



W.P. No.4106/2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
15.11.2022	22.11.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.4106 OF 2016

Praxair India Pvt. Ltd.
Regd. Office : Mercury 2B Block
6th Floor, Prestige Technology Park
Outer ring Road, Marathalli
Bangalore 560 103, rep. by
Its Corporate Legal Counsel
Mr. Sthanu Singh

.. Petitioner

- Vs -

1. The State of Tamil Nadu
Rep. by the Secretary to Govt.
Registration Department
Secretariat, St. George Fort
Chennai 600 009.

2. The District Registrar (Admin)
230, 5th Gandhi Road
Swalpet, Arakkonam 631 001.

3. The Sub Registrar of Assurances
Taluk Office Compound
M.B.1 Road, Walajapet 632 513.



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4. The Joint District Registrar (Record)
Old Custom House
Shahid Bhagatsingh Road
Fort, Mumbai 400 023.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records of the 2nd respondent comprised in his communication in Letter No.4398/B1/2014 dated 05.03.2015 addressed to the 4th respondent and quash the same as being arbitrary, illegal and is violative of the provisions of the Registration Act and consequently direct the respondents to take on record the endorsement issued by the Sub Registrar, Mumbai, reflecting the registration of the Conveyance Deed dated 04.05.1998 registered as Document No.719/98 in the office of the 4th respondent so as to reflect the said transaction in the records of the 2nd respondent.

For Petitioner : Mr. Rahul Balaji

For Respondents : Mr. E.Vijay Anand, AGP for RR-1 to 3

ORDER



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Assailing the communication of the 2nd respondent in and by which the endorsement regarding the sale made with regard to the subject property was not entertained as it is alleged to be against the provisions of the Registration Act, the present writ petition has been filed.

2. It is the case of the petitioner that land to the extent of about 7.62 acres in the land bearing Plot No.23, Sipcot Industrial Complex, Ranipet, North Arcot District, falling with the State of Tamil Nadu, was originally allotted to Asiatic Oxygen Ltd (for short 'AOL') by SIPCOT on lease-cum-sale basis as per the lease-cum-sale agreement executed on 27.01.1978 between SIPCOT and AOL registered as Doc. No.1011 of 1978 before the Joint Sub Registrar, North Chennai. Upon completion of the period of lease and payment of all the due amounts as contemplated under the lease-cum-sale agreement, the land was sold and transferred absolutely to AOL by SIPCOT vide sale deed dated 27.11.1997 registered as Doc. No.4426 of 1997.

3. A land to the extent of 4.12 acres from out of the total extent of 7.62 acres was conveyed to the petitioner vide deed of conveyance dated 4.5.1998 for



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which necessary non-judicial stamps of appropriate value as per the Indian Stamp Act was purchased from the Treasury of the Government of Tamil Nadu and the same was registered in the office of the Sub Registrar, Bombay City District as Doc. No.719/1998.

4. It is the further case of the petitioner that as per Section 30 (2) of the Registration Act, as it stood on the date of registration, the Registrar of a District in which a Presidency Town is included was entitled to receive and register any sale deed even if the property to which the sale deed relates to was situated in any part of India. Though the said provision was repealed with effect from 24.9.2001, the conveyance deed in favour of the petitioner was executed on 4.5.1998 when Section 30 (2) was very much in force and, therefore, the said registration is valid and legal.

5. It is the further averment of the petitioner that though Section 28 of the Registration Act, insofar as State of Tamil Nadu is concerned, was amended vide Act 19 of 1997 which provides that the document of sale which relates to any property situate within the State of Tamil Nadu, the Sub Registrar within whose



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District the whole or some portion of the property is situate, registration should be within the jurisdiction of the Sub Registrar and that any contravention of the aforesaid provision shall render the document null and void.

6. It is the further averment of the petitioner that Section 30 overrides the provisions of Section 28 and in the light of the same, the sale deed dated 4.5.1998 executed by AOL in favour of the petitioner and registered with the office of the Sub Registrar, Mumbai City is very much legal and in accordance with the provisions of the Registration Act as it stood at the relevant point of time and that there is no violation of Section 28 of the Registration Act. It is the further case of the petitioner that to regularize the process of registration of the deed of conveyance, the petitioner addressed a letter dated 3.2.2010 to the 3rd respondent requesting to make appropriate entry in the records in terms with the provisions of Section 30 (2) of the Registration Act. The petitioner was directed to get a letter from the Sub Registrar, Mumbai along with extract of certain documents, which were duly forwarded by the Sub Registrar, Mumbai. However, the petitioner was directed to take steps with the Sub Registrar, Mumbai for forwarding the aforesaid documents to the Sub Registrar, Arakonam.



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Since there was no response from the said authority, the petitioner addressed a letter to the Deputy Inspector General of Registration, Vellore, dated 23.9.2015 for expediting the process. However, after a considerable length of time, the petitioner was given to understand that the 2nd respondent had addressed the impugned communication to the 4th respondent since no action is required at the end of the 2nd respondent, the document copy is remitted back to the 4th respondent citing Section 28 of the Registration Act. Aggrieved by the said impugned order, the present writ petition has been filed.

7. Learned counsel appearing for the petitioner submitted that though Section 28 of the Registration Act, which was amended vide Tamil Nadu Act 19 of 1997 with effect from 29.3.1997 provides that insofar as document mentioned in clauses (a) to (i) of sub-section (1) and sub-section (2) of Section 17 insofar as such document affect immovable property and in clauses (a) to (c) and (cc) of Section 18, the same shall be presented for registration in the office of a Sub Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate in the State of Tamil Nadu, however, sub-section (2) to Section 30 of the Registration Act, as it stood then, provided the



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Registrar of a District in which a Presidency-town is included and the Registrar of the Delhi District may receive and register any document referred to in Section 28 without regard to the situation in any part of India of the property to which the document relates.

8. In view of the above provision of law, particular Sections 28 and 30 (2) as it stood on the relevant date, it is the submission of the learned counsel that Section 30 (2), being a Central enactment, will have a march over Section 28 of the State enactment. It is the further submission of the learned counsel for the petitioner that even Section 66 and 67 of the Registration Act contemplate registration of the document at any place and endorsement to be made in the registration district upon reference by the Registrar who registered the said document. Section 67 of the Registration Act was only omitted in the year 2001 and, therefore, necessarily, the document of the petitioner would be covered by Section 67 of the Act. It is the further submission of the learned counsel that Section 30 (2) having allowed to remain without being omitted when Section 28 was amended, necessarily, Section 30 (2) is an exception and the mere



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amendment to Section 28 without omitting Section 30 (2), 66 and 67 cannot render the registration void.

9. It is the further submission of the learned counsel that Registration Act falls under the concurrent list and since the above amendment got the President's assent, it would prevail in the State of Tamil Nadu, but the same would not be applicable in Mumbai, where the document was registered, as it was covered u/s 30 of the Registration Act and, therefore, the act of the 2nd respondent to return back the document, without entering the same in the register maintained for the purpose of showing the sale and registration of documents is wholly erroneous and unsustainable and, accordingly prays for allowing the petition with consequential directions.

10. In support of his submissions, learned counsel for the petitioner placed reliance on the following decisions :-

- i) *Rumi Sein & Anr. – Vs – Snjay Sureka & Ors. (2011 SCC OnLine Cal 1846); and*
- ii) *Gati Cargo Management Service – Vs – SBL Industries Ltd. (2014 SCC OnLine Del 3297).*



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11. Per contra, learned Addl. Government Pleader appearing for the respondents submitted that Section 28 of the Registration Act mandates that if the whole or some portion of the property to which such documents relates is situated in the State of Tamil Nadu such document shall be registered only in Tamil Nadu. In the case on hand, the property being within the sub-registration district under the 3rd respondent, necessarily the document has to be registered at the office of the 3rd respondent and it cannot be registered at Mumbai by virtue of Section 30 of the Registration Act.

12. It is the further submission of the learned Addl. Government Pleader that Section 30 of the Registration Act would in no way have a bearing on the application of Section 28 of the Registration Act as Section 28 of the Registration Act alone covers the field with regard to registration of documents within the State of Tamil Nadu.

13. It is the further submission of the learned Addl. Government Pleader that the document has been registered in contravention of amended Section 28



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of the Registration Act and, therefore, the consequent filing of the copy/memo and seeking updation of the Encumbrance Index II is not maintainable. It is the further submission of the learned Addl. Government Pleader that when Section 28 mandates registration of any document, with regard to the whole of part of the property falling within the sub registration district within the State of Tamil Nadu to be presented only before the Sub Registrar within whose sub-registration district the property falls and any document registered outside the State of Tamil Nadu in contravention of the aforesaid provision is null and void, the document registered at Mumbai and presented for being entered into in the records of the 3rd respondent cannot be entertained and it has been rightly returned back and, therefore, no interference is warranted with the said order.

14. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record as also the relevant provisions of law to which this Court's attention was specifically drawn.



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15. It is the admitted case of the parties that the document, which is the subject matter in issue, was registered before the Sub Registrar, Bombay City District on 4.5.1998 as Document No.719 of 1998. The said document, for the purpose of being regularized, was placed before the 2nd respondent, which was returned back to the 4th respondent stating that no action is required at the end of the 2nd respondent. The reason for the 2nd respondent returning the document back to the 4th respondent was on account of Section 28 of the Registration Act, which was amended with effect from 29.3.1997. For better appreciation, Section 28 as it stood amended on 29.3.1997, is quoted hereunder:-

“28. Place for registering documents relating to land.- Save as in this Part otherwise provided, -

(a) Every document mentioned in clauses (a), (b), (c), (d), (e), (f), (g), (h) and (i) of sub-section (1) and sub-section (2) of section 17 in so far as such document affects immovable property and in clauses (a), (b), (c) and (cc) of section 18, shall be presented for registration in the office of a sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate in the State of Tamil Nadu:

Provided that every document mentioned in clause (h) of sub-section (1) of section 17 may also be presented or registration in



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the office of the Sub-Registrar within whose jurisdiction the principal ordinarily resides : and

(b) Any document registered outside the State of Tamil Nadu in contravention of the provisions of clause (a) shall be deemed to be null and void.”

16. Relying on the aforesaid provision, which mandates that document mentioned in clauses (a), (b), (c), (d), (e), (f), (g), (h) and (i) of sub-section (1) and sub-section (2) of section 17 in so far as such document affects immovable property and in clauses (a), (b), (c) and (cc) of section 18, shall be presented for registration in the office of a sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate in the State of Tamil Nadu and any contravention of the aforesaid clause, the document would be deemed null and void, the 2nd respondent had returned back the document to the 4th respondent.

17. However, the petitioner relies on Section 30 (2) of the Act to persuade this Court that registration outside the State is permissible with respect to immovable property, viz., lands, of which whole or part is situate within a sub-



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registration district and in that scenario and the Registrar may entertain registration of the said document.

18. Section 30 (2) had been omitted vide Registration and Other Related Laws Amendment Act 48 of 2001 with effect from 24.9.2001. However, on the date of registration of the document in question, Section 30 (2) was very much in force and the said section reads as under :-

“30. Registration by Registrars in certain cases.- (1) Any Registrar may, in his discretion, receive and register any document which might be registered by any Sub-Registrar subordinate to him.

(2) The Registrar of a district in which a Presidency-town is included and the Registrar of the Delhi district may receive and register any document referred to in section 28 without regard to the situation in any part of India of the property to which the document relates.”

19. Relying on the aforesaid sub-section (2) to Section 30, persuasive argument is advanced by the learned counsel that the Registrar of a district in which a Presidency town is included and the Registrar of Delhi district may receive and register any document referred to in section 28 without regard to the



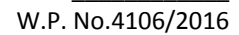
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situation in any part of India of the property to which the document relates. It is the submission of the learned counsel that Section 28 being a State amendment and the Act being in the concurrent list, the Central enactment will prevail over the State enactment and in that regard, Section 30 will have an overriding effect over Section 30 and, therefore, sub-section (2) to Section 30 will prevail over Section 28.

20. Sub-section (2) to Section 30 covered the field till its omission on 24.09.2001. However, even prior to its omission, Section 28 was amended by the State Legislature vide Act 19 of 1997, which came into effect on 29.3.1997 upon receipt of Presidential Assent. Therefore, the State enactment as well as the Central enactment, viz., Section 28 and Section 30 having received Presidential assent, which enactment would cover the issue on hand is the moot question that falls for consideration before this Court.

21. To address this issue, this Court has to turn back to Article 254 of the Constitution of India, which would determine the sequence under which one



“254. (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

(Emphasis Supplied)



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22. Article 254 (2), in unequivocal terms speaks of the law, which would prevail, in respect of matters falling in the concurrent list, where there are enactments by the Centre as well as by the State. In unambiguous terms, Article 254 (2) mandates that where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State.

23. In the case on hand, sub-section (2) to Section 30 of the Registration Act was holding the field on the day when the State thought it fit, for reasons thereto stated, to amend Section 28 to bring in an amendment to the effect that with regard to any immovable property enumerated in Sections 17 and 18 of the Registration Act, any document to be registered with regard to the property, which falls wholly or partially within the sub-registration district of the State of Tamil Nadu, the said registration should be done before the sub Registrar within whose jurisdiction the said immovable property is situate as otherwise the said



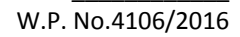
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registration would be held to be null and void. The said amendment received the assent of the President and had come into effect from 29.3.1997.

24. However, on the said date, sub-section (2) to Section 30 was still in the statute book and in that context, the provision which would hold the field would have to be decided by the application of Article 254 of the Constitution.

25. Reliance is placed on the decision in *Gati Cargo case (supra)* by the petitioner that in a similar situation the learned Judge of the Bombay High Court had gone into the question of validity of the registration with the jurisdiction of Maharashtra in respect of a property falling within the jurisdiction of the State of Bihar. However, in the case on hand, the validity of the registration made at the office of the 4th respondent has not been put in issue, rather, the entry that is sought to be made in the records maintained by the 3rd respondent with regard to the said registration is put in issue and contended that it is hit by Section 28 of the Registration Act. In the aforesaid context, the relevant portion of the said decision is quoted hereunder :-



"254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.-- (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the



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provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State: Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

24. By virtue of Article 254(1) of the Constitution, in the event of any conflict of laws enacted by a State Legislature and by the Parliament in respect of matters listed in the concurrent list, the legislation as enacted by the Parliament would prevail. In a situation, where a State Legislation has obtained the President's assent, the same would prevail in that State. Although, in the present case, there are no two different enactments, however, the principles that are enunciated in Article 254 of the Constitution of India would be applicable. Thus, in my view, the Registration Act, 1908 as amended by the Registration (Bihar Amendment) Act, 1991, would prevail over the existing law (i.e pre-constitutional legislation) as applicable to the State of Bihar. However, it is relevant to note that the same does not imply that the law as amended by the Bihar Legislature would have extraterritorial application. The last four words of Article 254(2) of the Constitution of India - "prevail in that State" clearly restrict the applicability of the amendment to the state of Bihar. That



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being so, the Registration of the sale deeds in question by the registering authorities in Mumbai by virtue of Section 30(2) of the Act are not flawed.

25. It is apparent from the above that the registration authorities in the State of Maharashtra were duly empowered to register the documents in accordance with the Central Legislation- the Act. There is no dispute that Section 30 of the Act as applicable to the State of Maharashtra included Sub-section (2). Accordingly, the act of the registering authorities in Mumbai, in registering a document pertaining to the subject property situated at Ranchi cannot be faulted. The limited question that needs to be addressed is whether the deletion of Section 30(2) of the Act as applicable to Bihar by the Bihar Legislature would have the effect of voiding the registration effected by the registering authorities at Mumbai.

26. The learned counsel for the applicants had drawn my attention to the amendments to Section 28 of the Act as applicable to the territory of Pondicherry, which were carried out by virtue of the Pondicherry Act 5 of 1999 w.e.f. 04.05.1999. Section 28 as amended by the Pondicherry Act 5 of 1999 reads as under:-

"28. Place for registering documents relating to land.-

Save as in this Part otherwise provided,-

(a) every document mentioned in clauses (a), (b), (c), (d) and (e) of sub-section (1) and sub-section (2) of section 17, in so far as such document affects immovable property



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and in clauses (a), (b), (c) and (cc) of section 18 shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate in the Union Territory of Pondicherry; and

(b) any document registered outside the Union Territory of Pondicherry in contravention of the provisions of clause (a) shall be deemed to be null and void."

27. It was pointed out that the amendment to Section 28 brought about by the Bihar Legislature did not include a clause similar to clause (b) of Section 28 of the Act as introduced by Pondicherry Act 5 of 1999. According to the applicants this indicated that it was not the intention of the Bihar Legislature to void any registrations in respect to property situated at Bihar, which were effected by the authorities in the erstwhile presidency towns and Delhi. It is settled law that the legislature expresses its intent through the language of the statute and accordingly, the language of a statute must be interpreted to discover the intention of the Legislature. In the present circumstances, one is hard pressed to find any other intention of the Bihar Legislature in deleting Section 30(2) of the Act, except to provide that registering documents other than in a manner as expressed by Section 28 of the Act was not available. However, that in my view would not be the same as expressing a legislative intent to void registrations of all documents that are effected, by virtue of section 30(2) of the Act, by Registrars of the districts in which



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*the erstwhile Presidency-towns are located or by the Registrar of
Delhi.*

(Emphasis Supplied)

26. From the above, it is clear that any document which is registered outside the jurisdiction within which the property is situated in the State of Tamil Nadu, such transactions would be void, as it is the intention of the Tamil Nadu Legislature to void registrations made in respect of property situated in Tamil Nadu, but were registered elsewhere.

27. Article 254 (2) mandates that where a State law, which is repugnant to a Central enactment falling in the concurrent list, provided the said State law received the assent of the President, would prevail over the Central enactment and would be applicable in the said State.

28. Section 30 (2) was in the statute book when Section 28 was amended and the said sub-section (2) to Section 30 is repugnant to Section 28, more particularly with reference to clause (b) of Section 28 as only in the absence of the assent of the President normally, the Central enactment, viz., 30 (2) would



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prevail over the law enacted by the State Legislature, viz., Section 28. However, as aforesaid, the amendment to Section 28 had received the assent of the President and came into force with effect from 29.3.1997. That being the case, necessarily the State enactment would prevail over the Central enactment and in that case, Section 28 and clause (a) appended thereto would come into play in respect of any immovable property, which falls within the State of Tamil Nadu and necessarily registration of the said instrument has to be made before the Sub Registrar within whose jurisdiction the whole or part of the immovable property falls and any registration made outside the State of Tamil Nadu with respect to an immovable property situate within the State of Tamil Nadu, such registration would be null and void.

29. Further, the insertion of clause (b) to Section 28 which provides for an instrument to be treated null and void if the same is not in compliance of Section 28 as enacted by the State Legislature and in such circumstances, the decision in *Gati Cargo case (supra)* would be more in favour of the respondents than the petitioner, as there is a marked difference between the case before the Bombay High Court and the present case before this Court.



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30. In ***Veena Textiles Ltd. – Vs – Authorised Officer, ICFI Ltd. (2014 (5) CTC 209)*** this Court has held that consequent on the amendment of Section 28 by the Registration (Tamil Nadu amendment) Act 19 of 1997 with effect from 29.3.1997, the assignment deed assigning the debt along with underlying securities being immovable properties lying in Tamil Nadu but registered beyond Tamil Nadu is *null and void and non-est*.

31. Further, in the decision in ***ARC Investments Castings LLP – Vs – Interpump Hydraulics India Pvt. Ltd. (2021 (5) CTC 422)*** this Court held, in the facts of the said case, that the assignment deed executed at Mumbai which is in respect of immovable property at Hosur and that the said assignment deed is not registered at Tamil Nadu, the non-registration of the assignment deed *per se* at Tamil Nadu renders it invalid. The facts in issue in the abovesaid case is squarely applicable to the case on hand and, therefore, it is clear that the registration of document at Mumbai in respect of an immovable property within the State of Tamil Nadu would be invalid.



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32. In the case on hand, the document was registered before the Sub Registrar, Bombay City District, on 4.5.1998 in respect of an immovable property, which is situate within the State of Tamil Nadu by the petitioner entering into a Deed of Conveyance with AOL. The immovable property, which is the subject matter of the registration falls within the sub-registration district of the 3rd respondent and necessarily, the registration of the said document has to be done before the 3rd respondent in terms of Section 28 of the Registration Act. Registering the document by the petitioner before the 4th respondent and forwarding of the same for being entered in the books of the 3rd respondent for the purpose of marking the encumbrance would be against the tenor of Section 28, more particularly in view of clause (b) of Section 28, the provision u/s 30 (2) would not stand attracted to the case of the petitioner, as the immovable property falls within the sub-registration district of the 3rd respondent and any document registered beyond the jurisdiction of the State of Tamil Nadu would be null and void. Rightly interpreting and applying the aforesaid provision, the 2nd respondent had returned back the document back to the 4th respondent, which act of the 2nd respondent cannot be said to be perverse, arbitrary, illegal and unsustainable. The said act of the 2nd respondent is wholly covered by the



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mandate of Section 28 and necessarily this Court has to uphold the act of the 2nd respondent and no interference is warranted with the order impugned herein.

33. For the reasons aforesaid, this writ petition fails and the same is dismissed. In the circumstances of the case, there shall be no order as to costs.

22.11.2022

Index : Yes / No

Internet : Yes / No

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To

1. The Secretary to Government
Registration Department
Government of Tamil Nadu
Secretariat, St. George Fort
Chennai 600 009.
2. The District Registrar (Admin)
230, 5th Gandhi Road
Swalpet, Arakkonam 631 001.
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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NO.4106 OF 2016**

**Pronounced on
22.11.2022**