BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 30.07.2021
CORAM :
THE HONOURABLE MRS.JUSTICE J. NISHA BANU
W.P.(MD).No.13147 of 2021
and
W.M.P.(MD).No.10157 of 2021

B.Mahendran ... Petitioner

- Vs -

1.The Inspector General of Registration,
Registration Department,
No.100, Santhome High Road,
Chennai- 600028.

2.The Deputy Inspector General of Registration,
Registration Department,
Trichy.

3.The District Registrar, (Administration),
Registration Department,
Trichy.

4.The Sub Registrar,
Sub-Registrar Office,
Thiruvarambor,
Trichy.

5.S.Kanniyan,

6. S.Kannaiyan

7.M.Mariyappan ... 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 3rd Respondent impugned proceedings in Moo.Mu.No.4816/A4/2021 dated 18.06.2021, pertaining to sale deed in document No. 57/18, dated 04.01.2018 and the rectification deed in document No.401/18, dated 25.01.2018 executed by the 6th Respondent in favour of the 7th Respondent and the sale deed in document No. 522/18, dated 01.02.2018, executed by the 7th Respondent in favour of the petitioner, registered on the file of the 4th Respondent and quash the same as illegal and consequently directing the Respondent 1 to 4 to remove the entry of the sale deed in document No. 57/ 18 dated 04.01.2018 and the rectification deed in document No. 401/18, dated 25.01.2018 and the sale deed in document No, 522/18 dated 01.02.2018 from the records within time frame that may be stipulated by this Court.

For Petitioner : Mr.K.Mahendran
For Respondents : Mr.M.Lingadurai
Government Advocate

ORDER

This writ petition has been filed to quash the 3rd Respondent impugned proceedings in Moo.Mu.No.4816/A4/2021 dated 18.06.2021, pertaining to sale deed in document No. 57/18, dated 04.01.2018 and the rectification deed in document No.401/18, dated 25.01.2018 executed by the 6th Respondent in favour of the 7th Respondent and the sale deed in document No. 522/18, dated 01.02.2018, executed by the 7th Respondent in favour of the petitioner, registered on the file of the 4th Respondent and consequently, directing the Respondent 1 to 4 to remove the entry of the sale deed in document No. 57/ 18 dated 04.01.2018 and the rectification deed in document No. 401/18, dated 25.01.2018 and the sale deed in document No, 522/18 dated 01.02.2018 from the records within time frame that may be stipulated by this Court.

2. The brief facts of the case are as follows:-

(i) The petitioner purchased the Plot No.149 in the approved layout LPTT No.21/84 in Survey No.603, 604, 609, 611 ,613/1, 614 and 615/2 of Semangulam Village with in the Thiruvarambur Sub Registration District, Thiruvarambur Taluk, Trichy District, from the 7th Respondent, on a valuable consideration and the same has been registered as document No. 522/18, before the 4th Respondent on 01.02.2018. The petitioner purchased the property after verification of the sale deed in document No. 57/18 and the rectification deed in document No.401/18, executed by the 6th respondent in favour of the 7th Respondent and also the 6th Respondent purchased the above said property from the General Power holder K.A.Kalik S/o. N.M.Kajamiyan Rowther on 11.05.1984 and the same has been Registered as document No.1188/1984, before the 4th Respondent. Petitioner verified the Encumbrance Certificate from 1980 to till the date of Registration and nothing reflect in the Encumbrance Certificate, except the above said documents. Therefore, petitioner was under impression that he is the bonafide purchaser of the above said Plot and have every right to deal with the above said Plot.

(ii) After purchase, during the month of March, 2018 with a view to construct a house started an earth work in the vacant plot. At that time, the 5th respondent came and prevented the petitioner to clear the plot and informed that he is the owner of the plot and did not sold the property to anybody else. Further, the 5th respondent gave a complaint to the 4th Respondent stating that he is the real owner of the property and the 6th respondent created a forged sale deed in document No.57/ 18 and rectification deed in document No. 401/18 and sold the property to the 7th respondent with the connivance of one Sekar and Ashok Kumar. Again the 7th Respondent with the connivance of the 6th Respondent, Sekar and Ashok Kumar sold the property to the petitioner and the same has been registered in document No. 522/18. Further, the 5th Respondent requested the 4th Respondent to cancel the documents executed by the 6th respondent to 7th respondent and 7th respondent to the petitioner and also take criminal action against the forged persons.

(iii) The 4th respondent after scrutinizing all the sale deeds came to the conclusion that the 6th respondent is not a real Kanniyan and the 5th respondent is a genuine person. Further, the 6th respondent impersonate himself as 5th respondent and executed a forged document. Hence, the 4th respondent by proceedings dated 08.02.2018 requested the Superintendent of Police, Trichy, to take necessary action against the said forged persons. After receiving letter from the 4th respondent, the Superintendent of Police, Trichy, forwarded the same to the Inspector of Police, District Crime Branch (Land Grabbing), Tricy. Based on the complaint from the 5th respondent, a case in Crime No.5 of 2019 was registered, for the alleged offences under Sections 419, 420, 465, 467, 468 and 471 of IPC., against the 6th and 7th respondents, the witnesses Sekar and Ashok Kumar and against the petitioner.

(iv) Thereafter, the petitioner approached the 5th respondent and told him that once again the petitioner intended to purchase the property on valuable sale consideration to avoid criminal case against him and requested the 5th respondent to sell the same property to the petitioner at the prevailing market rate. Accordingly, the petitioner and the 5th respondent entered an agreement on 08.02.2021 and the petitioner paid a sum of Rs.16,00,000/-, as sale consideration and handed over all the original documents to the petitioner. It has been mentioned in the document that the petitioner have to cancel the forged sale deed created by the 6th and 7th respondents. The Petitioner and the 5th respondent gave a complaint on 24.03.2021 to the 3rd respondent seeking cancellation of the forged documents executed by the respondents 6 and 7.

(v). On receipt of the complaint, the 3rd respondent initiated proceedings in Na.Ka.No.4816/A4/2021, dated 08.04.2021, sent a notice to the petitioner, respondents 5 to 7 and conducted an enquiry on 10.05.2021. Further, the 3rd respondent also directed the 4th respondent to produce the relevant records on 10.05.2021.

In the mean time, the 3rd respondent received a letter from the 4th respondent vide proceedings in Na.Ka.No.258/2021, dated 14.06.2021 stating that the 4th respondent received a report from the Inspector of Police, District Crime Branch (Land Grabbing), that the 6th respondent created a forged document and directed the 4th respondent to cancel the above said forged documents and permit the 5th respondent to execute a sale deed to the proposed purchaser, to that extent the investigation officer also give no objection.

(vi). On 10.05.2021, the 3rd respondent conducted an enquiry. On that day, the 5th respondent produced the relevant documents to establish that the 5th respondent is the real owner of the property. The enquiry notice sent to the respondents 6 and 7 returned as insufficient address and no such person in the said address. The 3rd respondent, based on the relevant documents and the reports furnished by the investigation authority came to the conclusion that the documents executed by the respondents 6 and 7 are forged one and passed the impugned proceedings in Moo.Mu.No.4816/A4/2021, dated 18.06.2021 and further he came to the conclusion that in view of the Circular issued by the 1st respondent in his letter No.41530/U1/2017, dated 20.10.2017, he has no power to cancel the fraudulent documents and directed to the petitioner to approach the concern civil Court for seeking cancellation of the documents.

3. The learned counsel appearing for the petitioner 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.

4. The learned Government Advocate appearing on behalf of the official respondents submitted that the petitioner and the 5th respondent insisting for the cancellation of the earlier sale deed executed and such request made by them is un-sustainable, 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 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.

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

6. 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.

7. In the present case, the third respondent, after conducting an enquiry, has found the transaction to be a fraudulent one and thereby, the document executed in favour of the petitioner 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 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."

8. 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.

9. In view of the above, this Court is inclined to interfere with the impugned proceedings of the third respondent, dated 18.06.2021 and accordingly, the same is quashed. There shall be a direction to the respondents 1 to 4 to remove the entry of the sale deed in document No. 57/ 18, dated 04.01.2018 and the rectification deed in document No. 401/18, dated 25.01.2018 and the sale deed in document No, 522/18 dated 01.02.2018 from the records. 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.

10. This Writ Petition stands allowed with the above directions. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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- 600028.

2.The Deputy Inspector General of Registration,
Registration Department,
Trichy.

3.The District Registrar, (Administration),
Registration Department,
Trichy.

4.The Sub Registrar,
Sub-Registrar Office,
Thiruvarambor,
Trichy.

+1 CC to M/s.K.MAHENDRAN, Advocate (SR-24896[F] dated 02/08/2021)
+1 CC to M/s.SPL GP (SR-24912[F] dated 02/08/2021)

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