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W.P.No.28387 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2024

CORAM:

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

W.P.No.28387 of 2022 and
WMP.No.27694 of 2022

Y.Ravishankar

...Petitioner

Vs.

1.Collector,
Chengalpattu District Collectorate,
Chengalpattu 603 001
2.The Tahsildar,
Chengalpattu Taluk Office,
Chengalpattu 603 001
3.Marg Properties Limited,
Having its Registered Office at Marg Axis,
4/318, Rajiv Gandhi Road
(Old Mahabalipuram Road), Kottivakkam,
Chennai 600 041
4.G.Ramakrishna Reddy
5.V.P.Rajini Reddy
(Respondents 3 to 5 impleaded as
per order dated 06.06.2024 in WMP.No.3533
of 2024 in WP.No.28387 of 2022)

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Mandamus directing the respondents to proceed and perform their statutory duties by executing the attachment, auction or sale of the property described in the Recovery Warrant dated



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18.11.2021 and to recover the amount under the Recovery Warrant as arrears of Land Revenue within a stipulated time fixed by this Court.

For Petitioner : Mr.Naveen Kumarmurthi
for M/s.S.Varsha

For Respondents
For R1 & 2 : Mr.S.J.Mohammed Sathik,
Government Advocate

For R3 to 5 : Mr.V.Premkumar

ORDER

This writ petition has been filed for direction to respondents 1 & 2 to proceed as per the recovery warrant dated 18.11.2021 to recover the amount under the Revenue Recovery Act from respondents 3 to 5 herein.

2. Respondents 3 to 5 had promoted a project under the name and style of 'Savithanjali' comprised in survey Nos.192/1, 194/2, 194/3, 195/1, 195/3, 194/1, 159/2 and 196 admeasuring 7 acres and 11 cents situated at No.6 Kalavakkam Village, Tiruporur Panchayat, Chengalpet. The petitioner had booked a residential flat in block No.C, Third Floor, Apartment No.307 with a built up area of the apartment admeasuring



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1323 sq.ft and 422 sq.ft of undivided share in the land. The total cost of the apartment was fixed at Rs.46,01,565/-. The petitioner had paid amount of Rs.42,66,185/- out of the total sale consideration and the remaining amount is only very meagre. Accordingly, agreement for sale and also construction agreement were executed on 12.04.2012 by respondents 3 to 5 with the petitioner. The sale deed in respect of undivided share was executed in favour of the petitioner on 13.03.2013. As per the agreement for construction, respondents 3 to 5 undertook to deliver and hand over the possession of the constructed flat in the month of June 2013 with three months grace period. However, so far no construction was made and the flat was not handed over to the petitioner.

2.1 In fact, respondents 3 to 5 had abandoned the entire project and the entire amount which was received from all the purchasers was siphoned by them. Therefore, the petitioner lodged complaint and FIR was also registered in crime No.30 of 2016 for the offence under Sections 406, 420, 506(i) of IPC on the file of the Central Crime Branch, Chennai. After completion of investigation, charge sheet was laid and the



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same has been taken cognizance by the trial court. That apart, the petitioner lodged complaint before the Real Estate Regulatory Authority (hereinafter called as 'RERA') for refund of sale consideration with interest. After conducting detailed enquiry, RERA passed order to refund a sum of Rs.81,67,814/- together with interest to the petitioner. Thereafter, respondents 3 to 5 failed to comply with the order and as such, the petitioner was constrained to file petition in EP.No.1 of 2021 before RERA. RERA, considering the petition, issued warrant for execution of order passed by 'RERA' to the first respondent under Section 40(1) of the RERA Act and to attach the schedule property and recover the amount under the Revenue Recovery Act. However, the order has not been complied with so far by respondents 1 & 2.

3. On perusal of the status report filed by the second respondent, revealed that they identified some schedule mentioned properties of respondents 3 to 5 and they found that respondents 3 to 5 are not the owners of the properties covered under the schedule mentioned properties of the execution petition. Therefore, they are



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unable to execute the warrant to recover the amount under the Revenue Recovery Act.

4. Heard, the learned counsel appearing on either side.

5. Though RERA restricted its warrant to the schedule property for recovering the amount under the Revenue Recovery Act, Section 5 of the Revenue Recovery Act says as follows:

“5. Whenever revenue may be in arrear, it shall be lawful for the Collector, or other officer empowered by the Collector in that behalf to proceed to recover the arrear, together with interest and costs of process, by the sale of the defaulter's movable and immovable property, or by execution against the person of the defaulter in manner hereinafter provided”

6. Thus, it is clear that the amount can be recoverable by attachment and by sale of the defaulter's movable and immovable property. Therefore, respondents 1 and 2 can very well attach any other property other than the schedule mentioned property of respondents 3 to



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5 for sale to recover the awarded amount under the Revenue Recovery Act.

7. In view of the above, respondents 1 and 2 are directed to execute the recovery warrant dated 18.11.2021 issued against respondents 3 to 5 and proceed under Section 5 of the Revenue Recovery Act to recover the amount as per the recovery warrant, within a period of twelve weeks from the date of receipt of copy of this order.

8. With the above direction, this writ petition is allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

25.06.2024

Neutral citation: Yes/No
Index: Yes/No
Speaking/Non-speaking order
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