



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE M. S. RAMESH

W.P. (MD) No.8706 of 2018

and

W.M.P. (MD) No.8166 of 2018

V. Joseph Manoharan

... Petitioner

vs.

1. The Revenue Divisional Officer,
Kovilpatti Sub-division,
Thoothukudi District.

2. The Tahsildar,
Ottapidaram Taluk,
Thoothukudi District.

3. The District Registrar,
Registration Department,
Thoothukudi District,
Thoothukudi.

4. The Sub-Registrar / Registration Officer,
Ottapidaram Sub - Registrar Office,
Thoothukudi District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the entire records, relating to the impugned order of the fourth respondent in RFL/Ottapidaram/4/2018, Dated 05.04.2018 and to quash the same as illegal and consequently to direct the fourth respondent to register the document dated 05.04.2018 in respect of the properties of petitioner in survey Nos.496/3 and 496/4 situated at Panchalankurichi Village, Ottapidaram Taluk, Thoothukudi District, to the extent of 22 cents.

For Petitioner : Mr.N.Ramesh Arumugam

For Respondents : Mr.V.Anand

Government Advocate for R1 & R2

Mr.M.Murugan

Government Advocate for R3 & R4

ORDER

This writ petition has been filed to quash the impugned order of the fourth respondent, made in RFL/Ottapidaram/4/2018, dated 05.04.2018 and consequently, to direct the fourth respondent to register the sale deed presented by the petitioner on 05.04.2018 in respect of the properties comprised in Survey Nos.496/3 and 496/4, measuring an extent of 22 Cents of Panchalankurichi Village, Ottapidaram Taluk, Thoothukudi District.



2. The main point raised by the petitioner is that the Tahsildar cannot direct the Registering Authority to stop the registration and as long as the documents are properly valued and presented, the Sub-Registrar cannot refuse registration of the same.

WEB COPY

3. In a catena of Judgments, this Court has categorically held that the Sub-Registrar is not empowered to insist for the production of the original title deeds of the parties at the time of registration and that they are bound to consider the objections only on the grounds, which are set forth in Rules 55 and 162 of the Tamil Nadu Registration Rules. One such Judgment in the case of T.Sundar vs. Sub Registrar, Office of the Sub Registrar, Palayamkottai, Tirunelveli and another, reported in 2010(1)MLJ 1286, reads as follows:-

"10. Thus, in view of the law laid down by this Court in the above referred decision, which has referred to various decisions of this Court in the earlier case, the principle which can be culled out is that the action of the respondents in refusing to release the document on the ground that the sale deed was executed by the person who was not the real owner is not legally sustainable. It has been further held that it is not for the registering authority to verify as to whether the vendor in the sale deed has a right to convey the property mentioned therein. Hence, the said judgment squarely applies to the facts and circumstances of the case, and on this ground alone, the petitioners are entitled to succeed.

11. Next, it was pointed out by the learned counsel for the petitioners that a communication has been sent by the second respondent to the first respondent not to entertain any sale deed in respect of the said survey numbers. The Hon'ble Division Bench of this Court had decided the scope of such direction in the nature of prohibition and whether the same could be issued by either the Government or any other body to the said registration of assurance directing him not to entertain any document. In Thiyagavalli Panchayathai Serntha Nochikkadu Grama Vivasayigal Pathukappu Matrum Makkal Pothunala Sangam's case, the Hon'ble Division Bench of this Court held that there is no provision under the statute where the State Government or the respondents therein can validly issue any directions refusing to register any document for which registration



is permissible under the provisions of the Act.

12. Therefore, in view of the law laid down by the Hon'ble Division Bench of this Court, the direction issued by the second respondent to the first respondent is also to be held as unsustainable. In fact, the learned counsel for the petitioners would submit that the release of the document is always subject to the right which has already accrued in favour of the Tamil Nadu Housing Board by resisting to release the document by the Board is not justifiable.

13. In view of the law laid down by the Hon'ble Division Bench of this Court as stated supra, all the writ petitions are allowed as prayed for. The first respondent is directed to return the sale deeds to the petitioners. It is made clear that merely because the sale deeds have been released, the same does not mean that the petitioners have title over the said properties and that apart the release of such sale deeds would in any manner affect or impeach the title of the Tamil Nadu Housing Board, or its allottees. No costs. Consequently, connected miscellaneous petitions are closed."

4. In the light of the aforesaid Judgment, the Honourable Division Bench of this Court had an occasion to deal with this aspect in a Judgment in the case of V.K.Amalraj vs. Inspector General (Registrations), The Appellate Authority, Government of Tamil Nadu, 120, Santhome High Road, Chennai and 4 others reported in 2011 (1)CWC 283, in which the following observations were made:-

"10. It is the main grievance of the petitioner that registering authorities are indiscriminately registering the documents without making proper enquiry with regard to the rights and ownership of the seller. Therefore, Mandamus has to be issued to the respondents to stop all unlawful registration through out the State of Tamil Nadu by considering his representation, dated 09.10.2009. According to the respondents 1 to 3, the Registering Officer is expected to enquire into the document brought before him and he can make enquiry only within the frame of provisions of the Registration Act and the Rules framed thereunder, particularly with reference to Rule 55 relating to enquiry



WEB COPY

before the registration speaks about what is not the duty of the Registering Officer. Rule 55 is extracted hereunder:

"55. It forms no part of a registering officer's duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document; but he is bound to consider objections raised on any of the grounds stated below:-

(a) that the parties appearing or about to appear before him are not the persons they profess to be;

(b) that the document is forged;

(c) that the person appearing as a representative, assign or agent, has no right to appear in that capacity;

(d) that the executing party is not really dead, as alleged by the party applying for registration; or

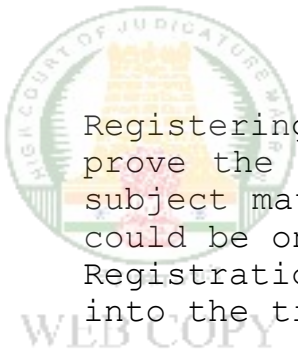
(e) that the executing party is a minor or an idiot or a lunatic".

11. A close reading of the said Rule would show the registering authority is bound to consider the objection only on the ground which is stated in the said Rule. Rule 55 does not provide enquiry by the Registering Officer with regard to the right and ownership of the seller. Thus, the authorities concerned are bound to act only in accordance with the Act and Rules framed thereunder. The authorities cannot be directed to act contrary to the provisions of the statute. We also find that the writ petition is filed only to settle the family dispute between the petitioner and the respondents 4 and 5. Hence, we do not find any merit in the writ petition."

5. In the instant case, by the impugned order dated 05.04.2018, the fourth respondent refused to register the petitioner's sale deed dated 05.04.2018, on the ground that as per the order dated 27.08.2013, passed by the second respondent - Tahsildar, Ottapidaram, a No Objection Certificate to sell the properties mentioned in the sale deed, was required.

<https://hcservices.ecourts.gov.in/hcservices/>

6. In view of the well settled provisions of law that the



Registering Authority is not empowered to insist upon the parties to prove the title or to verify the title over the property, which is subject matter of the deed of conveyance and that the consideration could be only within the scope of Rules 55 and 162 of the Tamil Nadu Registration Rules, the fourth respondent may not be justified going into the title of the property.

7. In the light of the above observations, the order dated 27.08.2013, passed by the second respondent - Tahsildar, Ottapidaram and the impugned order passed by the fourth respondent herein are against the provisions of the Tamil Nadu Registration Act and its corresponding Rules. Consequently, the impugned order of the fourth respondent, made in RFL/Ottapidaram/4/2018, dated 05.04.2018 is quashed and the fourth respondent herein is directed to register the petitioner's sale deed, dated 05.04.2018, within a period of two weeks from the date of receipt of a copy of this order, if it is otherwise in order and consequently return the same to the petitioner forthwith.

8. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-I)

To:

1. The Revenue Divisional Officer,
Kovilpatti Sub-division, Thoothukudi District.
2. The Tahsildar,
Ottapidaram Taluk, Thoothukudi District.
3. The District Registrar,
Registration Department,
Thoothukudi District, Thoothukudi.
4. The Sub-Registrar / Registration Officer,
Ottapidaram Sub - Registrar Office,
Thoothukudi District.

+1CC to Mr.M.S.Jeyakarthick, Advocate in SR.No.76673.
+1CC to Special Government Pleader in SR.No.76559.

KRK

DS/SKN-RSK/SAR-1 :09.08.2018: 5P/7C

W.P. (MD) No.8706 of 2018
and

W.M.P. (MD) No.8166 of 2018
01.08.2018