

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

WP.No.18517/2015

Kalaiselvi

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Petitioner

Versus

- 1.The Secretary,
Revenue Department,
Fort St. George,
Chennai-600 009.
- 2.The Inspector General Registration,
Santhome, Chennai-600 028.
- 3.The District Registrar,
Administration
Namakkal,
Namakkal District-637 001.

Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the third respondent to pass the final orders on petition dated 31.07.2012 bearing Reference No.Na.Ka.No.5355/AA1/2012 based on the enquiry conducted by the third respondent and pass necessary orders as per the Circular No.67 dated 03.11.2011 (C.No.52338/C1/2011) of the 2nd respondent herein, within a time framed to be fixed by this Court.

For Petitioner : Mr.AR.L.Sundaresan,
Senior Counsel for
Mr.D.Sathiyaraj

For Respondents: Mr.V.Subbiah, Spl.GP

ORDER

By consent, the writ petition is taken up for final disposal.

2. The deponent of the affidavit claims to be the Power of Attorney agent of the petitioner and submitted that the petitioner is a permanent resident of Malaysia and her husband, while he was alive, executed a registered Power of Attorney dated 11.06.1990 in favour of his brother, who in turn, had entered into an agreement of sale with

one Udayakumar and another in respect of the land and property admeasuring to an extent of 8200 sq.ft. in S.Nos.295/6, 260/1, 260/2 and 2743 sq.ft. in S.No.174/2 situated at Vttampadi village, Namakkal Town and he has also indulged in other illegal activities. The petitioner after the demise of her husband along with his legal heirs, requested his brother-in-law, viz., Selvaraj, to return the properties. But, he was giving evasive reply. Subsequently, criminal complaints were also lodged.

3. The petitioner has filed a petition on 31.07.2012 before the District Registrar, Namakkal, for cancelling the Sale Deeds bearing Document Nos.774/1996, 681/1997, 1145/1997 and 1055/1996 by placing reliance upon the Circular No.67 dated 03.11.2011 issued by the 2nd respondent and the said petition was also numbered as Na.Ka.No.5355/AA1/2012 dated 13.08.2012. The grievance expressed by the petitioner is that though the said application is pending right from 2012, the 3rd respondent did not pass any orders and also informed the petitioner, vide his letter dated 22.06.2015, that the validity of the said Circular has been put to challenge in the writ petition and therefore, he cannot take any further action.

4. Mr.Ar.L.Sundaresan, learned Senior counsel appearing for the petitioner would submit that the challenge made to the said Circular in WP.[MD] Nos.5908/2013 etc., batch, has ended in dismissal, vide common order dated 17.07.2014, reported in CDJ 2014 MHC 2596 [RAMASAMY Vs. THE STATE OF TAMILNADU REP. BY THE SECRETARY, REVENUE DEPARTMENT, FORT ST. GEROME AND OTHERS] and in the light of the said development, there is no impediment on the part of the 3rd respondent to consider the petitioner's application dated 31.07.2012.

5. Heard Mr.V.Subbiah, learned Special Government Pleader who accepts notice on behalf of the respondents 1 to 3.

6. As rightly contended by the learned Senior Counsel appearing for the petitioner, the challenge made to the Circular No.67, issued by the 1st respondent has ended in dismissal and it is also reported in CDJ 2014 MSC 2596 [cited supra] and it is relevant to extract paragraph 12, which reads thus-

"..... 12.To sum up,

[a]The Circular contains effective procedural guidelines for the Registration Authorities in curbing the menace of fraudulent transactions at the hands of land-grabbers and anti-social elements ;

[b]the Circular does not provide any new rule, rather, it is in the nature of suitable instructions for scrupulous adherence by the authorities while exercising the wide powers already available ;

[c]when the power to annul a document is already available to the Registrar himself, as could be seen from section 68 of the Act which empowers the said officer to pass any order consistent with the Act, it can never be construed that such power is derived 'for the first time' from the impugned order.

[d]even otherwise, in terms of section-21 of the General Clauses Act which provides that an authority having power to issue inter alia orders also has power to rescind such order, the guidelines laid down for the authorities in the Department to act with concentrated efforts in exclusively dealing with fraudulent transactions cannot be found fault with as the contents of the Circular are fair and just not only to logical reasoning but also judicial analysis here ;

[e]the Circular is also in fine tune with the ruling of the Apex Court in Indian Bank's case [cited supra] wherein it is made explicit that the Authorities, be they Constitutional, Statutory or Administrative, possess the power to recall their judgments or orders if they are obtained by fraud as Fraud and Justice never dwell ;

[f]for argument sake, even if the Circular is construed to be a rule as if passed under Section - 69 of the Act, in line with the ratio laid down in Rajasthan SRTC V. Santosh [2013 [7] SCC 94] to the effect that simply filing up an existing vacuum till the legislature chooses to make appropriate laws does not amount to taking over the functions of the legislature and therefore, Courts can also issue necessary directions as an interim measure till proper law is enacted by the Legislature, the present Circular also can be safely concluded as an interim measure to fill up the lacunae in dealing with an extraordinary situation due to the menace of fraudulent transactions till a suitable rule is brought in or inserted in the statute ;

[g]already, this Court in A.Nazaar V. Inspector General of Registration [2012 [5] MLJ 487] and in an unreported decision dated 21.12.2012 rendered in WP [MD] No.16914/2012 [S.P.Vasanth V. The District Registrar, Sivaganga], while dealing with the very same Circular, held in good faith that the registering authorities must act in terms of the Circular and in the latter decision, in fact, a

positive direction was issued to the Department to dispose of the appeal of the petitioner as per the Circular impugned herein ; therefore, this Court does not desire to unsettle the things that have been already settled, and

[h]if, contrary, to the scheme of the provisions in the Act, it is held that the Registering Authorities have no power to annul an earlier document, such interpretation would lead to perilous implications harming public interest and public policy by allowing the fraudulent transactions to take place lavishly behind the back of innocent land owners. Therefore, this Court, in a larger public interest, is inclined to uphold the validity of the impugned Circular as there is no negative element subsists therein so as to render it otiose in the course of judicial test.

13. In the light of the foregoing discussion, this Court does not find any illegality or flaw either in the impugned circular or the annulment orders respectively of the IGR and the District Registrars concerned. Consequently, WP [MD] Nos.5908, 3247, 15361, 8003, 13056, 13057, 13516, 13634, 10807, 13889 & 14022/2012 and 331, 454, 1946, 1947, 3681, 3682, 9075, 16712, 17057, 3095/2013, wherein the validity of the Circular and the annulment order is challenged, fail and they are dismissed as devoid of any merit, and WP [MD] Nos.2611, 3450, 3692, 10921, 12204 & 12894/2012, 1627, 2027, 2028, 2181, 2811, 3578, 3651, 4101, 10415, 11280, 14835, 15488, 16606 & 17231/2013 seeking inquiry based upon the Circular are ordered by making it clear that such inquiry shall have to be made only in terms of the provisions of the Act as well as the guidelines issued in the Circular and that there should not be any deviation by delving into the issues relating to title. Connected miscellaneous petitions stand closed. Inasmuch as the only grievance of the petitioner in the contempt petition is that her appeal is not decided by the Registration Department despite the direction issued in the main petition concerned, the authorities are hereby directed to dispose of the same in accordance with law, within four weeks from the date of receipt of a copy of this order. With such direction, the contempt petition stands disposed of."

7. In the light of the above said Judgment, the writ petition is disposed of and the 3rd respondent is directed to consider and dispose of the petitioner's petition dated 31.07.2012 in reference No.Na.Ka. 5355/AA1/*2012 in accordance with law, after putting on notice the persons concerned and pass orders within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken to the petitioner as well as to the persons concerned.

8. The writ petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar(cs iv)

Dated:29.06.2015

***Amended as per order dated
06.07.2015 made in W.P.18517 of 2015**

Sd/- Assistant Registrar(cs-iv)

Dated : 08.07.2015

True Copy

Sub Assistant Registrar

AP

To

1.The Secretary,
Revenue Department,
Fort St. George,
Chennai-600 009.

To be substituted for the
order already despatched

2.The Inspector General Registration,
Santhome, Chennai-600 028.

on 30.06.2015

3.The District Registrar,
Administration
Namakkal,
Namakkal District-637 001.

1 cc to Mr. D.Sathyaraj, Advocate Sr.No.33686

1 cc to Government Pleader.Sr.No.31834

WP.No.18517/2015

ctk(co)

pmk.29.5.2015

CA(08/07/2015)