



W.P. No.29397 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 14.07.2022

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

**W.P. No.29397 of 2017
and WMP. No.31669 of 2017**

M.Subramanian

...Petitioner

vs.

1. The Inspector General of Registration,
Santhome, Chennai-4.

2. The District Registrar,
Namakkal District.

3. The Sub Registrar,
SRO, Kumarapalayam,
Namakkal District.

... Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India, to issue an order or direction or Writ and in particular Writ in the nature of a Writ of Certiorarified Mandamus call for the records made in the Mu.Mu.No.1004/A1/2017 dated 24.03.2017 passed by the second respondent, quash the same and further direct the respondents to register the sale deed dated 04.01.2017 submitted by the petitioner relating to the property measuring an extent of 1.37 acres of Punja agricultural land comprised in R.S.No.239/1B2 and 239/2B2 of Kumarapalayam Amani Village, Namakkal District.



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For Petitioner : Mr. M.V.Venkata Seshan

For Respondents : Mr.Yogesh Kannadasan, SGP

ORDER

The petitioner has filed this petition seeking to quash the order in Mu.Mu.No.1004/A1/2017, dated 24.03.2017 passed by the second respondent and further direct the respondents to register the sale deed dated 04.01.2017 submitted by the petitioner relating to the property measuring an extent of 1.37 acres of Punja agricultural land comprised in R.S.No.239/1B2 and 239/2B2 of Kumarapalayam Amani Village, Namakkal District.

2. The facts of the case are as follows:

The petitioner has entered into a sale agreement with one Hari Ramachandran on 15.10.2012 in respect of a land measuring an extent of 1.37 acres of punja agricultural land comprised in R.S.No.239/1B2 and 239/2B2 of Kumarapalayam Amani Village, Namakkal District and the sale consideration was fixed at Rs.45,21,000/-. On various dates the petitioner has paid a sum of Rs.35,00,000/-. While registering the document, the



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petitioner paid the balance sale consideration of Rs.10,21,000/- but the third respondent has refused to register the sale deed on 05.01.2017 on the ground that there was already a registered sale agreement bearing Doc.No.104/2016 pending in his file and therefore, as per the Circular dated 08.11.2013 of the first respondent, the third respondent cannot registered the document unless the above said encumbrance is cleared. Challenging the said memo dated 05.01.2017, the petitioner has filed appeal before the second respondent. The petitioner and witnesses have appeared before the second respondent and clearly explained the facts. Without considering all the facts, the second respondent, vide the impugned order dated 24.03.2017, declined the registration of sale deed dated 04.01.2017 as per Circular No.67 dated 03.11.2011 and the Circular dated 08.11.2013. Challenging the said order, the petitioner has filed the present writ petition before this Court.

3. Learned counsel for the petitioner submitted that the issue involved in the present case is no more res-integra, which was already decided by the Hon'ble Division Bench of this Court in the case reported in **2020 (6) CTC 697 (N.Ramayee V. Sub-Registrar, Registration Department)**, wherein



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it has been held that mere registration of an agreement for sale will not be a bar for subsequent transfers. The relevant portion of the above said order is extracted hereunder:-

“46. It is also brought to our notice about the new Circular in No.24011/C1/2020, dated 8.10.2020. It is the contention of the learned Additional Advocate General that the Registrar has power to regulate the registration in order to prevent fraud and hence, the Registrar is having powers under the Registration 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 the 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



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provision of law, which deals with the transfer of 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 Constitution.

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48. As already indicated, the purpose of registration is only to give a Public Notice. It is for the buyer or subsequent transferee to make reasonable Enquiry. Doctrine of Caveat emptor will also apply to every transfer. It is for them to verify the title of the property by making reasonable Enquiry. At any event, subsequent transfer will always be subject to the rights already created. Therefore, it cannot be said that merely because Agreement for Sale is registered without obtaining Decree of declaration that such Agreement is void, subsequent transfer is prohibited and cannot be registered. We hold that as discussed in our Judgment, Registrar has no right to refuse to register the subsequent document on the basis that Agreement of Sale was already registered in respect of the same property. Accordingly, the Reference is answered. Post the Writ Petition in W.P.No.674 of 2020 before the learned Single Judge for disposal.”



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been obtained from the appropriate forum and the same cannot be held to be a bar for further transfer of the property or registration of the said document.

It is to be pointed out that the Registrar has no right to refuse the registration of the subsequent document of sale once the decree had not been honoured within the period of limitation citing that a registered agreement of sale is pending. It is borne out by record that the sale agreement has not been registered even after lapse of five year. Moreover, it is an admitted fact that the petitioner had also paid the entire sale consideration to his vendor. Hence, the proceedings dated 24.03.2017 passed by the second respondent is bad in law as per the decision (supra) rendered by Division Bench of this Court.

6. Applying the ratio laid down in the aforementioned order of the Division Bench of this Court, the proceedings dated 24.03.2017 passed by the second respondent is set aside and the third respondent is directed to entertain the document presented by the petitioner, if it is otherwise in order and pass appropriate orders on merits after affording an opportunity of hearing to the petitioner, within a period of twelve weeks from the date of



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receipt of a copy of this order, after receipt of necessary Stamp duty and registration charges.

7. Accordingly, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is also closed.

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Index : Yes / No

Internet : Yes / No

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