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W.P.No.26627 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10..07..2024

Coram

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Writ Petition No.26627 of 2022

and

W.M.P.No. 25762 of 2022

1.S.Vennila

2.K.Kanagaraj

..... Petitioners

-Versus-

1.The Revenue Divisional Officer,
Coimbatore South,
Opposite to Coimbatore Commissioner Office,
Coimbatore.

2.The Tahsildar,
Perur, Coimbatore District.

3.The Sub Registrar,
Thondamuthur Sub Registrar Office,
Coimbatore.

4.The State rep. By its
The Inspector of Police,
Land Grabbing Special Cell,
Coimbatore District.

5.M.Chitra

..... Respondents



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Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the order dated 26.04.2022 vide proceedings in C.No.19/INSPR-ALGSC/CBE-DIST/2022 on the file of 4th respondent and quash the same.

For Petitioner : *Mr.K.Myilsamy*

For Respondent (s) : *Mr.B.Vijay,*
Additional Government Pleader
for RR1 to 3

: *Mr.S.Sugendran,*
Additional Government Pleader
for R4

Mr.S.Karthikei Balan for R5

ORDER

A Challenge has been made to the order dated 26.04.2022 passed by the 4th respondent in his proceedings in C.No.19/INSPR-ALGSC/CBE-DIST/2022 on the file of 4th respondent whereby he requested the Sub Registrar to cancel the sale deed executed by the 1st petitioner in favour of the 2nd petitioner and not to entertain any further transactions in respect of the subject property.

2. The case of the petitioner in brief is as follows: - By virtue of a registered partition deed dated 21.10.1992 vide Doc.No.2220/1992 on the file of the Sub Registrar, Thondamuthur, an agricultural land measuring an extent of



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Acres 2.50 Cents comprised in S.No.131/2 situated at Alandurai village, Perur

Taluk, Coimbatore District, was allotted to the share of her father -

S.A.Sundarasamy, while her paternal uncle - S.A.Gopalsamy was allotted Acres

2.50 Cents on the western side of the land allotted to her father. Right from the

date of partition, her father and paternal uncle had been in possession and

enjoyment of their respective shares separately without any misunderstanding

or any difference of opinion. While so, for the formation of pond/tank,

Government through department concerned had acquired a portion of land

measuring an extent of 38 cents from the land belonging to her paternal uncle.

After the acquisition, the remaining land measuring an extent of 2 Acres and 12

cents in S.No.131/2 was in the possession and enjoyment of her paternal uncle.

Her paternal uncle had also received sufficient compensation from the

government for the land acquired from him. What that be so, land in S.131/2

was sub divided into S.No.131/2B1 – Acres 2.50 cents and S.No.131/2B1B –

Acres 2.12 cents and pattas were issued in the name of S.A.Gopalsamy

(paternal uncle of the petitioner) and S.A.Sundarasamy (father of the

petitioner). Whereas S.A.Gopalsamy owned only Acres 2.12 cents after the

acquisition of 38 cents out of Acres 2.50 cents. The sub divisions took place

behind back of her father and as such those sub division proceedings have to be

cancelled.



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3. While so, the father of the petitioner died intestate on 23.10.2017 leaving behind him the petitioner as his only legal heir to succeed his estate and paternal uncle of the petitioner also died leaving behind his wife-Shantha, three daughters, Vanathiganga, Arthiganga, Sindhuganaga as his legal heirs to succeed his estate. Thereafter, the legal heirs of her paternal uncle sold the property measuring an extent of 2 Acres 50 cents to the 5th respondent through a sale deed dated 05.09.2007 vide Doc.No.5055 of 2007 whereas the land held by her paternal uncle was only Acres 2.12 cents. Therefore, she made an application to the 2nd respondent seeking to cancel the patta bearing Patta No.1374 issued in the name of the 5th respondent which was summarily rejected by the 2nd respondent without conducting any enquiry. On appeal to the 1st respondent, by order dated 05.02.2021, the matter was remanded to the 2nd respondent with a direction to conduct a proper enquiry and pass orders. Thereafter, he was under the impression that he would be called for enquiry. But, there was no response. Hence, he filed a writ petition in W.P.No.28215 of 2021 seeking a mandamus directing the respondent to conduct an enquiry pursuant to the directions of the 1st respondent. This court by order dated 04.01.2022 while disposing of the writ petition directed the 2nd respondent to dispose of the application of the petitioner for cancellation of patta standing in the name of the 5th respondent after giving opportunity to all parties concerned



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within a period of two weeks from the date of receipt of a copy of the order.

Despite the orders of this court, no orders have been passed on his application for cancellation of patta.

4. In the meantime, 1st petitioner sold a portion of her land measuring 38 cents to the 2nd petitioner on 23.11.2021 through a registered sale deed vide Doc.No.9947/2021 on the file of the 3rd respondent and handed over possession of the transferred property on the date of the sale itself. During the 1st week of August, 2022, when he applied for an encumbrance certificate, he came to know that 5th respondent lodged a police complaint against the petitioners. No FIR was registered on the complaint made by the 5th respondent. Thereafter, the 1st petitioner made a complaint to the District Registrar, Coimbatore under the Registration Act, 1908 against the 5th respondent seeking to cancel the sale deed executed in favour of the 5th respondent. To counterblast the said complaint, the 5th respondent gave a complaint before the 4th respondent. Without conducting any enquiry and even before registering the FIR on the complaint of the 5th respondent, 4th respondent directed the 3rd respondent to cancel the registered sale deed executed by the 1st petitioner in favour of the 2nd petitioner not to register any further document by his proceedings dated 26.04.2022. It is this proceedings which is under challenge in the present writ petition.



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5. No counter affidavit from the respondents 1 to 4.

6. The 5th respondent has also not filed any counter affidavit.

7. Heard both sides.

8. The learned counsel for the petitioners would submit that the 4th respondent by sending a communication dated 26.04.2022 in C.No.19/INSPR-ALGSC/CBE-DIST/2022 to the registering authority virtually prevented the 1st petitioner from dealing with her property.

9. Per contra, the learned counsel appearing for the 5th respondent would submit that on the basis of the complaint given by the 5th respondent the District Registrar conducted an enquiry and relegated the parties to approach the civil court; aggrieved by the same, the 5th respondent filed W.P.No.6068 of 2023 and, this court, by its order dated 01.03.2023 while setting aside the proceedings of the 2nd respondent herein dated 06.12.2022 in No.11813/Aa1/

2021, remitted the matter to the 2nd respondent for fresh consideration; this court in its order, directed the District Registrar to thoroughly enquiry the matter under Section 77-A of the Registration Act and pass final orders taking into account the complaint given by the 1st petitioner herein and the counter



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complaint given by the 5th respondent herein; and the matter is now pending before the District Registrar for consideration.

10. It is stated by both parties that the matter is now pending before the District Registrar and there is no development in view of the stay granted by a Division Bench of this Court in a batch of writ petitions in W.P.No.26952 of 2022, etc.

11. Further, admittedly, the 5th respondent herein filed a suit in O.S.No.53 of 2023 on the file of the learned District Judge, Coimbatore, against the petitioners herein for a judgement and decree, declaring that she is the absolute owner of the subject property and for a consequential relief of permanent injunction restraining the petitioners herein, their men, agents or anybody claiming under them from in any way interfering with her title and possession and enjoyment of the subject property and the same is pending.

12. It is needless to state the rights of the private parties over the subject property shall be decided only by the civil court and not on the application made by the 1st petitioner to the District Registrar, Coimbatore or on the complaint given by the 5th respondent to the 4th respondent police.

13. Since the 5th respondent has already approached the Civil Court by way of a civil suit in O.S.No.53 of 2023 against the petitioners for declaration



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of title and for permanent injunction and the same is pending, the petitioner(s) and the 5th respondent shall work out their remedies in the pending suit. In such a view of the matter, the impugned order passed by the 4th respondent-Inspector of Police, Land Grabbing Special Cell, Coimbatore District, dated 26.04.2022 vide C.No.19/INSPR-ALGSC/CBE-DIST/2022 stands quashed accordingly. It is made clear that encumbrance if any created over the subject property, the same will always be subject to the result of the civil suit.

In the result, this writ petition is allowed accordingly to extent indicated above. No costs. Consequently, connected WMP stands closed.

Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
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To

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