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W.P. No. 13333 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.09.2023

Pronounced on : 09.10.2023

CORAM: JUSTICE N.SESHASAYEE

W.P. No.13333 of 2023

Rev Father Paul Moses

... Petitioner

Vs.

1.The District Collector
Chennai District
Rajaji Salai, Fourth Floor
62, Beach Road
George Town, Chennai - 600 001.

2.The Revenue Divisional Officer
Chennai South
Little Mount, Kotturpuram
Chennai - 600 032.

3.The Tahsildar
Mylapore - Triplicane Taluk
Bishop Garden
46, Greenways Road
Raja Annamalaipuram
Chennai - 600 028.

4.H.A.Easwara

... Respondents



W.P. No. 13333 of 2023

PRAYER: Writ petition filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the first respondent dated 17.09.2022 vide Doc.No.6/4175/2022, quash the same and consequently pass an order to quash the fabricated relationship certificate vide D.Dis.A4/18066/2012.

For Petitioner : Mr.T.M.Hariharan

For Respondents : Mr.V.Manoharan
Additional Government Pleader
for R1 to R3

Mr.Satish Parasaran, Senior Advocate
Asst. by Mr.K.S.Jeyaganeshan for R4

ORDER

This petition is instituted challenging the proceedings of the first respondent, District Collector, dated 17.09.2022, rejecting the petitioner's request for cancelling the relationship certificate issued by the Tahsildar, the third respondent dated 18.07.2022.

2.1 The facts which provides the backdrop and the context for this case are stated as below:



W.P. No. 13333 of 2023

WEB COPY

- (a) The 4th respondent Eswara herein claims that he is the brother and Class II heir of certain Ashwatha Narayanaa, who died a bachelor on 26.12.2007.
- (b) The 4th respondent claimed that late Ashwath Narayanan owned a block of property measuring about 18 grounds in Sy.Nos.9/8A and 8/2 of Palavakkam Village, Kanchipuram District, wherein the petitioner herein had put up a Church.
- (c) On 19.12.2008, the Government through the Special Commissioner, Urban Land Ceiling & Urban Land Tax, notified the above said property under the Urban Land Ceiling Act. Eswara would now institute W.P.No.256 of 2009, and challenging the said notification. A learned Single Judge of this Court, vide his order dated 06.11.2009, allowed the same and quashed the notification. This in essence meant that the said property reverted back to the estate of Aswath Narayana. This was challenged by the Department in W.A.No.2654 of 2020, and it came to be dismissed on 12.07.2013.
- (d) In the meantime, in 2009, Eswara approached this Court with OP.No.494 of 2008 for succession certificate to deal with



WEB COPY



W.P. No. 13333 of 2023

certain securities, and obtained the same vide order of the court dated 06.02.2009.

(e) Eswara will now approach the Tahsildar, Mylapore, for issuance of a relationship certificate to the effect that he is the brother of deceased Aswatha Narayana, to enable him to effect mutation in the revenue records pertaining to the property in question. On 28.06.2012, this was granted, and necessary mutation too was subsequently effected in the revenue records following which he became the registered owner of the property.

(f) As things stood thus, a certain Dhanasekaranan laid a suit in O.S.No.110 of 2018 before the District Munsif Court, Alandur for bare injunction against Eswara. Eswara on his part, had laid O.S.No.31 of 2019 before the Sub Court, Tambaram for a mandatory injunction against Dhanasekaran to remove the encroachments and deliver vacant possession. It may be stated that in his plaint in O.S.No.110 of 2018, Dhanasekaran, the plaintiff therein, introduced the petitioner herein as his tenant. The case of Eswara is that both Dhanasekaran and the petitioner herein are the encroachers of his property.



W.P. No. 13333 of 2023

WEB COPY

(g) Later O.S.No.110/2018 pending on the file of Additional District Munsif Court, Alandur was transferred to Sub Court, Tambaram and that both the suits (filed by the petitioner and Dhanasekaran) were referred to Lok Adalat. On 13.11.2019, Dhanasekaran and Eswara amicably settled the matter, where by Dhanasekaran chose to deliver vacant possession of the property to Eswara. This award has since become final.

(h) The petitioner however, moved this Court in CRP(PD) No.4299 of 2019 to set aside the award of the Lok Adalat, and this Court vide its order dated 24.09.2020, closed the revision petition, on the request of the counsel for the petitioner on the ground that the petitioner has filed certain applications before the Lok Adalat for impleading necessary parties, after passing of the award by the Lok Adalat on 13.11.2019.

(i) During the pendency of the aforesaid two suits, Eswara laid W.P.No.10211 of 2019 for removing the encroachments made by Dhanasekaran and the petitioner herein, who were respectively arrayed as respondents 5 and 6. This petition was allowed by a Division Bench of this Court vide its order dated 29.04.2022. And according to Eswara, by 20.06.2022, the



WEB COPY



W.P. No. 13333 of 2023

entire encroachments were removed. Indeed, it is stated that the 6th respondent therein, (the petitioner herein) had volunteered to vacate from the property. This order was challenged by the petitioner in SLP(C) .No.10699/2022, and the Hon'ble Supreme Court vide its order dated 16.06.2022, dismissed the same.

2.2 In this setting, the petitioner came out with an allegation that the relationship certificate dated 28.06.2012, which Eswara had relied on for effecting mutation of the property in Sy.Nos.9/8A and 8/2 of Palavakkam Village, is a fraudulent document, as the Tahsildar, Mylapore, had not issued any such certificate. The petitioner, therefore, appealed to the District Collector, the first respondent, who after enquiry dismissed the same vide his impugned proceedings dated 17.09.2022. This is now under challenge in this petition.

3. Mr.T.M.Hariharan, the learned counsel appearing for the petitioner made three pointed statements in support of his contentions. They are :

(a) Dhanasekaran had filed two separate applications dated 02.02.2019 and 11.03.2019 under the RTI for ascertaining the



W.P. No. 13333 of 2023

genuineness of the relationship certificate issued by the Tahsildar, Mylapore in D.Dis.A4/18066/2012 dated 28.06.2012, and it was informed to him on 28.02.2019 and also on 14.08.2019, that the records in D.Dis.A4/18066/2012 were destroyed. The petitioner on his part, had filed an application on 14.07.2020 seeking the same information under the RTI Act, and he was also informed vide proceedings of RTI dated 27.07.2020, that the said records of the Tahsildar, Mylapore were destroyed. This is impossible because these records should be maintained for a minimum of 10 years, since it comes under the category 'decennial disposal'.

(b) Secondly, in paragraph No.4 of the order in W.P.No.256 of 2009, the following facts are narrated as below :

"4. Since the respondent had not considered the records with regard to the petitioner's brother's possession of the said land and as such he was entitled for the benefit of the repealing of the Act, he preferred a writ petition in W.P.No.24874 of 2008 seeking to dispose of the representation dated 15.02.2007. The said writ petition was disposed by this court by an order dated 16.01.2008 directing the respondents therein to



W.P. No. 13333 of 2023

dispose of the revision dated 15.02.2007 within a period of four weeks from the date of receipt of the said order."

Now it is an admitted fact that Ashwatha Narayana died on 26.12.2007, but he is alleged to have preferred W.P.No.24874 of 2008. This apart, he is also alleged to have filed W.P.No.2523 of 2008. This incongruence in filing of these writ petitions in association with the admitted date of death of Ashwatha Narayana would indicate some fraud is played on the Court by Eswara.

(c) When fraud is played on judicial process, it can be challenged even collaterally. Therefore, this Court's jurisdiction is not fettered by the order passed in W.P.No.10211 of 2019, as well the order passed by the Hon'ble Supreme Court in SLP(C) No.10699 of 2022.

4. Per contra, Mr.Satish Parasaran, the learned senior counsel appearing for the 4th respondent submitted that :

(a) An identical contention was raised by the petitioner herein in W.P.No.10211 of 2019, which the Division Bench has recorded



WEB COPY



W.P. No. 13333 of 2023

in paragraph No.5 of its order. This was however not found to have carried any conviction with the Bench.

(b) Secondly, vis-a-vis, the Division Bench had also recorded the following facts in paragraph No.11 of its order and reads thus :

"11. the said decree granted in Lok Adalat, Legal Services Committee, Sub Court, Tambaram on 13.11.2019, as per the settled legal position, is not appealable, as it has become final. Nonetheless, the sixth respondent filed C.R.P.(PD) No.4299 of 2019 questioning the decree granted by the Lok Adalat, whereby learned counsel for the sixth respondent sought permission to close the revision petition and therefore, by recording the said submission, the revision petition was closed on 24.09.2020. Therefore, when the fifth respondent himself has entered into joint compromise memo and handed over the possession to the petitioner, the sixth respondent being a tenant of the fifth respondent has no locus standi to question the right over the subject property of the petitioner. Moreover it is to be noted that the fifth respondent has not produced any document, such as title deed, patta etc., to substantiate that he is the absolute owner of the property in question. Besides, there is no planning permission obtained by him. The suit filed by the sixth respondent for bare injunction against the petitioner cannot have any



W.P. No. 13333 of 2023

bearing on the petitioner as he is the absolute owner of the property."

(c) And, in the present petition, the petitioner has averred that while the relationship certificate dated 28.06.2012, indicates that the petitioner is the brother of Ashwatha Narayana, in the land records, it is shown as Aswathama Iyer, and there is no gazette notification that Ashwathama Iyer has changed his name to Ashwatha Narayanaa.

(d) In the passport of Ashwatha Narayana, he had given the 4th respondent Eswara as his relative. And in the family card, both the names of Ashwatha Narayana and Eswara along with other family members find a place.

5. This Court carefully evaluated the rival submissions made. The foundation for the petitioner's case rests on thin and weak line of contentions.

(a) the file relating to the issuance of relationship certificate by the Tahsildar to the 4th respondent, which later came to be confirmed by the District Collector was not traceable, and that



WEB COPY



W.P. No. 13333 of 2023

it is an impossibility since the records ought to be preserved for ten years; and

(b) that Ashwatha Narayanaa is stated to have filed W.P. W.P.No.24874 of 2008 and W.P.No.2523 of 2008, in 2008, when he had already died in 2007.

As to the other contentions are concerned, they are now closed, but the petitioner is optimistic that with his twin contentions, he can unsettle the effect of the multiple orders passed by this Court in the writ petitions referred to above. And, this includes the order of dismissal passed by the Hon'ble Supreme Court in SLP(C) .No.10699/2022.

6. This Court however, cannot share the same level of optimism with which the petitioner has approached this Court. Principally, this Court is concerned about the very *locus standi* of the petitioner to challenge the relationship certificate issued by the 4th respondent. The 4th respondent herein has produced the passport and the family card of late Ashwatha Narayanaa, and they show Eswara, the 4th respondent as the relative of Ashwatha Narayanaa or his family member as the case may be. Now unless the petitioner herein can show that it is he, and not the 4th respondent as the Class-II heir of late Ashwatha Narayanaa, he cannot



W.P. No. 13333 of 2023

unsettle the relationship certificate issued to him. Here the petitioner does not even dispute the correctness of the passport of Ashwatha Narayanaa as well as the family card produced by the 4th respondent. As to other aspects, it has to be held that they fall outside the scope of present litigation. This Court does not intend to stretch the scope of the litigation merely because arguments are advanced.

7. To conclude, this Court does not find any merit in this petition and hence, dismissed. No costs.

09.10.2023

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

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W.P. No. 13333 of 2023

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WEB COPY

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W.P. No. 13333 of 2023

N.SESHASAYEE.J.,

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Pre-delivery order in
W.P.No.13333 of 2023

09.10.2023