

(2014) 12 MAD CK 0248

In the Madras High Court

Case No : W.P. (MD) No. 19586 of 2014 and M.P. (MD) Nos. 1 and 2 of 2014

M. Baskar

APPELLANT

Vs

The Principal Secretary and Commissioner of Land
Administration

RESPONDENT

Date of Decision : 03-12-2014

Acts Referred:

Citation : (2014) 12 MAD CK 0248

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Judgement

M. Venugopal, J.—Heard the learned counsel for the Petitioner and the learned Additional Government Pleader appearing for the respondents.

2. The Petitioner has preferred the instant Writ of Mandamus praying for passing of an order by this Court calling for the records relating to the impugned orders made by the fourth respondent by his proceedings in Na.Ka./A1/1357/09, dated 25.3.2009 insofar as it relates to the Petitioner's lands in Old Survey No. 65/66, in Kalanivasal Village, Karaikudi Taluk, Sivaganga District and quash the same as illegal and consequently to direct the 6th respondent to take on file and register the documents in respect of the said lands.

3. According to the Petitioner, he being the Power of Attorney Holder and in fact, his principal purchased the land measuring to an extent of 2400 Sq.ft of land in Kalanivasal Village, Karaikudi Taluk from one M.Kavitha in the year 1998 by a registered sale deed. From that time onwards, he was in possession and enjoyment of the same. As the principal was in need of money and he intended to sale the said property, he had executed the power of attorney in favour of the petitioner on 15.09.2008 to sell and deal with the property and to institute any legal proceedings in respect of the said land. Hence, he was approached by a few buyers who offered to buy his property and when transactions almost got finalized and when he visited the office of the 6th respondent in the month of July 2014, he was informed that no document for deed witnessing any

conveyance of any property in S.No. 65, Kalani vasal Village of Karaikudi Taluk could be registered on account of the impugned proceedings issued by the fourth respondent.

4. The stand of the petitioner is that he obtained photocopy of the impugned proceedings of the fourth respondent dated 25.03.2009 in and by which the fourth respondent had directed the sixth respondent (Sub-Registrar, Karaikudi) not to register any document with regard to lands in S.No. 65 of Kalanivasal village. The said impugned proceedings was passed on the ground that the said lands in S.No. 65 was wrongly sub-divided by the then Assistant Settlement Officer, Madurai without any jurisdiction. Only on the strength of the impugned proceedings, it transpires that the sixth respondent has been refusing to entertain any documents for registration. Immediately, he preferred a representation to the respondents 1 to 3 and 5 seeking their intervention detailing as to how the fourth respondent has no power under the Registration Act, 1908 or any other law to direct the sixth respondent to perform his statutory duty. That apart, such order is an illegal one besides the same is being passed without jurisdiction. When that being the facts and circumstances, on the basis of his representation, he was informed by the second respondent through proceedings, dated 20.01.2012 to the effect that already it was clarified to the fifth respondent that the Registrars should not refuse registration. That apart, the first respondent had also by his communication dated 10.04.2012 stated that the Government has been apprised of the fact that lands in S.No. 65 of Kalanivasal village are classified as "Ryotwari Dry" and not vested in the Government at the time of settlement and the third respondent has misconstrued the order passed by the Assistant Settlement Officer, Madurai between the year 1983-1985 and it was beyond its jurisdiction and considered those orders on par with the other fraudulent orders passed by the Assistant Settlement Officer, Madurai after the year 1996. It is due to this misconception of the fact by the fourth respondent by means of impugned order, directed the fourth respondent not to register any document in respect of such lands.

5. Added further, in the said proceedings dated 10.4.2012, the first respondent had also mentioned as the lands/subject-matter of the impugned proceedings are not classified as Government Poramboke Land nor Anadheenam Lands and the fourth respondent had no justification or jurisdiction to suspend the registration of documents in respect of Survey No. 65, Kalanivasal Village, Karaikudi and therefore requested the third respondent/District Collector, Sivaganga District, Sivaganga to direct the fourth respondent/Revenue Divisional Officer Devakkottai to withdraw the memo, dated 25.03.2009. Despite the said communication, dated 10.4.2012 of the first respondent, the impugned proceedings has not been withdrawn till today and thus remains in force till date.

6. Advancing his arguments, the Learned counsel appearing on behalf of the petitioner submits that when the petitioner presented a document in respect of his property on the file of the sixth respondent on 07.10.2014 along with the

proceedings dated 10.04.2012 seeking to register the documents as per the proceedings of the first respondent, the sixth respondent has refused to entertain the same. Hence, the petitioner has filed the present Writ Petition.

7. In this connection, the Learned counsel for the Petitioner cites a decision in T.Sundar .Vs The Sub Registrar, Office of the Sub- Registrar, Palayamkottai, Tirunelveli and another reported in 2010 (2) CWC 159 whereby and whereunder in paragraphs 11 and 12, it is observed and laid down as follows:

"11. Next, it was pointed out by the learned counsel for the Petitioners that a communication has been sent by the second respondent to the first respondent not to entertain any sale deed in respect of the said survey numbers. The Honourable Division Bench of this Court had decided the scope of such direction in the nature of prohibition and whether the same could be issued by either the Government or any other body to the said registration of assurance directing him not to entertain any document. In Thiyavalli Panchayathai Serntha Nochikkadu Grama Vivasayigal Pathukappu Matrum Makkal Pothunala Sangam, represented by its Secretary, Nochikkadu .Vs The Chairman, Tamil Nadu Electricity Board and three others, 2008(3) LW 766, the Honourable Division Bench of this Court held that there is no provision under the statute where the State Government or the respondents therein can validly issue any directions refusing to register any document for which registration is permissible under the provisions of the Act.

12. Therefore, in view of the law laid down by the Honourable Division Bench of this Court, the direction issued by the Second Respondent to the First Respondent is also to be held as unsustainable. In fact, the learned counsel for the Petitioners would submit that the release of the document is always subject to the right which has already accrued in favour of the Tamil Nadu Housing Board by resisting to release the document by the Board is not justifiable."

8. It is to be noted that in the aforesaid decision T.Sundar .Vs The Sub Registrar, Office of the Sub-Registrar, Palayamkottai, Tirunelveli and another reported in 2010 (2) CWC 159, in regard to the direction given by the respondent therein to the Registration Authority not to register certain documents pertaining to certain survey numbers and hold that there is no provision under the statute which enables the respondent to give direction to that effect and further the document for which registration is permissible under the Registration Act has to be registered.

9. He also invites the attention of this Court to the order dated 25.4.2014 in W.P(MD)No. 13811 of 2012 between K.Rajaguru and the Principal Secretary and Commissioner of Land Administration, Chepauk, Chennai, whereby and whereunder in paragraph 8 to 10 it is observed and held as under:

"8. On a misconception that the survey Nos. 65/1 and 65/2 are related to Government properties, the fourth respondent, by memo dated 25.3.2009 which is impugned herein, directed the Sub-Registrar, not to register the documents presented for registration. Subsequently, the Principal Secretary and

Commissioner of Land Administration, by letter dated 10.4.2012, requested the Collector to direct the Revenue Divisional Officer, Devakkottai to withdraw the memo dated 25.3.2009, which is impugned herein and inform the same to the Registration Department. But, till date, the said letter has not been withdrawn, so that the authorities continued refusing registration of the document presented by the Petitioner.

9. The Government filed a counter affidavit referring to the direction given by the Revenue Divisional Officer, Devakkottai, so that the document sought to be registered was not registered. Now, the Government itself requested the District Collector, by letter dated 10.4.2012, to direct the Revenue Divisional Officer, Devakkottai, to withdraw the memo dated 25.3.2009, which is impugned herein and on that score, the impugned order is liable to be set aside.

10. In view of the foregoing reasons and also in view of the decision cited supra, the Writ Petition is allowed and the impugned memo dated 25.03.2009 is set aside and the sixth respondent is directed to register the document presented by the Petitioner, if it is otherwise found fit and release the same, within a period of two weeks from the date of receipt of a copy of this order. Consequently, the connected miscellaneous Petitions are closed. No costs."

10. The primordial contention of the learned counsel for the Petitioner is that the Registration Authority under the Registration Act, 1908 has no power to refuse registration of the document which is permissible to be registered. More over, the Registration Act, 1908 is a self-built Act and Rules made thereunder. The emphatic plea of the petitioner is that the authority concerned is not empowered to address the communication to any other authority not to entertain sale deed in respect of the survey nos in question.

11. Apart from the above, the learned counsel appearing on behalf of the petitioner seeks in aid of the order dated 28.10.2014 made in W.P.(MD).No. 17325 of 2014, in M.Malathy Vs the Principal Secretary and Commissioner of Land Administration and others, wherein this Court had allowed the Writ Petition but passed orders in setting aside the order of the fourth respondent dated 25.03.2009 on the ground that the said order bristles with infirmities, material irregularities and patent illegalities in the eye of law. Furthermore, this Court has also observed that as and when the petitioner therein presents the documents for registration if the same is in accordance with law then the sixth respondent shall register the same in the manner known to law and in accordance with law. The learned counsel for the petitioner submits that the said order dated 28.10.2014 made in W.P.(MD).No. 17325 of 2014 applies to the facts and circumstances of the case with full vigour and vitality. Following the order, dated 28.10.2014, passed by this Court in W.P.(MD).No. 17325 of 2014, this Court allows the Writ Petition by setting aside the order of the fourth respondent in his proceedings in Na.Ka./A1/1357/09, dated 25.03.2009. Consequently, the connected miscellaneous petitions are closed. No costs.