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W.P.No.23816 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.23816 of 2021

and

W.M.P. Nos. 25081 and 25082 of 2021

1.S.Suganya
2.S.Ramgopal
3.S.Vaishnavi

..Petitioners

Vs.

1.The Commissioner,
Erode City Municipal Corporation,
Erode District, Erode 638 011.

2.The Assistant Commissioner,
Erode City Municipal Corporation -Zone-3,
Erode District, Erode 638 011.

3.S.Premnarayan

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the 2nd respondent culminated in and by her proceedings in Na.Ka.No.A1/1855/2013, dated 13.07.2021, quash the same and consequently direct the 2nd respondent to restore the name for the property tax into original status with respect to the disputed property.



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For Petitioners : Mr.V.S.Kesavan

For Respondents : Mr.M.Rajamathivanan for R1, R2
Mr.N.Inbamaran for
Mr.R.Bharanidharan for R3

ORDER

The present writ petition is filed challenging the impugned order dated 13.07.2021, whereby the petitioners' representation questioning the name transfer of the property tax from Rajammal (deceased) to Premnarayan / 3rd respondent herein vide letter dated 31.12.2020 stood rejected.

2. The present writ petition is filed for restoration of property tax to the name of Rajammal, wife of K.Kaveri Mudaliyar, in respect of the property situated in Ward No.13, 30, Thirunagar Colony Street-3, Erode, having property tax number 056/013/00735 and water connection number in 056/013/00093(hereinafter referred to as “subject property”) . The challenge to the impugned order is made primarily on the premise that Rule 256 3(c) of the Tamil Nadu Urban Local Body Rules, 2023 provides that no transfer shall be made in the name of the transferee if there is a civil suit relating to the property's ownership is pending in any



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Court of law.

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3. The subject property originally belonged to the joint family of K.Kaveri Mudaliyar and his two sons viz., K.Sivasubramaniyam (Elder son) and K.Sivakumar (Younger Son). The patta of the subject property stood in the name of the Kartha of the said joint family viz., Kaveri Mudaliyar. Mr.Sivasubramaniyan, elder son of Kaveri Mudaliyar died leaving the petitioners herein as legal heirs. The 1st petitioner herein is the wife, 2nd and 3rd petitioners are the son and daughter of the said K.Sivasubramaniyam. During the lifetime of said Kaveri Mudaliyar, a gift deed dated 12.05.1978 bearing Document No.1738 of 1978, was executed in favour of Rajammal by Kaveri Mudaliyar, K.Sivasubramaniam and K.Sivakumar transferring the subject property.

4. The petitioners herein have filed more than one Suit including O.S.No.331/2011 and O.S.No.210/2013 before the Principal Subordinate Judge, Erode. O.S.No.331 of 2011 was filed praying for a declaration that the gift deed dated 12.05.1978 is sham and nominal document and



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thus void in law. The said Suit is stated to be pending. The petitioners also filed a Suit in O.S.No.210 of 2013 for partition including the subject property and this Suit is also stated to be pending.

5. Later on 06.08.2013, Rajammal executed a gift deed bearing Document No.5231 of 2013 in favour of the 3rd petitioner (grandson). This deed is premised on the title to the subject property being derived by Rajammal by virtue of gift deed dated 12.05.1978. Importantly, as stated supra the above gift deed dated 12.05.1978 by which title to the suit property is sought to be derived by Rajammal is put to challenge in O.S.No.331 of 2011 on the ground that the said suit is sham and notional as stated supra.

6. During the pendency of the above Suits, the 3rd petitioner attempted to change the patta of the aforesaid property to his name. The petitioners filed a writ petition before this Court in W.P.No.8211 of 2015 and the same is still pending.



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7. Whiles, the 3rd petitioner sought to change the Property Tax Number 056/013/00735 and Water Connection number in 056/013/00093 to his name. The petitioners issued a legal notice dated 23.11.2019 to the 2nd petitioner not to change the name of water connection and property tax from Rajammal to that of the 3rd petitioner as requested. However, the name in relation to water connection and property tax was transferred / changed to that of the 3rd Respondent from that of Mrs.Rajammal.

8. Hence, petitioners submitted a representation dated 31.12.2020 to the 2nd Respondent to restore the Property tax and water connection to the original name i.e., Rajammal as it stood prior to name change made vide order dated 18.12.2020. In spite of the petitioner's representation, the 2nd Respondent refused to restore the original name i.e., Rajammal with regard to water connection and property tax vide impugned order dated 13.07.2021. Importantly, the 3rd Respondent gave an undertaking dated 07.12.2020 that if any objection is raised to the name transfer, the same would be cancelled.



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9. Without taking into account the above relevant aspects, the 2nd Respondent has passed the impugned order refusing to restore the property tax and water connection to its original name with respect to the subject property. Aggrieved by the impugned order passed by the 2nd Respondent in Na.Ka.No.A1/1855/2013 dated 13.07.2021, the petitioners are before this Court.

10. It is not in dispute that there are suit pending in O.S.Nos.331, 210 of 2013 and 148 of 2018 before the Courts at Erode wherein the title of the subject property in dispute. It is submitted by the learned counsel for the petitioner that the request of the petitioner not to transfer property tax and water connection from the name of Rajammal on the premise that the Suit is presently pending, stood rejected. It was submitted that applying the same reasoning, the Respondent authorities ought not to have transferred the property tax in the name of the 3rd respondent from Rajammal while the Suit was pending.



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11. I find that there is merit in the submission of the learned counsel for the petitioners inasmuch as the 2nd Respondent had erred in transferring the name in property tax and water connection from Rajammal to 3rd Respondent unilaterally without affording the petitioners any opportunity despite representation having been made and the factum of pendency of Civil Suit wherein title in respect of the Suit property was in dispute was brought to the notice of the 2nd Respondent. It may be relevant to note that Rule 256(3)(c) of the Tamil Nadu Urban Local Body Rules, 2023, provides that no transfer shall be made in the name of the transferee in the property records, if there is a civil suit relating to the property's ownership is pending in any Court of law. The relevant portions of the aforesaid Rules is extracted hereunder:

“(3) (a)

(b)

(c) *The name of the transferee shall only be entered against the property in the municipality's property records when any outstanding property tax dues till that half-year have been cleared by the transferee or the transferor:*

Provided that no transfer shall be made in the name of the transferee if there is a civil suit related to the property's ownership pending in any court of law:

Provided further that nothing will prevent the municipality from implementing any court order relating to the said property unless there is a stay granted by any competent court.”

11.1. A reading of the above Rule would *prima facie* appear to



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suggest that no changes to the name of the transferee shall be made to the property records if there is a Civil Suit relating to the property in issue, is pending, which has not been examined by the 2nd Respondent before changing the name in property records in particular name in property tax and water connection.

12. In view of the same, the impugned order dated 13.07.2021 is set-aside and the 2nd respondent is directed to restore the property tax in the name of Rajammal. The parties including 3rd respondent are at liberty to make a fresh application for change of name of property tax and water connection. If any such application is made, the same shall be decided, keeping in view the relevant provision in particular Rule 256 (3)(c) of the Tamil Nadu Urban Local Body Rules, after putting all the interested parties on notice and after affording all stake holders / interested parties an reasonable opportunity. If such application is filed, the Respondents shall decide the issue on merits and in accordance with law, uninfluenced by any of the observations made herein.



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13. With the above directions, the writ petition stands disposed of.

No costs. Consequently, connected miscellaneous petitions are closed.

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Speaking (or) Non Speaking Order

Index: Yes/No

Neutral Citation: Yes/No

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To

1.The Commissioner,
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Erode District, Erode 638 011.

2.The Assistant Commissioner,
Erode City Municipal Corporation -Zone-3,
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MOHAMMED SHAFFIQ, J.



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