



W.P.Nos.283 and 291 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition Nos.283 and 291 of 2023
and W.M.P.Nos.273, 274, 275 and 280 of 2023

S.Malarvizhi

... Petitioner in both W.Ps.

-Vs-

1.The District Registrar (Salem West)
Salem.

2.The Sub-Registrar
Mechery Mettur Taluk
Salem District.

3.Thiru D.Kumar

4.Minor K.Navin

5.Minor Subhashree

6.Thiru.Muthusamy

.... Respondents in W.P.No.283/ 2023

1.The Sub Collector
Mettur

2.The Tahsildar
Mettur.



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3.Thiru D.Kumar

4.Minor K.Navin

5.Minor Subhashree

6.Thiru.Muthusamy

... Respondents in W.P.291/2023

Prayer in W.P.No.283 of 2023: Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order of the 1st respondent herein bearing Na.Ka.No.3788/E4/2022 dated 24.06.2022 in respect of Doc.No.2066/2005 and quash the same and direct the respondents 1 and 2 herein to remove all the entries made in the encumbrance certificates and the registers in respect of the said document pursuant to the said order.

Prayer in W.P.No.291 of 2023: Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records relating to the order of the 2nd respondent herein dated Nil of 2022 in N.M.4107/2022/B3 signed on 14.12.2022 in respect of Survey No.410/1A1 of an extent of 0.70 ½ cents of Mechery Village, Mettur Taluk and quash the same.

In Both W.Ps.

For Petitioner : Mrs.A.L.Gandhimathi

For Respondents : Mr.Yogesh Kannadasan
Special Government Pleader – for RR 1 and 2

Notice dispensed with – for RR 3 to 6



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COMMON ORDER

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Since the issue raised in these writ petitions is one and the same or inter-related, with the consent of the learned counsel for the petitioner as well as the learned Government Advocate appearing for the official respondents, these writ petitions were taken up together, heard and are disposed of by this common order.

2. In respect of the property in question, which were claimed by the private respondents to have purchased the same pursuant to the court decree made in O.S.No.179 of 2018 at Sub Court, Mettur, they made a complaint to the 1st respondent District Registrar against the petitioner as if that the petitioner had claimed to have purchased the property some time in the year 2005 itself from one M.A.Subramani and therefore, in order to cancel the said deed, the private respondents filed the said complaint before the 1st respondent. In order to decide the same, the 1st respondent seems to have issued a notice to the petitioner on 24.05.2022. However, the said notice had not been served on the petitioner as it has been returned with the endorsement 'no such person in the address'. Therefore, the 1st respondent set the petitioner exparte and accordingly decided the issue in favour of the private respondents. Thereby, even though in the operative portion of the order dated 24.06.2022 which is



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impugned in the first writ petition, it has been stated by the 1st respondent that the Registrar does not have the power to cancel the document, however, the effect of the order impugned which has been passed by the 1st respondent has impacted the interest of the petitioner.

3. Followed by the said order passed by the 1st respondent, the Tahsildar, Mettur Taluk / second respondent in W.P.No.291 of 2023 has issued a proceedings dated 14.12.2022 cancelling the patta stood in the name of the petitioner in respect of the property in question. Therefore, challenging these orders passed by the 1st respondent in W.P.No.283 of 2013 and 291 of 2013 these writ petitions have been filed.

4. Stating the aforesaid, Mrs.A.L.Gandhimathi, learned counsel for the petitioner would submit that, while conducting any enquiry or before disposing the complaint given by the private respondents against the petitioner, the 1st respondent has not given any notice to the petitioner.

5. To what address the 1st respondent has sent notice to the petitioner and it has been returned as no such person, is not known to the petitioner. The petitioner's permanent address is given in this writ petition as well as in the typed set of papers. Therefore, it is a case where, since there has been no



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notice given against the petitioner, without hearing the petitioner by violation of the principles of natural justice since the order impugned has been passed by the 1st respondent, the same, on the said ground alone, is liable to be interfered with, she contended.

6. Even though it has been stated in the operative portion of the order dated 24.06.2022 that the 1st respondent does not have the power to cancel the document, however taking clue from the said order dated 24.06.2022 passed by the 1st respondent in W.P.No.283 of 2013, the 2nd respondent in W.P.No.291 of 2023 has issued the order dated 14.12.2022 cancelling the patta stood in the name of the petitioner. Therefore, the consequential order dated 14.12.2022 passed by the 2nd respondent in W.P.No.291 of 2023 is also equally unlawful and hence the learned counsel for the petitioner seeks the indulgence of this Court against both the orders.

7. Heard Mr.Yogesh Kannadasan, learned Special Government Pleader appearing for the official respondents in both the writ petitions who would submit that, insofar as the first order passed by the 1st respondent which is impugned in W.P.No.283 of 2013 is concerned, that order was passed prior to the amendment came into effect wherein Section 77A was inserted in the Registration Act. Therefore, if at all the petitioner has got any grievance with regard to the



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violation of principles of natural justice, on that ground the impugned order can be remanded back to the 1st respondent for reconsideration, where, after giving notice to the petitioner as well as the private respondents and after giving opportunity of being heard to both sides, the 1st respondent would reconsider the issue and decide the same afresh within a time frame that may be stipulated by this Court. Till such order is passed, the subsequent order passed by the 2nd respondent in W.P.No.291 of 2023 dated 14.12.2022 by the Tahsildar concerned, can be kept in abeyance.

8. I have heard the submissions made by the learned counsel for both sides and have perused the materials placed on record.

9. As has been rightly pointed out by the learned counsel for the petitioner, in the order impugned in the first writ petition passed by the District Registrar dated 24.06.2022 is concerned, under the heading 'Explanation of the respondent' in the said complaint, who is none other than the petitioner, the following has been stated,

“எதிர் மனுதாரர் விளக்கம்

எதிர் மனுதாரர் மலர்விழிக்கு 24.05.2022 அன்று நேரில் ஆஜராக அழைப்பாணை அனுப்பப்பட்டு No

Such Person in the Address என குறிப்பிடப்பட்டு திரும்ப வரப்பெற்றது.”



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10. Therefore, it has become clear that, no notice had been served on the petitioner. It is also not known as to which address such notice has been sent and if it is sent to such address where the petitioner has not been staying or having any business, further steps should have been taken to serve the petitioner even otherwise by way of substitute service and that also could have been taken at the cost of the complainants ie., the private respondents. Without resorting to any such method since the 1st respondent set the petitioner exparte and accordingly decided the issue where so many observations have been made impacting the interest of the petitioner, even though at the operative portion of the order the 1st respondent stated that, he did not have the power to cancel the document, based on such impact, the Tahsildar concerned passed the subsequent order, which is impugned in the second writ petition, whereby the patta issued in the name of the petitioner already has been cancelled, hence this Court feels that the first order passed by the District Registrar dated 24.06.2022 without giving notice to the petitioner or without hearing the petitioner is nothing but an order passed without following the principles of natural justice and on that ground, the order impugned passed by the 1st respondent is liable to be interfered with.

11. In that view of the matter, this Court is inclined to dispose of these writ petitions with the following order.



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- That the impugned order dated 24.06.2022 passed by the District Registrar / 1st respondent in W.P.No.283 of 2013 is set aside and the matter is remitted back to the 1st respondent for reconsideration, where the District Registrar shall give notice to both the petitioner as well as private respondents and after giving them an opportunity of being heard, then only orders shall be passed on merits and in accordance with law.
- While passing orders, the 1st respondent shall invoke the provisions of Section 77A of the Registration Act and accordingly the said complaint given by the private respondents against the petitioner shall be disposed of on merits.
- The needful shall be undertaken by the District Registrar within a period of 12 weeks from the date of receipt of a copy of this order.
- As a sequel, the order impugned in the second writ petition ie W.P.No.291 of 2023 is also liable to be set aside, and accordingly it is set aside. It is made clear that once the order is passed by the District Registrar in the first writ petition ie., W.P.No.283 of 2023 as directed herein above, depending upon the outcome of the order to be passed by the District Registrar, further course of action, if any has to be decided by the Tahsildar who is the second respondent in W.P.No.291 of 2023.



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12. With the above directions, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

06.01.2023

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order / Non-speaking order
KST
To

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R. SURESH KUMAR, J.

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