



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

W.P. (MD) .No.12888 of 2021

and

W.M.P. (MD) .No.9966 of 2021

T.Chinnamanyakar @ Bangarusamy

...Petitioner

Vs.

1.The Inspector General of Registration,
Registration, Department,
No.100, Santhome High Road,
Chennai - 600 028.

2.The District Registrar (Administration),
Registration Department,
Periyakulam, Theni,
Theni District.

3.The Sub Registrar,
O/o. The Sub Registrar Office,
Registration Department,
Aundipatty,
Theni District.

... Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the 3rd respondent in his proceedings in refusal check slip in RFL/Aundipatti/1/2021, dated 14-07-2021 and quash the same as illegal and consequently to direct the 3rd respondent to register and release the sale deed, dated 06-07-2021, presented on 13-07-2021, within the period that may be stipulated by this Court.

For Petitioner

: Mr.C.Venkatesh Kumar for
M/S Ajmal Associates

For Respondents

: Mr.M.Lingadurai
Government Advocate

ORDER

This writ petition has been filed for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the 3rd respondent in his proceedings in refusal



check slip in RFL/Aundipatti/1/2021, dated 14-07-2021 and quash the same as illegal and consequently to direct the 3rd respondent to register and release the sale deed, dated 06-07-2021, presented on 13-07-2021, within the period that may be stipulated by this Court.

2. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents.

3. The case of the petitioner is that the land comprised in Survey No. 259 to an extent of 2 Acres 72 cents and in S.No. 262 to an extent of 4 Acres 68 Cents totally to an extent of 7 Acres 40 Cents situated at Kovilpatty Village, Aundipatty Sub Division, Periyakulam, Registration District, Theni District, originally belonged to one Mr.R.J. Sundaraja Iyyangar. He executed a registered sale deed in Document No.7433/1960 in favour the petitioner and one Rangaswamy Naicker on 22.09.1960, as such, they are in joint possession and enjoyment of the above said property. Whiles, one Duraiswamy, who created the forged document in respect of S.No.262 to an extent of 4 Acres 68 Cents, registered the same in favour of his son viz., D. Pichaimani vide Doc.No.3371 of 2014, dated 16.07.2014. Thereafter, another forged document was created by the wife of the abovesaid Duraisamy viz., Jothiammal and his two sons viz., Velmurugan and Muthuvel in respect of S.No. 259 to an extent of 2 Acres 72 Cents and they registered the same in favour of D.Pichaimani vide Doc.No.4310 of 2016 dated 08.09.2016. Later, the said Pichaimani executed a forged sale deed in favor of his wife Viz., Ramya in respect of S. No. 259 and 262 to an extent of 2 Acres 72 Cents and 4 Acres 68 Cents totally to an extent of 7 Acres 40 Cents vide Doc.No.1119 of 2017 dated 14.03.2017.

4. The further case of the petitioner is that he made a representation to the 2nd respondent, on 16.04.2018 to cancel the forged documents created vide Doc.Nos.3371/2014, 4310/2016 and 1119/2017. After conducting full-fledged enquiry by hearing both the parties, the 2nd respondent by his proceedings dated 13.08.2018 has declared that the documents executed vide Doc.Nos.3371/2014, 4310/2016 and 1119/2017 are fraudulent documents and necessary entries have also been made in the Index of the Encumbrance Certificate (EC), as such, the said subject matter of property is free from any encumbrance on the strength of the proceedings of the 2nd respondent in Na.Ka.No.1512/E2/2018, dated 13.08.2018.

5. It is further stated that thereafter, the petitioner presented the settlement deed in favour of his wife viz., Kamuthai in respect of the property in S.No.262 to an extent of 2 Acres 34 Cents before the 3rd respondent Sub Registrar Office on 13.07.2021, for execution, it has been returned vide Impugned Refusal Check Slip, dated 14.07.2021 stating that the petitioner has to get cancellation of the earlier documents registered vide Doc.Nos 3371/2014, 4310/2016 and 1119/2017 by approaching the Civil Court and re-submit the settlement deed for registration. Hence, this



6.The learned counsel for the petitioner would state that once the order is passed by the 2nd respondent declaring that the documents executed vide Doc.Nos.3371/2014, 4310/2016 and 1119/2017 are fraudulent documents and necessary entries have also been made in Index of the Encumbrance Certificate (EC), the petitioner need not approach the Civil Court to cancel the forged documents. The order passed by the second respondent, dated 13.08.2018 has become final and the same has not been put to challenge on appeal. The said position was reiterated by this Court in the case of J.Jayaniithaa Vs. Inspector General of Registration and others reported in 2021 (1) CTC 839 wherein it has been held that in the event of transaction held as fraudulent by the competent authority, the party should not be driven to the Civil Court to cancel the document and the proper course stipulated is that entry has to be made in the Encumbrance Certificate reversing the earlier entry at the time when the fraudulent transaction was registered. Thus, he would pray for setting aside the impugned order. In support of his contentions, he would rely on the decisions of this Court made in W.P.18721 of 2020 etc., batch, dated 15.12.2020 & W.P.(MD)No.10177 of 2021, dated 17.06.2021, and submitted that in similar circumstances, this Court has granted the relief to the petitioners therein.

7.The learned Government Advocate appearing for the respondents submitted that the Hon'ble Supreme Court has held that the Registration Department does not have the power to cancel any document and the same has been followed by the Circular issued by the Inspector General of Registration informing all the concerned Sub Registrars that such cancellation of a registered document should not be done. Thus, he would state that the impugned order does not require interference by this Court Court.

8.Heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondents.

9. It is relevant to extra below the paragraphs 10 to 15 of the order passed by this Court in W.P.(MD)No.10177 of 2021, dated 17.06.2021 relied on by the learned counsel for the petitioner.

"7. The learned counsel appearing for the petitioner submitted that the order passed by the second respondent, dated 30.04.2019, has become final and the same has not been put to challenge by the fifth respondent. The learned counsel by bringing to the notice of this Court the Judgment passed in the case of J.Jayaniithaa Vs. Inspector General of Registration and others reported in [2021 (1) CTC 839], submitted that where a transaction has been held to be fraudulent, a party should not be driven to a Civil Court to cancel the



document and proper entry has to be made in the Encumbrance Certificate reversing the earlier entry that was made place at the time when the fraudulent transaction was registered.

8. The learned Government Advocate (Civil) appearing on behalf of the official respondents submitted that the petitioner was insisting for the cancellation of the earlier sale deed executed in favour of the fifth respondent and such request made by the petitioner is unsustainable since the Hon-ble Supreme Court has held that the Registration Department does not have the power to cancel any document and the same has been followed up by the Circular issued by the Inspector General of Registration informing all the concerned Sub Registrars that such cancellation of a registered document should not be done. The learned counsel further submitted that the earlier transaction in favour of the fifth respondent has been declared to be a fraudulent transaction and the petitioner is also permitted to deal with the subject property. Therefore, he can always register the document pertaining to the property. Apart from that, no further relief can be granted to the petitioner by the Registration Department.

9. This Court has carefully considered the submissions made on either side and perused the materials available on record.

10. The Registration Act, 1908, provides for a mechanism to the concerned Authority to deal with a complaint pertaining to a fraudulent transaction. Once an Authority exercises such a power and conducts an enquiry and ultimately, finds that the entire transaction is fraudulent, such an order passed by the Authority should get reflected in the records. The Authority on the one hand cannot state that he will declare a transaction to be fraudulent and thereafter, he will send the party to a Civil Court to cancel that document. Declaring a transaction to be a fraudulent one, virtually makes that document void in the eye of law. Once a document is void in the eye of law, it is nonest and there is no necessity for a party to unnecessarily spend his time in a Civil Court seeking for cancellation of such a document. It will be a wasteful exercise without any purpose.



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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 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

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

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

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

15. This Writ Petition stands allowed with the above directions. No costs."

10. In my considered opinion, the above decision is squarely applicable to the facts of the present case. Accordingly, the impugned refusal check slip dated 14.07.2021 of the third respondent is quashed. There shall be a direction to the third respondent to take steps to record the proceedings of the 2nd respondent, dated 13.08.2018 in the relevant books and the same should be reflected in the EC., within a period of four weeks from the date of receipt of a copy of this order. Thereafter, it is for the petitioner to approach the Sub-Registrar for execution of the settlement deed.

11. This Writ Petition stands disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

TM/MPK

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,
Registration, Department,
No.100, Santhome High Road,
Chennai - 600 028.
2. The District Registrar (Administration),
Registration Department,
Periyakulam, Theni,
Theni District.

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



3.The Sub Registrar,
O/o. The Sub Registrar Office,
Registration Department,
Aundipatty,
Theni District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-24707[F] dated
30/07/2021)

+1 CC to M/s.SPL GP (SR-24732[F] dated 30/07/2021)

W.P. (MD) .No.12888 of 2021

Dated:

29.07.2021

MGJ(19.08.2021) 8P 6C