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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.07.2024

Pronounced on : 16.07.2024

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

W.P.No.12053 of 2023
and W.M.P.No.11896 of 2023

Sathyanarayanan

.. Petitioner

Versus

1.The Sub Registrar
O/o the Sub Registrar
T.Nagar, Chennai – 600 017

2.Arulmigu Bashaya Kara Adi
Chennai Kesava Perumal Thirukoil
Rep by its Executive Officer
T.Nagar, Chennai – 600 017

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent relating to the impugned order bearing Refusal Number: RFL/Thiyagaraya Nagar/33/2022 dated 13.10.2022 and quash the same and consequently direct the 1st respondent to register the General Power of Attorney deed executed by the petitioner dated 13.10.2022.

For Petitioner : Mr.T.Gowthaman, Senior Counsel
for M/s.Karpagapriya

For Respondents : Mr.B.Vijay for R2
Additional Government Pleader
Mr.M.Vijayakumar for R2

ORDER



Challenge has been made to the refusal slip issued by the respondent refusing to register the power of attorney presented by the petitioner on the ground that there is no previous document and also the property belongs to the temple.

2. It is the case of the writ petitioner that the property measuring 4240 sq.ft., comprised in Old Survey No.154/3, T.S.No.8983, Block No.130 of T.Nagar Village, Mambalam Guindy Taluk, Chennai District belonged to one Mr.K.V.Panchatcharaiyer and the said property was transferred to one Lakshmikanthammal vide transfer deed dated 31.01.1959, leaving behind her only daughter namely Bharathiammal, who also obtained a Ryotwari Patta in her name issued by the Tahsildar, Mambalam Taluk vide C.A.No.330/1986. She died on 05.03.2005, leaving behind her daughters Mrs.Ranibai @ Rani, Mrs.Rosibai, Mrs.Karthikeyani @ Sampathkumari, Mrs.Kalavathy and her son, the petitioner. They are in the absolute possession and enjoyment of the property with 1/5th share each. When all of them executed a power of attorney dated 13.10.2022 in favour of one P.Ayyappa Rao and sought to register, the same was refused to be registered on the ground that the property belonged to temple. Challenging the said order, this writ petition on the ground that the Settlement Officer had already upheld the rights of their mother as early as on



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3. Counter has been filed by the respondents. It is the contention of the first respondent that while presenting the Power of Attorney, title deed has not been produced and the second respondent has objected to the registration of any document on the ground that Bharathi Ammal is a lessee and since, the lease period came to an end, the building therein was also demolished. According to them, the land exclusively belongs to the second respondent Temple. The property was utilised for commercial purpose and the ground rent was not paid, the second respondent filed a suit in O.S.No.24/2008 seeking for removal of the building in the said land to get vacant possession of the property. The said suit was decreed in favour of the second respondent and the first appeal filed by the legal heirs of Bharathiammal against the decree in A.S.No.23/2013 was allowed. Challenging the judgment of the first appellate court, second appeal is filed before this Court and the same is pending. Hence, it is their contention that the first respondent cannot register the transfer deed in respect of the property that belong to the temple under the HR & CE Act.

4. It is the contention of the second respondent that the property was



originally leased out to Panchanatha Iyer, thereafter, the lease-holder-right was transferred to Mrs.Lakshmikanthammal. After the death of the Lakshmikanthammal, her only daughter Bharathiammal succeeded the leasehold-right and she used to pay the rent to the temple during her lifetime. She died in the year 2005, the petitioner is only a lessee and owner of the building which was constructed by their predecessor and the second respondent temple is the owner of the site. It was declared by the Settlement Tahsildar by order dated 25.05.1971 and thereafter the lessees have filed a revision against the said order before the Assistant Settlement Officer, Chengalpattu on 29.09.1972 and the same was dismissed. It is the contention that the order of the Settlement Tahsildar will not give any right to the lessees except the leasehold-right over the building and the lessees do not have right over the site. Therefore, when the site belonging to the temple, Section 22-A of the Registration Act bars transfer of such property.

5. The learned Senior Counsel for the petitioner mainly submitted that in settlement proceedings, a joint patta has been issued under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963, (Act 30 of 1963) (hereinafter referred to as "the Act") in favour of the petitioner's mother



and temple/second respondent. Hence, the building will always vest with the owner. Therefore, as far as the building is concerned, the petitioner being the legal heirs are entitled to deal with the property.

6. Whereas, Mr.B.Vijay, the learned Additional Government Pleader would submit that joint patta was issued under the settlement proceedings will not confer any right to the petitioner to claim ownership of the property. Granting joint patta under Section 13 of the Act does not vest any property in a person in whom that property did not vest prior to the appointed day, only the superstructure will vests with who owned it immediately before the appointed day, whereas, the site on which the building stands will always vest with the temple who owned it before the appointed day. Therefore, it is the contention that inamdar who continues to be in possession of the site even after the issuance of joint patta is entitled to recover the possession from his tenant. Such being the legal position, merely, the building vests with the mother of the petitioner, the title has not been passed, they have no right to deal with the property. Therefore, registration cannot be permitted.

7. The learned Senior Counsel for the petitioner replying to the above submissions submitted that as per the scheme of Section 13 of the Act, the



building may belong to one and the site to another. It is not necessary that both the site and the building should belong to one and the same person so as to derive the benefit of Section 13 with effect from appointed day. A dual estate is not repugnant to the provision and dual ownership is recognized. As far as the building is concerned, the petitioner is entitled to deal with the property.

8. In light of the above submissions, now, the point arises for consideration in this writ petition is whether the joint patta granted in favour of the petitioner's mother and temple confer absolute title to the petitioner to deal with the property.

9. Heard both sides and perused the materials placed on record.

10. Section 13 of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963, (Act 30 of 1963) reads as follows:

"13(1) : Every building situated within the limits of an inam land shall, with effect on and from the appointed day, vest in the person who owned it immediately before that day but the Government shall be entitled for each fasli year commencing with the fasli year in which the appointed day falls to levy the appropriate assessment thereon.



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(2) In this section, 'Building' includes the site on which it stands and any adjacent premises occupied as an appurtenance thereto."

11. The above provision makes it clear that unless the owner of the building is also the owner of the site, the building inclusive of the site will not vest in the owner of the building. Further, there is no statutory transfer effected in respect of the site on which the building stand. It is relevant to note that this Court in the case of *Sri Kumarakattalai Subrahmanyaswami Devasthanam v. K.S.Sundararajulu Chettiar* made in S.A.No.1484 of 1971, judgment dated 16.08.1974, wherein, it is held as as follows:

"On the other ground rested on Section 13, we are of opinion that the effect of a combined reading of the two Sub-sections of that Section 13 of Madras Act XXX of 1963 is that, unless the owner of the building is also the owner of the site, the building inclusive of the site will not vest in the owner of the building. In other words, the effect of Sub-section (2) is not to make a statutory transfer of the land to the owner of the building where it had not formerly belonged to him."

12. In the case of *Shri Thiagarajaswami Devasthanam, Thiruvavarur, Thanjavur District rep by its Executive Officer vs. The Commissioner of Land Administration, Chepauk, Madras and others* reported in 2000-2-L.W.103, this Court, in paragraph 9 held as follows:

" 9. I am of the view that the issue raised in the writ petition is concluded by the decision of the Supreme Court in R.Manicka Naicker's case (AIR 1995 SC.1613=1995-1-LWL.731). The Supreme Court has considered the scope, object



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and purpose of the Tamil Nadu Act 30 of 1963, particularly, the scope of Section 13 of the said Act and held as under:

"Section 13 does not vest any property in a person in whom that property did not vest prior to the appointed day. It merely sets out that a building shall vest in the person who owned it immediately before the appointed day. Section 13(2) merely provides that the site on which the building stands will also be covered by section 13(1). Hence the site on which the building stands will vest in the person who owned it immediately before the appointed date."

(Emphasis supplied).

In the case of Sri Kumarakattalai Subrahmanyaswami Devasthanam v. K.S. Sunderarajulu Chettiar, ILR (1975) 1 Mad., 501, a learned Single Judge of the Madras High Court considered the provisions of Section 13 of the said Act and held that unless the owner of the building is also the owner of the site, the site will not vest in the owner. The effect of sub-section (2) is not to make a statutory transfer of the land to the owner of the building where it had not formerly belonged to him. An inamdar who continues to be in constructive possession of the site even after the notified date would be entitled to recover possession from his tenant. We respect-fully agree with these findings of the learned Single Judge.

(Emphasis supplied)."

13. Further, in the case of *R.Manicka Naicker vs. E.Elumalai Naicker* reported in (1995) 4 SCC 156, wherein, the Hon'ble Apex Court in paragraphs 12, 13 and 14 has held as follows:

12. The contention of the appellant that by virtue of Section 13, the land underneath the building also vests in him must be rejected. Section 13 does not vest any property in a person in whom that property did not vest prior to the appointed day. It merely sets out that a building shall vest in the person who owned it immediately before the appointed day. Section 13(2)



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merely provides that the site on which the building stands will also be covered by section 13(1). Hence the site on which the building stands will vest in the person who owned it immediately before the appointed date.

13. In the case of Sri Kumarakattalai Subrahmanyaswami Devasthanam v. K.S. Sunderarajulu Chettiar, ILR (1975) 1 Mad., 501, a learned Single Judge of the Madras High Court considered the provisions of Section 13 of the said Act and held that unless the owner of the building is also the owner of the site, the site will not vest in the owner. The effect of sub-section (2) is not to make a statutory transfer of the land to the owner of the building where it had not formerly belonged to him. An inamdar who continues to be in constructive possession of the site even after the notified date would be entitled to recover possession from his tenant. We respect-fully agree with these findings of the learned Single Judge.

14. Moreover, in the present case, the patta granted expressly provides that the appellant has been granted a ground rent patta only in respect of the building, while the patta for the site has been granted to the respondent. A joint patta seems to have been granted in the names of both the appellant and the respondent because of the claim of the appellant to the building and the claim of the respondent to the site on which the building stands. Therefore, looking to the nature of the grant of the patta also it cannot be said that by virtue of the patta, the site on which the building stands has been, in any manner, transferred to the appellant or vests in him. The appellant cannot, therefore, claim that the decree for possession cannot be executed against him because he has become the owner of the site.”

14. Moreover, the concept of dual ownership under Section 13 of the Act was also categorically laid down by the Hon'ble Supreme Court of India in the case of *K.S.Thirugnasambandam Chettiar (dead) by Lrs etc., Vs. The Settlement Thesildar, Coimbatore & others* reported in CDJ 1995 SC 1335



and relevant findings read thus :-

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"It is, therefore, not necessary that both the site and the building should belong to one and the same person so as to derive the benefit of Section 13 with effect from the appointed day. A dual estate is not repugnant to the provision, which evidently is of a very special nature, when ryotwari patta may not be admissible for a building per se, but may be admissible for the site standing thereon."

15. The Division Bench of this Court in the case of *L. Varalakshmi vs. Commissioner and others* reported in 2023 SCC OnLine Mad 7715 has held that building is vested in the person as per Section 13 of the Act, however, the land on which the building is situated will not vest in them because they were not the owners of the land immediately before the appointed day and it is only the temple which was. As such, the joint ground rent patta is given. The meaning of the joint ground rent patta would be that the temple is the owner of the land and the appellant's father will be owner of the superstructure. Such dual ownership is recognised law of our country and is very much part of the scheme of things under the Act. While holding so, in paragraph 21, has held as follows:

"21. Thus, it can be seen that the appellant is only the owner of the superstructure. The second respondent temple is the owner of the land in question. It is entitled to revise the rent. Therefore, no exception can be taken to the findings of the learned Single Judge entitling the respondents to revise the rent."



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16. Similarly, a Division Bench of this Court in the case of *Kandasamy @ Muthu Mudaliar vs. Sri Ranganathaswamy (Idol) rep. through his Executive Officer, Srirangam, Trichy* reported in 2023 (2) CWC 610 has held that temple is entitled for patta absolutely for land enumerated under Second Schedule and patta for the site for the land enumerated under First schedule whereupon building has been constructed.

17. The combined reading of the above settled position of law makes it clear that joint patta issued in the name of the tenant and also the temple, site on which the building stand has been in no manner transferred to the tenant or the person in occupation of the building. Though the petitioner's mother became owner of the superstructure as the dual ownership is recognised in country as held in *K.S.Thirugnasambandam Chettiar* (cited supra). The provision, self-contained as it is, allow the Government levying an appropriate assessment thereon for each fasli year commencing with the fasli year. That apart, the Division Bench of this Court in *L.Varalakshmi* (cited supra) has also held that the temple being the owner of the land in question is entitled to revise rent for the land on which the building is situated.



18. In R.Manicka Naicker (cited supra), the Hon'ble Apex Court has held that even after granting patta, the suit for recovery of possession of the land from the tenant is maintainable. Further, it is held that an inamdar who continues to be in constructive possession of the site even after the notified date would be entitled to recover possession from his tenant. Such view of the matter, when the temple always has the power to recover the possession of the property by way of filing a suit, at this stage, this Court is of the view that the petitioner cannot claim absolute right to transfer the rights of the property including the site only on the basis of joint patta issued in their name in the settlement proceedings. The impugned order is with regard to the rejection of the power of attorney presented for registration. The copy of the Power of Attorney is also available in the typedset of papers. The General Power of Attorney executed and presented before the authorities is not in respect of the building alone, the schedule of the property is as follows:

Schedule

4/5th Undivided Share i.e. 4240 Sq.ft., out of 5300 Sq.Ft of piece and parcel of Plot Situated at Old Door No.33, New Door No.79, Burkit Road, T.Nagar, Chennai – 600 017, land comprised in Old Survey No.154/3, T.S.No.8983, Block No.130 of T.Nagar Village, Mambalam Guindy Taluk, now Guindy Taluk, Chennai District within the limits of Greater Chennai Corporation and bounded on the:

North by : Burkit Road



South by : Mannar Reddy Street
East by : Property belonging to Suraj @ Balaji
West by : Property belonging to Madhavanan

19. In fact, factually, the Power of Attorney has been executed in respect of the site alone not even in respect of the building. Therefore, when the site vests with the temple, the question of executing any document for site does not arise at all. Hence, the rejection order passed by the first respondent cannot be found fault with.

20. It is relevant to note that though certain facts not pleaded in the writ petition, on perusal of the available records in the typedset of papers, this Court has to record the factual aspects. The second respondent has already filed a suit in the year 1983 in O.S.No.3381 of 1983 before the XIII Assistant City Civil Court, Chennai for recovery of possession on the ground that default of rent for the building. The suit has been originally decreed. Challenging the same, an appeal in A.S.No.572 of 1987 before the IV Additional City Civil Court, Chennai and the appeal was allowed on the ground that since the appellant is a tenant, who is entitled to the benefit of the Tamil Nadu City Tenants Protection Act, there must be three months notice under Section 11 of the Act before filing the suit for recovery of possession.



On that ground, appeal was allowed. Challenging the same, second appeal was preferred by this Court in S.A.No.303 of 1989. This Court has dismissed the appeal mainly on the ground that the notice under Section 11 Tamil Nadu City Tenants Protection Act is not issued, therefore, the suit is not maintainable. Thereafter, it appears that a suit was filed by the second respondent in O.S.No.24 of 2008 before the City Civil Court, Chennai for the recovery of possession of the property. The suit was decreed on 04.09.2012, directing the defendants/petitioner herein to deliver the possession of the suit property. Challenging the decree and judgment, appeal in A.S.No.23 of 2013 was filed before the XVI Additional City Civil Court, Chennai, wherein, the learned Judge considering the joint patta issued by the Settlement Officer dated 25.09.1971 allowed the appeal. As against which, second appeal is filed in S.A.No.565 of 2019 before this Court and the same is pending.

21. Such view of the above pendency of the proceedings and as per the dictum of the Hon'ble Supreme Court in R.Manicka Naicker (cited supra), the suit filed by the temple is maintainable for recovery of possession and this Court is of the view that till the above second appeal is decided, the question of executing any document by the petitioner in respect of the same property cannot be permitted. If at all any right has to be exercised, the same shall be



decided only after the finality reached in the second appeal. The Court exercising *parens patriae* jurisdiction over the temple properties is of the view that successive alienation or encumbrance cannot be created without rights having established.

22. Accordingly, the impugned stands confirmed. The rights of the petitioner will be subject the result of the second appeal, if any. The temple has always retained the power of recovery of possession as per the dictum laid down by the Hon'ble Apex Court in R.Manicka Naicker (cited supra).

23. With the above observations, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

16.07.2024

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N.SATHISH KUMAR, J.

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