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W.P.No.1029 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.1029 of 2023
and W.M.P.No.1018 of 2023

1.P.P.Vijayakumar
2.S.S.Murugesan

.... Petitioner

-Vs-

- 1 The Inspector General of Registration
100, Santhome Road Chennai - 600 028.
- 2 The Deputy Inspector General
of Registration 6/1 Red Fields GRD Road
Coimbatore Coimbatore district.
- 3 The District Registrar (Administration)
(in the cadre of Assistant
Inspector General of Registration) office of
Registration Department Coimbatore
Coimbatore district.
- 4 The Sub- Registrar
Mettupalayam Sub Registrar 271 Coimbatore
Main Road Dasampalayam Mettupalayam
Coimbatore district.

5 Devi Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records from the third respondent in his Impugned order dated 17.11.2022 in No.2162/ AA1/ 2022 to quash the same.



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For Petitioners : Mr.C.K.Chandrasekhar
For Respondents : Mr.Yogesh Kannadasan
Special Government Pleader – for RR 1 to 4
R5 – Notice dispensed with

ORDER

The prayer sought for herein is for a Writ of Certiorari calling for the records from the third respondent in his Impugned order dated 17.11.2022 in No.2162/ AA1/ 2022 to quash the same.

2. The private respondent seems to have given a complaint against the petitioner in respect of certain documents which have already been registered at the Sub Registrar Office, Mettupalayam, Coimbatore District, as if that those documents are fraudulent documents and action to be taken against those documents as well as the registering authorities. The said complaint, having been entertained by the 3rd respondent, the impugned order dated 19.11.2022 came to be passed, wherein the 3rd respondent has given certain findings as if that the documents in question are fraudulent documents or bogus documents or not registered properly. Based on the said findings, the 3rd respondent has also given a finding that since the power to cancel those documents is not vested with the 3rd respondent, the parties were directed to approach the civil court for appropriate relief. Aggrieved over the same, the present writ petition has been filed.



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3. Assailing the impugned order, the learned counsel for the petitioner would submit that, first of all such kind of findings given by the 3rd respondent is not tenable. As against the same though the petitioner is entitled to prefer an appeal, the petitioner has chosen to file this writ petition challenging the impugned order passed by the 3rd respondent mainly because the 3rd respondent has got the authority vested in him as on the date when he passed the order on 17.11.2022.

4. Learned counsel would further contend that since the Registration Act, 1908 having been amended, four new provisions have been inserted including Section 77A of the Act, under which the power is vested with the District Registrar concerned to entertain such complaint given by any aggrieved party and after enquiry, that shall be decided on merits and in accordance with law, and thereafter if really the document challenged by the third party is a bogus document within the meaning of Section 22B of the Act, action can be taken to direct the registering authority to cancel the document and that power even though has been given under the amended provisions with effect from 16.08.2022, unmindful of the same, the impugned order has been passed by the 3rd respondent and hence mainly on that ground the impugned order cannot be sustained.



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5. In order to support his contentions,, the learned counsel for the petitioner has relied upon a recent order passed by this Court on **15.12.2022** in the matter of **K.Samraj and another -vs- Inspector General of Registration** in **W.P.No.33674 of 2022**, where the learned counsel relied upon the following findings given by this Court.

“ 8. It is a known fact that, from 16.08.2022 Act 41 of 2022 i.e. Amendment Act of Registration Act, 1908 has been published in the Tamil Nadu Government Gazette from that date it has come into effect with the amended provisions viz., Sections 22-A, 22-B and 77-A of the Registration Act.

9. Under the said provisions, if any aggrieved party, against the fraudulent document, filed a complaint before the District Registrar, who is empowered under Section 77-A of the Registration Act, to enquire the matter and decide the same and ultimately if the District Registrar found that the document in question is a bogus one or fraudulent one, the registration made in this regard be directed to be cancelled by the Registering Authority, to that extent, the power is vested with the District Registrar under Section 77-A of the Act.

10. However, the 3rd respondent being the District Registrar, before whom such an application/complaint had been filed, having conducted the enquiry, has found that the document in question is a fraudulent one. Instead of disposing the said appeal by making such a



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declaration and also a direction to the Registering Authority viz., the 4th respondent to cancel the registration in respect of the document in question, he simply relegated the parties to go before the Civil Court to seek appropriate remedy, therefore, the said order is in conflict with the provisions of Section 77-A of the Act.

11. Be that as it may, as against the said order, as directed by the 3rd respondent through the order dated 10.11.2022, when appeal was filed by the petitioners before the 2nd respondent/Deputy Inspector General of Registration, he even though has held that the District Registrar has not properly decided the representation, has abdicated his duty and power which otherwise ought to have been exercised under Section 77-A of the Act. Nevertheless the 2nd respondent has simply directed the petitioner to file appeal before the 1st respondent i.e. Inspector General of Registration.

12. If the 3rd respondent/District Registrar aware of the amendment from 16.08.2022 in the Registration Act under which Section 77-A has been brought in to be effected, he should have acted upon strictly under the said provisions. Otherwise if the 3rd respondent does not know or not aware of the said amendment, then it is a very serious issue against whom action through departmental proceedings has to be initiated.

13. Though in this regard the 2nd respondent in his order dated 05.12.2022 has called for explanation from the 3rd respondent, the very same 2nd respondent has directed the parties to go before the 1st respondent by way of appeal, instead the 2nd respondent should have



allowed the appeal by setting aside the order and remitting the matter back to the 3rd respondent or if the 3rd respondent has not exercised his function properly within the meaning of Section 77-A of the Act, it could have been entrusted to any other District Registrar with the equal rank to exercise his power as a special case to be specially entrusted.

14. However the 2nd respondent also has not properly dealt with the matter. Therefore, this Court feels that both orders i.e. order dated 10.11.2022 passed by the 3rd respondent and order dated 05.12.2022 passed by the 2nd respondent would not stand in the legal scrutiny as it goes against the very spirit of Section 77~A of the Registration Act, therefore, this Court has no hesitation to hold that those orders are liable to be interfered with, accordingly the following orders are passed in this writ petition.

That the impugned orders dated 10.11.2022 and 05.12.2022 are hereby set aside. As a sequel, there shall be a direction to the 1st respondent to take up the matter and entrust the same to any District Registrar not to the present District Registrar at the 3rd respondent Office with direction to decide the same on merits and in accordance with law by giving opportunity of being heard to both parties within a time frame of twelve (12) weeks from the date of such reference and on making such reference by the 1st respondent/Inspector General of Registration, the concerned District Registrar to whom such reference is to be made shall act upon and decide the complaint



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of the 5th respondent within the time frame to be stipulated as indicated above.

15. In general, this Court also feels that despite the amendment having been made which comes into effect from 16.08.2022 still some of the District Registrar Level Officers like the 3rd respondent is not clear about their power and function as well as the responsibility especially under Section 77~A of the Registration Act. Therefore, in this regard a direction in general may be issued to all the District Registrar concerned who are expected to exercise their function under Section 77~A of the Act by way of mandatory guidelines for the effective implementation of the amended provisions. Such a circular shall be issued by the 1st respondent/Inspector General of Registration at the earliest so that this kind of confusions and consequential litigations can be avoided. ”

6. Relying upon this order, the learned counsel would contend that, in similar circumstances the very same 3rd respondent has passed a similar order, which in fact was challenged in the said writ petition. Therefore this Court having satisfied that the order passed by the 3rd respondent in that case, would not stand in the legal scrutiny, that was set aside and the matter was remitted back to the respondents therein with a direction to the Inspector General of Registration to entrust the matter to any other District Registrar other than the 3rd respondent therein and a general direction was given to the Inspector General of Registration to issue a circular alerting all the District Registrars about the



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power vested with them under Section 77A of the Act and they should act diligently while exercising such power, after giving opportunity to both parties in each of the cases which they deal with.

7. Despite the same, the present order is passed, of course before the order of this Court was passed, however, after the amendment having been made from 16.08.2022. Therefore the learned counsel would submit that the present impugned order also has to face the same fate and has to be set aside and the matter can be remitted back to the 3rd respondent for proper scrutiny. He would also submit that, while remitting the matter, instead of the present 3rd respondent any other District Registrar at his level can be entrusted with the matter with necessary directions by the Inspector General of Registration.

8. On the other hand, the learned Special Government Pleader would submit that, in fact pursuant to the order passed by this Court in the case referred above, the Inspector General of Registration has issued a circular on 04.01.2023. However, since the order impugned has been passed prior to such instructions given by the Inspector General of Registration as well as the order passed by this Court probably the 3rd respondent may not have noticed the amended provisions and the power vested in him. Anyhow if this Court ultimately comes to the conclusion that the matter can be remitted back to the 3rd



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respondent and further feels that it should be heard by any other District Registrar other than the 3rd respondent, the needful would be undertaken.

9. Considering the submissions of both sides, as has been rightly pointed out by the learned counsel for the petitioner, the third respondent, without realising the power vested in the District Registrar since has passed an order and this issue has already been settled by this Court by the order dated 15.12.2022 as stated supra, this Court has no hesitation to hold that the impugned order does not stand in the legal scrutiny. Accordingly, this Court is inclined to dispose of this writ petition with the following order.

- (a) The impugned order dated 17.11.2022 is set aside and the matter is remitted back to the 3rd respondent for reconsideration.
- (b) However, the 1st respondent Inspector General of Registration is hereby directed to entrust the matter to any other District Registrar other than the 3rd respondent holding the post of District Registrar.
- (c) On receipt of such remittance from the Inspector General Registration, the District Registrar so entrusted with the matter, shall enquire into the matter afresh and after affording



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reasonable opportunity of being heard to both the petitioner as well as the complainants, take a decision on merits and in accordance with law under Section 77A of the Act within a period of eight weeks from the date of receipt of a copy of this order.

With the above directions, this writ petition is disposed of. No costs.
Consequently, connected miscellaneous petition is closed.

12.01.2023

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



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To

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100, Santhome Road Chennai - 600 028.
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of Registration 6/1 Red Fields GRD Road
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R. SURESH KUMAR, J.

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