



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date :09.08.2019

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P. (MD) Nos.1202 and 1203 of 2017

and

WMP (MD) No.1018 of 2017 &

WMP (MD) No.1017 of 2017

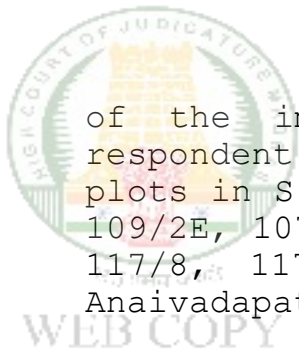
W.P. (MD) Nos.1202 of 2017

1. S.C.Pandian
2. P.Ganesan
3. P.J.Mahesraja .. Petitioners

Versus

1. The Inspector General of Registration
Santhome High Road
Santhome,
Chennai - 600 004.
2. The District Registrar (Admin.)
Tenkasi
Tirunelveli District.
(Cause title amended vide order
dated 09.10.2018 in WMP (MD)
Nos.18860 of 2018)
3. The Sub-Registrar
S.H.40, Tenkasi Road
Alangulam
Tirunelveli District - 627 851.
4. K.H.Kalil Ahmed
5. Mohamed Musafar Ahmed
6. P.Abraham .. Respondents

Writ Petition (MD) No.1202 of 2013 filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the impugned order and records in relation to Petition No.5398/B1/2016 dated 15.12.2016 passed by the second respondent and quash the same as illegal and consequently, direct the third respondent to cancel all the sale deeds admitted by virtue



of the impugned order dated 15.12.2016 passed by the second respondent in respect of the petitioners' property consisting of 303 plots in S.Nos.105/1, 80/1, 80/3, 105/2, 107/4, 112/1, 115/1, 114/2, 109/2E, 107/3, 116, 117/1, 111, 110, 115/2, 114/3B, 117/2, 117/4 and 117/8, 117/6 and 117/7 situated at KTR Satellite Township at Anaivadapathi Village, Alangudi, Kudavasal Taluk.

W.P. (MD) Nos.1203 of 2017

1. S.C.Pandian
2. P.Ganesan
3. P.J.Mahesraja .. Petitioners

Versus

1. The Inspector General of Registration
Santhome High Road
Santhome
Chennai - 600 004.

2. The District Registrar
2nd Floor
Combined Department of Registration Campus
New Bus Stand
Thoothukudi
Thoothukudi District. .. Respondents

Writ Petition (MD) No.1203 of 2013 filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the second respondent to pass orders based on the enquiry conducted by the second respondent on 11.07.2016 under Reference No. Na.Ka.1518/B1/2016, for which, the petitioners appeared in pursuance of a summon dated 27.05.2016 in order to safeguard the interest of the petitioners forthwith.

For Petitioners in
both Writs : Mr.Vijay Shankar
for
Mr.S.Palani Velayutham

For Respondents 1 & 2
in both Writs : Mr.M.Murugan
Government Advocate

For Respondent-3 in
WP. (MD) No.1202/2013 : Mr.M.Murugan
Government Advocate

For Respondent-4 in
WP. (MD) No.1202/2013: Mr.Ajmal Khan, Senior Counsel
for
M/s. Ajmal Associates



For Respondent-5 in
WP. (MD) No.1202/2013 : Mr.V.Nirmal Kumar

For Respondent-6 in
WP. (MD) No.1202/2013 : Mr.Rameez Ajmal Khan

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COMMON ORDER

Since the issues involved in both the Writ Petitions are interlinked, they are taken up together and a common order is being passed.

2. Present Writ Petition, viz., No.1202 of 2017 has been filed to quash the impugned order dated 15.12.2016 relating to the petition No.5398/B1/2006 passed by the second respondent and consequently, to direct the third respondent to cancel all the sale deeds admitted by virtue of the impugned order dated 15.12.2016 passed by the second respondent in respect of the petitioner's property consisting of 303 plots in S.Nos.105/1, 80/1, 80/3, 105/2, 107/4, 112/1, 115/1, 114/2, 109/2E, 107/3, 116, 117/1, 111, 110, 115/2, 114/3B, 117/2, 117/4 and 117/8, 117/6 and 117/7 situated at KTR Satellite Township at Aanaivadapathi Village, Alangudi, Kudavasal Taluk.

3. Present Writ Petition, viz., No.1203 of 2017 has been filed for issuance of a Writ of Mandamus directing the second respondent to pass orders based on the enquiry conducted by the second respondent on 11.07.2016 under Reference No. Na.Ka.1518/B1/2016, for which, the petitioners appeared in pursuance of a summon dated 27.05.2016 in order to safeguard the interest of the petitioners forthwith.

4. The case of the petitioners as put forth by the petitioners' counsel to substantiate their case are that the petitioners had constituted 'PGM developers', a partnership firm in 2007 for carrying out the business of real estate and developing properties in August 2008, the petitioners purchased 303 plots in the name of the partnership firm in the layout KTR Satellite Township at Aanaivadapathi Village, Alangudi, Kudavasal Taluk, to an extent of 5.5 lakhs sq.ft approved by the DTCP by its approval No.91/2003 for their business purpose. The above said plot has been purchased by different sale deeds registered on 26.08.2008 totalling 16 documents, namely, Document Nos.406 of 2008 to 4021 of 2008. Meanwhile, it is alleged that the 5th respondent has forged the letter of authorization alleging to act as representative of the partnership firm, which was alleged to have been signed by the first petitioner and that authorization was used to create a general Power of Attorney, which is said to have been executed by the 5th respondent along with one Madasamy, appointing 6th respondent as Power Agent to deal with the properties. The said Power of Attorney in favour of



the 6th respondent said to have been registered on 06.07.2015 by document No.2439 of 2015 before the Sub-Registrar, Ottapidaram, Tuticorin District.

5. The petitioners' counsel would further submit that as soon as the petitioners came to know about the alleged Power of Attorney, they issued an objection letter to the Sub-Registrar, Thiruvarur, on 06.11.2015 and pending consideration of their objection, on 27.11.2015, the 6th respondent said to have entered into a sale agreement in favour of one Mohammed Nagutha Marakkayar and which had been registered as Document No.2608 of 2015 on the file of Sub-Registrar, Ottapidaram, Tuticorin District, with regard to the firm's property. Further, in the said agreement, the Schedule-A property situates at Paraikudam Village, Ottapidaram Taluk and Schedule-B property situates at Aanaivadapathi Village, KTR Satellite Township, Thiruvarur.

6. The petitioners submit that coming to know about the fraud committed against the firm's property, they preferred a detailed complaint to the first respondent as early as 17.02.2016, which was re-directed to the District Registrar, Tuticorin, for enquiring the alleged documents No.2439 of 2015 and 2608 of 2015, which are the alleged Power of Attorney and the sale agreement. The District Registrar, Tuticorin, issued summons dated 27.05.2016 directing the petitioner to appear on 11.07.2016. Notwithstanding the above proceedings, the petitioner seems to have lodged a criminal complaint against the alleged land grabbers for fraudulently executing the Power of Attorney and the sale agreement and on the basis of the complaint, an FIR was registered vide FIR No.5 on the file of the District Crime Branch, Thiruvarur, dated 18.04.2016.

7. The first petitioner appeared before the District Registrar, Tuticorin on 11.07.2016 and produced all the necessary documents. During the enquiry, the petitioner also claims that one of the author of the Power of Attorney dated 06.11.2015 in Document No.2439 of 2015 had cancelled the power that was given in favour of the 6th respondent and subsequently, the petitioner also cancelled the alleged Power of Attorney dated 06.06.2016. However, the 6th respondent had executed a sale deed based on the alleged cancelled Power of Attorney with regard to the firm's property in favour of the 4th respondent, that had been presented for registration before the Sub-Registrar, Alangulam.

8. It was the further case of the petitioners that the third respondent placed the said sale deed for verification of value of the property, and check if any court order or any other order has been passed restraining to register the property. As against the order of the third respondent, it is stated that the fourth respondent had filed a Writ Petition seeking for prayer to direct the Sub-Registrar, Alangulam to register and release the sale deed.

<https://hcarchives17.g016/hc2016/>. In the said Writ Petition, this Court has passed

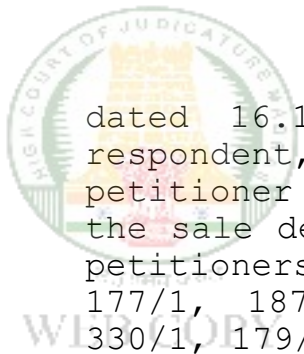


an order directing the third respondent to pass suitable orders within six weeks. However, the third respondent, in compliance to the said order passed by this Court, passed an order refusing to register the sale deed dated 17.10.2016. However, against the order of the third respondent, the fourth respondent had preferred an appeal before the second respondent on 15.12.2016, vide its order and Document No.5398/V1/2016 to set aside the order of the third respondent dated 17.10.2016 and directed the third respondent to register the sale deed in favour of the fourth respondent. As against the order passed by the second respondent, dated 15.12.2016, the writ petitioners have approached this Court, challenging the same, by way of the Writ Petition in W.P.No.1202 of 2017. It is also seen that on the very same set of facts, the petitioners have also filed W.P.No.1203 of 2017 seeking for a Mandamus directing the second respondent to pass orders based on the enquiry conducted by the second respondent on 11.07.2016 under reference No. Na.Ka.No. 1518/V1/2016 for which, the petitioners appeared in person to the summon issued dated 25.07.2016 in order to safeguard the interest of the petitioners.

9. A common counter was also filed by the second respondent, based on which, the Government Advocate submitted by reiterating the facts stated by the petitioners, not as an allegation, but holding the factual matrix and tandem with the petitioners' statement, but concludes the counter by quoting "**Satyapal Anand .. vs.. State of Madhya Pradesh**" reported in **2016 (10) SCC 767** and states that the cancellation of document as prayed for by the petitioners cannot be done and the petitioners have to approach the competent Civil Court.

10. The 6th respondent in W.P.(MD) No.1202 of 2017 has also filed a common counter denying the averments as stated by the petitioners in their affidavit filed in support of the Writ Petitions. However, relies on the same judgment and proceeds to state that Sub-Registrar has no jurisdiction to cancel the document registered by him and in case, the petitioners are aggrieved by any deed of conveyance or its registration, they ought to approach the competent Civil Court for redressal. Apart from that, the 6th respondent also proceeds to state that the petitioners' firm 'PGM Developers' represented by the first petitioner herein had entered into an agreement for sale with the sixth respondent on 27.05.2015, by which, it was agreed that the properties of the same would be sold to the sixth respondent and in turn, the properties of the sixth respondent would be conveyed to the firm and in furtherance of the agreement, the firm had issued an authorization to the fifth respondent to deal with the properties.

11. Thereafter, it is seen in pursuant to the sale agreement, the sixth respondent's properties in S.No.19/1B, 97/1, 110/7, 98/5A2, 110/3C, 92/5, 111/2A, 98/5B2 in Ottapidaram Taluk, Tuticorin District were conveyed in favour of the PGM Developers by sale deed



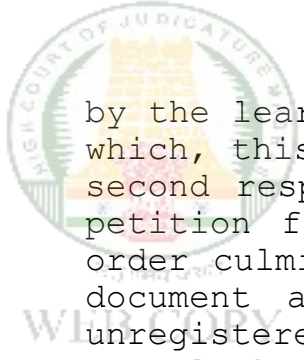
dated 16.11.2015. In the said sale deed, it was the fifth respondent, who had represented the petitioner's firm and the first petitioner in the sale deed. The sixth respondent also claims that the sale deed was executed by the sixth respondent in favour of the petitioners' firm for their properties in S.No.164/2, 188/3, 176/4B, 177/1, 187/1, 187/4, 188/1, 218/2, 218/6, 221/1, 211/2, 279/2, 330/1, 179/3, 192, 178/1, 178/4, 199, 199/3, 259/2A, 260/1 and 221/2 at Avalnatham Village, Kovilpatti Union, Tuticorin District in S.No.99/3, Venkatesapuram Village, Ottapidaram Taluk, Tuticorin District by registered sale deed dated 09.11.2015.

12. The sixth respondent further claims that the said land has also been utilised by the petitioners and their firm and on the same subject O.S.No.25 of 2017 has also been instituted by the petitioners before the District Munsif Court, Thiruvarur and the Court has also directed to maintain status quo in respect of the property and for the same purpose, the present Writ Petition has been filed, which according to the sixth respondent is nothing but an abuse of process of law and Court and the Writ Court should not entertain the Writ Petition in these circumstances. Hence, the counsel for the sixth respondent urged upon this Court to dismiss the Writ Petition as the discretionary jurisdiction of this Hon'ble Court does not need to be exercised when the Civil Suit filed for same cause of action is pending.

13. Further, the learned counsel for the sixth respondent also emphasized that the allegation putforth by the petitioner is all question of facts, which this Court cannot entertain under Article 226 and cannot traverse on the factual assertions made by the petitioners. Moreso, the learned counsel for the sixth respondent also vehemently contended that the basis on which the entire Writ Petition is filed is on the basis of the authorization that was given to the fifth respondent to act on behalf of the firm and the validity of authorization cannot be questioned in Writ proceedings. As it is a matter of evidence, that has to be lead by the petitioners regarding the claim that the authorization is bad in law and the petitioners' claim that it has been fabricated, has to be decided only by a civil court. On the above said circumstances, the sixth respondent also claims that the order in question before this Court in the present Writ Petitions has also been acted upon and since the further documents based on the order passed by the second respondent, the third respondent has registered the document presented by the sixth respondent and as such, the sixth respondent pleads that the Writ Petition itself is not maintainable.

14. Heard the learned counsels and perused the materials on record.

15. On the perusal of the documents filed by the counsels and upon hearing the submissions made by the respective counsels, it is
<https://hccs.easerecords.com/records/> records and the pleadings and the arguments putforth



by the learned counsel for the petitioners, that the entire basis on which, this Writ Petitions filed challenging the order passed by the second respondent dated 15.12.2016, which is an order passed for a petition filed under Section 72 of Registration Act, which is an order culminating when the third respondent refused to register the document and directed the sixth respondent to receive back his unregistered documents. The perusal of the above documents would reveal that when the sixth respondent acting as an agent to execute sale deed dated 17.10.2016 in favour of the fourth respondent, the said document was kept pending by the third respondent as the sale deed had certain other properties lying within the jurisdiction of Sub-Registrar, Thiruvavur and for assertion of value of the property, apart from to find out whether there is any Court order pending.

16. Meanwhile when such document were pending for registration, the first petitioner as a precautionary measure and of abundant caution seems to have presented the deed of cancellation of Power of Attorney cancelling the alleged power of attorney in Document No.2439 of 2015 at Sub-Registrar Office, Thiruvavur, which gives right to the sixth respondent as claimed by the sixth respondent, to deal with the property. Since the third respondent did not act strictly, the sixth respondent approached this Court in W.P.(MD) No.21499 of 2016 seeking for a direction to direct the third respondent to release his deeds, which were kept pending by the third respondent. This Court directed the third respondent to pass appropriate orders within a period of six weeks. The third respondent, in turn, on receipt of the Court order, has passed an order by refusing to register the documents on 17.12.2016 and further directed the sixth respondent to receive back his unregistered documents.

17. Aggrieved by the order dated 07.12.2016, the sixth respondent has preferred an Appeal under Section 72 before the second respondent. After thorough enquiry, the second respondent has passed the impugned order dated 15.12.2016 by which, the second respondent had categorically held that the basis of the rejection order refusing to register the documents by the third respondent comes under the scope of Civil Court as Rule 55 of the Registration Act prohibits the Registrars from deciding the validity of the documents and right from the party. Holding that the third respondent has acted beyond the scope of the Registration Act, the second respondent has passed the impugned order. Assailing the impugned order dated 15.12.2016, present Writ Petition No.1202 of 2017 has been filed.

18. On perusal of the entire facts that culminated into the impugned order dated 15.12.2016 passed by the second respondent, this Court is of the view that the present Writ Petition is not maintainable for the reason that the prayer sought in the nature of Writ Petition No.1202 of 2017 is for the issuance of Mandamus to quash the order dated 16.12.2016 and to



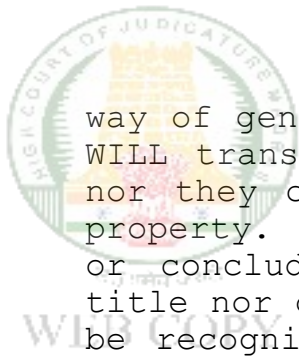
cancel all the sale deeds admitted pursuant to the order dated 15.12.2016 falls beyond the scope of Article 226 of the Constitution of India. The petitioner counsel has relied upon more than 10 judgments, wherein which, none of the judgments relied on by the petitioner supports his case as those were the cases discussing the powers of the Registrar under Registration Act and contrary to the facts in the present case.

19. In the Judgment of Hon'ble Supreme Court in (2012) 1 Supreme Court Cases 656 [Suraj Lamp and Industries Private Ltd., (2) through Director V. State of Haryana and Another, the counsel for the petitioner argued that the sale agreement, general power of attorney, sale transaction did not convey title and did not amount to transfer nor they can be recognised or valid mode of transfer of immovable property and the Courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property and submitted that sales by general power of attorney is not a valid one.

19(i) As these transactions were involved to avoid prohibitions / conditions regarding certain transfers, to avoid payment of duty and registration charges on deeds of conveyance, to avoid payment of capital gains on transfers, to invest unaccounted black money and to avoid payment of enhanced increases due to the development authorities, on transfer.

19(ii) The Apex Court has held that these transactions are not to be confused or equated with genuine transactions where the owner of the property grants a power of attorney to his spouse, son, daughter, brother, sister or relative to manage his affairs or the person may enter into development agreement with the land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale and grant of power of attorney empowering the developer to execute agreement of sale or conveyances in regard to individual plots of land or undivided transactions in the land relating to apartment in favour of purchasers. The execution of such development agreement and powers of attorney are held regulated by law and subjected to specific stamp duty and the observations made in SA/GPA sales will not effect validity of sale agreement. The petitioner has to prove that he has not signed the said letter of authorisation and the same cannot be gone into in this Writ Petition. The facts of the above said case is not similar to the case on hand. In this case cited supra, an individual executed a Will in form of a copy, which is challenged and there cannot be a recognised deeds of title, except to the limited extent of Section 53-A of Transfer of property Act and this citation will not be of any help to the petitioner.

19(iii) A transaction by way of general power of attorney does not convey any title nor create any interest in immovable property. The immovable property can be legally and lawfully transferred or conveyed only by a registered deed of conveyance and transaction by



way of general power of attorney sales or general power of attorney WILL transfers, do not convey title and do not amount to transfer nor they can be recognised or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of Section 53A of the Transfer of Property Act.

20. In the order passed by this Court in **2016 (1) CTC 673 (Asset Reconstruction Company (India) ltd., Vs. Inspector General of Registration and others)**, with regard to **Maintainability of a Writ Petition for setting aside registration of sale deed**, it is stated that the writ petition under Article 226 of the Constitution of India is maintainable either for the purpose of enforcing a statutory right or legal right or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities, only then, the Court can enforce the performance of a statutory duty by a public body to provide for a right to insist on such performance. The existence of such right is a condition precedent for invoking a writ jurisdiction and the legal right that can be enforced must ordinarily be a right of the appellant itself, who complains of infraction of such right and approaches the Court for relief as regards the same. A legal right to a person aggrieved must prove that there is an injury caused to him. This can be enforced only when there is a legally breach on the part of Registrar and that official action can be questioned. But in the present case on hand, the Registrar has registered the documents, which was fraudulently registered by him, the action of the registrar cannot be questioned in the writ petition. Challenge to an official action is maintainable before Writ Court without interference with interse dispute of private parties. Only when there is a dispute arises regarding enforceable legal right, which can be challenged and not on mere disputed facts.

21. In the Order passed by this Court reported in **(2014) 5 CTC 1 : [P.M.Elavarasan V. Inspector General of Registration]** it is observed as under;

21(i) The learned counsel would submit that quasi-judicial and administrative authorities have inherent powers to recall their orders or proceedings at a later stage, if they are apprised that such orders or proceedings were obtained by playing fraud and misrepresentation and he would further submit that in this case, if the property registered was a public property and the Registrar is empowered to verify the validity of the documents. But on prima facie verification of the records, if authority comes to a subjective satisfaction that there is a fraud taken place, he can certainly object it by withholding the documents by assigning reasons thereof and should bring the same to the notice of the Inspector General for Registration and also take steps to initiate criminal proceedings against those persons and authority are empowered to recall their

view / orders, if parties played misrepresentation.

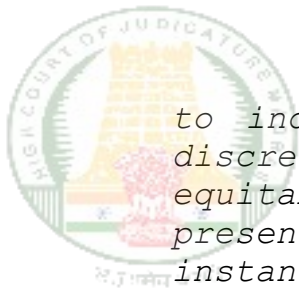
21(ii) In the Judgment of **Hon'ble Supreme Court in Satya Pal Anand V. State of M.P. & Others, [2016 SCC Online SC 1202]**, it is held that the Registering authority has no power to recall and has to approach the Civil Court and the relevant paragraphs are as follows:-

'The decision of Karnataka High Court in M. Ramakrishna Reddy V. Sub-Registrar, Bangalore, In paragraph No.15 has observed thus:

"6.'15'. In view of aforesaid discussion, we are of the view that after registration of the extinguished deed or other documents by the Sub-Registrar, if any application is moved by any of the affected party of such document stating that the same was not registered by practicing the fraud with his right then, Sub-Registrar in the lack of any specific provision in this regard could neither entertain nor adjudicate such application under the provisions of Sections 17, 18 or 69 or some other provisions of the Act. Section 69 of the act only confers the superintending power of registration offices and to make rules to the Inspector General Respondent No.2. It does not give any rights to cancel the earlier registered documents or modifying any entries in the index or in the other record at the instance of any of party. So, Section 17(1)(b) read with 69 of the act is also not helping to the petitioner in this writ petition. Consequently, it is held that Sub-Registrar as well as Inspector General have not committed any fault in dismissing the application of the petitioner with direction to approach the competent forum for adjudication of his dispute."

11.....Thota Ganga Laxmi's case must be understood as applicable to the express procedure prescribed for registration of an extinguishment Deed or cancellation deed in the State of Andhrapradesh in terms of statutory Rules. Inasmuch as, in absence of any express provision about the procedure for registration of such document, that requirement cannot be considered as mandatory. For it is not the Specific Relief Act, 1963 to hold that unilateral cancellation of the deed would be in violation of the said provision read with Article 59 of the Limitation Act, 1963, which requires cancellation of any instrument within 3 years.

15.....It is well established position that the remedy of Writ under Article 226 of the Constitution of India is extra-ordinary and discretionary. In exercise of writ jurisdiction, the High Court cannot be oblivious to the conduct of the party invoking that remedy. The fact that the party may have several remedies for the same cause of action, he must elect his remedy and cannot be permitted



to indulge in multiplicity of actions. The exercise of discretion to issue a writ is a matter of granting equitable relief. It is a remedy in equity. In the present case, the High Court declined to interfere at the instance of the appellant having noticed the above clinching facts.....

17..... In our considered opinion, it would be unnecessary if not inappropriate to examine any other contention at the instance of this appellant as we agree with the view taken by the High Court in summarily dismissing the writ petition with liberty to the appellant to pursue statutory remedy. At best, further observation or clarification would suffice to the effect that the competent Forum before whom the dispute has been filed by the appellant shall consider all contentions available to the parties, uninfluenced by the factum of registered extinguishment Deed. In that, if the competent forum was to hold that it was open to the society to cancel the allotment and membership of the concerned member and thereafter to allot the same plot to another person enrolled as a member of the society, no other issue would arise for consideration. On the other hand, if the competent forum was to answer the relevant fact in favour of the appellant, only then the argument of the effect of unilateral registration of the extinguishment deed followed by compromise deed voluntarily executed by the appellant may become available to the Society and to the subsequent purchasers /allottees of the subject plot. At their instance, those issues can be examined on the basis of settled legal position. Neither the observation or the opinion recorded by one of the dissenting Judge of this Court need any further dissection nor would it be appropriate to enlarge the scope of the proceedings before this Court on those aspects. This would subserve the twin requirements. Firstly, to avoid an exposition on matters and questions which do not arise for our consideration in the fact situation of the present case at this stage; and secondly, also provide an opportunity to the parties to pursue all contentions and other remedies as may be permissible in law.

22. The role of the Sub-Registrar (Registration) stands discharged, once the document is registered (See Raja Mohammad Amir Ahmad Khan (Supra). Section 17 of the Act of 1908 deals with documents which require compulsory registration. Extinguishment Deed is one such document referred to in Section 17(1)(b). Section 18 of the same act deals with documents, registration whereof is optional. Section 20 of the Act deals with documents containing interlineations, blanks, erasures or alterations. Section

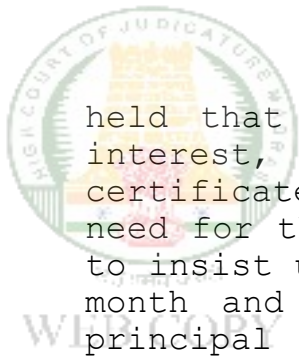


21 provides for description of property and maps or plans and Section 22 deals with the description of houses and land by reference to Government maps and surveys. There is no express provision in the Act of 1908 which empowers the Registrar to recall such registration. The fact whether the document was properly presented for registration cannot be reopened by the Registrar after its registration. The power to cancel the registration is a substantive matter. In absence of any express provision in that behalf, it is not open to assume that the sub-Registrar (Registration) would be competent to cancel the registration of the documents in question. Similarly, the power of the Inspector General is limited to do superintendence of registration offices and make rules in that behalf. Even the Inspector General has no power to cancel the registration of any document which has already been registered.

24. If the document is required to be compulsorily registered, but while doing so some irregularity creeps in, that, by itself, cannot result in a fraudulent action of the State Authority. Non-presence of the other party to the Extinguishment Deed presented by the Society before the Registering Officer by no standard can be said to be a fraudulent action per se. The fact whether that was done deceitfully to cause loss and harm to the other party to the Deed, is a question of fact which must be pleaded and proved by the party making such allegation. That fact cannot be presumed. Suffice it to observe that since the provisions in the Act of 1908 enables the Registering Officer to register the documents presented for registration by one party and execution thereof to be admitted or denied by the other party thereafter, it is unfathomable as to how the registration of the document by following procedure specified in the Act of 1908 can be said to be fraudulent. As aforementioned, some irregularity in the procedure committed during the registration process would not lead to a fraudulent execution and registration of the document, but a case of mere irregularity. In either case, the party aggrieved by such registration of document is free to challenge its validity before the Civil Court'.

22. This Court in the order in **W.P.No.33958 of 2013 reported in 2014 - 4 - Law Weekly 347 [Confederation of Real Estate Developers' Association of India V. the State of Tamil Nadu and another]** has held as follows;

It is regarding production of life certificate from the principal by the General Power of attorney holder and here the case is regarding production of life certificate, where the Court has



held that power of attorney where the authority is coupled with interest, which are irrevocable nature, production of life certificate of the principal does not at all arise and there is no need for the agents to produce the same. There is no justification to insist upon production of life certificate for every spell of one month and there is every likely hood of demanding money to the principal riding over the agent. Hence, the Inspector General of Registration shall consider the circumstances under which the production of the life certificate itself does not arise and till such Rules are framed the Registering authority shall act as per the prevailing of the Act. This case is not applicable to the present case on hand.

23. In the Judgment of **Hon'ble Supreme Court reported in AIR 2000 SCT 1165 [United India Assurance Co. Ltd V. Rajendra Singh and others]**, among other things it is referred that;

The Order obtained by a person playing fraud and thereby Court has power to recall such order, same way, the petitioner submits that the authority under Registration Act has got power to recall such order on the ground of fraud.

24. The petitioners have not denied the pendency of O.S.No.25 of 2017 before the District Munsif Court, Thiruvavur, on the very same subject, in which, the petitioners are also parties and contesting the said suit. Nowhere in the affidavit filed by the petitioner in support of the Writ Petitions has disclosed the pendency of the Civil Suit on the same subject. Moreso, all the factual aspects as put forth by the writ petitioners cannot be gone into and decided under Article 226, that too, when the petitioners played fraud on the part of the sixth respondent, wherein which the allegation against the sixth respondent that the authorization letter has been forged and created by the fifth respondent and upon such alleged fabricated authorization, the fifth respondent executed a Power of Attorney in favour of the sixth respondent, which was registered on 06.11.2015 by Document No.2439 of 2015.

25. The petitioners' counsel also has produced the report of the handwriting expert alleging that there is a discrepancy in the handwriting and the signature in the said authorization letter, which according to the petitioner is a forged one. The counsel for the respondent had submitted that this Court should not entertain the said report, as the same has to be gone into only before the competent authority i.e., Civil Court. For the said proposition, Mr.Ajmal Khan, learned counsel for the 4th respondent in W.P.(MD) No.1202 of 2013 has produced certain judgments which are as follows:

25(i) **AIR 1967 Supreme Court 778 (V 54 C 165) (The State of Gujarat ..vs.. Vinaya Chandra Chhota Lal Pathi)**, wherein the Hon'ble Supreme Court has held as follows:-

<https://hcservices.ecourts.gov.in/hcservices/> 10. It may not be



safe for a Court to record a finding about a person's writing in a certain document merely on the basis of comparison, but a Court can itself compare the writings in order to appreciate properly the other evidence produced before it in that regard. The opinion of a handwriting expert is also relevant in view of s. 45 of the Evidence Act, but that too is not conclusive. It has also been held that the sole evidence of a handwriting expert is not normally sufficient 'or recording a definite finding about the writing being of a certain person or not. It follows that it is not essential that the handwriting expert must be examined in a case to prove or disprove the disputed writing. It was therefore not right for the learned Judge to consider it unsafe to rely upon the evidence of the complainant in a case like this, i.e., in a case in which no handwriting expert had been examined in support of his statement.

25(ii) **(1973) 4 SCC 46 (Bhagwan Kaur ..vs.. Maharaj Krishan Sharma)** wherein the Hon'ble Supreme Court has held as follows:-

"26. The evidence of a handwriting expert, unlike that of a fingerprint expert, is generally of a frail character and its fallibilities have been quite often noticed. The courts should, therefore, be wary to give too much weight to the evidence of handwriting expert. In *Sri Sri Kishore Chandra Singh Deo v. Babu Ganesh Prasad Bhagat & Ors.* (1), this Court observed that conclusions based upon mere comparison of handwriting must at best be indecisive and yield to the positive evidence in the case.

25(iii) **AIR 1992 Supreme Court 2100 (State of Maharashtra ..vs.. Sukhdeo Singh and another)**, wherein the Hon'ble Apex Court has held that there is no rule of law that the evidence of a handwriting expert cannot be acted upon unless substantially corroborated. The relevant portions are as follows:-

29. While coming across cases of conflicting opinions given by two handwriting experts engaged by opposite parties, it is necessary to exercise extra care and caution in evaluating their opinion before accepting the same. So courts have as a rule of prudence refused to place implicit faith on the opinion evidence of a handwriting expert. Normally courts have considered it dangerous to base a conviction solely on the testimony of a handwriting expert because such evidence is not regarded as conclusive and such opinion evidence cannot take



the place of substantive evidence, courts have, as a rule of prudence, looked for corroboration before acting on such evidence. True it is, there is no rule of law that the evidence of a handwriting expert cannot be acted upon unless substantially corroborated but courts have been slow in placing implicit reliance on such opinion evidence because of the imperfect nature of the science of identification of handwriting and its accepted fallibility.

.....
....

The court can place reliance on the opinion of an expert, it must be shown that he has not betrayed any bias and the reasons on which he has based his opinion are convincing and satisfactory.

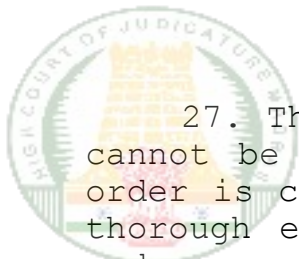
30.

"It is no doubt true that the opinion of handwriting expert given in evidence is no less fallible than any other expert opinion adduced in evidence with the result that such evidence has to be received with great caution. But this opinion evidence, which is relevant, may be worthy of acceptance if there is internal or external evidence relating to the document in question supporting the view expressed by the expert."

.....

..... There can be no hard and fast rule, but nothing will justify the rejection of the opinion of an expert supported by unchallenged reasons on the sole ground that it is not corroborated. The approach of a court while dealing with the opinion of a handwriting expert should be to proceed cautiously, probe the reasons for the opinion, consider all other relevant evidence and decide finally to accept or reject it."

26. The above judgments cited by the 4th respondent in W.P. (MD) No.1202 of 2013 cannot be taken into consideration, since those cases had not taken into account the papers produced by the petitioner i.e., handwriting expert's report. Hence those judgments are not relevant at this stage. The respondents can produce those judgments at the time when the handwriting expert's report was taken up for adjudication.



27. These factual allegations and counter allegations certainly cannot be decided in a Writ Proceedings. As far as the impugned order is concerned, the second respondent seems to have conducted a thorough enquiry and relied upon Rule 55, while setting aside the order passed by the third respondent, refusing to register the document presented by the sixth respondent. This Court does not find any infirmity in the impugned order, as the second respondent's order is based on Rule 55 of Registration Act, which categorically prescribes the nature and duty of the Registrar, while entertaining a document for registration. Moreover, it is not in dispute that the order dated 15.12.2016 passed by the second respondent has been acted upon and further documents have been registered by the third respondent, which cannot be challenged under Article 226 of the Constitution of India. The writ petitioners have to work out their remedy elsewhere and cannot approach this Court.

28. As far as W.P.(MD) No.1202 of 2017 is concerned, this Court is of the view that once an order is implemented, the consequence of implementing such order has to be separately challenged and as far as in the present case, the consequences of implementing the order dated 15.12.2016 by the third respondent has given rise to registration of documents presented by the 6th respondent for registration. These documents cannot be cancelled as prayed for by the petitioners under Article 226 of the Constitution of India. Hence the Writ Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

29. As far as W.P.(MD) No.1203 of 2017 seeking for a Mandamus directing the second respondent to pass orders based on the enquiry conducted by the second respondent on 11.07.2016 under reference No. Na.Ka.No. 1518/B1/2016, for which the petitioner appeared pursuant to the summons issued dated 27.05.2016, the concerned authorities hereby directed to give necessary opportunity and pass orders in accordance with law, as expeditiously as possible. Accordingly, W.P.(MD) No.1203 of 2017 is disposed of. No costs.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Inspector General of Registration
Santhome High Road
Santhome, Chennai - 600 004.



2. The District Registrar (Admin.)
Tenkasi
Tirunelveli District.
(Cause title amended vide order
dated 09.10.2018 in WMP (MD)
Nos.18860 of 2018)

WEB COPY

3. The Sub-Registrar
S.H.40, Tenkasi Road
Alangulam,
Tirunelveli District - 627 851.

4. The District Registrar
2nd Floor
Combined Department of Registration Campus
New Bus Stand
Thoothukudi,
Thoothukudi District.

+1 CC to Mr.S.PALANI VELAYUTHAM, Advocate SR-81012.

+1 CC to M/s.AJMAJ ASSOCIATES, Advocate SR-81358.

W.P. (MD) Nos.1202 and 1203 of 2017

and

WMP (MD) No.1018 of 2017

09.08.2019

CS(04.09.2019) 17P 7C