



W.P.No.1088 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.1088 of 2021

and

W.M.P.No.1207 of 2021

G.Kavitha

...Petitioner

-Vs-

1. The District Collector,
Salem District, Salem.

2. The Revenue Divisional Officer,
Salem District.

3. Sadaiyappan @ Perumal Gounder

4. Panchayammal

5. P.Kaliyappan

6. Raju

7. Venkatachalam

8. Jeyavelu

9. Jayasanthi

10. The Sub-Registrar,
No.1, Joint Sub-registrar Office (Salem East),
Ammamet, Salem

...Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India
praying for the issuance of a Writ of Certiorarified Mandamus, call for



W.P.No.1088 of 2021

the records relating to the proceedings order passed in Na.Ka.No. 1497/2020/A3 dated 16.11.2020 passed by the 2nd respondent in respect of the petitioner's agricultural land to an extent of 1.02³/₄ Acres, comprised in Old Re.Survey No. 27/1, New S.No.27/1B (45¹/₂ Cents) and in Old Re.Survey No.27/4, New S.No.27/4A2 (0.54¹/₂), situated at Paalapatti Village, Salem Taluk & District and quash the same.

For Petitioner	: Mr.Pachaiyappan for Law Vision
For R1 & R2	: Mr.S.J.Mohammed Sathik Government Advocate
For R3 & R5	: Notice Served, No appearance
For R4 & R6	: Mr.R.Nalliappan
For R7 & R8	: No appearance
For R9	: No appearance
For R10	: Mr.R.Neethiperumal Government Advocate

ORDER

This Writ Petition has been filed challenging the order passed by the second respondent dated 16.11.2020, insofar as it relates to cancellation of sale deed executed by the 9th respondent in favour of the petitioner.



W.P.No.1088 of 2021

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2. The agricultural land to an extent of 1.00 acre out of 2.00 acres along with the pathway and well rights to an extent of 0.02 $\frac{3}{4}$ cents out of 0.05 $\frac{1}{2}$ cents, totally to an extent of 1.02 $\frac{3}{4}$ acres, comprised in Old Re.Survey No. 27/1, New S.No.27/1B (45 $\frac{1}{2}$ Cents) and in Old Re.Survey No.27/4, New S.No.27/4A2 (0.54 $\frac{1}{2}$) (herein after called as “the subject property”), originally belongs one Dhanalakshmi and others and the same was purchased by the third respondent registered vide No.2667/1995 dated 05.10.1995. Thereafter, the third respondent, in order to settle his properties to the respondents 4 to 9 had executed settlement deeds in favour of them. Insofar as the subject property is concerned, ad-measuring 1.02 $\frac{3}{4}$ acres was settled to the 9th respondent by way a Gift Settlement Deed dated 05.04.2010 registered vide Document No.1622/2010. Thereafter, all the revenue records were mutated in favour of the 9th respondent and she was also issued with patta. While being so, she offered the said property for sale for the total sale consideration of Rs.3,79,800/- and the petitioner agreed to purchase the same.



W.P.No.1088 of 2021

WEB COPY

3. Accordingly, the petitioner had entered into an agreement for sale on 04.04.2018 and on the same day, the petitioner had paid a sum of Rs.3,00,000/- as an advance in favour of the 9th respondent. On the date of agreement itself, the possession of the property was handed over in favour of the petitioner. The time for execution of sale deed and for payment of balance sale consideration was fixed as 30 months. Accordingly, on 30.09.2020, the sale deed was executed in favour of the petitioner by the 9th respondent registered vide Document No.4045 of 2020 dated 30.09.2020. The petitioner is in possession and enjoyment of the said property. Pending agreement for sale in respect of the subject property, the third respondent filed a petition before the second respondent for cancellation of settlement deeds which were executed by him in favour of his two daughters and four sons and his wife, on the ground that he was not maintained by his daughters and sons.

4. The learned counsel for the petitioner would submit that the petitioner, being a bonafide purchaser of the subject property from the 9th respondent was not issued with any notice by the second respondent and



W.P.No.1088 of 2021

she was not given any opportunity of hearing before cancelling the sale deed executed in her favour. In fact, the sale consideration for the subject property was deposited in favour of the third respondent by way of Fixed Deposit by the 9th respondent herein. Though the third respondent filed an application to consider the settlement deeds under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, the third respondent failed to fulfill the twin conditions as contemplated under the said provisions. Accordingly, the transfer must have been made subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence.

5. The learned counsel for the respondents 1 and 2 submitted that on the application submitted by the third respondent, the second respondent conducted a detailed enquiry, after issuance of notice to the respondents 4 to 9 herein. After recording their statements, the second



W.P.No.1088 of 2021

WEB COPY

respondent rightly cancelled the settlement deeds which were executed by the third respondent in favour of the respondents 4 to 9 herein and the subsequent document such as sale deed executed in favour of the petitioner by the 9th respondent herein.

6. A perusal of the impugned order dated 16.11.2020 passed by the second respondent revealed that admittedly, no notice has been served on the petitioner and the petitioner was not heard by the second respondent. She was not given any opportunity to put forth her case. Admittedly, the petitioner is the purchaser of the subject property from the 9th respondent. A settlement deed was executed by the third respondent on 05.04.2010 in favour of the 9th respondent in respect of the subject property. Immediately, the revenue records were mutated in favour of the 9th respondent and thereafter, she offered to sell the subject property. The petitioner agreed to purchase the subject property for a total sale consideration of Rs.3,79,800/- and she also paid a sum of Rs.3,00,000/- as an advance on the date of agreement viz., 04.04.2018. On the date of agreement of sale, the possession of the subject property



W.P.No.1088 of 2021

was handed over in favour of the petitioner and the petitioner is in possession and enjoyment of the subject property. Pursuant to the agreement for sale, the 9th respondent had executed a sale deed in favour of the petitioner by the registered sale deed dated 30.09.2020 registered vide Document No.4045 of 2020. Therefore, the petitioner is a bonafide purchaser and the second respondent ought not to have cancelled the sale deed executed in favour of the petitioner without any notice to the petitioner and without affording any opportunity of hearing to the petitioner.

7. Therefore, without expressing any opinion on the other grounds raised by the petitioner, only on the sole ground that the petitioner was not given any opportunity of hearing by serving notice, the impugned order has been passed, it is a clear violation of principles of natural justice.

8. In view of the above, the impugned order cannot be sustained and is liable to be quashed. Accordingly, insofar as the settlement deed



W.P.No.1088 of 2021

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executed in favour of the 9th respondent dated 05.04.2010 registered vide Document No.1622 of 2010 and the sale deed executed in favour of the petitioner by the 9th respondent dated 30.09.2020 registered vide Document No.4045 of 2020 viz., Item 6 and 8 mentioned in the tabular column of the impugned order alone, are hereby quashed. The matter is remanded to the second respondent for fresh disposal in respect of the subject property alone. The second respondent is directed to serve notice to the petitioner as well as the third respondent herein and after giving an opportunity of hearing to them, pass appropriate orders on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order.

9. Accordingly, this writ petition is allowed. Consequently, connected Miscellaneous petition is closed. There shall be no order as to costs.

16.04.2024

Internet: Yes
Index : Yes/No
Neutral Citation: Yes/No
Speaking/Non Speaking order
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W.P.No.1088 of 2021

To

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2. The Revenue Divisional Officer,
Salem District.
3. The Sub-Registrar,
No.1, Joint Sub-registrar Office (Salem East),
Ammamet, Salem.



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W.P.No.1088 of 2021

G.K.ILANTHIRAIYAN. J.

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W.P.No.1088 of 2021

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