IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.NO.2992 OF 2022

P.Sunil alias Sunil Prakash ..Petitioner

Vs

1. The Government of Tamilnadu
   rep. by its Secretary
   Commercial Taxes and Registration Department
   Fort St. George, Chennai - 600 009.

2. The Inspector General of Registration
   Government of Tamilnadu
   120, Santhome High Road
   Chennai - 600 028. ..Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for a writ of certiorari to call for the records culminating in circular No.4798/Aa1/2021, dated 17.11.2021 issued by the respondents and quash the same.

For the Petitioner : Mr.P.Sunil alias Sunil Prakash (Party-in-person)

For the Respondents : Mr.Yogesh Kannadasan Special Government Pleader (Registration)

ORDER
(Order of the Court was made by the Hon'ble Chief Justice)

By the writ petition, a challenge is made to the circular dated 17.11.2021 issued by the Registration Department, by which it is provided that a general power of attorney has to be revoked by the principal by execution of a revocation deed and the Sub Registrar should not insist that the principal should intimate the agent regarding the revocation of the general power of attorney through telegram/ letter.

2.Learned counsel for the petitioner submitted that the part of the circular denying an intimation to the agent about the revocation of the general power of attorney offends Section 202 of the Contract Act. Thus, the circular deserves to be struck down, as denial of such information to the agent would tantamount to violation of the elementary principles of natural justice.

3.Learned counsel for the petitioner placing reliance on the following judgments submitted that the the law propounded by the Apex Court and this Court requires an information to the agent before the revocation of the power of attorney:

(i)Commissioner of Centrla Excise, Bolpur v. Ratan Melting and Wire Industries, (2008) 13 SCC 1;
(ii)J.K.Sayani v. Bright Brother (P) Ltd., Bombay, 1980-1-MLJ 130 (DB);
(iii)Amar Nath v. Gian Chand and another, 2022 SCC OnLine SC 102;
(iv)M.Masilamani v. M.Veeramani and another, 2017 SCC OnLine Mad 4978;
(v)Gaddam Laxmaiah and others v. The Commissioner and Inspector General, Registration and Stamps, M.J.Road, Hyderabad and others, 2017 (4) ALT 213;
(vi)Ediga Chandrasekar Gowd and another v. The State of Andra Pradesh and others, 2017 (3) ALT 420;
(vii)P.Rajagurusamy v. The Sub-Registrar Office, Alandur at Nanganallur, Chennai and others, 2008 (1) CTC 284; and
(viii)Seth Loon Karan Sethiya v. Ivan E.John and others, AIR 1969 SC 73.

4.Learned counsel for the petitioner heavily relied on paragraph (5) of the Apex Court judgment in the case of Seth Loon Karan Sethiya, supra, in support of his argument and the same is quoted hereunder:

> "5. There is hardly any doubt that the power given by the appellant in favour of the bank is a power coupled with interest. That is clear both from the tenor of the document as well as from its terms. Section 202 of the Contract Act provides that where the agent has himself an interest in the property which forms the subject-matter of the agency, the

> agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest. It is settled law that where the agency is created for valuable consideration and authority is given to effectuate a security or to secure interest of the agent, the authority cannot be revoked. The document itself says that the power given to the bank is irrevocable. It must be said in fairness to Shri Chagla that he did not contest the finding of the High Court that the power in question was irrevocable."

Paragraph 5 quoted above makes a reference of Section 202 of the Contract Act, which provides that where an agent himself has interest in the property which forms subject-matter of agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest. It was also held that where the agency is created for valuable consideration and authority is given to effectuate a security or to secure interest of the agent, the authority cannot be revoked.

5.The other judgments referred by learned counsel for the petitioner propound the same ratio and it is with the observation that if a right of an agent exists in the property, revocation should not be without a notice to him. It was further held in the above judgments that in case of revocation of power of attorney, an intimation to the third party is required, if a right is created.

6.None of the judgments cited by the petitioner demonstrate that the power of attorney cannot be revoked by way of a revocation deed without notice to the agent, if the agent has no right in the property. Revocation of agency, where it is created for valuable consideration, cannot be made ignoring the provisions of Section 202 of the Contract Act, 1872. The same would not apply to revocation of the general power of attorney, unless the agent proves his right in the property, because the power of attorney is not executed in reference to valuable consideration.

7.On the contrary, the authorisation for agency can be on valuable consideration. Thus, a right is created, as a consequence such agency cannot be revoked without notice to the other party. The same principle does not apply to the revocation of general power of attorney and therefore, prior notice before execution of the revocation deed is not necessary.

8.However, if a third party right has been created prior to the execution of revocation deed and it is proved, the revocation deed can be challenged and the veracity of the same shall be determined by a Court of law.

9.For the foregoing reasons, this court finds no merit in the challenge made to the impugned circular and, accordingly, the writ petition is disposed of with the above observation. No costs. Consequently, W.M.P.Nos.3166 and 3167 of 2022 are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To:

1. The Secretary
   Government of Tamilnadu
   Commercial Taxes and Registration Department
   Fort St. George, Chennai - 600 009.

2. The Inspector General of Registration
   Government of Tamilnadu
   120, Santhome High Road
   Chennai - 600 028.

+1cc to Mr.P.Sunil Alias Sunil Prakash,
Party in Person, S.R.No.10487

+1cc to the Government Pleader, S.R.No.11566 (11/03/2022)

W.P.No.2992 of 2022

GPL(CO)
RGA(23/02/2022)