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W.P.No.754 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.754 of 2023 and
W.M.P.No.708 of 2023

T.Arockia Dass

Trustee – India Bible Camp Ministries (IBCM)

Plot No.29, Gopal Nagar

Old Perungalathur, Chennai – 63.

.. Petitioner

vs

1. The Inspector General of Registration

No.100, Santhome Road, Chennai – 28.

2. The District Registrar

South Chennai

Fanepet, Nandhanam, Chennai – 35.

3. M.Menaka

.. Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, forbearing the second respondent from conducting the proceeding in Ref.No.14014/E2/2022 dated 15.07.2022 pending on its file without affording an opportunity of personal hearing me along with right to produce relevant documents in accordance with mandate of Section 77 A of the Registration Act, 1908 on the basis of my representation dated 29.08.2022.

For Petitioners : Mr.R.Viduthalai
Senior Counsel
for Mr.M.A.Muthalakan

For Respondents : Mr.Yogesh Kannadasan
Special Government Pleader
for respondents 1 & 2



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ORDER

Prayer sought for herein is for a Writ of Mandamus, forbearing the second respondent from conducting the proceedings in Ref.No.14014/E2/2022 dated 15.07.2022, pending on the file of the second respondent without affording an opportunity of personal hearing to the petitioner, along with the right to produce relevant documents in accordance with mandate of Section 77A of the Registration Act, 1908 (for brevity, “the Act”) on the basis of the representation dated 29.08.2022.

2. In respect of the property in question, it seems that a complaint has been given by the third respondent before the second respondent to cancel such document within the meaning of Section 77A of the Act.

3. Pursuant to which, having taken the complaint on file, the second respondent issued notice on 15.07.2022 to various third parties, but not to the petitioner, therefore, the petitioner has decided to challenge the said notice issued by the second respondent dated 15.07.2022 on various grounds.



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4. Assailing the said communication ie., the summons issued by the second respondent dated 15.07.2022 and seeking to prohibit the second respondent from proceeding further to conduct an enquiry under Section 77A of Act, Mr.R.Viduthalai, learned Senior Counsel appearing for the petitioner would submit that, insofar as the property in question, it was purchased by the petitioner through a valid sale deed dated 24.08.2021 from his vendor one Kaznavi, who in turn had purchased the property from his vendor called the Real Value Promoters on 08.01.2021.

5. If we trace the title, we can find that the said Real Value Promoters has purchased the property from one Vaduvambal through her Power Agent viz., A.Johnson on 02.03.2005. In this context, the sum and substance of the complaint seems to be that the said Vaduvambal, according to the complainant, died in the year 1984. Therefore, according to the complainant, the subsequent transaction made on behalf of the said Vaduvambal through her Power Agent, including the sale made in respect of the property sometime in 2005 to and in favour of the Real Value Promoters, who is the predecessor in title of Kaznavi, who is the vendor of the petitioner, that the transaction is bad in law. Therefore, it seems that on these grounds, the third respondent might have set up a complaint before the second



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respondent to enquire the matter and decide the same within the meaning of Section 77A of the Act.

6. By making these submissions, learned Senior Counsel would contend that, insofar as the property in question, the ownership is rested with the petitioner, who purchased the property from the said Kaznavi on 24.08.2021. Therefore, he is the present owner of the property and by virtue of any order, to be passed ultimately by the second respondent on the complaint given by the third respondent under Section 77A of the Act, would have an impact on the petitioner. Therefore, the principle of natural justice requires that notice of summons ought to have been issued to the petitioner and the petitioner should have been given the opportunity of furnishing all documents, to be referable by the second respondent as projected by the third respondent and thereafter, after granting the opportunity of being heard to the petitioner, then only the issue can be proceeded to be concluded by the second respondent. Without exhausting these mandatory procedures to be followed, as a facet of natural justice principles, if the second respondent proceeds to conduct enquiry and conclude the same, unmindful of the ownership of the petitioner in respect of the property in question, that will be an exercise directly in violation of the principle of natural justice. Therefore, on that



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ground alone the second respondent can be restrained from proceeding further under Section 77A of the Act on the complaint given by the third respondent, the learned Senior Counsel contended.

7. Though the learned Senior Counsel made other submissions on the issue as to the applicability of Section 77A of the Act for the documents which have been registered prior to 16.08.2022, the date on which such amendment has been given effect to, that issue since is not going to be decided in this writ petition, it need not be traversed.

8. On the other hand, Mr.Yogesh Kannadasan, learned Special Government Pleader appearing for the respondents 1 and 2 would submit that, since the complaint had been given by the third respondent only against one Johnson and one Chitra Keerthi and others, notice might have been given by the second respondent only to those people and in this respect, the property in question, if it is claimed by the petitioner that he has purchased the property on 24.08.2021 and he claims to be the owner of the property presently, notice would be given to the petitioner also and if at all in this regard a copy of the complaint given by the third respondent as well as the other supporting documents filed by her is required by



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the petitioner, that would also be supplied to the petitioner and thereafter, after giving the opportunity of being heard, the second respondent would proceed with the enquiry and ultimately pass final orders thereon.

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

10. Insofar as the main grievance, as espoused by Mr.R.Viduthalai, learned Senior Counsel appearing for the petitioner is concerned, that the petitioner is the present owner of the property in question, therefore, if at all any adverse orders are passed by the second respondent, ultimately by concluding the Section 77A enquiry on the complaint given by the third respondent, certainly that will have an adverse impact against the interest of the petitioner.

11. Insofar as the transaction that has been made between 1984 and 2005 are concerned, it cannot be decided by this Court at this juncture, in respect of which, the merits of the case can be gone into only by the second respondent during the enquiry, for which, both sides can submit documents and place their plea before the second respondent to decide the issue.



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12. However, insofar as the non-issuance of notice by the second respondent to the petitioner is concerned, as has been rightly pointed out by the learned Senior Counsel appearing for the petitioner, which in fact was endorsed by the learned Special Government Pleader appearing for the respondents 1 and 2, such notice is necessary to be issued to the petitioner, who is the present owner of the property as claimed by him, since he claim to have purchased the property on 24.08.2021.

13. Therefore, this Court has no hesitation to hold that the present proceedings as initiated by the second respondent on the complaint of the third respondent by issuing summons dated 15.07.2022 to only some third parties and not to the petitioner, which is impugned herein, is concerned, to that extent, the proceedings of the second respondent cannot be permitted to go on unless and until the natural justice principle is fully followed by the second respondent.

14. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:



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(i) That the second respondent is hereby directed to furnish a copy of the complaint given by the third respondent or any other third party as well as the documents to be filed by the noticees, to whom notice has been given through the impugned order dated 15.07.2022, to the petitioner within a period of two weeks from the date of receipt of a copy of this order.

(ii) On receipt of the said documents, including the copy of the complaint, it is open to the petitioner to file his detailed reply with supportive documents to substantiate his case that he is the owner of the property and the documents in question need not be canceled by exercising the power by the second respondent under Section 77A of the Act.

(iii) Such reply by the petitioner shall be given within a period of two weeks thereafter and after giving fair opportunity of being heard to both the petitioner and the third respondent as well as the other noticees, who are the erstwhile owners, who



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are all involved in any transactions prior to the purchase of the property by the petitioner, ultimately, a decision can be taken by the second respondent within the meaning of Section 77A of the Act within a period of twelve weeks thereafter.

(iv) It is made clear that till such time, i.e. till the final order is passed by the second respondent, as indicated above, no precipitative action shall be taken to cancel the document in question, under which, the petitioner claims ownership of the property.

15. With these directions, the writ petition is disposed of. There will be no order as to costs. Consequently, connected miscellaneous petition is closed.

Index: Yes/No
drm

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To

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