



WEB COPY



W.P.No.34486 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.34486 of 2022 and
W.M.P.No.33936 of 2022

1.R.Banumathi
2.R.Sarojini
3.R.Subramanian

... Petitioners

Vs

1.The Inspector General of Registration,
Santhome High Road,
Chennai – 28.

2.The District Registrar [Administration]
Asst. Inspector General of Registration,
Coimbatore.

3.C.Ravichandran
4.S.Santhamani
5.A.Navamani Arusamy

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records relating to the second respondent dated 29.11.2022 and to quash the same.

For Petitioners : Mr.S.Vijayakumar

For Respondents : Mrs.N.Senthil Selvi
Government Advocate for R1 & R2



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ORDER

The prayer sought for herein is for a Writ of Certiorari, calling for the records relating to the 2nd respondent dated 29.11.2022 and to quash the same.

2. The respondents 3 to 5 seems to have given a complaint against the petitioners before the 2nd respondent/District Registrar (Administration), Coimbatore to cancel certain documents, which have already been registered at the concerned Sub Registrar Office, by invoking Section 77-A of the Registration Act, 1908.

3. Having receipt of the said complaint, the 2nd respondent issued summon to the petitioners on 29.11.2022 which is impugned in this writ petition.

4. Assailing the said summon, Mr.S.Vijayakumar, learned counsel appearing for the petitioners would submit that, Section 77-A of the Act, which has been inserted through the recent amendment, empowered the 2nd respondent to entertain a complaint filed in this regard and to enquire the matter and decide the same as to whether particular document



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registered already is to be declared as a fraudulent or bogus document and a consequential direction whether can be given to the registering authority to cancel such documents.

5. Though such a power is vested with the District Registrar like the 2nd respondent, whether any such complaint made by any party against registered document can be entertained without even seeing the veracity of the complaint as to whether it is to be entertained or is entertainable within the meaning of Section 77-A of the Act? In this regard, the learned counsel appearing for the petitioners has relied upon a Circular issued by the Inspector General of Registration in Letter No.33760/U1/2022 dated 27.09.2022. Where, in para 13 of the circular, the learned counsel for the petitioners has heavily relied upon that, there are five situations mentioned in the said circular as to what is the difference between enquiry under Section 68(2) and Section 77-A of the Act.

6. Out of the five situations, situation No.5 deals with civil dispute, if there is a civil dispute which will not be taken up for enquiry either under Section 68(2) or under Section 77-A of the Act.



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WEB COPY 7. Relying upon this circular which has been issued by the Inspector General of Registration, of course pursuant to the amendment made by bringing Section 77-A in the said Act, the learned counsel would contend that, insofar as the present complaint made by the respondents 3 to 5 is concerned, it is against the documents pertaining to the lands which have already been in the Civil Court where one round of litigation has been over and the second round as it is in the second appeal stage, therefore the Civil Court decree cannot be nullified by any proceedings to be issued by the 2nd respondent in exercising his power under Section 77-A of the Act. Therefore, at the threshold the complaint ought not to have been entertained by the 2nd respondent, therefore the consequential summons issued, which is impugned herein in this writ petition, should not also have been issued by the 2nd respondent, hence on that ground the learned counsel seeks indulgence of this Court to set aside the impugned summon.

8. However, Mrs.N.Senthil Selvi, learned Government Advocate appearing for the respondents 1 and 2 would submit that, insofar as the power to be exercised by the District Registrar concerned within the



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meaning of Section 77-A of the Act, it is to be exercised whenever the complaint comes from any party against alleged fraudulent transaction and registration of documents concerned and once such complaint comes, the procedure established is that, the District Registrar after receipt of the complaint has to give notice to both the complainant as well as the persons against whom such complaint is filed and after hearing them, then only the District Registrar has to come to the conclusion that, whether the complaint is a worth one to be further enquired or it should be dismissed *in limine*, after hearing both sides. Even for that limited purposes the power vested with the District Registrar has to be exercised and while exercising such power it become inevitable to issue summons to the persons against whom such complaint has been made, that only has been done now by the 2nd respondent. Therefore, the impugned summon cannot be assailed as stated by the learned counsel for the petitioners, the learned Government Advocate contended.

9. I have considered the said submissions made by the learned counsel for the parties and have perused the materials placed before this Court.



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10. As has been pointed out by the learned counsel for the petitioners, whether a complaint given by any third party against the alleged transactions, which according to the complainant, may be a fraudulent one or forged one and while entertaining the complaint before conducting a full-fledged enquiry as to the merits of the case, whether it should be verified by the District Registrar as to whether the issue raised in the complaint involves in a civil dispute already has been pending or had been disposed or decided by a competent Civil Court and in that case what shall be done. Though this position has not been mentioned in the provisions of the Act, subsequently the Inspector General of Registration has issued the Circular dated 27.09.2022, where he has shown the five situations based on which the difference between the enquiry to be conducted under Section 68(2) and Section 77-A of the Act have been noted. Out of the five situations, the 5th situation is that the civil dispute will not be taken for enquiry, and that would be made uniformly for both the enquiry either under Section 68(2) or under Section 77-A of the Act.

11. However, as has been stated by the learned Government Advocate even to arrive at a said decision by the District Registrar whether there is a civil dispute involved and already there has been a



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Civil Court decree or judgment to that effect whether that has to be taken into account for the purpose of coming to the conclusion that, the further enquiry need not be entertained as claimed by the complainant through the complaint itself, has to be arrived at by the District Registrar only after ascertaining the *prima facie* facts to be projected by both sides.

12. Therefore, for the limited purpose, the District Registrar, in the considered opinion of this Court, is empowered to issue summons to the persons against whom such complaint is made under Section 77-A of the Act. Therefore if not for a full-fledged enquiry to ultimately conclude the prayer sought for in the complaint atleast for deciding the issue within the meaning of clause 5 of para 13 of the Circular dated 27.09.2022, such a limited enquiry is required to be conducted by the District Registrar. Therefore, for the said purpose if summons are issued by the 2nd respondent to the persons against whom such complaint is made, here it is the petitioner, cannot be found fault with. Therefore, this Court has no hesitation to hold that, insofar as the impugned summons are concerned, it cannot be stated that it was issued without jurisdiction of the 2nd respondent and therefore the petitioner has to respond to the impugned summon and appear before the 2nd respondent and put forth their case.



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13. In this regard, it is for the 1st respondent to take up the case to be projected both by the complainant as well as the petitioners against whom such complaint has been given and to decide the same within the meaning of Section 77-A of the Act by taking into account of the situations mentioned in the Circular of the Inspector General of Registration dated 27.09.2022.

14. With this observation, this Court feels that this writ petition can be disposed, accordingly it is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

22.12.2022

Index : Yes/No

Speaking Order : Yes/No

Note: Issue order copy on **23.12.2022**

Sgl
To

1.The Inspector General of Registration,
Santhome High Road,
Chennai – 28.

2.The District Registrar [Administration]
Asst. Inspector General of Registration,
Coimbatore.



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R.SURESH KUMAR, J.

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