

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Writ Appeal No.521 of 2017

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order of the learned Single Judge in W.P. No. 2081 of 2017 dated 23.1.2017. The appellant herein is the 4th respondent in the writ petition. The 1st respondent herein filed the said writ petition to declare the inaction on the part of the 3rd respondent therein, in initiating proceedings under Sections 82 to 84 of the Registration Act, 1908 (for short 'the Act') based on the representation submitted by her on 3.10.2016, as arbitrary and illegal. The Writ Petition was allowed at the stage of admission directing the Sub-Registrar to consider the 1st respondent-writ petitioner's representation in accordance with law within a period of eight weeks from the date of receipt of a copy of the order after issuing notice to the affected parties.

The complaint of the learned counsel for the appellant is that, as the Sub-Registrar lacks jurisdiction to adjudicate disputes, this Court, by the order under appeal, could not have conferred such a jurisdiction on him; and the writ petition was allowed even without the appellant-4th respondent being put on notice, and without being given an opportunity of being heard.

Sri J. Prabhakar, learned counsel for the 1st respondent-writ petitioner, would submit that the Sub-Registrar has the power under Section 83 of the Act to initiate prosecution where registration of a document is vitiated by fraud; the 1st respondent-writ petitioner had only called upon the Sub-Registrar to exercise the powers vested in him under Section 83 of the Act; the order of this Court merely requires him to exercise discretion, and does not obligate him to initiate proceedings under Section 83; and it is always open to the Sub-Registrar to take a

decision whether or not to initiate proceedings under Section 83 of the Act.

It is evident that the appellant, who has been arrayed as the 4th respondent in the writ petition, was neither put on notice nor was she given an opportunity of being heard before the impugned order came to be passed. While the order requires the Sub-Registrar to take action under Section 83 of the Act, the consequence of action being taken under Section 83 is that criminal proceedings would be initiated against the appellant-4th respondent. Such an order, which would undoubtedly cause prejudice to the appellant-4th respondent, could not have been passed without putting her on notice and without giving her an opportunity of being heard.

On this short ground, the order under appeal is set aside. The writ petition is restored to file. As the appellant is now represented by counsel, the writ petition shall be taken up for admission and grant of relief after hearing Counsel on both sides. Needless to state that the writ petition would be considered afresh on its merits, without being influenced by any observations made by us in this order.

The writ appeal is, accordingly, disposed of. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(Dr. SHAMEEM AKTHER, J)

20th April, 2017

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Date: 20.4.2017

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