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W.P.No.32080 of 2022 and etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.11.2022

C O R A M

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.32080, 32081, 32082, 32083 & 32084 of 2022
and WMP.Nos.31506, 31507, 31508, 31509 and 31510 of 2022

C.A.Palanisamy

... Petitioner in all the writ petitions
Vs

The Sub Registrar,
Nambiyur Sub Registrar Office,
Nambiyur, Erode District.

... Respondent in all the writ petitions

Prayer in W.P.No.32080 of 2022: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ, order or direction in the nature of Writ of Certiorarified Mandamus calling for the records relating to the impugned Refusal check slip in RFL/ Nambiyur / 8/ 2022 dated 24.11.2022 passed by the respondent quash the same consequently direct the respondent to register the sale deed dated 24.11.2022 executed by one A.Duraisamy and 6 others in respect of the lands measuring 2.00 acres comprised in New SF No. 253 Kosanam A Village, Nambiyur Taluk, Erode district and release the original sale deed.

Prayer in W.P.No.32081 of 2022: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ, order or direction in



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the nature of Writ of Certiorarified Mandamus calling for the records relating to the impugned Refusal check slip in RFL/ Nambiyur /10/ 2022 dated 24.11.2022 passed by the respondent quash the same consequently direct the respondent to register the sale deed dated 24.11.2022 executed by one A.Duraisamy and 6 others in respect of the lands measuring 1.68 acres comprised in New SF No. 526/2 Kosanam A Village, Nambiyur Taluk, Erode district and release the original sale deed.

Prayer in W.P.No.32082 of 2022: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ, order or direction in the nature of Writ of Certiorarified Mandamus calling for the records relating to the impugned Refusal check slip in RFL/ Nambiyur / 9/ 2022 dated 24.11.2022 passed by the respondent quash the same consequently direct the respondent to register the sale deed dated 24.11.2022 executed by one A.Duraisamy and 6 others in respect of the lands measuring 1.80 acres comprised in New SF No. 253 Kosanam A Village Nambiyur Taluk Erode district and release the original sale deed.

Prayer in W.P.No.32083 of 2022: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ, order or direction in the nature of Writ of Certiorarified Mandamus calling for the records relating to the impugned Refusal check slip in RFL/ Nambiyur / 12/ 2022 dated 24.11.2022 passed by the respondent quash the same consequently direct the respondent to register the sale deed dated 24.11.2022 executed by one A.Duraisamy and 6 others in respect of the lands measuring 1.41 acres in S.F.



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No. 311 / 10 11 cents in S.F. No. 317/6 9 cents in S.F. No. 317 / 8 and 29 cents in S.F. No. 317/9 totally 1.90 acres in Kosanam A Village Nambiyur Taluk, Erode district, Kosanam A Village , Nambiyur Taluk, Erode District and release the original sale deed.

Prayer in W.P.No.32084 of 2022: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ, order or direction in the nature of Writ of Certiorarified Mandamus calling for the records relating to the impugned Refusal Check Slip in RFL/ Nambiyur/ 11 / 2022, dated 24.11.2022 passed by the respondent quash the same and consequently direct the respondent to register the sale deed dated 24.11.2022 executed by one A.Duraisamy and 6 others in respect of the lands measuring 1.15 acres and 1.14 acres comprised in S.F.Nos. 273/8 and 290/2 respectively in Kosanam A Village, Nambiyur Taluk , Erode District and release the original sale deed.

For Petitioner ... M/s. N.Manokaran (for all the petitions)

For Respondent ... Mr. E.Vijay Anand (for all the petitions)
Addl. Government Pleader

COMMON ORDER

Since the issue involved in all the matters and the facts are one and the same. Therefore, all the petitions are disposed of by way of common order.



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2. The petitions have been filed seeking the relief of quashment of the respective impugned Refusal Check Slips dated 24.11.2022 issued by the Respondent and a direction to the Respondent to register the sale deed dated 24.11.2022 in respect of the subject properties.

3. Mr. E.Vijay Anand, learned Addl. Government Pleader takes notice for the respondent.

4. . It is the case of the petitioner that the subject properties and other properties were ancestral properties of one Appachi Gounder and after death of the said Appachi Gounder, all his legal heirs viz., three sons and three daughters, have filed a suit for partition and separate possession and the said suit was decreed. After obtaining a decree, the decree holders/plaintiffs have approached the petitioner with an offer to sell the properties, for which, the petitioner herein has presented a sale deed with respect to the above said properties before the respondent on 24.11.2022 for registration. When the sale deed was presented before the Respondent for Registration along with required stamp duty and registration expenses, the Respondent refused to register the same vide the impugned Refusal Check Slips dated 24.11.2022 on the ground



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that the the petitioner has not produced any records to show as to to whether any appeal has been filed against the preliminary decree and final decree passed in the suit. Challenging the said impugned Refusal Check Slips, the petitioner has come up with these Writ petitions seeking the relief of quashment of the same.

5. Learned counsel for the petitioner submits that as on date, there is no litigation pending in any of the Courts in respect of the subject properties. Based on the final decree passed in O.S.No.170 of 1986 dated 25.04.1991 by the Sub Court, Gobichettipalayam, the petitioner has purchased the above said properties from his vendor. Further, in the absence of any restrained order in respect of the subject properties, the respondent has refused to register the sale deed and issued the Refusal Check Slips impugned in these Writ Petitions are liable to be quashed and the same may be allowed.

6. Learned Addl. Government Pleader appearing for the respondent herein submits that the respondent have no power to refuse the document in the absence of any restrained order and hence, the learned counsel prays to pass an appropriate orders.



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7. Heard the learned counsel on the either side and perused the materials available on record.

8. The facts of the case are not in dispute. The petitioner has purchased the above said properties from his vendor based on the final decree passed in favour the vendors. It is also not in dispute that as there is no restrained order passed against the vendors in respect of the subject properties, the respondent has refused to register the sale deeds, which is not sustainable one. In fact, the power of the respondent is that he is only an adjudicating authority in terms of Section 77(a) or 68(ii) of the Registration Act. Further, the respondent has stated in the impugned order that the petitioner has not produced any records to show as to whether any appeal has been filed against the decree passed in the said suit. Though there is any litigation pending between the parties and no restrained order passed by any of the competent Court, the respondent refused to register the document and passed the impugned refusal check slips, which is *non-est* in law.



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9. The issue in this case 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 Regisration, 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 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.

10. On going through the facts and circumstances of the present case on hand, this Court is of the view that in the absence of any restrained order passed over the subject properties, the refusal to register the document, is not sustainable. Therefore, this Court sets-aside the impugned orders dated 24.11.2022 passed by the respondent is set-aside and remands the matter back to the respondent for fresh consideration.

11. Accordingly, the Writ Petitions are allowed with the above terms and the Respondent/Sub Registrar is directed to entertain the document on payment of necessary stamp duty and registration charges, if there is no legal impediment. No Costs. Consequently, connected miscellaneous petitions are



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also closed.

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Index: Yes/No

Internet: Yes

Speaking/Non-Speaking order

To

The Sub Registrar,
Nambiyur Sub Registrar Office,
Nambiyur, Erode District.

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