

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.27283 of 2015

N.Kumar, M.A. B.L.,

Advocate,

No.9/9, 10th Lane,

Adhi Nagathamman Koil Opp. Street,

Indira Nagar, Adyar,

Chennai-600 020.

... Petitioner

Vs.

1.The Secretary to Government,
Law Department,
State of Tamil Nadu,
Fort St. George, Chennai-600 009.

2.Mrs.N.Niraiselvi,
W/o.S.Nithyanandam,
No.57/1, VOC Main Road,
Anna Nagar East,
Chennai-600 102.

3.Mrs.K.Porchelvi,
W/o.K.M.Kulasekaran,
2/32, U Block, 10th Street,
Anna Nagar, Chennai-600 040.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the order of the 1st respondent made in G.O.(M.S.) No.289, dated 13.08.2015 and to quash the same as illegal and violative of principles of natural justice.

For Petitioner : Mr.K.Venkatramani, Senior Counsel
for M/s.G.I.Ramshankar

For respondents : Mr.P.Rajalakshimi, AGP (For R1)
Mr.S.Parthasarathy (For R2 & R3)

ORDER

This writ petition has been filed by the petitioner praying for issuance of a writ of certiorari to call for the order of the 1st respondent made in G.O.(M.S.)No.289, dated 13.08.2015 and to quash the same as illegal and violative of principles of natural justice.

2. In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows:-

The petitioner has been appointed as Notary in the city of Chennai for a period of 5 years with effect from 19.12.2001, which was subsequently renewed periodically and lastly renewed for a period of 5 years from 19.12.2011 and it is due to expire on 18.12.2016. The petitioner has been practicing as a Notary without any negative remark or complaint. While so, one Mr. Manoharan came along with his sisters and brothers and got attestation of respective persons' letters to the Assistant Engineer, Tamil Nadu Electricity Board, Palavakkam, Chennai, wherein they have given no objection in favour of one Mr. R. Manoharan for obtaining an electricity service connection for Door No. 145, Philips Street, Chinna Neelagarai. The said persons were duly identified and on verification only, the petitioner had attested the said letters on 02.06.2011. Nearly after a period of two years, the respondents 2 & 3 herein, who are the brothers of the said Manoharan, have made a complaint to the 1st respondent that the petitioner has attested the signature of them in the affidavit given to the Electricity Board without verifying the residence proof and identifying the persons concerned. Pursuant to the said complaint, the petitioner was called for submitting a written statement and accordingly, he submitted a detailed written statement/defence during August, 2013. Pursuant to his written statement, the 1st respondent referred the matter to the learned Principal Judge, City Civil Court, to conduct an enquiry. Though the 2nd respondent has given a sworn statement, she has not let in evidence; her husband only has let in evidence. The 3rd respondent has let in evidence; but, she herself stated in cross-examination that she came at the instance of her husband. After the oral enquiry, the petitioner has also submitted a detailed written arguments before the enquiry authority viz., the learned Principal Judge, City Civil Court, but the same has not been considered. The learned Principal Judge, City Civil Court has submitted his report stating that though there is no proof for forgery, the complaint made by the respondents 2 & 3 were proved; but, a copy of the said report was not furnished to the petitioner. The 1st respondent has not called for any further explanation on the basis of the report; but, as per the impugned proceedings in G.O. Ms. No. 289 Law (Administration) Department, dated 13.08.2015, cancelled the petitioner's certificate of Practice and removed his name from the Register of Notaries maintained by the Government under Section 4 of the Notaries Act. Aggrieved by the same, the petitioner has come forward with the present writ petition before this Court.

3. The 1st respondent has filed a counter, contending that the respondents 2 & 3 in their complaints dated 24.06.2013, have alleged that the petitioner herein has

attested in a No Objection Letter dated 02.06.2011 as if the respondents 2 & 3 have signed in it so as to enable one Thiru.Manoharan to get EB connection illegally for the land comprised in Survey No.68/1C, 69/2 and 69AC which is the subject property in a Civil case pending against him. The respondents 2 & 3 have in their respective complaints stated that they have not signed in the said No Objection Letter, dated 02.06.2011 and their signatures were forged and the residential addresses of both the respondents 2 & 3 mentioned in the said document are also wrong. In this regard, the complainants/respondents 2 & 3, have requested to take necessary action against the Notary/petitioner herein for not verifying the identity of the executants before attesting the document. In this connection, written statement of defence was called for from the petitioner in the aforesaid two complaints vide Government letter, dated 31.07.2015 under Sub-Rule (5) of Rule 13 of the Notaries Rules, 1956. The petitioner had also submitted his written statement of defence dated 13.08.2015, wherein he had denied the allegations as baseless, stating that he had attested the said 'No Objection Letter', dated 02.06.2011, only after verifying the identity of the executants. Since the petitioner/Notary has not produced any documentary evidence to prove his contention and in order to find out whether the executants/deponents have signed in the Notarial Register maintained by the petitioner/Notary as required under Rule 11(2) of the Notaries Rules, in Government Letters, dated 06.09.2013, the learned Principal Judge, City Civil Court, Chennai was requested through the Registrar General, High Court of Madras, to conduct an enquiry under the said Rules and submit a report to the Government. After conducting the inquiry, the learned Principal Judge, City Civil Court, Chennai has observed in his inquiry report as follows:-

"11. In the case on hand, the Notary has admitted that he has attested the execution of the document in question. The document bears his seal of Notary. His case is that the executants signed the document in his presence and he has attested the execution after the executant identified herself. However, he has not let in any evidence to prove his case. Pleading does not take the place of proof. Pleading should be proved by evidence. It is not his case that the executant was personally known to him at the time of execution of document, so as to dispense with the necessity of identification of the executant. The document in question would not disclose that the executant was identified by any one to the Notary. There is also no other material to show that the Notary has ascertained the identity of the executant and verified the address of the executant of the document.

12.It would be incumbent upon the Notary to refute the allegations by producing Notarial Register besides other materials, which he would rely on. Unfortunately, the Notary has not produced the Notarial Register (Form XV) which would have gone a long way in resolving the issue. There is no explanation forthcoming from the Notary for the non-production of the Notarial Register. It is well settled that a party who is in possession of the best evidence and a party who is the best person to give evidence on certain matter should enter the witness box and place the facts before the Court and in the event of his failure to do so, the Court is bound to draw adverse inference against him.

13.There is no explanation as to why the Notary, who is the best person to speak about the notarial act in question, has not examined himself as a witness. He did not subject himself to cross examination. In these circumstances, this authority is left with no option except to draw an inference that the version of the complainant is acceptable and if the Notarial Register is produced, it will falsify the version of the Notarial Public.

14.For the reasons stated above, without expressing any definite opinion on the issue of forgery in view of the litigation said to be pending before the Civil Court, I hold that the allegations that the Notary, while performing his notarial act, has attested the document in question without ascertaining the identity of the executant and also without verifyign the address of the executant of the document, have been substantiated." सत्यमेव जयते

Thus, the learned Principal Judge, City Civil Court, Chennai has concluded that the petitioner failed to produce the Notarial Register which could have gone a longway in resolving the issue and it is mandatory to maintain the Notarial Register by making entries of every Notarial act. Only after examination of the enquiry report, the 1st respondent has passed the impugned order. Thus, the 1st respondent sought for dismissal of the writ petition.

4.The respondents 2 & 3 have filed a joint counter, stating that the litigations between the respondents 2 & 3 and the said Manoharan is pending from the year 1997 before the Alandur District Munsif Court, with regard to the property for which the 'No Objection Letter' is alleged to have been executed. There is no chance of the respondents 2 & 3 to go

along with the said Manoharan on 02.06.2011 for getting attestation from the petitioner herein/Notary, for obtaining an electricity service connection for Door No.145, Philips Street, Chinna Neelangarai. There is no delay in preferring the complaint before the 1st respondent. Further, on the factual aspects, it is stated by the respondents 2 & 3 that the respondents 2 & 3 are the daughters of one late T.M.Ramachandran through his first wife and he was the owner of the lands measuring Acres 6.95 cents, Acre 0.28 cents and Acre 0.30 cents comprised in Survey Nos.68/1, 69/2 and 69/4 respectively, totally admeasuring Acre 7.53 cents in No.145, Neelangarai Village, Neelangarai Taluk. Their father Ramachandran bequeathed the said property in favour of the respondents 2 & 3 in the proportion of Acre 3.57 cents and acre 3.96 cents respectively, vide registered Will dated 22.04.1971. The said Will came into force after the death of their father Ramachandran on 18.05.1994. Thus, the respondents inherited the said property by virtue of the Will dated 22.04.1971. In the said Will itself, it has been clearly stated that neither his second wife nor her children had any right over the said property. The remaining properties of the father of the respondents 2 & 3 were partitioned between the legal heirs of their father including one Manoharan, who is the son of the second wife of father of the respondents 2 & 3. The said Manoharan, having no right over the suit property, has created documents based on false representations and trying to alienate the said property. Hence, the 2nd respondent filed a suit in O.S.No.400 of 2006 before the Additional District Munsif Court at Alandur, seeking permanent injunction restraining the said Manoharan from alienating the suit property in any manner to any person and also obtained an interim injunction order. The 3rd respondent has also filed a suit in O.S.No.3169 of 1997 against the said Manoharan for permanent injunction, which is also pending on the file of the learned Principal District Munsif, Alandur. While things being so, it is highly impossible for the respondents 2 & 3 to give 'No Objection' in favour of the said Manoharan to obtain Electricity Connection to their property. But, based on the attestation of the petitioner herein/Notary, the said Manoharan obtained electricity connection in his name in respect of the property of the respondents 2 & 3. Based on the EB connection, the said Manoharan is fabricating false documents one after the other as if he is owner of the subject property. The petitioner, being a Notary, is bound to take care about identification of executants under the Notarial Act. As per the Notaries Act, 1952 and as per Rule 11 of the Notaries Rules 1956, the Notary should maintain a Notarial Register in the prescribed Form XV, and the deponent should sign in Column 10, which has not been followed by the petitioner herein and he has also not presented the said Notarial Register before the Court. Thus, the respondents 2 & 3 sought for dismissal of the writ petition.

5. When the matter is taken up for consideration, the learned senior counsel appearing for the petitioner invited the attention of this Court to para 11 of the impugned order passed by the 1st respondent, wherein it has been stated as follows_

"The Principal Judge, City Civil Court, Chennai has concluded that without expressing any definite opinion on the issue of forgery in view of the litigation said to be pending before the Civil Court, held that the allegations against the said Notary that while performing his notarial act, has attested the document in question without ascertaining the identity of the executant and also without verifying the address of the executant of the document, have been substantiated. The Principal Judge, City Civil Court, Chennai on the basis of the available documents has also come to a conclusion that the allegations levelled against Thiru.N.Kumar, Notary in the City of Chennai in the two complaints are proved."

It is submitted by the learned senior counsel appearing for the petitioner that by relying upon the above said report of the Principal Judge, City Civil Court, the 1st respondent has passed the impugned order. When the 1st respondent has chosen to rely upon the above said report of the learned Principal Judge, City Civil Court, a copy of the report ought to have been furnished to the petitioner. But, the petitioner was not furnished with a copy of the report of the Principal Judge, City Civil Court. Thus, the petitioner was deprived of his right to make his objections, before passing the impugned order. Therefore, there is a violation of principles of natural justice and as such, the impugned order is liable to be set aside. In this regard, the learned senior counsel appearing for the petitioner has also relied upon the decision of the Hon'ble Supreme Court reported in (1991) 1 SCC 588 [Union of India and others Vs. Mohd. Ramzan Khan], wherein it has been held as follows:-

"We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter."

6. The learned Government Advocate appearing for the 1st respondent as well as the learned counsel appearing for the respondents 2 & 3, made their submissions, vehemently opposing the prayer of the petitioner.

7. I have carefully heard the submissions made on either sides and perused the materials available on record.

8. The main allegation against the petitioner is that while performing his notarial act, he has attested the document in question without ascertaining the identity of the executant and also without verifying the address of the executant of the document. In this regard, after conducting enquiry, the learned Principal Judge, City Civil Court, Chennai, sent a report to the 1st respondent. It is the submission of the learned counsel for the petitioner that copy of the said report was not furnished to the petitioner before passing the impugned order; thus, according to the learned counsel for the petitioner, the impugned order is liable to be quashed.

9. No doubt, a copy of the report of the learned Principal Judge, City Civil Court, Chennai, was not furnished to the petitioner by the 1st respondent before passing the impugned order. But, I find that the petitioner himself has not produced any document to show that the executants/deponents have signed in the Notarial Register maintained by the petitioner/Notary as required under Rule 11(2) of the Notaries Rules. The petitioner has failed to produce any document to prove his contention. Therefore, it prima facie shows that there is violation of the Notaries Rules, on the part of the petitioner.

10. However, considering the factual aspects of the case and taking note of the fact that the petitioner's period as Notary is coming to an end by December, 2016 and he has only another 10 months period, this Court is of the opinion that instead of cancelling his licence, it would be appropriate to treat the period of six months from the date of issuance of impugned order to till date, as suspension period for the petitioner, for violation of the Notaries Rules by the petitioner.

11. Accordingly, the impugned order is set aside and the punishment imposed on the petitioner by the 1st respondent is hereby modified to the effect that the period from the date of impugned order to this date, is ordered to be treated as suspension period for the petitioner, as per Rule 13(12)(b) (ii) of Notaries Rules. It is made clearly that the civil suits pending between the parties can be decided without being influenced by this order.

With the above terms, the writ petition is partly allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

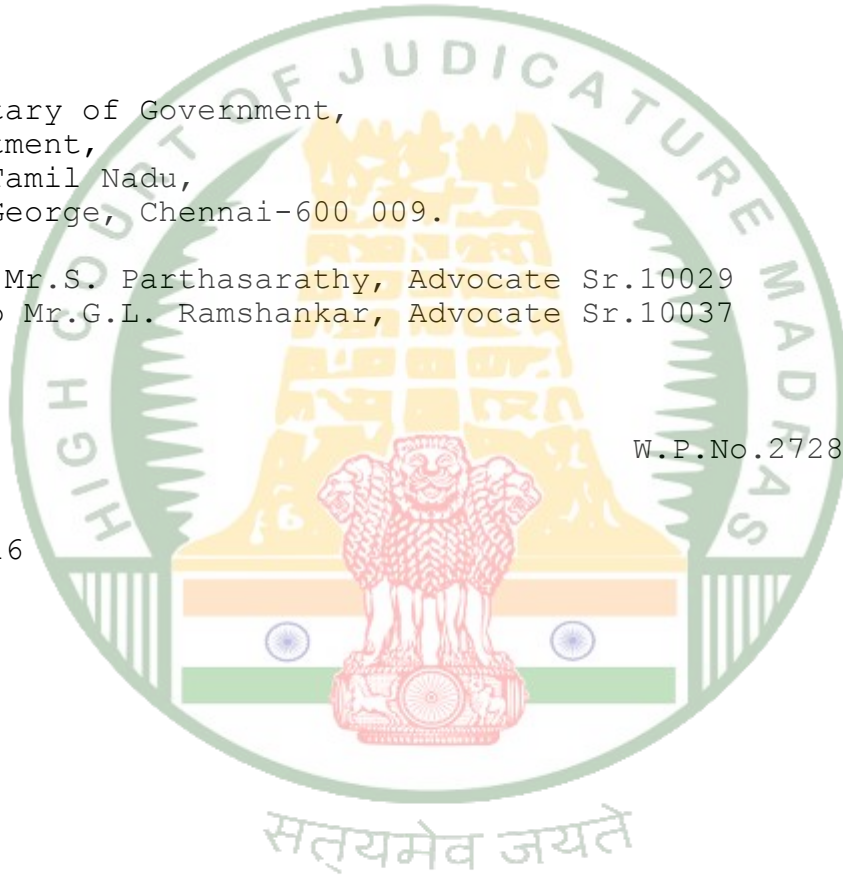
ssv

To
The Secretary of Government,
Law Department,
State of Tamil Nadu,
Fort St. George, Chennai-600 009.

+ 1 cc to Mr.S. Parthasarathy, Advocate Sr.10029
+ 2 ccs to Mr.G.L. Ramshankar, Advocate Sr.10037

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