



W.P.No.28488 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2022

CORAM:

THE HON'BLE **MR.JUSTICE M.DHANDAPANI**

W.P.No.28488 of 2022

and

W.M.P.No.27798 of 2022

S.M.Syed Abdul Khader

. . . Petitioner

Vs.

1. The Sub Registrar,
Virugambakkam,
47/5, Arcot Road, Udhayam Colony,
Lambert Nagar, Virugambakkam,
Chennai 600 083.
2. The Inspector General of Registration,
100, Santhome High Road,
Chennai 600 028.
3. The Real Estate Regulatory Authority,
Thalamuthu Natarajan Maligai,
No.1, Gandhi Irwin Road, Egmore,
Chennai-600 008.

. . . Respondents



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PRAYER:Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the 3rd respondent in its Letter No.TNRERA/3/3114/2021 dated 24.06.2021, quash the same and consequently direct the 1st respondent to register the Lease Deed entered into by the Petitioner with M/s.Infiniti Retail Limited.

For Petitioners : M/s.Menon

For Respondents : Mr.C.Karthiravan,
Special Government Pleader for R1 & R2

: M/s.R.Varalakshmi for R3

ORDER

The present petition has been filed seeking to quash the impugned letter dated 24.06.2021 issued by the 3rd respondent and direct the 1st respondent herein to register the Lease deed entered into by the petitioner with M/s.Infiniti Retail Limited.

2. It is the case of the petitioner that the subject property was developed under a registered Wakf Deed dated 20.06.1957 having obtained necessary approval from Chennai Metropolitan Development Authority



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(‘CMDA’) which property consists of stilt plus four floors, . While being so, the 3rd respondent issued a notice dated 31.08.2017 calling upon the petitioner to register the above said building with the 3rd respondent as the same was developed under Real Estate Regulation and Development Act 106 (‘RERA Act’) for which, the petitioner sent a reply stating that the petitioner is neither a promoter nor he had sold the above said property and said property was developed from their own funds, which does not come under the purview of the RERA Act.

3. It is the further case of the petitioner that, after completing the construction, the petitioner having obtained a completion certificate from CMDA, had leased out 1st, 2nd & 3rd floor of the premises to M/s. Infiniti Retail Limited under a lease Deed dated 27.08.2022. Thereafter, said Lease Deed was placed for registration before the 1st respondent/Sub Registrar, however, the 1st respondent had refused to register the same based on the communication of the 3rd respondent requesting not to register the lease deed presented by the petitioner and also insisting for the “No Objection Certificate” to be obtained from the 3rd respondent. Challenging the said



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communication of the 3rd respondent, the present petition has been filed.

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4. Learned counsel for the petitioner submits that it is the claim of the petitioner that he is neither a promoter nor he had sold the property and that the building constructed in the subject property has been leased out by the petitioner and the said property has not been sold and only the lease deed has been placed for registration before the registering authority and therefore, the petitioner is not required to register the property with the 3rd respondent.

5. As per sections 22-A, 22-B, 71 & 74 of the Registration Act, the 3rd respondent has no authority to direct the registering authority not to entertain the document for registration. Such, being the case, the act of the 1st respondent in refusing to entertain the document presented by the petitioner by merely citing an objection raised by the 3rd respondent is wholly unsustainable. Therefore, the impugned letter which was issued by the 3rd respondent needs interference and the same is liable to be set aside.



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6. On the above contentions, this Court heard the learned Special Government Pleader appearing for the respondents 1 & 2 and the learned counsel appearing for the 3rd respondent and perused the materials available on record.

7. The issue arises in the present case is no longer *res integra* as the similar issue was considered by this Court in the case of ***Vadamugam Vellode NalukaraiNattu Goundergal Sangam Vs Inspector General of Registration, 2021 (1) CTC 535*** in W.P.No.12585 of 2020 & W.M.P.Nos.15518 & 15521 of 2020. The relevant portion of the order is extracted under as:

10. The 5th Respondent has approached the Civil Court and he has file O.S.No.48 of 2019, seeking for the relief of Partition and separate posession of 1/27th share in the Suit properties. It is also seen that the 5th Respondent has filed yet another Suit in O.S.No.58 of 2017 in which kshe has claimed for the relief of Permanent Injunction restraining the Defendants not to alienate the Suit Properties. In both the Suits, there is no Order passsed by the Competent Civil Court injuncting from dealing with the Suit properties. What the 5th Respondent was not able to achieve before the Civil court is now sought to be achieved through the 3rd Respondent by virtue of a Letter given before this Court, dated 21.02.2020. The 3rd Respondent is a Statutory Authority, who has



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*to strictly perform his function in accordance with law. This Court exercising its jurisdiction under Article 226 of Constitution of India can never prevent a Statutory Authority from performing his function. **Therefore unless and otherwise a Competent Civil Court passes any Interim Order restraining the alienation of the property, the 3rd Respondent has to entertain the documents and register the same, if it is otherwise in order.** Ultimately, even if the suit is decreed, the transaction will be subject to the Rule of *les pendens*. There is no law in force which says that no transaction can take place during the pendency of the suit. That is exactly why Section 52 of the Transfer of Property Act, provides a solution for transactions that take place during the pendency of the suit.*

11. In view of the above discussion, the impugned Letter of the 3rd Respondent, dated 21.02.2020 is hereby quashed and the 3rd Respondent is directed to entertain the documents submitted for registration and register the same, if it is otherwise in order. It goes without saying that the necessary Stamp Duty and Registration Fee will be paid at the time of submitting the document for registration.

12. This Writ Petition is accordingly allowed. No Costs. Consequently, the connected Miscellaneous Petitions are closed.

From the ratio laid down in the aforesaid decision, in the absence of any interim order passed by any court of law restraining the alienation of the property, acting on a communication of RERA to reject the registration of the document is impermissible.

8. As per Section 3 of the Real Estate and Regulatory Act, the owners shall not sell any portion of this building without registering the



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project TNRERA. In the present case, it is not the case of the respondents that the petitioner has sold his property or the fact that the petitioner is a real estate promoter. Only in respect of real estate promoter, where property is sold, such properties would come within the purview of RERA. In fact it is the case of the petitioner that he has not sold the property and he has only leased out the said property and that he is not a real estate promoter. Therefore, the said property does not require any registration with RERA and there is no violation of the provisions contemplated under the TNRERA Act. While such being the case, acting on the communication of RERA, the act of the 1st respondent in refusing to register the document in respect of the subject property is wholly unsustainable.

9. It is also imperative to advert to the decision in ***N.Ramayee Vs The Sub-Registrar, Registration Department and Ors (Manu/TN/6215/2020)*** in W.P.No.674 of 2020 vide order dated 05.11.2020, wherein this Court in the relevant portion of the order has held as under:-

“46. It is also brought to our notice about the new circular in No.24011/C1/2020 dated 08.10.2020. It is the contention of the learned Additional Advocate general that the registrar is having powers under the Registration



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act to regulate the registration and the right to refuse the document and that such power is available under Section 71 of the Registration act. Such contention is not acceptable for the simple reason that the circular bars transfer of property on the ground that when a lease is already executed in respect of the property, without expiry of the lease, transfer cannot be permitted or without consent of lessee no registration is permissible, Further, insisting a no objection from mortgagee before registration is also against the very substantive provision of law. If any property is sold with existing mortgage, the transferee steps into the shoes of mortgagor. He has the right to redeem the property by paying the mortgage money. Therefore in the name of regulating the registration, any circular which is in the nature of violating the substantive provision of law, which deals with the transfer or property, then such circular cannot stand in the eye of law. If the contention of learned Advocate General that without seeking declaration and cancellation of the agreement of sale, subsequent agreement or transaction cannot be registered, is accepted then such restriction, in fact, infringes the very Constitutional right of the citizen provided under Article 300 A of the Constitution.

From the aforesaid decision, it is evident that no circular has statutory force and the said circulars, which is in violation of substantive provision of law is impermissible. Such being the case, the act of the 1st respondent in not entertaining the registration deed based on the communication of the 3rd respondent is wholly unsustainable and it is against the provisions of the



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Registration Act. Therefore, the non-entertainment of the document presented by the petitioner for registration citing the communication of the 3rd respondent is wholly unsustainable and in the above backdrop, the impugned communication of the 3rd respondent deserves to be set aside with a consequential direction to the 1st respondent to entertain the document submitted by the petitioner for registration.

10. Accordingly, this Writ Petition is allowed in the above terms and the 3rd Respondent/Sub Registrar is directed to register the document on payment of necessary stamp duty and registration charges if there is no other impediment for registration of the same. No Costs. Consequently, the connected Miscellaneous Petition is closed.

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Index : Yes / No

Internet : Yes / No

Note to Office :

Issue order copy on 25.11.2022.

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M.DHANDAPANI, J.

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To

1. The Sub Registrar,
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Lambert Nagar, Virugambakkam,
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2. The Inspector General of Registration,
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