

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.23687 to 23692 of 2016

D.Gunasekaran ... Petitioner in W.P.Nos.23687, 23688,
23689, 23691 & 23692 of 2016

G.Kandavel ... Petitioner in W.P.No.23690 of
2016

Vs.

1. The District Registrar (Admn.)
State Bank Road,
District Collector Office Complex,
Coimbatore - 641 018.
2. The Sub-Registrar - Joint I,
State Bank Road,
District Collector Office Complex,
Coimbatore - 641 018. ... Respondents in all W.Ps.

W.P.No.23687 of 2016: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, calling for the records of the 1st respondent in AP 7/A1/2014, dated 14.06.2016 and quash the same and consequently direct the 2nd respondent to release the petitioner's sale deed, dated 02.01.2012 presented on 03.01.2012 in the office of the 2nd respondent, bearing Document No.P2/2012.

W.P.No.23688 of 2016: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, calling for the records of the 1st respondent in AP 9/A1/2014, dated 14.06.2016 and quash the same and consequently direct the 2nd respondent to release the petitioner's sale deed, dated 23.12.2011 presented on 03.01.2012 in the office of the 2nd respondent, bearing Document No.P3/2012.

W.P.No.23689 of 2016: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, calling for the records of the 1st respondent in AP 6/A1/2014, dated 14.06.2016 and quash the same and consequently direct the 2nd respondent to release the

petitioner's sale deed, dated 27.12.2011 presented on 28.12.2011 in the office of the 2nd respondent, bearing Document No.P260/2011.

W.P.No.23690 of 2016: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, calling for the records of the 1st respondent in AP11/A1/2014, dated 14.06.2016 and quash the same and consequently direct the 2nd respondent to release the petitioner's sale deed, dated 07.12.2011 presented on 08.12.2011 in the office of the 2nd respondent, bearing Document No.P209/2011.

W.P.No.23691 of 2016: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, calling for the records of the 1st respondent in AP 8/A1/2014, dated 14.06.2016 and quash the same and consequently direct the 2nd respondent to release the petitioner's sale deed, dated 05.01.2012 presented on 06.01.2012 in the office of the 2nd respondent, bearing Document No.P21/2012.

W.P.No.23692 of 2016: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, calling for the records of the 1st respondent in AP 10/A1/2014, dated 14.06.2016 and quash the same and consequently direct the 2nd respondent to release the petitioner's sale deed, dated 27.12.2011 presented on 28.12.2011 in the office of the 2nd respondent, bearing Document No.P261/2011.

For Petitioner in all W.Ps. :Mr.Venkatesh
Mahadevan

For Respondents in all W.Ps. :Mr.C.Manishankar,
Addl. Advocate General
assisted by
Mr.S.Diwakar,
Special Government Pleader

COMMON ORDER

Since the issue involved in all these cases is one and the same, all the Writ Petitions are taken up for disposal by a common order.

2. For the sake of brevity, the case of the petitioner in W.P.No.23687 of 2016 alone is discussed here. According to the petitioner in W.P.No.23687 of 2016, he purchased a vacant land to an extent of 2686 sq. ft. vide Sale Deed, dated 02.01.2012

for a consolidated sale consideration of Rs.6,19,000/- from one Salunnisa and presented the same for registration in the office of the Sub-Registrar Joint I, Coimbatore, on 03.01.2012. The 2nd respondent gave a temporary number to the Sale Deed vide P2/2012 and it was kept pending on the ground that certain persons as Power of Attorney of the original owners have made sale transactions and a Gift Deed in favour of the Special Officer, Kurinchi Municipality, as though the said property is a layout.

3. It is the further case of the petitioner in W.P.No.23687 of 2016 that the subject land comes under the Coimbatore Corporation limits. However, the Special Officer, Kurinchi Municipality, vide his letter dated 24.07.2009, has clearly stated that for the lands in Survey No.511/1, no application has been received for sanctioning a residential layout and that no sanction as such has been given by Kurinchi Municipality for converting the said lands into a residential layout. Though the 2nd respondent has been apprised of the said facts, unmindful of the documentary evidence, he returned the documents in P.No.2/2012, after a period of more than three years. Pursuant to the same, the petitioner filed an appeal as prescribed under the Act before the 1st respondent herein on 08.09.2014. The 1st respondent dismissed the said appeal on 14.06.2016, in view of the Circulars issued by the Inspector General of Registration, Chennai, vide Circular No.18339/C1/2012, dated 25.04.2012 and Circular No.18223/C1/2013, dated 08.11.2013.

4. Learned counsel for the petitioners contended that none of the documents presented by the petitioners have neither been discussed nor been acknowledged by the 1st respondent in the impugned orders. He further contended that the orders passed by the Appellate Authority are totally without application of mind, as they have been passed after two years from the date of presentation of the appeal, while both the so-called Circulars have been issued in the years 2012 and 2013 itself. According to the learned counsel, the petitioners presented the Sale Deed for registration before the 2nd respondent much prior to the issuance of Circulars and hence, contended that rejecting the request of the petitioners, more particularly with reference to Rule 162-A of the Registration Rules, is bad and that the said provision does not apply to the facts of this case.

5. It is also contended by the learned counsel for the petitioners that merely because some fraudulent persons have transacted and there is encumbrance and that they are in possession of some other property, it may not be a ground to return the documents of the petitioners and the Appellate Authority has completely went tangent and rejected the request of the petitioners. According to the learned counsel, the order

of the Appellate Authority confirming the order of the Original Authority, thereby returning the pending documents ignoring the provisions of law, has to be decided only in this Court and that for statutory violation, the remedy lies only before this Court. He further submitted that when facts are not disputed, certainly, this Court can entertain the Writ Petitions without relegating to alternative remedy.

6. In support of his case, learned counsel for the petitioners has relied on the following :

(i) a Supreme Court decision in the case of State of Rajasthan vs. Basant Nahata, (AIR 2005 SCC 3401), wherein, it is held that execution of power of attorney per se, is not illegal. Sections 32 and 33 of the Registration Act does not bar any such registrations. The whole aim of the Act is to govern documents and not the transactions embodied therein. Thereby, only the notice of the public is drawn. In absence of any substantive provisions contained in a parliamentary or legislative Act, a person cannot be refrained from dealing with his property in any manner he likes.

(ii) a decision of this Court in the case of Mathews, M.L. vs. The Inspector General of Registration, (2007 (3) CTC 243), wherein, it is held that Registration Authority cannot refuse to register a document unless they demonstrate that registration of document would be contrary to public policy or in violation of applicable law.

(iii) yet another decision of this Court in the case of K.Kala vs. District Registrar, (2016 (3) MLJ 50), wherein, it is held that in the absence of any interim order, the official respondents viz. the District Registrar concerned cannot refuse to release documents in question, thereby, the Writ Petition was allowed.

7. In reply, Mr.C.Manishankar, learned Additional Advocate General drew the attention of this Court to the orders impugned in the Writ Petitions and submitted that the facts are in dispute and there are several documents that have been registered and cancelled. According to him, though the petitioners may be genuine purchasers, since the facts are in dispute, the remedy lies only before the Civil Court in terms of Section 77 of the Registration Act, 1908. He further submitted that the Appellate Authority has clearly observed that some of

the documents in S.Nos.510 and 511/1 have been registered to different persons and that an extent of more than 60,000 sq. ft. has been remanded to Kurichi Municipality.

8. Learned Additional Advocate General also submitted that the request of the petitioners has been denied and the documents have been returned due to the fact that the lands in question are said to have been registered in the names of some fraudulent persons and a Gift Deed has been made in the favour of Special Officer, Kurichi Municipality and that there are encumbrances as per records. According to him, the request of the petitioners could not be considered for the reason that they have not been able to produce any relevant document from the original purchaser, as the said document runs to several years, i.e. from the year 1917. Non-production of any document by the petitioners atleast prior to 30 years from the date of registration, is also a reason for the rejection of their request.

9. Though the learned Additional Advocate General fairly submitted that Rule 162-A of the Rules may not be applicable to the facts of this case, merely quoting a legal provision may not be a ground to interfere with the impugned orders. He also submitted that the Circulars referred to by the petitioners are not at all relevant to the facts of this case and also it is open to the petitioners to get appropriate judgment and decree from the Civil Court in order to enable the Sub-Registrar concerned to register the documents.

10. In reply, learned counsel for the petitioners submitted that there was no Gift Deed at all, as contended by the learned Additional Advocate General. He further submitted that as the matter is pending for more than six years, relegating the petitioners for an alternative remedy at this distant point of time, more particularly to seek declaration in Civil Court is not required and in that event, the petitioners need to shell out more money than the money they had paid in 2011/2012 at the time of registration of the documents.

11. Heard the learned counsel on either side and perused the material documents available on record.

12. It is not in dispute that the petitioners have purchased the properties in question for sale consideration and presented the documents for registration. But, the same have been kept pending for a long time, without registration. It is also true that the Original Authority as well as the Appellate Authority kept the matter pending for years together. Though orders with regard to return of the documents have been passed, the documents have not yet been returned to the petitioners and that the impugned orders of rejection of the appeals have been

passed after two years of filing the appeals.

13. In the communication of the Special Officer, Kurichi Municipality, dated 24.07.2009, it is clearly stated that for the lands in Survey No.511/1, no Planning permission as also permission for residential layout has been granted.

14. For the sake of convenience, Sections 35, 75(2), 75(3), 76, 77 of the Registration Act, 1908 and Rules 126 and 162-A of the Registration Rules, are extracted hereunder:
Registration Act, 1908:

35. Procedure on admission and denial of execution respectively.—

(3) (a) If any person by whom the document purports to be executed denies its execution, or

(b) if any such person appears to the registering officer to be a minor, an idiot or a lunatic, or

(c) if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution, the registering officer shall refuse to register the document as to the person so denying, appearing or dead: Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII

75. Order by Registrar to register and procedure thereon.—

(2) If the document is duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60.

(3) Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

76. Order of refusal by Registrar. (1) Every Registrar refusing—

(a) to register a document except on the ground that the property to which it relates is not situate within his district or that the document ought to be registered in the office of a Sub-Registrar, or

(b) to direct the registration of a document under section 72 or section 75, shall make an order of refusal and record the reasons for such order in his Book No. 2, and, on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

(2) No appeal lies from any order by a Registrar under this section or section 72.

77. Suit in case of order of refusal by Registrar.—

(1) Where the Registrar refuses to order the document to be registered, under section 72 or a decree section 76, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.

Registration Rules, 1908:

Rule 162 - When the registration is refused the reasons for refusal shall be at once recorded in book 2. They will usually come under one or more of the heads mentioned below—

XI. Section 35- that execution is denied by any person purporting to be an executing party or by his agent.

162-A. No registration officer shall accept for registration any document or service agreement evidencing bonded labor or transaction constituting an offense under any law or opposed to public policy or morality.

15. A reading of the provisions of the Registration Act and Rules makes it very clear that the Registrar is bound to register a document, provided if it is in order. It is no doubt true, that the Registrar will have to satisfy himself with regard to the documents presented. It may be a genuine case of the petitioners having presented the documents. In the case on hand, serious irregularities have been committed with regard to registration of the documents, in which, not only the Sub-Registrar, but also the parties are involved. It may be true that there are no rival claims and the petitioners have purchased properties from the legal heirs of one Bashan Sahib and his wife Kasim Bi and that the amount towards sale consideration has been parted with.

16. To ascertain as to whether there is encumbrance or not, necessary documents need to be presented by the petitioners before the appropriate Civil Court in terms of Section 77 of the Act in order to enable them to get appropriate judgment and decree, so that the documents can be registered by the authority concerned. Further, it is for the parties to decide as to whether they will have to file a suit for declaration or for mandatory injunction. But, taking note of the fact that there is a sale consideration and that there are no rival claims as stated by the petitioners, as the orders of the Appellate Authority are under challenge, it is for the petitioners to make an application before the appropriate forum seeking necessary relief.

17. Admittedly, Rule 162-A referred to by the Appellate Authority is not at all applicable to the facts of this case. Though, I find much force in the contention of the learned counsel for the petitioners that the two Circulars referred by him is only after presentation of the documents, it may not be relevant to the facts of this case and probably due to the pendency of the appeals, the Appellate Authority has completely ignored the date of filing of the appeal in time. It is upto the appropriate Civil forum to decide upon the two Circulars referred to by the petitioners.

18. Learned Additional Advocate General submitted that the time limit prescribed under the Limitation Act is not applicable to the facts of this case, in view of Section 77 of the Act.

19. Taking note of the said submission, this Court is of the view that the petitioners should have filed the Writ Petitions within 30 days from the date of the rejection order, only then they would be entitled to get the relief before the Civil Court. Since the Writ Petitions are filed within 30 days, the period of pendency of the Writ Petitions shall be excluded for the purpose of filing the Civil Suit and if any suit is filed within time, the appropriate Civil Court shall proceed with the matter on a day-to-day basis without adjourning the matter beyond three working days at any point of time and pass a judgment and decree within a period of six months from the date of filing the Civil Suit.

20. The 2nd respondent herein is directed to return the pending documents to the petitioners within ten days from the date of receipt of a copy of this order, in order to enable the petitioners to approach the appropriate Civil Court.

No costs. Consequently, connected W.M.P.Nos.20279 to 20284 of 2016 are closed.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

(aeb)

To:

1. The District Registrar (Admn.)
State Bank Road,
District Collector Office Complex,
Coimbatore - 641 018.

2. The Sub-Registrar - Joint I,
State Bank Road,
District Collector Office Complex,
Coimbatore - 641 018.

W.P.Nos.23687 to 23692 of 2016

SP(08/12/2017)