

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2016

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM

AND

THE HON'BLE MR.JUSTICE P.KALAIYARASAN

Writ Appeal No.765 of 2013

AGAINST

W.P.NO.11224/2012

1 S.CHELLAPPAN ..[APPELLANT]/PETITIONER

Vs.

1 THE STATE OF TAMILNADU
REP. BY ITS SECRETARY TO GOVERNMENT
COMMERCIAL TAXES AND REGISTRATION DEPARTMENT
ST. GEORGE FORT, CHENNAI-9.

2 THE INSPECTOR GENERAL OF REGISTRATION
OFFICE OF THE REGISTRATION DEPARTMENT
SANTHOME HIGH ROAD, MYLAPORE
CHENNAI-4.

3 THE DISTRICT REGISTRAR (SOUTH)
NO.9, JEENEES ROAD
SAIDAPET, CHENNAI-15.

4 THE JOINT SUB REGISTRAR-1
SAIDAPET, SOUTH CHENNAI
CHENNAI-15.

5 DR.V.P.R.VARADARAJAN ..[RESPONDENTS]/RESPONDENTS

WRIT APPEAL filed under Clause 15 of Letters Patent against the order passed in W.P.No.11224 of 2012 dated 28.1.2013 on the file of this Court.

W.P.NO.11224/2012:- This Writ Petition filed under Article 226 of the Constitution of India, Praying for the issuance of a Writ of Prohibition Prohibiting the 3rd respondent from holding or

conducting any proceedings or enquiry regarding the validity of the registered Sale Deed Document Nos.2132/2008 dated 31.3.2008 2133/2008, dated 31.3.2008 and 6083/2010 dated 18.8.2010 based on the alleged petitioner of the 5th respondent dated 24.11.2011.

For Appellant : Mrs.Chitra Sampath,
Senior Counsel for
M/s.T.S.Baskaran

For Respondents : Mr.N.Ravichandran,
Additional Government Pleader
for R1 to R4
Mr.AR.L.Sundaresan,
Senior Counsel for
Mr.V.G.Suresh Kumar for R5

J U D G M E N T

(Judgment of the Court was delivered by
A.SELVAM, J)

This Writ appeal has been directed against the order dated 28.1.2013 passed in Writ Petition No.11224 of 2012 by the learned Single Judge of this court.

2. The appellant herein, as petitioner, has filed Writ Petition No.11224 of 2012 under Article 226 of the Constitution of India, praying to issue a Writ of Prohibition or any other appropriate Writ against the third respondent from conducting enquiry on the basis of the notice dated 23.4.2012.

3. It is averred in the petition that the petitioner has purchased certain properties by virtue of Sale Deeds dated 31.3.2008 and 18.8.2010 and after getting registration, the third respondent, viz., District Registrar has sent the impugned notice dated 23.4.2012 and thereby directed the petitioner to appear for enquiry on 11.5.2012 with all documents on the basis of the complaint given by by one Varadarajan. Under such circumstances, present writ petition has been filed for getting the relief sought therein.

4. The learned Single Judge, after considering the contentions put forth on either side, has dismissed the Writ Petition. Against the dismissal order, present Writ Appeal has been preferred at the instance of the petitioner, as appellant.

5. The learned counsel appearing for the appellant/petitioner has repeatedly contended that the District

Registrar/third respondent has no power under the provisions of the Registration Act, 1908 (16 of 1908) to issue Notice dated 23.4.2012 on the basis of the complaint given by a third party. Under such circumstances, present Writ petition has been filed for getting the relief sought therein, but the learned Single Judge, without considering the locus standi of the third respondent/District Registrar to issue such kind of notice, has erroneously dismissed the Writ Petition and therefore, the impugned order passed by the learned Single Judge is liable to be set aside.

6. Per contra, the learned counsel appearing for the third respondent/District Registrar relied upon Section 82(a) of the Registration Act, 1908.

7. The learned senior counsel appearing for the fifth respondent has contended that on the basis of the complaint given by the fifth respondent, the notice has been issued for conducting a detailed enquiry on 11.5.2012 and further, as per Circular dated 3.11.2011 issued by Inspector General of Registration vide No.67, the District Registrar/third respondent is having unfettered power to issue such kind of notice. The learned Single Judge, after considering the rival contentions put forth on either side, has rightly dismissed the writ petition and therefore, the order passed by the learned Single Judge does not call for any interference.

8. It is an admitted fact that by virtue of three Sale Deeds, the petitioner has purchased certain properties. It is also equally an admitted fact that the third respondent/District Registrar has given the impugned notice dated 23.4.2012, whereby directed the present petitioner and one Ganesa Pandian to make appearance for enquiry to be held on 11.5.2012.

9. The only gravamen expressed on the side of the appellant/petitioner is that there is no specific provision, which enables the District Registrar/third respondent, in the Registration Act, 1908 to give such kind of notice, on the basis of a complaint given by a third party, who is not having connection whatsoever with the particular registered documents. But, in the instant case, the third respondent/District Registrar has given the impugned notice erroneously.

10. As adverted to earlier, learned counsel appearing for the third respondent has simply relied upon the provision of Section 82(a) of the Registration Act. Section 82 of the said Act deals with penalty for making false statements, delivering false copies of translations, false personation and abetment etc.

11. In the instant case, such occurrence has not taken place.

12. The learned senior counsel appearing for the fifth respondent has solely relied upon the circular issued by Inspector General of Registration vide No.67, wherein it has been specifically stated like thus:

"Finally, they have opined as follows:-

"In the considered opinion of this Court, if a person sells away the property belonging to the other, it would certainly be fraud on the statute. It would be adding insult to injury, if such person is asked to go to civil court and get the subsequent sale deed cancelled or seek a declaration."

In this regard, attention is further drawn to Sections 34(3) and 35 read with Rule 55 of the Registration Act, wherein duty has been cast on the Sub-Registrars to consider objection raised on the grounds that the parties appearing before them are not the persons they profess to be or that the document is forged or that the representative/agent/assignee has no right to appear in that capacity or that the existing party is not really dead as alleged.

In the light of the above discussion, following mandatory procedure is prescribed to deal with the complaints relating to fraudulent registrations through impersonation or production of false documents and evidences."

13. From a close reading of the portion of the circular indicated above, this Court is of the considered view that on the basis of the complaint, the District Registrar is having power to conduct enquiry. Further, the said Circular has been challenged in a batch of Writ Petitions and the same have been dealt with by the learned Single Judge of this Court and ultimately held that the circular issued by the Inspector General of Registration holds good, vide 2014 (4) CTC 627 (Ramasamy vs. State of Tamil Nadu).

14. The learned counsel appearing for the appellant/petitioner has relied upon the following portion, which has been mentioned in the Circular dated 3.11.2011:

"However, these instructions will not apply to the cases where the complainant has admitted execution by

himself due to whatever reasons. It is further emphasized that the procedure prescribed above is only to deal with fraudulent registrations done and it should in no way be construed to mean that the registering authority shall go into the issue of deciding title in case of rival claims on certain basis."

15. A mere reading of the portion of the circular mentioned supra, it is made clear that if the complainant himself has admitted execution of documents, the instructions given in the Circular are not applicable.

16. In the instant case, the contention of the fifth respondent is totally otherwise. Under such circumstances, this Court is of the view that the third respondent is having ample power to issue such kind of notice and further the date mentioned in the notice has also expired and therefore, there is no merit in the Writ Appeal and altogether the same deserves to be dismissed.

In fine, this Writ Appeal is dismissed. No costs.

ajr

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

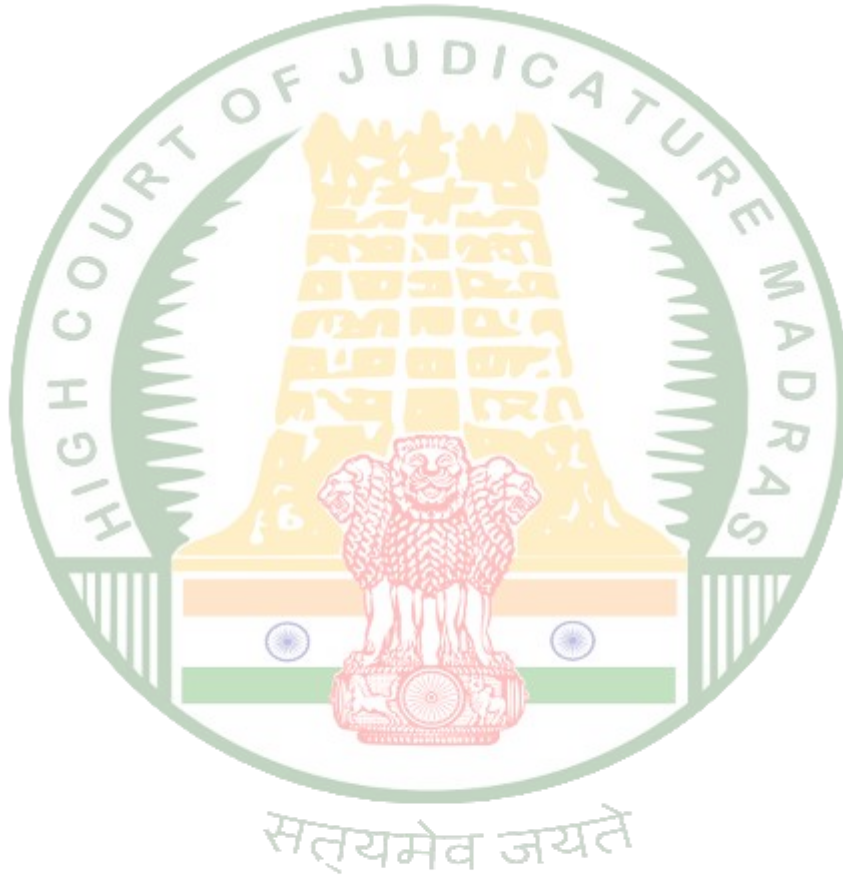
To

- 1 THE SECRETARY TO GOVERNMENT
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+ 1 cc to Mr.V.G.Suresh Kumar, Advocate Sr 36496
+ 1 cc to The Govt.Pleader, Sr 36673
+ 2 ccs to M/s.T.S.Baskaran, Advocate Sr 36581

KR/4/7/16

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