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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.09.2021

PRONOUNCED ON:18.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.No.491 of 2020
and
C.M.P.No.7312 of 2020

1. R.Krishnan
2. G.Kannan ..Appellants/Petitioners
Vs.

1. The Union Territory of Puducherry
Rep. by its Chief Secretary,
Government of Puducherry, Secretariat,
Puducherry.

2. The Inspector General of Registration,
Government of Puducherry, Puducherry.

3. The District Registrar,
Office of the District Registration Department,
Sakthi Nagar, Saram, Puducherry 13.

4. Narmada @ Mahalakshmi
5. A.Rajendiran ..Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent against the order dated 02.01.2020 passed in W.P.No.33741 of 2015.

Prayer in W.P.No.33741 of 2015: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the records of the 3rd respondent in his proceedings bearing DRP.No.3/2015/1096 dated 28.9.2015 quash the same.

For Appellants : Mr.T.Mohan for Mr.R.Kumar

For Respondents: Mr.V.Usha
Additional Government Pleader
(Puducherry) for RR 1 to 3
Mr.B.Balavijayan for RR4 and 5



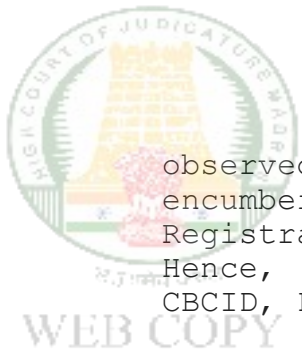
J U D G E M E N T

The appellants herein are the writ petitioners in W.P.No.33741 of 2015 and they questioned the order of the writ Court dated 02.01.2020 made therein.

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2.The challenge in the writ petition was to an order passed by the third respondent dated 28.09.2015. The said order was passed at the instance of the fourth and fifth respondents herein, who are wife and husband. The fourth respondent had purchased an extent of 7500 sq.ft. of land in R.S.No.257 in Thattachanvady Revenue Village from one Philomena Francis Gerard Rajarattinam on 23.09.2010. The said property was earlier developed by way of layout by one Balasundaram and Seenuvasan in the year 1965. The Eastern side of the property of the said plot was earmarked for the purpose of road. While so, when the appellants/writ petitioners attempted to fence the said area, having purchased the said portion from one Dr.A.Vasantha Kumari on 16.03.2015, the fourth respondent gave a complaint of encroachment of road. The appellants had claimed that they had obtained No Objection Certificate (NOC) from the Municipality to the effect that the road portion did not belong to the Municipality. Therefore, the fourth and fifth respondents had preferred a petition before the third respondent to cancel the sale deed that was executed in favour of the appellants. The said representation given by the fifth respondent was kept pending, which necessitated him to file W.P.No.27822 of 2015 seeking a Mandamus to dispose of the said representation.

3.On 04.09.2015, this Court disposed of the said writ petition, pursuant to which, the third respondent herein had conducted an enquiry by hearing both sides. It was contended before the District Registrar that the sale deed dated 16.03.2015 in favour of the appellants had given rise to the cause of action to approach the third respondent to invoke his powers under Section 68(2) of the Registration Act, 1908 (hereinafter referred to as "the Act"). By virtue of the powers conferred upon the Registrar under Section 75(4) of the Act, the Registrar had summoned the parties and conducted an enquiry as if he was a Civil Court. After enquiry, within the scope of the powers conferred upon him, the third respondent had found that the sale deed dated 16.03.2015 in favour of the appellants cannot confer any right to them and cancelled certain documents as per the powers vested under Section 68(2) read with Section 69 of the Act and also on the strength of the Circular No.8969/REGN/C3/DRDM/2014, dated 19.03.2015 of the Inspector General of Registration. Thus, the third respondent had cancelled the sale deed dated 03.05.2005, rectification deed dated 21.03.2005 and also the sale deed in favour of the appellants dated 16.03.2015. The third respondent had further



observed that the appellants had created a sham document by encumbering the road portion, which is a fraud played on the Sub Registrar amounting to an offence under Section 83 of the Act. Hence, the matter was referred to the Superintendent of Police, CBCID, Puducherry, for taking appropriate action.

4.The said order was challenged in W.P.No.33741 of 2015, wherein, the learned Single Judge also had found that the sale deed dated 16.03.2015 could not have conferred any right on the appellants, as it is earmarked for public purpose, namely, for usage as the road and it cannot be utilized for any other purpose. Hence, the present appeal.

5.Heard the learned counsel appearing on behalf of the parties on either side and perused the materials placed before this Court.

6.In the backdrop narrated above, the two aspects arise for consideration in this appeal are : firstly, whether the appellants had a valid title, having purchased the plot from a person, who does not have a marketable right ? and secondly, whether the third respondent has got powers to cancel the sale deed as Registering Authority ?

7.Insofar as the first question is concerned, admittedly, the appellants have already filed O.S.No.80 of 2015 on the file of the Principal District Judge, Puducherry, arraying the revenue officials also their vendor and the private respondents herein as defendants and sought for a relief of declaration that the plaintiffs (appellants) are the absolute owners of the property and also an injunction against the defendants (respondents). The said suit is still said to be pending. Prior to that, there is a proceedings of the Tahsildar, Oulgaret Taluk Office, dated 07.09.2012 in No.483/TOO/FS/LG/2012. The said communication was issued at the instance of the vendor of the appellants alleging that the fourth respondent had encroached on her land in the same Survey No.257/1 in Thattanchavady village. After detailed enquiry, based on the judgments of the Hon'ble Supreme Court holding that any site reserved for street, open space, park, school, etc., in a layout and normally be used for public purpose cannot be used or transferred for any other purpose, he held that R.S.No.257/1 earmarked in the layout as road cannot be transferred to any other person. The Tahsildar had further found that the Commissioner, Oulgaret Municipality, had already declared the land in R.S.No.257/1 as road even in the year 1998 itself and the same should be protected from any encroachment. Thus finding, the Tahsildar had sought a direction from the Sub Collector (Revenue) North, Puducherry, to be issued to the Commissioner, Oulgaret Municipality, to take legal steps to declare the sale as null and void as they are clear



encroachments on the road portion and the petitioner therein was advised to approach the Civil Court for damages against the vendors. Ironically, the vendor of the appellants herself had sold the plot to the appellants three years thereafter. Therefore, the appellants cannot claim any right or title over the property, when the same is purchased from a person, who did not have saleable right, as per the findings of the Tahsildar.

8. The next question regarding the powers of the Registrar to cancel the sale deed is concerned, it would be relevant to advert to Section 82(a) and (d) of the Act, which is reproduced as follows :

"82. Penalty for making false statements, delivering false copies or translations, false personation, and abetment.— Whoever—

(a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or enquiry under this Act; or

.....

(d) abets anything made punishable by this Act, shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both."

9. When the Tahsildar even in the year 2012 had specifically found that the land in dispute is earmarked for a public purpose, namely, road, by making a false statement, the vendors of the appellants have sold the property to them. Therefore, having committed an act contrary to the interest of the public, the Registering Authority has got power to rectify the same to the extent what has been permitted under the Act. In exercise of his power under Section 83 of the Act, the Registrar had referred the matter to the CBCID, Puducherry, for prosecuting the purchasers for their wrongful act. The Writ Court also, considering all these aspects, had specifically found that no purpose would be served by remanding the matter to the third respondent.

10. Once again, as mentioned supra, the appellants had already filed a civil suit, wherein, all the official parties are arrayed as defendants and the Civil Court would be the appropriate forum to establish their title. As indicated earlier, the revenue authorities and the Municipal officials have found that the property in dispute was specifically earmarked for the purpose of road and the same cannot be put to any other use other than for public use. Therefore, the appellants cannot claim any right over the suit property until Civil Court render its judgment after trial in their favour.



11. The third respondent had recommended criminal action against the purchasers and it is stated that the criminal case has also been registered. Despite all the above facts, the learned counsel for the appellants would place reliance on Satya Pal Anand V. State of M.P., (2016) 10 SCC 767 and contend that the Registering Authority does not have the power to cancel the sale deed. In this regard, it is apposite to refer to the following paragraphs of the said judgment :

"40. The Andhra Pradesh High Court, in Yanala Malleshwari v. Ananthula Sayamma, AIR 2007 AP 57, was called upon to consider whether a person can nullify the sale by executing and registering a cancellation deed and whether the Registering Officer like District Registrar and/or Sub-Registrar appointed by the State Government is bound to refuse registration when a cancellation deed is presented. The fact remains that if the stipulation contained in Sections 17 and 18 of the 1908 Act are fulfilled, the Registering Officer is bound to register the document. The Registering Officer can refuse to register a document only in situations mentioned in sections such as Sections 19 to 22, 32 and 35. At the same time, once the document is registered, it is not open to the Registering Officer to cancel that registration even if his attention is invited to some irregularity committed during the registration of the document. The aggrieved party can challenge the registration and validity of the document before the civil court. The majority view of the Full Bench was that if a person is aggrieved by the extinguishment deed or its registration, his remedy is to seek appropriate relief in the civil court and a writ petition is not the proper remedy.

41. Section 35 of the Act does not confer a quasi-judicial power on the Registering Authority. The Registering Officer is expected to reassure that the document to be registered is accompanied by supporting documents. He is not expected to evaluate the title or irregularity in the document as such. The examination to be done by him is incidental, to ascertain that there is no violation of provisions of the 1908 Act. In Park View Enterprises v. State of T.N., AIR 1990 Mad 251, it has been observed that the function of the Registering Officer is purely administrative and not quasi-judicial. He cannot decide as to whether a document presented for registration is executed by person having title, as mentioned in the instrument. We agree with that exposition."



12. There is no second opinion about the above legal position that the Registering Authority cannot cancel the sale deed as the power is vested only with the Civil Court. If the argument has to be accepted, in terms of the above referred to judgment, it would be appropriate to wait for the result of O.S.No.80 of 2015 pending on the file of the Principal District Court, Puducherry.

13. As fraud vitiates all solemn acts and the appellants herein are claiming right based on a fraudulent transfer, which is evident from their very suit, which added their own vendors also as parties, it would be appropriate to keep all the three documents, namely, (i) Sale Deed dated 03.05.2005 ; (ii) Rectification Deed dated 21.03.2005 ; and (iii) Sale Deed dated 16.03.2015, in abeyance till the outcome of O.S.No.80 of 2015. The criminal proceedings may also be expedited in the meantime. It is made clear that no right, title or interest would flow to any party under the above said three documents, till such time.

14. In such view of the matter, the portion of the order of the third respondent cancelling three documents needs interference and the remaining portion of the order needs to be upheld and accordingly, the order of the third respondent dated 28.09.2015 is set aside insofar as it cancels the documents, which are directed to be kept in abeyance by us, and in respect of the remaining directions, the same remain unaltered, as confirmed by the Writ Court. The appellants are restrained from dealing with the property by encumbering or alienating the same till such time, the Civil suit is disposed of finally.

15. In the result, the writ appeal is disposed of modifying the order of the learned Single Judge to the extent indicated above. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Secretary,
Government of Puducherry,
Secretariat,
Union Territory of Puducherry
Puducherry.



2. The Inspector General of Registration,
Government of Puducherry, Puducherry.

3. The District Registrar,
Office of the District Registration Department,
Sakthi Nagar, Saram,
Puducherry 13.

+1cc to Mr.B.Balavijayan, Advocate, S.R.No.11010

+1cc to Mr.R.Kumar, Advocate, S.R.No.11334

W.A.No.491 of 2020
& C.M.P.No.7312 of 2020

BR(CO)
RGA(24/02/2022)