



W.P.No.27081 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.27081 of 2022 and
W.M.P.Nos.26301, 26303 & 32665 of 2022

1. Raniraju
2. S.Elson
3. L.Arokiya Angeline .. Petitioners

vs

1.The District Revenue Officer, Thiruvarur.
2. The District Registrar, (Audit), Thiruvarur.
3. The District Registrar, Administration, Thiruvarur.
4. The Sub-Registrar, Thiruvarur.
5. The Tahsildar, Thiruvarur.

6. M.Fazilur Rahman
7. Fathima B.R. .. Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records of the first respondent bearing செ.மு.ந.க.No.10366/2015/ஆ1 dated 15.11.2021 and the proceedings of the second respondent herein bearing செ.மு.ஆ.No.96/2022 dated 11.08.2022 in respect of Survey No.112/4 of Kattur Village and quash the same and direct the second respondent to remove the entries treating the sale deeds executed after 04.08.1969 in respect of the said property as fraudulent documents and forbear the respondents from in any manner interfering with the rights of the petitioners 2 and 3 in respect of the property of an extent of 11 2/3 cents in Survey No.112/4 A1a in Kattur (Vilagam) Village.



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For Petitioners : Ms.A.L.Ganthimathi
For Respondents : Mr.Yogesh Kannadasan
Special Government Pleader
for respondents 1 to 5
Mr.M.Ravindran
Senior Counsel
for Mr.Krishna Ravindran
for respondents 6 & 7

ORDER

Prayer sought for herein is for a Writ of Certiorari, calling for the records of the first respondent bearing செ.மு.ந.க.No.10366/2015/ ஆ1 dated 15.11.2021 and the proceedings of the second respondent herein bearing செ.மு.ஆ.No.96/2022 dated 11.08.2022, in respect of Survey No.112/4 of Kattur Village and quash the same and direct the second respondent to remove the entries, treating the sale deeds executed after 04.08.1969 in respect of the said property as fraudulent documents and forbear the respondents from in any manner interfering with the rights of the petitioners 2 and 3 in respect of the property of an extent of 11 2/3 cents in Survey No.112/4 A1a in Kattur (Vilagam) Village.

2. In respect of the land at Survey No.112/4, Kattur village, Thiruvarur District, there was a complaint given by the private respondents 6 and 7 to the first respondent that, before the UDR Survey, the property in question belonged to the



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father of the respondents 6 and 7, but, subsequently, the UDR Survey has wrongly mentioned and removed the name of the father of the respondents 6 and 7. By taking advantage of the same, some third parties have exploited the property in question, therefore, that should be rectified.

3. Having considered the said representation-cum-complaint given by the respondents 6 and 7, the first respondent passed an order on 15.11.2021, whereby, the pattas issued in respect of the land pertaining to the transaction and registered by the concerned Registrar Office on or before 04.06.1969, has to be canceled and accordingly, the patta should be restored before the said date. That order passed by the first respondent dated 15.11.2021, is the first impugned order in this writ petition.

4. It seems simultaneously that the private respondents had given a complaint to the second respondent to declare the documents i.e., six number of documents, which were made sometime in between 1991 and 1999 by various parties, under which, the property in question have been sold to the petitioner's predecessors in title, from whom, the petitioners have purchased the property. That complaint also having been considered and after hearing both sides, by giving



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notice to both sides, the District Registrar / second respondent herein passed an order on 11.08.2022, whereby, the second respondent has declared those six documents, mentioned in the order itself, having been registered fraudulently. The second respondent has explained his inability to cancel such registration, because, at that time, the law prevailing was that the Registering Authority could not cancel the registrations made, even though it is concluded as fraudulent transactions. He, by order dated 11.08.2022, relegated the parties to go before the appropriate Civil Court to get the remedy.

5. Challenging these impugned orders, the petitioner has moved this present writ petition.

6. Therefore, there are two impugned orders, one is passed by the first respondent dated 15.11.2021 and another is passed by the second respondent dated 11.08.2022.

7. Assailing these orders impugned, Ms.A.L.Gandhimathi, learned counsel appearing for the petitioner has submitted that, insofar as the first impugned order passed by the first respondent is concerned, no notice has been given to the



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petitioner and absolutely no whisper, in the impugned order made by the first

respondent, to state that at least opportunity has been given to the petitioner.

Without giving a notice or without giving any opportunity if this order is passed, it is a complete violation of the principle of natural justice. Since the order have been passed by the first respondent in violation of principle of natural justice, apart from the merit of the case, the impugned order of the first respondent is liable to be interfered with.

8. Assailing the second impugned order passed by the second respondent dated 11.08.2022, learned counsel appearing for the petitioner would submit that, though notice have been given to the petitioners also, as it is a large extend of land and a part of which have been purchased by various other parties, the petitioners could not appear before the second respondent and therefore, the actual cause which ought to have been projected by the petitioner could not be projected before the second respondent, hence, the matter can be once again reheard by the second respondent by giving such an opportunity to the petitioner, she contended.

9. However, Mr.M.Ravindran, learned Senior Counsel appearing for the private respondents, viz., respondents 6 and 7 would submit that, prior to the UDR



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Survey, the land in question stood in the name of the private respondents' father.

During the UDR Survey, somehow, the patta has been issued, other than the private respondents' father, namely , one M.K.Rahman Sahib, who is no more and taking advantage of the same, so many exploitation have taken place and the property belonging to the private respondents having been exploited by so many third parties, who seem to have sold it to the predecessor in title of the petitioner, also from whom the petitioner seems to have purchased. Therefore, in order to rectify this mistake made by the Revenue Department during the UDR Survey, when petition has been given, that was enquired by the first respondent and orders were passed on 15.11.2021.

10. He further submits that even though there has been no discussion as to whether the petitioners herein or their predecessors in title has been issued notice and their view has been heard or not, but it cannot be said that no notice had been given to the third parties, who are the predecessors in title of the petitioners, as claimed by the petitioners. Therefore, on that ground, the impugned order dated 15.11.2021 passed by the first respondent cannot be successfully assailed, he contended.



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11. Insofar as the second impugned order dated 11.08.2022 is concerned, learned Senior Counsel would submit that, notice have been given to the petitioners and other stakeholders in respect of the extend of land covered in this issue and though notice has been served on them, the petitioner seems to have chosen not to appear before the second respondent.

12. The second respondent after having conducted an enquiry, passed a detailed order on 11.08.2022, where, even though six documents registered in the concerned Registration Office, having been found to be a fraudulent one, instead of canceling the said documents, the second respondent has relegated the parties to go before the Civil Court and also it has been stated in the said order that as against the said order, the aggrieved party can prefer an appeal before the Deputy Inspector General of Registration.

13. When that being so, it is for the petitioners to file an appeal before the Deputy Inspector General of Registration and not to approach this Court, challenging this order. Therefore, this writ petition is not deserved to be entertained, accordingly, it is liable to be dismissed, the learned senior counsel contended.



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14. I have heard Mr.Yogesh Kannadasan, learned Special Government Pleader appearing for the official respondents, who would submit that, insofar as the order passed by the first respondent dated 15.11.2021 is concerned, it is not stated anywhere in the order that notice have been given either to the petitioner or to the predecessors in title of the petitioners and they were heard. When that being so, when this Court feel that the principles of natural justice is violated on that ground, the matter can be remitted back for reconsideration to the first respondent.

15. Insofar as the second impugned order dated 11.08.2022, passed by the second respondent is concerned, learned Special Government Pleader would submit that, this impugned order was passed on 11.08.2022 and the amendment in the Registration Act came into effect only from 16.08.2022, in which, new provisions have been inserted including Section 77A of the Registration Act, 1908, in which, the District Registrars are empowered to enquire such complaints being made by the aggrieved parties, that some fraudulent transactions have been taken place and those documents were registered by the Registering Authorities and after enquiry, if ultimately the District Registrars found that these fraudulent documents have been registered, the District Registrars are empowered to declare it as a



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fraudulent document and to give direction to the Registering Authorities to cancel those documents.

16. He would also submit that, since such a power is now vested with the District Registrars, however, the same has come into effect only from 16.08.2022, probably the second respondent has passed this order on 11.08.2022, just 5 days prior to the Act came into force, relegating the parties to go before the Civil Court, therefore, in this aspect, if this Court feels that even the second order also can be remitted back to the second respondent for reconsideration within the meaning of Section 77A of the Registration Act, 1908, it can be remitted back.

17. I have given my considerations to the said submissions made by the learned counsel appearing for the parties and perused the materials placed before this Court.

18. Insofar as the first order dated 15.11.2021 passed by the first respondent is concerned, I have gone through the same and nowhere it has been stated that the notice have been given to the petitioner or predecessors in title of the petitioners.



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19. It is the fundamental right that if any adverse order is going to be passed against the parties, against whom such complaint or representation is made, the Authorities concerned, who exercise their function as *quasi* Judicial Authority, has to necessarily give notice to the opposite parties, who would be ultimately affected if an adverse order is passed. If no such notice is given, then it would amount to violation of principles of natural justice.

20. In this context, it was submitted by the learned Senior Counsel appearing for the private respondents that, even though there was no mentioning in the impugned order dated 15.11.2021, it cannot be stated that the petitioners have not been put on notice.

21. If at all the first respondent wanted to hear the petitioners or the predecessors in title, as by virtue of the order dated 15.11.2021, if the pattas stand in the name of any third party other than the father of the private respondents is canceled or modified, by virtue of that, the affected parties would be only the persons like the petitioners. Therefore, they are necessarily to be heard. Notice should have been issued and since there has been no mentioning about the issuance of notice to the petitioners in the impugned order passed by the first respondent,



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this Court, on that ground, feels that the impugned order passed by the first respondent can be set aside and remitted back to the first respondent for reconsideration.

22. Insofar as the second impugned order dated 11.08.2022 passed by the second respondent is concerned, though notice have been given to the petitioners, they have not chosen to appear before the second respondent. Therefore, on that ground , it cannot be assailed.

23. But, at the same time, on perusal of the order passed by the second respondent, I find that, the second respondent expressed his inability to set aside the documents registered already, which have been considered to be a fraudulent one, on the ground that as on date of the order, which was, 11.08.2022, the second respondent did not have the power to cancel the documents also even to give a direction to the Registering Authority to cancel the documents, as rightly pointed out by the learned Special Government Pleader, the amended provisions of Section 77A of the Registration Act, 1908 has come into force only with effect from 16.08.2022.



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24. Once the law has come into effect from 16.08.2022, this Court feels that as per the order passed by the second respondent, if the parties are driven to go before the Civil Court, which will take longer period to come to a conclusion as to the plea raised by the private respondents with regard to the alleged fraudulent transactions which had been registered or not and therefore, this Court feels that the second impugned order passed by the second respondent also can be remitted back for the limited purpose to exercise the power of the District Registrar within the meaning of Section 77A of the Registration Act, 1908.

25. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

(i) That both the impugned orders viz., the order dated 15.11.2021 and 11.08.2022, passed by the first and second respondents respectively are hereby set aside and the matters are remitted back to the respective respondents for reconsideration.



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(ii) Insofar as the first respondent is concerned, he shall reconsider the issue after giving notice to the petitioners as well as the private respondents and decide the same on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order.

(iii) Insofar as the second impugned order dated 11.08.2022 is concerned, the second respondent is hereby directed to entertain the complaint, already been given by the private respondents against the petitioners, within the meaning of Section 77A of the Registration Act, 1908 and after giving opportunity of being heard to both parties once again, the same shall be decided by exercising his power under Section 77A of the Registration Act, 1908 and communicate the same to the parties within a period of six weeks from the date of receipt of a copy of this order.



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(iv) It is made clear that the second respondent can independently decide the complaint of the private respondents under Section 77A of the Registration Act, 1908 and for the said purpose, the second respondent need not depend on the orders, to be passed by the first respondent.

26. With these directions, the writ petition is disposed of. There will be no order as to cost. Consequently, connected miscellaneous petitions are closed.

Index: Yes/No
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20.12.2022

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R. SURESH KUMAR, J.

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