



W.P.(MD)No.15874 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 07.11.2023

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.15874 of 2021

Malathi

... Petitioner

vs.

1.The District Registrar,
Virudhunagar District, Virudhunagar.

2.The Sub Registrar,
Sattur Registration Office,
Sattur, Virudhunagar District.

3.The Deputy Superintendent of Police,
Economic Offence Wing-II (E.O.W-II),
(Financial Institution) Kanyakumari District,
Nagercoil. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the 1st respondent to conduct an enquiry on the basis of petitioner's representation and to pass final order thereupon in a time frame stipulated by this Court.

For Petitioner	:Mr.P.M.Vishnuvarthanan
For R1 and R2	:Mr.A.K.Manikkam Special Government Pleader
For R3	:Mr.R.Sivakumar Government Advocate (crl. side)



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ORDER

This Writ Petition has been filed for the issue of Writ of Mandamus directing the first respondent to conduct an enquiry based on the representation made by the petitioner on 02.08.2021 and to pass orders within a time frame fixed by this Court.

2.The case of the petitioner is that he is the absolute owner of the subject property in S.No.165 at Mettamalai Village, Sattur Taluk, Virudhunagar District by virtue of a registered sale deed dated 22.02.2021 registered as Doc.No.1711/2021. The petitioner wanted to deal with the property and at that point of time, the petitioner ascertained the fact that a communication was received from the third respondent dated 26.06.2021 not to register documents pertaining to the property. An endorsement was also made and therefore, the document is not entertained by the second respondent. It is under these circumstances, the present Writ Petition has been filed before this Court.

3.The third respondent has filed a counter affidavit. It is seen from the counter affidavit that an investigation was conducted by the third



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respondent in Cr.No.1 of 2014, which pertained to the non payment of the deposit to the 511 depositors and hence, steps were taken to identify the properties and the same were attached under four Government Orders. During the course of investigation, it came to know light that even the property in S.No.165 has been conveyed fraudulently and hence, the communication was issued to the second respondent not to entertain any document pertaining to the subject property. It is further stated in the counter affidavit that 460 depositors are yet to be settled the amount and therefore, the petitioner cannot be permitted to deal with the property and consequently, the present Writ Petition is liable to be dismissed.

4.Heard Mr.P.M.Vishnuvarthanan, learned Counsel appearing on behalf of the petitioner, Mr.A.K.Manikkam, learned Special Government Pleader appearing on behalf of the respondents 1 and 2 and Mr.R.Sivakumar, learned Government Advocate (Crl.side) appearing on behalf of the third respondent.

5.The short issue that requires the consideration of this Court is as



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to whether the third respondent, by issuing a communication to the second respondent, can prevent the petitioner from dealing with the subject property.

6.In this case, admittedly, four Government Orders have been issued and properties have been freezed and the subject property in S.No. 165 does not form part of any of the said Government Orders. It is claear that the subject property has been attached in the manner known to law. The third respondent by issuing a communication to the second respondent has directed the second respondent not to entertain any document pertaining to the subject property. This communication made by the third respondent virtually amounts to freezing the immovable property belonging to the petitioner situated in S.No.165 and such a stand has also been specifically taken in the counter filed by the third respondent.

7.The third respondent has the power to freeze the movable properties only in line with Section 102 of Cr.P.C. In the instant case, the property involved is an immovable property. The question is as to



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whether the third respondent has the power to freeze the immovable property by issuing a communication to the second respondent.

8.This issue in question is no longer *res integra* and the same has been settled by the Supreme Court reported in **2019 (4) MLJ (Crl) 456 (Nevada Properties Private Limited vs State of Maharastra and others)**. The Apex Court has categorically held that “property” under Section 102 Cr.P.C., does not include the attachment/seizure or sealing of an immovable property and it pertains only to movable property. In view of the same, there is no power vested with the third respondent to issue a communication to the second respondent not to entertain any document pertaining to the subject property and this communication virtually amounts to freezing of immovable property. This communication does not stand the test of law and it cannot be put against the petitioner, who wants to deal with the property.

9.In the light of the above discussion, the communication issued by the third respondent to the second respondent by directing not to entertain any document for registration pertaining to the subject property



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in S.No.165, is illegal and non-est. If at all the third respondent wants to prevent the alienation/dealing with the subject property, it can only be done by following the procedure under TANPID Act and attaching the property. Till this is done, the third respondent cannot prevent the petitioner from dealing with the subject property.

10.In the light of the above, the second respondent can always entertain the document presented for registration pertaining to the subject property in S.No.165 at Mettamalai Village, Sattur Taluk, Virudhunagar District and the communication given by the third respondent should not be put against the petitioner.

11.This Writ Petition is disposed of in the above terms. No costs.

Index :Yes / No
Internet :Yes / No
NCC :Yes / No

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