

(2019) 01 CAL CK 0128
In the Calcutta High Court
Case No : Writ Petition (Wp) No. 296 Of 2018

Mohammed Ummer

APPELLANT

Vs

Lieutenant Governor And others

RESPONDENT

Date of Decision : 18-01-2019

Acts Referred:

Andaman And Nicobar Islands Land Revenue And Land Reforms Regulation, 1966 —
Section 2(8), 159, 159(9), 168(A)

Citation : (2019) 01 CAL CK 0128

Hon'ble Judges : Shivakant Prasad, J

Bench : Single Bench

Advocate : M.K.Thakur, SK.Mandal

Final Decision : Disposed Off

Judgement

The petitioner is licensee of a non-agricultural land (house-site) bearing survey no.34/2 measuring an area of 91 square meters situated at village Lamba Line, Port Blair Tehsil, South Andaman District and he filed a petition for issuance of sale permission to the office of the Deputy Commissioner, South Andaman District. The Deputy Commissioner, the respondent No.3 herein refused to issue the sale permission on the ground that the petition was not accompanied by No Dues Certificate issued by the Municipal Council.

Accordingly, the petitioner has sought for issuance of a writ in the nature of Mandamus directing the respondent Nos.2 and 3 to cancel and rescind the impugned order dated 15th March, 2018 passed in RC No.622/2017/DCSA/7973 dated 28th September, 2018 and in Revenue Appeal No.FRA No.06 of 2018 and also to declare that the impugned order so passed in the said proceeding are bad, illegal, arbitrary, whimsical and liable to be quashed and otherwise to compensate the petitioner being a senior citizen an ailing person for mental agony and harassment by paying Rs.5 lakhs towards compensation on account of harassment by the government authorities.

It is reflected from record of holding register that the petitioner is recorded tenant in respect of survey/plot No.34/2 in respect of 91 square meters. Mr.Thakur, learned counsel appearing for the petitioner invites my attention to the Press Release of the Deputy Commissioner, South Andaman dated 15.03.2017 whereby it has been informed to all concerned to seek permission for sale/gift/mortgage permission from the competent authority from the Deputy Commissioner, South Andaman and henceforth it was said that all the applicants who require the said permission has to file and submit relevant application with the certified/self-attested documents (viz copies of RoR, sketch map, No Dues Certificate and non-encumbrance as well as valuation certificate) and any application seeking sale/gift/mortgage permission without accompanying the requisite certificates/self-attested documents shall not be entertained.

It is submitted on behalf of the petitioner that with regard to transfer of interest towards non-agricultural (house-site) in respect of the survey number under reference the Reader to the Deputy Commissioner, South Andaman by letter dated 16th October, 2017 informed the petitioner that after examining his case and the application filed on 3rd October, 2017 that permission for transfer of such land was turned down because the application for transfer of interest has not been accompanied with No Dues Certificate from the Port Blair Municipal Council. An appeal was preferred by the writ petitioner before the Secretary(Revenue) being the Appellate Authority, Andaman and Nicobar Administration, Port Blair against the said order. Revenue Secretary in FRA No.06 of 2018 upheld the order of the Deputy Commissioner vide letter dated 15th October, 2017 by quoting the provisions of section 159(9) of the Andaman and Nicobar Islands Land Revenue and Land Reforms Regulation, 1966 which inter alia, provides that the interest of a licensee of a non-agricultural land shall not be transferable except with the previous permission in writing of the Deputy Commissioner and subject to such terms and conditions as may be specified by him.

The Appellate Authority also made it clear that under Rule 168(a) of the Andaman and Nicobar Islands Land Revenue and Land Reforms Rules, 1968 (A) permission under sub-section (9) of section 159 of the said Regulation to a licence to transfer his interest in any non-agricultural land being a house-site shall not be granted, unless the conditions are satisfied namely, the licensee concerned shall not be a defaulter in payment of any government dues.

Since the letter issued by the Reader of the Deputy Commissioner to the writ petitioner was for the reason that the application for transfer of interest was not accompanied with NOC from the Port Blair Municipal Council, the permission was not accorded.

I have gone through the relevant provisions of section 168(A) sub-clause (a) of the Andaman and Nicobar Islands Land Revenue and Land Reforms Rules, 1968 which reads thus:-

"168 (A) Permission under sub-section (9) of section 159, to a licensee to transfer his interest in any non-agricultural land being a house site shall not be granted, unless the following conditions are satisfied namely:-

(a) The licensee concerned shall not be a defaulter in payment of any government dues;"

In the said provision there is no mention specifically with interpretation clause that No Dues Certificate is required from the Municipal Council though Rule 168(A) (b) provides that in the case of house-site in the Port Blair municipal area the licensee shall have constructed a dwelling house/building on such site in accordance with the building plan duly approved by the Port Blair Municipal Board as prescribed by the Town Planner provided that this condition shall not be applicable to a house site in the Port Blair municipal area, on which the licensee had constructed and/or had commenced the construction of a residential house building prior to coming into being of the Port Blair Municipal Board or prior to the inclusion of the area within the limits of the Port Blair Municipal area as the case may be.

Therefore, it clearly spells out that there is no specific requirement for the No Dues Certificate or encumbrance certificate to be issued by the Municipal Council.

Learned Counsel for the petitioner by supplementary affidavit has enclosed the documents which were in support of the application for permission of transfer of the interest in land with record of holding register (Annexure P), sketch map duly approved by the Tehsildar, Port Blair (Annexure P-1) and the No Dues Certificate/ Non-encumbrance certificate issued on 2nd November, 2016 by the Tehsildar, Port Blair and the valuation certificate so issued on 22nd September, 2017 by the Tehsildar, Port Blair in respect of the said survey no.24/2 with a classification 'House-site' providing valuation certificate.

Mr.Mandal, learned senior counsel for the authority submits that Tehsildar is one of the authority of the Government but the Port Blair Municipal Council is also an authority of the Government. I do not disagree with such submission of Mr.Mandal on the score that the Municipal Council is local self-Government undoubtedly, but considering the interpretation clause as provided in section 2(8) of the Notification as embodied in the Andaman and Nicobar Islands Land Revenue and Land Reforms Regulation, 1966, I find that the Tehsildar is considered to be the authority of the Government to issue such No Dues Certificate/Non-encumbrance certificate for the purpose of permission for transfer of interest of the land to be effected.

I find no reason why the authority of the Deputy Commissioner should reject the prayer of the petitioner in not according permission for transfer of land so prayed and made on behalf of the writ petitioner, ergo, the order impugned dated 28th September, 2018 of the Deputy Commissioner, South Andaman district, Port Blair is hereby quashed.

Accordingly, I direct the respondent authority, particularly, the Deputy Commissioner, South Andaman District, Port Blair to take into consideration all these aspects of the matter as observed in the body of this judgment and to issue permission within three weeks from the date of receipt of a copy of this order.

The writ application being WP No.296 of 2018 is, thus, disposed of.

Urgent certified copy of this order, if applied for, be supplied to the parties upon compliance of usual formalities.