was purchased by a Trust, namely Kalaimagal Sabha. The eastern side of 3.64 acres was further sub divided into two parts 1.64 acres and 2 acres. A portion of that land was acquired by National Highways Authority of India, for the purpose of laying



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four way road and the remaining 1.61 acres remained with one Chittiraivel, who purchased 4.01 acres on the eastern side from one Sivasankaran Narayanan Pillai. The Kalaimagal Sabha is facing several litigations and therefore in W.P No.514 of 1999, a Joint Receiver was appointed by the Principal Bench of this Court. The Court appointed the Receiver and issued some directions to the second respondent, Sub Registrar, not to register any documents pertaining to Kalaimagal Sabha and based on that objection, the respondents 2 & 3 have raised objections for registration of the document of this petitioner in Survey No.10B/2B-2B to an extent of 1.61 acres on the eastern side.

4.The grievance of the petitioner is that the property of Kalaimagal Sabha is only to an extent of 2.38 cents in the said Survey number on the western side and it is nothing to do with the property of this petitioner. However, the respondents 2 & 3 have mechanically objected for the registration of the document of this petitioner. The second respondent by his impugned memo dated, 01.03.2011 returned the sale deed for the purpose of obtaining No Objection Certificate from the third respondent and



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the third respondent, by his impugned letter dated 14.01.2011 refused to give No Objection Certificate and therefore, the petitioner has filed the present writ petition.

5.The learned counsel appearing for the petitioner submits that the impugned orders of the respondents 2 & 3 are illegal and as against the provision under Article 300 A of Constitution of India that no person shall be deprived of his property. He further submits that there is no provision enabling the second respondent to refuse to register a document. The provision, which was available under Section 22 A of Indian Registration Act was also declared to be unconstitutional, as per the orders of the Honourable Supreme Court in ***State of Rajasthan & others Vs Basant Nahata on 7 September, 2005***, reported in ***2005 4 CTC 606***. He further submits that following the said judgment, the Division Bench of this Court has held that G.O.Ms.No150, issued, based on the Section 22 A as invalid.

6.The learned Special Government Pleader appearing for the respondents 1 & 3 submits that as per the direction of this Court, in Memo



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307 and 308 in W.P.514 of 1999, dated 29.10.2009, the Inspector General of Registration has issued instruction, vide letter No.62654/E1/09, dated 10.12.2009, by which, all the registering Officers were instructed not to register any document of the properties of Kalaimagal Sabha, without getting No Objection Certificate from the Joint Receiver. Based on these instructions of the High Court and as per the letter of Inspector General of Registration, dated 10.12.2009, the petitioner was insisted to obtain No Objection Certificate.

7.The learned counsel appearing for the third respondent submits that pursuant to the order of the Court in W.P.No.43650 of 2006, dated 01.11.2021, the Government appointed Sri.D.Mahesh, the Assistant Inspector General of Registration as a Special Officer, vide G.O.50514/I 3 2021, dated 07.01.2022, and now he has taken charge from the Court Receiver and he requested some more time to get instructions, with regard to the issue involved in this matter. The special Officer/the third respondent is also intending to engage a new counsel.



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8.The issue with regard to Kalaimagal Sabha is nearly a two decades old. This Court has also appointed a Receiver and based on the instructions of the receiver, the impugned orders came to be passed. Even after 16 long years, it appears that the Receiver appointed by the Court has not acted upon and virtually there is no progress in identifying the properties of Kalaimagal Sabha and disposing the same. The petitioner has taken a specific stand that the property in S.No.10B/2B was an extent of 5.99 acres, divided as two parts on western side and eastern side. The petitioner's vendor was holding the property on the eastern side and the Kalaimagal Sabha has purchased the property on the western side only to an extent of 2.35 acres and even without identifying the property, since the sale deed has been made in S.No.10D/2B-2B, the respondents have mechanically rejected the registration of the document. The document was presented for registration on 06.08.2007. This writ petition is also filed in the year 2011. The third respondent, who received the notice in this writ petition has not taken any steps to identify the property intended to be registered by the petitioner. Moreover, they have not even filed a counter



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affidavit, claiming any right over the property, intended to be conveyed by the petitioner to the fourth respondent.

9.The Court appointed Receiver to administer the properties of Kalaimagal Sabha with an object to see that the properties are disposed and the depositors are refunded with their deposits. It appears that the administrators, taking advantage of the orders of this Court are not acted diligently and have not decided the issue for the past 10 years and therefore, this Court cannot simply shut its eyes and to mechanically dispose of this writ petition, based on these memos issued in the strength of the High Court orders. As rightly pointed out by the learned counsel appearing for the petitioner, a right to possess and enjoy the property is guaranteed under Article 300A of Constitution of India, by which, no person shall be deprived of his property save by the authority of law. Therefore, the Article protects an individual from interference by the State and dispossess a person of the property unless it is in accordance with the procedure established by law.



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10. When this matter was taken up for hearing on 06.03.2020, the third respondent sought time for filing counter affidavit. But no counter affidavit has been filed so far. This Court, by earlier order, dated 29.03.2022, directed the third respondent to file a status report as to the administration of the properties of the Kalaimagal Sabha, pursuant to which, a report has been filed by the third respondent on 11.04.2022, wherein, it has been stated that the Kalaimagal Sabha has 5.3 lakh members and owns around 13000 acres of lands and buildings spread across Tamil Nadu, Puducherry, Kerala, Karnataka and Delhi Regions. After taking charge of the Kalaimagal Sabha, the Joint Receivers identified properties, made auctions and sold 870.13 acres of lands and few buildings to the higher bidders. The amount collected from the sale of lands and buildings is Rs. 43,34,33,358/- (Rupees Forty Three Crores, Thirty Four Lakhs Thirty three Thousand three hundred and fifty eight only) deposited in Indian Bank, T.Nagar and with the available fund, 40% of the amount has been disbursed to nearly one lakh members as first installment and Rs.95,00,00,000/- (Rupees Ninety Five Crores Only) has been deposited in Indian Bank, T.Nagar and High Court Branches, as fixed deposits. It is also stated that lot

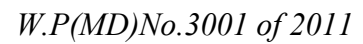


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of agreements towards purchase of lands and advance amount paid to the respective sellers have been found and in order to recover the advance amount, suits were filed in various Subordinate Courts. It is further stated that there were lot of encroachments in the lands of Kalaimagal Sabha and the Joint Receivers had taken legal action as against them and 50 cases were pending in various Courts and one Special Leave Petition is also filed before the Supreme Court of India.

11. In the report, it is further stated that in order to disburse the remaining 60% of the amount to the members, the Joint Receivers approached the Principal Seat of this Court, seeking permission for computerization of members records and no order has been passed in this regard. This Court, in W.P.No.43650 of 2006, directed to appoint a Special Officer in the cadre not less than the rank of Assistant Inspector General of Registration for administration of Kalaimagal Sabha. In compliance of the above order, the Government issued G.O.50514/13/2021, dated 07.01.2022, appointing Mr.D.Magesh, Assistant Inspector General of Registration as Special Officer and the present Special Officer has taken charge on



12. The status report filed by the Special Officer reveals that the present Special officer has taken charge of the third respondent/Kalaimagal Sabha only on 24.01.2022 and the report filed by him is silent with regard to the issue involved in this writ petition. Moreover, the third respondent Sabha has not filed any counter affidavit disputing the averment made by this petitioner that the subject matter of land intended to be conveyed is the property of the third respondent. The fact remains that this writ petition is pending from the year 2011 and for the past 12 long years, the third respondent has not taken any steps even to file a counter affidavit and this Court feels that in the absence of any material to substantiate that the subject land is belonging to the third respondent Sabha, this Court is inclined to allow this writ petition.



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13. In view of the foregoing discussions, this writ petition is allowed. The impugned order passed by the second respondent/ Sub Registrar Office, Morappanadu, dated 01.03.2011 and the order of the third respondent, dated 14.01.2011 are hereby set aside. The second respondent is directed to register the document of the petitioner, in accordance with the Registration Act. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No.

Internet: Yes / No.

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