



W.P(MD)No.19966 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 13.12.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.19966 of 2022

and

W.M.P(MD)Nos.14529 & 14530 of 2022

1.S.Karunanithi

2.Kavitha

... Petitioners

Vs

1.The Deputy Inspector General of Registration,
Integrated Complex of Registration Department,
TNAU Nagar, Rajakampeeram,
Y.Othakkadai, Madurai – 107.

2.The District Registrar (Administration),
Virudhunagar District, Virudhunagar.

3.M.R.Rajasekaran

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the first respondent in Na.Ka.No.276/A4/2021 dated 27.06.2022 and quash the same as illegal.



W.P(MD)No.19966 of 2022

For Petitioners : Mr.C.Arul Vadivel @ Sekar

For Respondents : Mr.S.Shanmuganathan
Additional Government Pleader
for R.1 & R.2

Mr.A.Mohan for R.3

ORDER

Heard the learned counsel appearing for the writ petitioner, the learned Additional Government Pleader appearing for the respondents 1 and 2 and the learned counsel appearing for the third respondent. The third respondent is also present in person before this Court.

2.The petitioners herein had purchased the property comprised in Survey No.65/4, Thummuchinnampatti Village, Arupukottai Taluk, Virudhunagar District from one Annamalai (Document No.619/2020) on the file of Sub-Registrar, Panthalkudi on 20.06.2020. The said Annamalai purchased the property from one Sithaiammal in the year 1994 (Document No.229/1994). The said Sithaiammal in turn had purchased the property in the year 1967. According to the third respondent Thiru.M.R.Rajasekaran, what was purchased by Sithaiammal is comprised in Survey No.65/3. But when she executed sale deed in favour of Annamalai, the Survey number was fraudulently mentioned as 65/4. The third respondent would allege that this fraud is being perpetuated.



W.P(MD)No.19966 of 2022

3. The learned counsel for the petitioner on the other hand would contend that this mistake was rectified even at the time of UDR and that there is no element of fraud. I do not want to go into the merits of the rival contentions. That has to be adjudicated elsewhere.

4. While so, the third respondent filed W.P(MD)No.14004 of 2020 seeking initiation of criminal prosecution under Section 83 of the Registration Act on the basis of his representation dated 04.09.2020. The said writ petition was disposed of on 08.10.2020 in the following terms :

“7. This Court is of the considered view that since serious allegations are made against the authorities concerned, an enquiry shall be conducted, appropriate action to be taken, and in the enquiry, the persons, who are going to be affected shall also be heard. If there is any error, it is open to the authorities to rectify it in terms of Section 68(2) of the Act. But, if there is any wilful act, certainly, appropriate action, including criminal action will have to be taken against the Sub-Registrar in terms of Section 83 of the Act. No third party right shall be created in respect of S.No.65/4, till the issue is decided.”

Pursuant to the said direction, the impugned order came to be passed. As a result of the impugned order, the writ petitioners herein are not in a position to deal with the property in any manner. Aggrieved by the same, the present writ petition has been filed.



W.P(MD)No.19966 of 2022

5.The impugned order is a direct consequence of the order passed by this Court in W.P(MD)No.14004 of 2020. As already noted, the writ petition was disposed of only on 08.10.2020. By then the writ petitioners herein had already purchased the property. It was a registered transaction. The third respondent herein was fully aware of the purchase made by the petitioners herein. However, he did not choose to array the petitioners as respondents in the said writ petition. An order which directly operates to the prejudice of the petitioners was obtained behind their back. Such an order cannot bind the petitioners. In *J.S.Yadhav v. State of U.P (2011) 6 SCC 570*, it was held that no order can be passed behind the back of a person adversely affecting him and such an order, if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice.

6.The third respondent who is present in person also submits that the order impugned in the writ petition can be set aside and the matter can be remanded to the file of the first respondent for fresh disposal. The third respondent also gives an undertaking that he would withdraw the complaint levelled against the staff of the Registry for having numbered the writ petition.



W.P(MD)No.19966 of 2022

7. Recording the said undertaking and consent of the third respondent, the order impugned in this writ petition is set aside. This writ petition is allowed.

The matter is remitted to the file of the first respondent. The power of attorney of the writ petitioners and the third respondent shall appear before the first respondent on **10.02.2023 at 03.00 p.m.** It is for the first respondent to consider the third respondent's representation and pass appropriate order on merits and in accordance with law within a period of twelve weeks.

8. I must make one final observation. I notice that writ petitions are filed even without impleading necessary and interested parties. Often, orders are obtained behind their back. I would expect every counsel on record to bestow care and attention and ensure that all the interested parties are impleaded. In *J.Delibarn v. BCI (2019 SCC OnLine Mad 12201)*, the Hon'ble Division Bench has referred to a catena of decisions to drive home the point that writ petitions filed without impleading the necessary parties are liable to be dismissed. For instance, Order XXV Rule 4 of the Original Side Rules of the Madras High Court provides that application for probate shall be in Form No. 55. Paragraph 7 of the Form reads thus :

“Petitioner has impleaded all the next of kin or other persons interested as party/respondents. There is no next of kin or other person interested to be impleaded.”



W.P(MD)No.19966 of 2022

Time has come to issue practice direction for incorporating a corresponding averment in the affidavit filed in support of any writ petition.

No costs. Consequently, connected miscellaneous petitions are closed.

13.12.2022

Index : Yes / No
Internet : Yes/ No
mga

To

- 1.The Deputy Inspector General
of Registration,
Integrated Complex of Registration Department,
TNAU Nagar,
Rajakampeeram,
Y.Othakkadai,
Madurai – 107.
- 2.The District Registrar (Administration),
Virudhunagar District,
Virudhunagar.



WEB COPY



W.P(MD)No.19966 of 2022

G.R.SWAMINATHAN, J.

mga

W.P(MD)No.19966 of 2022

and

W.M.P(MD)Nos.14529 & 14530 of 2022

13.12.2022