



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.07.2018

CORAM:

THE HONOURABLE **MR. JUSTICE M.S.RAMESH**

W.P. (MD) No.10178 of 2018

Lingam,
Represented by Power Agent,
Narayanasamy.

... Petitioner

-Vs-

The Sub Registrar,
Karambakudi Post and Taluk,
Pudukottai District.

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, call for the records of the respondent in check slip dated 18.01.2018 and quash the same as illegal and arbitrary and in consequence thereof direct the respondent to register the sale agreement dated 02.01.2018 executed by the petitioner in favour of Raj, son of Palaniappan at once in accordance with law.

For Petitioner : Mr.P.Ganapathi Subramanian

For Respondent : Mr.M.Murugan
Government Advocate

ORDER

The petitioner challenges the impugned check slip dated 18.01.2018.

2. The learned Government Advocate, by relying upon the counter affidavit dated 28.06.2018, also submitted that the petitioner had already been informed by the respondent herein the document presented for registration is not valid as per the guidelines of the Registration Act, 1908.

3. Heard the counsel on either side.

4. On a perusal of the counter-affidavit, it is seen that the Sub-Registrar has gone into the title of the property in paragraph 10.4.1, stating the rights of the claimants over the property and he had categorically stated that the title over the said property



has to be established in a Civil Court.

5. The impugned check slip, in effect goes into the title of the property, which is sought to be conveyed in the impugned deed of conveyance. This Court, in a number of judgments, had held that the Registrar exercising his powers for registering a document is not entitled to go into the title of the property, which is sought to be conveyed. In a recent judgment passed in W.P.No.23870 and 23871 of 2017 dated 07.06.2018, this Court had an occasion to deal with couple of those judgments and the relevant portion of the same had been extracted hereunder:

3. In a catena of judgments, this Court has categorically held that the Sub-Registrar is not empowered to go into the title of the vendor over the scheduled properties and that they are bound to consider the objections only on the grounds, which are set forth in Rule 55 and Rule 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 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



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registration of assurance directing him not to entertain any document. In Thiyaagavalli 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, a Hon'ble Division Bench of this Court also 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 observation was made:-

"10. It is the main grievance of the petitioner that registering authorities are indiscriminately registering the documents



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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 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, the petitioners' request for registration of sale deed dated 07.12.2017, was refused on the ground that the petitioners did not have valid title over the properties, which have sought to purchase."

6. The above order is self explanatory. In view of the fact that the impugned check slip is illegal, it is liable to be set aside. Consequently, this Writ Petition stands allowed and the impugned check slip dated 18.01.2018 stands quashed. The respondent is directed to register the sale agreement dated 02.01.2018 executed by the petitioner in favour of Raj, son of Palaniappan, within a period of two weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

The Sub Registrar,
Karambakudi Post and Taluk,
Pudukottai District.

+ 1 cc TO Mr.P.Ganapathi Subramanian , Advocate in SR No. 71919
+ 1 cc TO The Special Government Pleader in SR No. 72258

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AE/PN/SAR1/18.07.2018/5P/4C

W.P. (MD) No.10178 of 2018
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