



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2021

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P(MD)No.17366 of 2021

A.Jinnah

... Petitioner

Vs.

1.The District Registrar,
District Registrar Office,
District Collector Office Campus,
Tirunelveli,
Tirunelveli District.

2.The Sub-Registrar,
No.1 Joint Sub Registrar Office,
Palayankottai,
Tirunelveli District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the second respondent herein in his proceedings in Refusal Number: RFL/1 No. Sub Registrar Palayamkottai/42/2021 dated 13.08.2021 and quash the same as illegal and against the provisions of Registration Act and direct the second respondent to register the document presented by the petitioner with No.TP/102377554/2021 dated 13.08.2020.

For Petitioner : Mr.S.Sarvagan Prabhu

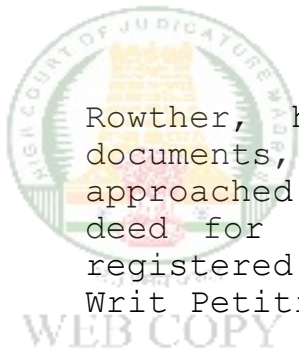
For R-1 and R-2 : Mr.P.Subbaraj,
Counsel for State.

For proposed respondent : Mr.V.Meenakshi Sundaram

ORDER

The petitioner challenges a refusal check slip dated 13.08.2021.

2. The petitioner states that the property bearing Survey No. 679 at Palayamkottai Village was purchased by his father, Atham



Rowther, his mother Muhaideen Fathima and himself under three documents, each dated 04.03.1994. Subsequently, the petitioner approached the second respondent herein and submitted a settlement deed for registration. Such settlement deed was refused to be registered under the impugned refusal check slip. By the present Writ Petition, the petitioner assails such order of refusal.

3. Mr.P.Subbaraj, learned counsel for the State, accepts notice on behalf of both the respondents. In addition, Mr.V.Meenakshi Sundaram, learned counsel, appears on behalf of a proposed party who was a party in an earlier Writ Petition namely W.P.(MD).No.24673 of 2018. He submits that the relevant property, namely, Survey No.269/Part is subject to a mortgage executed by the petitioner and that such mortgage is referred to in the impugned refusal check slip. He also points out that the impugned order may be assailed by way of a statutory appeal under Section 72 of the Registration Act, 1908.

4. Upon perusal of the impugned refusal check slip, it is evident that the second respondent has indicated about three reasons for refusal. The second respondent has stated that the petitioner has not produced any document establishing his entitlement to execute the document; the relevant property is subject to a mortgage in favour of the Tamil Nadu Merchantile Bank; and that third parties have rights over the relevant property. Notwithstanding the existence of an alternative remedy, this Court has interfered with refusal check slips which were either unreasoned or which set out a sole reason such as the non-availability of the original parent document. In those cases, interference was warranted because the decision making process was patently flawed. For instance, in spite of several judgments of this Court to the effect that registration should not be refused solely on the ground of non-production of the original parent documents, refusal orders were issued and such orders were interfered with. However, in the case at hand, three reasons, including the existence of a mortgage in favour of the bank is cited. As correctly pointed out on behalf of the intervenor, an order passed by the Sub-Registrar is subject to a statutory appeal under Section 72 of the Registration Act, 1908. In view of the nature of the order, which cites at least three reasons for refusal, this is not an appropriate case to interfere notwithstanding the existence of a statutory remedy.

5. Accordingly, without entering any findings on the merits of the matter, W.P.(MD).No.17366 of 2021 is disposed of without any order as to costs by leaving it open to the petitioner to assail the impugned refusal check slip by filing an appeal before the appellate authority concerned. In case the petitioner files such appeal within a period of fifteen (15) days from the date of receipt of a copy of this order, the appellate authority is directed to receive such appeal without going into the question of limitation and dispose of the appeal on merits and in accordance with law. Such



appeal shall be heard and disposed of after providing a reasonable opportunity to the petitioner and the intervening parties before this Court, namely, Mohammed Rabeek and Atham Raja.

Sd/-

Assistant Registrar (CS-I)

WEB COPY

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

tsg/LM

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 District Registrar,
District Registrar Office,
District Collector Office Campus,
Tirunelveli,
Tirunelveli District.

2.The Sub-Registrar,
No.1 Joint Sub Registrar Office,
Palayankottai,
Tirunelveli District.

+1 CC to M/s.S.SARVAGAN PRABHU, Advocate (SR-30446[F] dated 28/09/2021)

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-30456[F] dated 28/09/2021)

+1 CC to M/s.SPL.GP (SR-30464[F] dated 28/09/2021)

W.P (MD) No.17366 of 2021
27.09.2021

RD(6.10.2021) 3P 6C