



W.P.No.34867 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.34867 of 2022
and
W.M.P.No.34281 of 2022

1.A.Anand Prasaad
2.A.Chandini
3.A.Manohar Prasad
4.A.Lakshmi Anandhi
5.A.Anjali Krishna Mani
6.A.Sai Siva Jyothi

... Petitioners

Vs

1.The Inspector General of Registration,
Santhome High Road,
Chennai – 600 004.

2.The District Registrar,
Chennai South,
Saidapet,
Chennai.

3.The Sub Registrar,
Adyar Sub-Registrar Office,
Chennai – 600 020.

4.The Sub Registrar,
T.Nagar, Sub Registrar Office,
Chennai – 600 035.

... Respondents



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Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned order passed by the 2nd respondent in Na.Ka.No.13846/E2/2022 dated 10.08.2022 and quash the same and consequently direct the 3rd and 4th respondents to remove the endorsements made with respect to the documents mentioned in the impugned order.

For Petitioners : Mr.P.Sathish Parasaran
Senior Counsel
For Mr.C.Vigneswaran

For Respondents : Mr.Yogesh Kannadasan
Special Government Pleader

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus, to call for the records of the impugned order passed by the 2nd respondent in Na.Ka.No.13846/E2/2022 dated 10.08.2022 and quash the same and consequently direct the 3rd and 4th respondents to remove the endorsements made with respect to the documents mentioned in the impugned order.

2. In respect of documents in Document Nos.125/2020, 1548/2020, 183/2019, 186/2019, 190/2019, 191/2019, 938/2019 and



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3332/2019 registered at the 3rd and 4th respondents office, it seems that, some complaint had been given by Sub Registrar, T.Nagar and Sub Registrar, Adyar, who are the 4th and 3rd respondents herein on 17.06.2022 and 12.07.2022.

3. Taking the said complaint on file, the 2nd respondent had issued a summon to the petitioners on 15.07.2022 stating that, pursuant to the said complaints received by him, there would be an enquiry on 22.07.2022 and for participating such enquiry that summon was issued.

4. Though it has been stated in the said summon that, along with the said summon, the copy of the complaint given by 3rd and 4th respondents have been annexed, according the petitioners, no such copy of the complaint had been annexed and this has been brought to the notice of the 2nd respondent by the petitioners through their communication dated 25.07.2022, where they have stated that the copy of the complaint have not been annexed.

5. Despite the said reply given by the petitioners dated 25.07.2022, according to the learned Senior Counsel appearing for the petitioners, the



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copies have never been served on the petitioners and even before the enquiry at the 2nd respondent when this issue was raised that has not been taken into account and ultimately the order has been passed by the 2nd respondent on 10.08.2022 where the documents in question have been declared to be a fraudulent documents and consequential action also has been directed to be taken.

6. Mr.P.Sathish Parasaran, learned Senior Counsel appearing for the petitioners raised a point that, first of all no opportunity of being heard has been given and also since those proceedings have been initiated by the 2nd respondent within the meaning of Section 68(2) of the Registration Act i.e. before the amendment, under which Act 41 of 2022 came into effect from 16.08.2022, the 2nd respondent did not have such power under Section 68(2) declaring the documents as a fraudulent one and therefore on these two grounds, the learned Standing Counsel wants to assail this order impugned.

7. I have heard Mr.Yogesh Kannadasan, learned Special Government Pleader appearing for the respondents who would submit that, even though the proceedings was initiated before amendment under



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Section 68(2) of the Act subsequently the same since has got amended and Section 77-A of the Act has been inserted under which such power since is vested with the 2nd respondent District Registrar who is empowered to hear the matter and decide the same, accordingly, he has decided to declare the documents in question as fraudulent, therefore it cannot be stated that, the 2nd respondent has no power or jurisdiction to exercise and pass this order impugned, he contended.

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

9. Insofar as the first ground raised by the learned Senior Counsel appearing for the petitioners is concerned, I have perused the summon issued by the respondents dated 15.07.2022 where even though it has been stated that the copy of the complaint have been annexed along with the summon, immediately the petitioners had given a reply on 25.07.2022 where they have specifically taken a stand that the copy of the complaint have not been annexed, thereafter it seems that, no communication has come from the 2nd respondent, therefore it can very well be concluded



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that, there has been no complaint copy given to the petitioners, therefore

it is a violation of principles of natural justice.

10. Apart from that, insofar as exercising the power under Section 68(2) of the Act is concerned, it is only a limited power vested with the Registrar concerned, under which, every Registrar shall have authority to issue any order consistent with the Act which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him or in respect of the rectification of any error regarding the book or the office in which any document has been registered.

11. Such a power when it is exercised by the 2nd respondent, he cannot take up the power subsequently been vested in him under Section 77-A of the Act after amendment for declaration of the documents which have already been received, as fraudulent or bogus documents, as such an extreme power of the 2nd respondent to be exercised, the complaint must have been preferred properly by the affected party and a copy of the complaint should have been issued to the person against whom such complaint has been made. Without exhausting those procedure as contemplated under Section 77-A of the Act followed by the Circular



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issued in this regard by the Inspector General of Registration, this Court feels that, the present order passed by the 2nd respondent exercising the power partly under Section 68(2) and partly under Section 77-A of the Act, as claimed by the learned Special Government Pleader for the respondents, cannot be countenanced and therefore, this Court has no hesitation to hold that the impugned order would not stand in the legal scrutiny.

12. For all these reasons, this Court is inclined to dispose of this writ petition with the following order:

That the impugned order is set aside and the matter is remitted back to the 2nd respondent for reconsideration. While reconsidering the same, whatever the complaint given by the 3rd and 4th respondents, a copy of the complaint with relevant documents if any going to be relied upon by the 2nd respondent, shall be furnished to the petitioners and on giving such documents, after giving an opportunity of being heard, the same shall be considered and enquiry shall be conducted and a final decision can be taken within the meaning of Section 77-A of the Act.



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WEB COPY 13. With these directions, this Writ Petition is ordered accordingly.

No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Speaking Order : Yes/No

Sgl

To

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R.SURESH KUMAR, J.

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