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W.P.No.10657 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2024

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.10657 of 2017
and W.M.P.Nos.11603 of 2017 and 21894 of 2021

S.Varadhan

... Petitioner

vs.

1.The District Collector
Thiruvallur District
Office of the District Collector
Thiruvallur.

2.The District Revenue Officer
Thiruvallur District
Office of the District Collector
Thiruvallur.

3.The Tahsildar,
Avadi Taluk,
Office of the Tahsildar,
Avadi.

*(R3-Impleaded as per order dated 20.06.2017 in
WMP.Nos.16479 and 16480/2017 in WP.No.10657/2017)*

4.N.K.Abubacker (Deceased)

5.T.P.Shakeel

6.T.P.Shanid



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7.T.P.Shafeed

8.A.T.Mohamood

9.N.K.Haris

10.O.Sajitha Rahim

11.T.P.Zuhara

12.T.P.Askar

13.Kabeer Ahammed

14.Sultana Mariam

... Respondents

(R11 to R14 are substituted as LR's of Deceased R4, as per order dated 10.07.2024 in WMP.No.21014/2024 in WP.No.10657/2017)

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in proceedings in Rc 32556/2015/B3, dated 14.07.2016 issued by the 2nd respondent and the consequential order in Na. Ka. 1329/2017/Aa1, dated 13.03.2017, issued by the 3rd respondent, quash the same and direct the 3rd respondent to restore the patta in the name of petitioner.

For Petitioner : Mr.D.Srinivasan

For R1 to R3 : Mr.P.Sathish
Additional Government Pleader

For R4 to R10 : Mr.Ashok Menon



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For R11 to R14 : Mr.K.Premkumar

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ORDER

The Writ Petition has been filed by the petitioner challenging the order passed by the 2nd respondent by his Proceedings in Rc.No.32556/2015/B3, dated 14.07.2016 cancelling the patta issued in the name of petitioner and others and consequential order passed by the 3rd respondent in Na.Ka.No.1329/2017/Aa1, dated 13.03.2017 effecting changes in the revenue records as per the order passed by the 2nd respondent.

2. According to the petitioner, he purchased the property measuring 2400 Square Feet with Plot No.13 in Arthi Nagar Layout comprised in Survey Nos.465 and 467/2, Thirumulaivoil, Chennai under a registered Sale Deed dated 15.07.2002 vide Document No.3996/2002 from one Pandian represented by his Power Agent Lenin. The vendor of the petitioner Pandian purchased the above said property from one T.P.Hamza and others represented by their Power Agent-Duraisamy under a Sale Deed dated 10.12.1996 vide Document No.150/1997. The said Duraisamy was appointed as Power Agent of original owners T.P.Hamza and others under



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Power Deed dated 27.02.1994. The respondents 4 to 10 represented by their

Power Agent-V.Indira Balan filed an application before the District Registrar (Administration-North Chennai) seeking cancellation of the Sale Deed executed by the above said Duraisamy, Power Agent of T.P.Hamza and others on the ground that he executed various Sale Deeds in respect of above mentioned Survey Nos.465 and 467/2 by utilising fraudulent Power Deeds. The District Registrar (North Chennai) came to the conclusion that Duraisamy exceeded the scope of power granted to him and sold more extent than the actual extent authorised under the Power Deed.

3. Based on the said finding, the District Registrar (North Chennai) cancelled the Sale Deeds executed by Duraisamy. The 2nd respondent taking into consideration the order passed by District Registrar (North Chennai) cancelling the documents executed by Duraisamy, Power Agent of T.P.Hamza and others, passed the impugned order cancelling the patta issued in the name of the petitioner mainly on the ground that petitioner's vendor's vendor never authorised the said Duraisamy to sell the property and hence, documents executed by Duraisamy in favour of the petitioner's vendor-Pandian and other subsequent document executed in favour of the



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petitioner were invalid. The 3rd respondent by passing consequential order effected mutation in the revenue records as per the order passed by the 2nd respondent. Aggrieved by the same, the petitioner is before this Court.

4. Mr.D.Srinivasan, learned counsel appearing for the petitioner vehemently contended that challenging the order passed by the District Registrar (North Chennai) cancelling the Sale Deed executed by Power Agent-Duraisamy in favour of his vendor, he filed an appeal before the Inspector General of Registration and the same is pending. The 2nd respondent without taking into consideration the pendency of the said appeal, passed the impugned order. The learned counsel further submitted that the respondents 9 and 10 herein instituted a suit in O.S.No.119 of 2019 on the file of the District Munsif Court, Ambattur seeking declaration that Sale Deed executed by the said Duraisamy in favour of petitioner's vendor-Pandian, the 11th defendant therein was null and void and for other consequential relief of injunction. The learned counsel further submitted that 10th respondent filed a civil suit in O.S.No.515 of 2015 on the file of the District Munsif Court, Ambattur. When the civil suit is pending, the 2nd respondent ought not to have cancelled the patta issued in the name of the



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petitioner. The learned counsel also submitted that the 2nd respondent having held that the parties are at liberty to agitate their right with regard to title before the Civil Court, ought not have cancelled the patta issued in the name of the petitioner.

5. Mr.P.Sathish, learned Additional Government Pleader appearing for the respondents 1 to 3 by referring to the counter affidavit filed by the 3rd respondent submitted that the above said Duraisamy sold an extent of 19094 sq.ft., of land in S.Nos.465 and 467/2 in excess of the extent covered by the Power Deed executed in his favour. Therefore, the District Registrar (North Chennai) was justified in coming to the conclusion that Sale Deed executed in favour of petitioner's vendor was invalid.

6. Mr.Ashok Menon, learned counsel appearing for the respondents 4 to 10 would submit that the District Registrar (North Chennai) by taking into consideration the fraud committed by the Power Agent-Duraisamy in executing the Sale Deed in excess of the extent covered by the Power Deed, cancelled the Sale Deed in favour of the petitioner's vendor-Pandian. The learned counsel further submitted that all the subsequent Sale Deeds



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executed by Duraisamy in excess of Power granted to him were invalid including the Sale Deed in favour of petitioner's vendor.

7. Mr.K.Premkumar, learned counsel appearing for the respondents 11 to 14 also submitted that taking into consideration the fraudulent act committed by above said Duraisamy, the District Registrar (North Chennai) rightly passed an order holding the Sale Deeds executed by him were invalid and in such circumstances, the impugned order passed by the 2nd respondent by taking into consideration the earlier order passed by District Registrar (North Chennai) is perfectly valid. The learned counsel also brought to the notice of this Court the respondents 9 and 10 preferred a suit in O.S.No.119 of 2019 on the file of the District Munsif Court, Ambattur seeking declaration that Sale Deed executed in favour of petitioner's vendor-Pandian was invalid due to exercise of excess power by Power Agent-Duraisamy, who represented the original owners T.P.Hamza and others.

8. Heard the arguments of learned counsel appearing for both sides and perused the materials available on records.



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9. A reading of the impugned order would suggest that the patta issued in the name of the petitioner was cancelled by the 2nd respondent mainly on the ground that District Registrar (North Chennai) by his order dated 31.03.2016 held the Sale Deed executed by the above said Duraisamy in favour of petitioner's vendor-Pandian was without proper authority. Therefore, he cancelled the patta transfer order which was passed on the basis of Sale Deeds, which were executed in excess of power granted to said Duraisamy. In other words, the order passed by District Registrar (North Chennai) is the foundation for the 2nd respondent to cancel the patta issued in the name of the petitioner.

10. A perusal of the impugned order passed by the 2nd respondent and the Power Deed executed in favour of above said Duraisamy dated 27.02.1994 would establish Duraisamy sold nearly 60,039 sq.ft., of land in S.Nos.465 and 467/2 based on two registered Power Deeds with Document Nos.426/1992 and 235/1994. The first Power Deed with Document No.426/1992 was executed by one Chittibabu in favour of B.Ravishankar Banu in respect of 11 cents of land situated in S.No.286/7 on the file of



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Semmancheri Village, Adyar Sub Registrar Office. Therefore, the Power Deed with Document No.426/1992 utilised by Duraisamy is not really a Power Deed in favour of Duraisamy but it was in favour of somebody else. Therefore, it is stated in the order passed by the District Registrar (North Chennai), the said Duraisamy sold the property situated in S.Nos.465 and 467/2 by utilising the said forged document. The other Power Deed utilised by the Duraisamy namely Document No.235/1994 was executed by petitioner's vendors vendor T.P.Hamza and others in favour of Duraisamy in respect of the subject property giving power to him to sell 31,065 sq.ft., of land situated in the above mentioned survey numbers. However, by utilising the said Power Deed, Duraisamy sold larger extent of 60,039 sq.ft., of land. By recording these facts, the District Registrar (North Chennai) came to the conclusion that the above said Duraisamy engaged in fraudulent act by executing various Sale Deeds in excess of power granted to him and consequently, directed jurisdictional Sub-Registrar to initiate prosecution under Sections 82 and 83 of the Registration Act, 1908.

11. A perusal of the order passed by District Registrar (North Chennai) makes it clear that he has not cancelled the Sale Deed executed by



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Duraisamy in his capacity as Power Agent of T.P.Hamza and others in favour of Pandian, vendor of the petitioner. Infact, as mentioned earlier, the respondents 9 and 10 filed a civil suit in O.S.No.119 of 2019 on the file of the District Munsif Court, Amabttur seeking declaration that Sale Deed executed by said Duraisamy in favour of petitioner's vendor-Pandian was null and void and for other consequential injunction. The District Registrar (North Chennai) only passed an order for prosecution of Duraisamy. The District Registrar (North Chennai) has no power to cancel the registered Sale Deeds and infact, he has not cancelled the registered Sale Deed in favour of petitioner's vendor. The main ground on which the District Registrar (North Chennai) passed order for prosecution of Duraisamy was he acted in excess of power and sold 60,039 sq.ft., of land instead of 31,065 sq.ft., of land which he was authorised to sell under the Power Deed. The petitioner's vendor-Pandian purchased 2400 sq.ft., of land in the above mentioned survey numbers under Document No.150/1997 executed by Power Agent-Duraisamy in his capacity as Power Agent of T.P.Hamza and others. It is not clear whether the 2400 sq.ft., of land purchased by petitioner's vendor Pandian falls within the 31,065 sq.ft., of land covered by the Power Deed in favour of Duraisamy or falls outside the property covered by Power Deed.



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12. It is needless to say, if the property purchased by the petitioner's vendor falls within the extent of land covered by the Power Deed, he will acquire title. On the other hand, if the property purchased by the petitioner's vendor falls outside the extent covered by the Power Deed, he will not acquire any title. Whether the property purchased by the petitioner and his vendor is covered by the Power Deed executed by T.P.Hamza and others in favour of Duraisamy is a disputed question of fact, which requires evidence.

13. Admittedly, a civil suit is pending challenging the validity of the Sale Deed executed in favour of petitioner's vendor. The said question will be decided by the Civil Court. Infact, in the impugned order, the 2nd respondent also relegated the parties to workout their remedy before the Civil Court by establishing their title. However, he cancelled the patta issued in the name of the petitioner by relying on observations made by District Registrar (North Chennai).

14. From the order passed by the District Registrar (North Chennai), we cannot come to a definite conclusion that 2400 sq.ft., of land purchased



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by the petitioner and his vendor-Pandian falls outside the extent covered by the Power Deed executed by T.P.Hamza and others in favour of Duraisamy.

Therefore, the 2nd respondent ought not have cancelled the patta issued in the name of the petitioner based on the order passed by the District Registrar (North Chennai) and he ought have waited for the outcome of civil litigation.

15. In these circumstances, the order passed by the 2nd respondent by his Proceedings in Rc.No.32556/2015/B3, dated 14.07.2016 is unsustainable and accordingly, the same is set aside. The parties are at liberty to establish their right before the Civil Court and the Official Respondents shall effect mutation of revenue records as per the Civil Court's Decree. Till then, the Official Respondents shall maintain *Status Quo Ante* that prevailed prior to the impugned order passed by the 2nd respondent in so far as the land purchased by the petitioner is concerned.

16. The Writ Petition stands allowed with these directions. No costs. Consequently, the connected writ miscellaneous petitions are closed.

24.09.2024



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Index : Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No
dm

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S.SOUNTHAR, J.

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