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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.06.2021**

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD).No.10433 of 2021

G.Kalaiselvan ... Petitioner

Vs.

1.The Inspector General of Registration,
100, Santhome High Road,
Raja Annamalai Puram,
Chennai -28.

2.The Deputy Inspector General of Registration,
Electronic Complex, Guindy,
Chennai – 32.

3.The District Registrar,
Trichy District,
Trichy.

4.The Sub-Registrar,
K.Sathanoor Sub-Registrar Office,
Trichy District.

5.M.S.Natesan Housing Private Limited,
Rep. by its Director V.P.Seetharaman,

6.V.P.Seetharaman

7.A.S.Sundaram ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for records of the fourth respondent pertaining to the registration of the sale deed in Document No.656/2018, dated 12.02.2018 and quash the same as illegal and consequently direct the fourth respondent to remove the registration / encumbrance entries made qua the said sale deed in Document No.656/2018, dated 12.02.2018 from the books / register on the file of the fourth respondent within the time that may be stipulated by this Court.

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For Petitioner : Mr.M.Ajmal Khan, Senior Counsel
for M/s.Ajmal Associates

For Respondents : Mr.R.Suresh Kumar
Government Advocate for R1 to R4

: Mr.S.K.Mani for R5 to R7

ORDER

On consent given by either side, the main Writ Petition itself is taken up for final hearing, since the issue involved in this Writ Petition is squarely covered by the order passed by this Court in W.P.(MD)No.10177 of 2021, dated 17.06.2021.

2. The case of the petitioner is that he along with his wife and daughter entered into a Joint Development Agreement with the fifth respondent company. The sixth respondent is the Director of the fifth respondent company. In order to carry out the project under the Joint Development Agreement, the petitioner, his wife and daughter executed a power of attorney in favour of the sixth respondent on 23.02.2015. According to the petitioner, the power of attorney had given a very limited authority to the fifth respondent and this document did not authorise the fifth respondent to convey the property in favour of any third parties. In other words, the power of attorney only authorised the fifth respondent to carry on activities towards development of the structure and to get necessary permission from the concerned authorities and it never permitted the fifth respondent to encumber the property.

3. It is alleged that the sixth respondent, who is the Director of the fifth respondent company had also collected the original documents pertaining to the property from the petitioner and ultimately, the power of attorney document was used for the purpose of executing the sale deed in favour of construction company, which belongs to the sixth respondent. The petitioner was aggrieved by the sale deed executed by the fifth respondent and hence, a complaint was made before the third respondent on the ground that the transaction is fraudulent. The third respondent on receipt of the complaint conducted an enquiry, after hearing all the parties and passed an order dated 26.12.2018. In the said order, it was specifically held that the respondents have acted beyond the authorisation granted under the power of attorney. However, the third respondent went on to hold that the document cannot be nullified since it is beyond the jurisdiction of the third respondent.

4. Aggrieved by the above order, the petitioner filed an appeal before the second respondent. The second respondent once again

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conducted a detailed enquiry after affording opportunity to the parties and the second respondent through proceedings dated 26.06.2019, confirmed the findings of the third respondent. But, however, the document that was found to be fraudulent, was not nullified on the ground that it is beyond the jurisdiction of the Registration Department.

5. The petitioner even thereafter, made a representation and since the same did not evoke any response, the present Writ Petition has been filed before this Court seeking for appropriate directions.

6. Heard Mr.M.Ajmalkhan, learned Senior Counsel for M/s.Ajmal Associates, Mr.R.Sureshkumar, learned Government Advocate appearing for the respondents 1 to 4 and Mr.S.K.Mani, learned counsel appearing for the respondents 5 to 7.

7. In the considered view of this Court, the issue involved in the present Writ Petition is squarely covered by the judgment of this Court in W.P.(MD)No.10177 of 2021, dated 17.06.2021. The relevant portions in the judgment are extracted hereunder:

> *"**11**. In the present case, the second respondent, after conducting an enquiry, has found the transaction to be a fraudulent one and thereby, the document executed in favour of the fifth respondent has become nonest in the eye of law. It is stated that this order has also become final. Once such orders are passed, there is no requirement to cancel the document and it is enough if a necessary entry is made in the Encumbrance Certificate itself reflecting the proceedings of the concerned Authority declaring the transaction to be a fraudulent one. Once such an entry is made in the records, it automatically reverses the earlier registration of the fraudulent document. This procedure becomes even more important, since the continuation of the early entry made at the time when the transaction took place and which has been subsequently declared to be fraudulent, will virtually prevent the real owner of the property to deal with his property. Therefore, in all such cases, once an order is passed by the Authority declaring the transaction to be fraudulent and it has become final, the same has to be recorded in the relevant register and it must be reflected in the Encumbrance Certificate. It is brought to the notice of this Court that when the circular was issued by the Inspector General of Registration in Letter No.41530/U1/2017, dated 31.07.2018, Clause 6 (a) and (b) specifically provides for such an entry being made and for proper appreciation, the same is extracted hereunder:-*
>
> *"6. Hence, all the District Registrars are hereby*

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directed to do the following:-

a) If fraudulent registration is proved, apart from directing the Registering Officers to file police complaints against the fraudsters, specific orders to be passed directing the Registering Officers for making entry in the relevant indexes and also in the copies of documents. The entry in index (ii) shall be made as " The registration of document is found as fraudulent vide proceedings of the District Registrar (Proceeding No. and dated to be noted) due to----------(the findings to be given briefly)". The same note has to be made as a footnote in the relevant copies of documents filed and to be signed by the Registering Officer. If it is scanned document, then the note has to be made in a separate white paper, signed by the Registering Officer and to be linked to the main document.

(b) District Registrars in his/her proceedings should direct the Registering Officers that no registration of documents should be done based on the fraudulent document as declared by the District Registrar. But, the genuine owner of the property in question should be allowed to proceed with further registration irrespective of the occurrence of the fraudulent registration with respect to the said property."

***12**. It is clear from the above circular that the order passed by the competent Authority declaring a transaction to be a fraudulent one and where such order has become final, necessary entry has to be made in index. That apart, a foot note must also be made in the relevant copies of the documents. This safeguard is being given only to ensure that an innocent third party should be made aware that such an order has been passed and that he is not misled to enter into a transaction with regard to a document, which has been held to be a fraudulent one. This procedure will at least save the time of the real owner of the property, who need not unnecessarily knock the doors of a Civil Court.*

***13**. It is made clear that this procedure must be scrupulously followed in all cases, where the transaction has been declared to be a fraudulent one by the competent Authority and such order has become final. The Inspector General of Registration shall refer to this order and issue a circular to all the Sub Registrar Offices across Tamil Nadu and direct them to strictly follow the directions issued in the earlier circular dated 31.07.2018.*

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> ***14.*** *In view of the above, this Court is inclined to interfere with the impugned communication of the third respondent and accordingly, the same is quashed. There shall be a direction to the third respondent to take steps to record the proceedings of the second respondent, dated 30.04.2019 in the relevant books and the same should be reflected in the Encumbrance Certificate. This will effectively reverse the earlier entry that was made when the sale deed was executed in favour of the fifth respondent and which has been subsequently held to be a fraudulent transaction. This process shall be completed by the third respondent within a period of two weeks from the date of receipt of a copy of this order."*

8. In view of the above, once the authorities under the enactment have held transactions to be fraudulent, necessary entry has to be made in the relevant books and it must also be reflected in the encumbrance certificate. This Court in the above judgment has given a direction to the Inspector General of Registration to instruct all the Sub-Registrars to adopt this procedure in cases of this nature. Hence, there shall be a direction to the fourth respondent to make necessary entry in the relevant register regarding the orders passed by the second and third respondents and the same shall also be reflected in the encumbrance certificate. On such entry being made, it will effectively reverse the earlier entry that was made at the time of registration of the sale deed by the fifth respondent. This process shall be completed by the fourth respondent within a period of two weeks.

9. The learned counsel appearing on behalf of the respondents 5 to 7 submitted that the second and third respondents have not held the transactions to be fraudulent and it was only held that the sale deed executed by the fifth respondent is beyond the authority given under the power of attorney document. In the considered view of this Court, the findings of the second and third respondents virtually nullifies the document executed by the fifth respondent, since it has been categorically held that it is beyond the authority given to the power attorney agent. Under such circumstances, even though the second and third respondents have not specifically used the expression fraudulent transaction, the effect of the order will virtually nullify the transaction and hence, it has to be necessarily notified in the concerned books and reflected in the encumbrance certificate. It is made clear that if the respondents 5 to 7 are aggrieved by the proceedings of the second and third respondents, they have to necessarily approach the competent civil Court to establish their right and work out their remedy in accordance with law. The order passed in this Writ Petition will not stand in the way of the respondents 5 to 7 to work out their remedy in the manner known to law.

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10. This Writ Petition is disposed of with the above directions. No costs.

Sd/-

Assistant Registrar(CO)

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/ /2021

Sub Assistant Registrar(CS)

vsm

NOTE:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Inspector General of Registration,
100, Santhome High Road,
Raja Annamalai Puram,
Chennai -28.

2.The Deputy Inspector General of Registration,
Electronic Complex, Guindy,
Chennai – 32.

3.The District Registrar,
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Trichy.

4.The Sub-Registrar,
K.Sathanoor Sub-Registrar Office,
Trichy District.

+1 CC to M/s.SPL GP (SR-20030[F] dated 23/06/2021)

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22.06.2021

NS(CO)
TR(29.06.2021) 6P 6C

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