



W.P.No.871 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.871 of 2023 and
W.M.P.No.857 of 2023

M/s.Fresh Farms Enterprises LLP.
Authorised Signatory,
D.No.73, 111 M-11 New ASTC HUDCO
7th Cross Street, Hosur Town,
Krishnagiri District.

... Petitioner

Vs

- 1.The Inspector General of Registration,
No.100 Santhome High Road,
Chennai – 600 028.
- 2.The Deputy Inspector General of Registration,
Combined Registration Department
Office Compound, Veppamara Street,
Velapadi, Vellore – 632 001.
Vellore District.
- 3.The District Registrar
Combined District Registrar Office
No.19, State Highways 58,
Arakkonam – 631 001.
Ranipet District.
- 4.Mohammed Ali
- 5.T.S.Sivasubramaniam

... Respondents



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Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the entire records relating to the impugned proceedings in No.341/B1/2022 dated 19.12.2022 on the file of the 2nd respondent quash the same.

For Petitioner : Mr.Om Prakash
Senior Counsel
for Mr.R.Ezhilarasan

For Respondents : Mr.Yogesh Kannadasan
Special Government Pleader
for R1 to R3

ORDER

The prayer sought for herein is for a Writ of Certiorari to call for the entire records relating to the impugned proceedings in No.341/B1/2022 dated 19.12.2022 on the file of the 2nd respondent and quash the same.

2. The 4th respondent had given a complaint to the 1st respondent regarding the document i.e. Document No.1369/2021 registered at Joint Sub Registrar, Arakkonam as if that it is a fraudulent document and the said complaint had been forwarded by the Inspector General of Registration to the 3rd respondent District Registrar for enquiry.



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3. The 3rd respondent enquired the matter by giving opportunity to both the complainant as well as the petitioner against whom such complaint had been given and passed an order on 27.12.2021, where, the 3rd respondent has stated the following:

“எனவே மேற்படி கருதுகோள்களின் அடிப்படையிலும், பார்வை (3)ல் கண்டுள்ள நீதிமன்ற ஆணை அடிப்படையிலும், அரக்கோணம் 2 எண் இணை சார்பதிவக அலுவலகத்தில் பதிவு செய்யப்பட்ட ஆவண எண் 1369/2021 ஐ ரத்து செய்ய வேண்டும் என்ற மனுதாரரின் கோரிக்கையை ஏற்று ஆணையிட முகாந்திரம் இல்லை என முடிவு செய்து அவ்வாறே ஆணையிடப்படுகிறது. மேலும் மனுதாரர் குறிப்பிடும் கிரய உடன்படிக்கை நிபந்தனை மீறப்பட்டுள்ளது தொடர்பான முறைகேடுகள் குறித்தும், கிரைய ஆவணத்தில் தெரிவிக்கும் பணபரிமாற்றங்கள் தொடர்பான விபரங்களில் குறிப்பிடும் முறைகேடுகள் குறித்தும் உரிய நீதிமன்றத்தில் வழக்கு தொடுத்து அதன் மூலம் பரிகாரம் பெற்றுக்கொள்ள தெரிவிக்கப்படுகிறது.”

4. Aggrieved by the said order passed by the 3rd respondent, the private respondent filed appeal before the 2nd respondent and the said appeal having been heard was decided by the 2nd respondent by order dated 19.12.2022 which is impugned herein.



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5. Assailing the said order, Mr.Om Prakash, learned Senior Counsel appearing for the petitioner would submit that, the complaint given by the private respondent having been entertained was enquired by the 3rd respondent, who after having given detailed enquiry on the issue has ultimately concluded that, the document in question is not liable to be cancelled and in this regard the private respondents can approach the Civil Court to redress their grievances, accordingly the private respondents approached the Civil Court and filed a suit which is pending.

6. When that being so, as a parallel proceedings, the private respondents preferred appeal against the order passed by the 3rd respondent before the 2nd respondent which having been entertained was decided by the 2nd respondent through the impugned order dated 19.12.2022 wherein the 2nd respondent has given a finding that, the case of the private respondents who are the complainants or appellants before the 2nd respondent is to be accepted and in view of the provisions that was available at that time viz., under Section 68(2) of the Registration Act, the document in question even though was liable to be set aside cannot be set aside. However now in view of the amendment made in the Registration Act by inserting Section 77-A of



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the Registration Act, it is open to the private respondents who are the appellants and complainants before the authorities concerned as stated supra can make a fresh complainant to the 3rd respondent under Section 77-A of the Act and if that is made, that can be considered and decided by the 3rd respondent in accordance with the said provision of the Act.

7. This kind of finding given by the 2nd respondent through the impugned order is beyond the jurisdiction and also contra to the decision taken by the 3rd respondent where the 3rd respondent has given a clear finding that, there was no justification in accepting the plea of the complainant to cancel or set aside the document in question.

8. The learned Senior Counsel would also submit that, the case of the private respondents who are the complainants was that, due to the agreement which had been entered into between the parties, there has been a right accrued on the private respondents, therefore the subsequent sale if any made through the document in question, that can be construed as a fraudulent document, therefore it was liable to be interfered with or set aside. The said plea raised by the complainants i.e. the private respondents



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having been considered was rejected by the 3rd respondent with clear findings and the private respondents, in fact, were directed to go before the Civil Court which has been accepted by them and have gone to the civil Court by filing appeal. When that being so, once again since the liberty has been now given to the private respondents to set the law in motion by making a fresh complaint against the petitioner before the 3rd respondent invoking Section 77-A of the Act would run contra to the findings already given by the very same 3rd respondent, therefore such a relief ought not to have been given by the 2nd respondent and ultimately the findings that the plea of the complainant/ appellant is to be accepted also could not have been made by the 1st respondent as with that findings given by the 1st respondent if the private respondents go before the 3rd respondent and file a complaint under Section 77-A of the Act, the 3rd respondent being the lower level officer comparing with the 2nd respondent or the 1st respondent, would be merely influenced by such a finding given by the 2nd respondent through the impugned order thereby justice may not be done by the 3rd respondent and by virtue of that, the petitioner right would get affected and he would be prejudiced.



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9. Therefore the learned Senior Counsel appearing for the petitioner would submit that, on merits since the issue has already been concluded by the findings given by the 3rd respondent once again the very same issue need not be triggered by the findings given by the 2nd respondent through the impugned order and on that ground the impugned order passed by the 2nd respondent is liable to be interfered with, he contended.

10. I have heard Mr.Yogesh Kannadasan, learned Special Government Pleader for the respondents and in view of the order going to be passed in this writ petition, notice to the private respondents is dispensed with.

11. The learned Special Government Pleader for the official respondents would contend that, even though some findings had been given by the 3rd respondent in the order dated 27.12.2021 at that time there was no power for the District Registrar like the 3rd respondent to set aside or cancel or give direction to the Registering Authority to set aside or cancel the document in question, therefore probably the 3rd respondent District Registrar have decided to relegate the parties to go before the Civil Court to establish their right.



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12. However at the time when the appeal was decided by the 2nd respondent as order impugned was passed only on 19.12.2022 the Registration Act got amended and the provisions like Section 77-A has come into effect with effect from 16.08.2022, therefore having the said legal position in mind, the 2nd respondent has given the finding stating that, there was every justification on the part of the complainant to get the document cancelled and such a power is not vested with the Registration Department within the meaning of Section 68(2) of the Act. As the original complaint was decided by the 3rd respondent by order dated 27.12.2021 only within the meaning of Section 68(2) of the Act and subsequently since Section 77-A has been inserted and now the power is vested with the District Registrar concerned, the 2nd respondent through the impugned order had given such liberty to the private respondent who was the appellant before the 2nd respondent to file a fresh complaint under Section 77-A of the Act and if such a complaint is given, that can very well be considered and decided by the 3rd respondent, therefore such a finding given by the 2nd respondent in the order impugned is strictly in accordance with the provisions of law and also on merits, therefore the learned Special Government Pleader wants to sustain the order impugned.



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13. I have given my anxious consideration to the said submissions made by the learned Senior Counsel for the petitioner as well as the learned Special Government Pleader for the official respondents.

14. The learned Senior Counsel appearing for the petitioner has pointed out two issues, in the first issue he has stated that, against the very same document, complaint had already been given by the private respondent before the 3rd respondent, who having enquired the matter, has come to the conclusion that, there has been no scope for cancelling the document that is the reason why the private respondent i.e. the complainant was directed to go before the Civil Court.

15. Having accepted the said finding given by the 3rd respondent, the private respondent had also gone to the Civil Court and the suit filed by them are pending before the concerned Court. When that being so, the issue cannot be parallelly opened by the Registering Authority by entertaining the appeal filed by the private respondents and therefore on that ground the very order which is the impugned order passed by the 2nd respondent is infirm, he contended.



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16. He also submit that, if at all any findings have been given by the 2nd respondent through the impugned order stating that, there is every justification to cancel the document in question and to accept the case of the complainant and with that finding if the private respondents are permitted to go before the 3rd respondent to file a fresh complaint under Section 77-A of the Act, it is nothing but sending the private respondent to the 3rd respondent with an extra arm of finding given by the 2nd respondent through the impugned order, therefore the 3rd respondent will be influenced and therefore on that ground also by the order impugned may not be justifiable, he contended.

17. However this Court feels that, insofar as the findings whatever given by the 2nd respondent in the order impugned is concerned, especially the particular finding that the case of the complainant can be accepted and the document in question though is liable to be set aside, such power since is not vested under Section 68(2) of the Act and such power is vested only under Section 77-A of the Act to the District Registrar, the complainant can give a fresh complaint to the District Registrar i.e. the 3rd respondent is



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concerned, the findings given by the 2nd respondent only to that effect that the case of the complainant is acceptable can be erased as the 3rd respondent cannot be influenced by any such finding given by higher authority like the 2nd respondent.

18. But at the same time the right of the aggrieved party to file a complaint against the alleged fraudulent or bogus document already been registered before the District Registrar is concerned, such a right cannot be curtailed, merely because, already a first attempt had been made by the very same complainant and file a complaint which was decided only within the meaning of Section 68(2) of the Act.

19. Moreover, at the time when the 3rd respondent decided the issue on 27.12.2021 the amendment had not come and the provisions viz., Section 77-A including Sections 22-A, 22-B, 77-A and 77-B were not available, therefore the parties were directed to go before the Civil Court and the private respondents had no other option except to go before the Civil Court accordingly they might have filed a civil suit which could be pending.



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WEB COPY 20. But at the same time when they preferred an appeal against the order passed by the 3rd respondent dated 27.12.2021 that was taken up and decided by the 2nd respondent on 19.12.2022.

21. On the date when the appeal was considered and decided by the 2nd respondent, the amendment has come with effect from 16.08.2022 therefore consciously the 2nd respondent having taken note of the legal position has given such a liberty to the private respondent i.e. the appellant before the 2nd respondent to go before the 3rd respondent by filing a fresh complaint within the meaning of Section 77-A of the Act.

22. In this context, it is to be noted that, the scope of Section 77-A as has been intended by the legislature who brought such an amendment first time in the Country in the Registration Act, 1908 is very large.

23. Hitherto the power of cancelling the document which has already been registered was vested only with the Civil Court even not before this Court in view of the various judgments passed by this Court as well as the



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Hon'ble Supreme Court. Such a power hitherto exercised by the Civil Court now has been vested with the District Registrar and such an amendment have been brought in in the Registration Act only with the wisdom of the State Legislature as they have realised that so many such fraudulent or bogus or illegal, unlawful documents are being registered before the concerned Registering Authority throughout Tamil Nadu, with the result, the aggrieved parties have become remediless as they have to go before only the Court Court.

24. Assuming that, the aggrieved parties can go before the Civil Court and file a suit it will take a reasonable time and in some cases atleast a decade will be required to decide the civil suit at the first instance by the trial Court, thereafter if appeal is filed and further appeal is filed, we can imagine that another decade or more would be spent by the aggrieved party to get justice.

25. Only in order to avoid this agony being experienced by genuine landlords or owners of the property who being aggrieved because of the illegal, unlawful transactions and registration being made in the Registration



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Department, the State Legislature with its wisdom thought it fit to bring these amendments. Therefore such a statutory power since has been with the District Registrar, the scope of the enquiry to be conducted by the District Registrar within the meaning of Section 77-A of the Act is not only limited but also has been made as an exercise being one of the quasi judicial exercise which first time in the history of Registration Act is being exercised by the Officer of the District level of the Registration Department viz., the District Registrar concerned.

26. When that being the position, there has been full scope for having such a detailed enquiry to be conducted by the District Registrar concerned who was the 3rd respondent before whom not only the private respondents but also the petitioner can bravely go and face such an enquiry as the petitioner if at all feels that, it has got a presentable case and good grounds to overcome the complaint to be given by the private respondents, such kind of defence can very well be taken by the petitioner before the 3rd respondent, if such complaint is filed by the private respondents under Section 77-A of the Act as directed by the 2nd respondent through the impugned order.



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27. Moreover, when there is a statutory efficacious remedy is provided against which statutory appellate remedy also is provided, such kind of hierarchy of remedies which is quasi judicial in nature, shall be first exhausted.

28. Without exhausting these remedies, if the litigants are permitted to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution, then such kind of entertainment of writ petition would run contra to the wisdom of the legislature, who after having much deliberations brought the amendment by having long experience of such fraudulent transactions being registered by virtue of that many number of genuine land owners are suffered and were driven from pillar to post by going before the Civil Court and leading any Civil Court litigation for decades together.

29. In order to avoid all these unwarranted litigations such kind of quasi judicial powers are now vested with the District Registrar and appellate power also is vested with the I.G. of Registration under Section 77-A and 77-B of the Registration Act respectively.



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30. Therefore this Court has no hesitation to hold that, the liberty given by the 2nd respondent through the impugned order dated 19.12.2022 to the private respondents to file a fresh complaint against the petitioner with regard to the plea of the private respondents to cancel the document in question as a fraudulent document or bogus document within the meaning of Section 77-A of the Act is fully justifiable in view of the aforestated reasons and discussions.

31. Therefore, this Court is inclined to dispose of this writ petition with the following orders:

(i) That the impugned order passed by the 2nd respondent dated 19.12.2022 is sustainable. However the finding given in the operative portion of the order to the following effect that 'the plea of the complainant that is the appellant/private respondent is to be accepted' is eschewed from the said order and without being uninfluenced by the said findings given by the 2nd respondent in the impugned order, the 3rd respondent can independently take up the complaint to be given by the private respondents and decide the same within the meaning of



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Section 77-A of the Act after giving or affording an opportunity of being heard to both the petitioner as well as the private respondents provided if the private respondents come forward to make such complaint as directed through the impugned order before the 3rd respondent.

(ii) It is made clear that, it is open to the petitioner to put forth its case by raising whatever the grounds they want to raise including to make use of the order passed by the 3rd respondent already dated 27.12.2021 and the findings given therein as their defence to suitably defend the complaint to be given by the private respondents under Section 77-A of the Act as directed by the 2nd respondent through the impugned order.

32. With these directions and observations, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Speaking Order : Yes / No
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To

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1. Inspector General of Registration,
No.100 Santhome High Road,
Chennai – 600 028.
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R.SURESH KUMAR, J.

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