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W.P.No.1242 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.1242 of 2023

M/s. Precision Products
Rep by its Partner., M/s. Lotus Roofing Ltd.,
Formerly Known as M/s. Lotus Roofing Pvt. Ltd.,
Rep by its Director
Mr.R.Elango
No. C-45, Thiru-Vi-Ka Industrial Estate,
Guindy, Chennai – 600 032.

... Petitioner

Vs.

The Sub-Registrar
Alandur Sub Registrar Office
15/17, Military Quarters
Alandur, Chennai – 600 016.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the impugned order issued by respondent dated 09.11.2022 Ref.No.RFL/Alandur/18/2022 and quash the same and direct the respondent to register the Memorandum of Deposit of Title Deeds and all other subsequent documents without insisting upon the Non-Traceable Certificate from the jurisdictional Police Station.



For Petitioner : Mr.N.Alagu Narayanan
For M/s.RRN Legal

For Respondent : Mr.T.Arun Kumar
Additional Government Pleader

ORDER

The writ petition has been filed challenging the refusal check slip issued by the Sub Registrar on 09.11.2022 refusing to register the deposit of title deeds.

2. The petitioner is M/s. Precision Products, who is the absolute owner of the shed No.C-45, Thiru-Vi-Ka Industrial Estate, Guindy, Chennai 32. The petitioner presented Memorandum of Deposit of Title Deed for registration and the Sub Registrar refused to register on the ground that the petitioner has failed to produce the original Sale Deed pertaining to the property.

3. The learned counsel for the petitioner mainly contended that the petitioner has produced a certified copy of the original Sale Deed, which is good enough for acceptance and therefore, the Sub Registrar ought not to have issued the impugned refusal slip.



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4. The learned Additional Government Pleader appearing on behalf of the respondent objected the said contention by stating that under Rule 55 (A) of the Registration Rules, the petitioner in the absence of original document if at all the original deed is lost, has to submit non-traceable certificate issued by the Police Department along with the advertisement published in the local newspaper.

5. In the present case, the petitioner has not produced non-traceable certificate along with the advertisement and therefore, the sub Registrar is right in issuing the order impugned.

6. Rule 55(A) (i) of the Registration Rules stipulates that “*Registering officer before whom a document relating to immovable property is presented for registration, shall not register the same, unless the presentant produces the previous original deed by which the executant acquired right over the subject property and an Encumbrance Certificate pertaining to the property obtained within ten days from the date of presentation*”.



7. The relevant Proviso Clause stipulates *“Provided also that if the previous original deed is lost, the registering officer shall register such document only on production of non-traceable Certificate issued by the Police department along with the advertisement published in the local Newspaper as to the notice of loss of the previous original deed:”*.

8. With reference to the procedures contemplated under 55 (A) of the Registration Rules this Court has considered the issue in the case of ***The Federal Bank Limited Vs. The Sub Registrar, Pollachi*** reported in (2023) 2 CTC 289 and the relevant paragraphs are extracted here under:

“12. It is now necessary to closely examine Rule 55-A as this is the sheet anchor of the case of the respondents for refusing registration of the document presented by the petitioner. Rule 55-A (i) authorizes the Registrar to refuse registration of the document unless the presentant produces the previous original sale deed by which the executant acquired right over the property, and the Encumbrance certificate pertaining to the said property. It is not difficult to foresee that a literal application of this rule would lead to several absurd results. For example, if a person desires to



execute a Will and get it registered, and the property is mortgaged to a Bank it is obvious that he would be unable to present the original document. Similarly, where one sharer deals with his interest in joint family property registration can be easily stalled if the other co-sharer refuses to part with the original parent deed. In fact, in a recent decision [Ananthi v District Registrar, W.P 2498 of 2023, order dated 02.02.2023], this Court was confronted with a case where the Sub-Registrar had relied on Rule 55-A (i) and refused to register a sale deed only on the ground that the original partition deed had not been produced. Quashing the impugned order, this Court observed as follows:

?While framing such Rule, the Government has not taken into consideration of the fact that the partition deeds are entered among the co-owners. Normally, original partition deed will be retained by anyone of the family member. In fact, there may be a situation, wherein, the person who will be in possession of the original partition deed, may not be willing to produce the



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documents. If such original is not produced as required under this Rule, the other members of the family cannot deal with the property.?

13. It appears that on the very same day ie., 02.02.2023, the Inspector General of Registration issued Circular No 22482/CI/2022, dispensing with the production of the original documents in certain situations indicated in the guidelines. In the considered opinion of this Court, the very fact that several exemptions had to be granted by a circular clearly demonstrates the unworkability of Rule 55-A(i). However, a very intriguing aspect lies in the amendment to Rule 162 inserting Clause XX which reads as follows:

“Clause XX Rule 55A. That the presentant of the document fails to produce the original deed or record specified in rule 55A.”

13.a The newly introduced Clause XX is preceded by Clauses I-XIX authorizing the Registrar to refuse registration on the grounds set out therein. More importantly, each of the clauses authorizing the Registrar to refuse registration from Clauses I to XIX specifically refers to a



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substantive provision of law in the Registration Act or in some other legislation like the Income Tax Act, 1961 as the source of power. Clause XX on the other hand, does not refer to any substantive provision of law. Strangely and most curiously it authorizes the Registrar to refuse registration for non-production of original deed or record as specified in Rule 55-A. Normally, a subordinate legislation like a rule is authorized by a substantive provision of law. However, this is a unique case where a rule is authorized by another rule. This Court is of the considered opinion that in the absence of any substantive provision of law in the parent legislation, Clause XX is clearly beyond the powers of the Inspector General of Registration. The scheme of Rule 162 particularly Clauses 1 to XIX make it very clear that the grounds for refusal must be traceable to a substantive provision of law in the Registration Act or other legislation.

24. It is also well settled by the decision of the Supreme Court in J.K. Industries Ltd. v. Union of India, (2007) 13 SCC 673 that a subordinate legislation may be struck down as arbitrary or contrary to statute if it fails to take into account



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vital facts which expressly or by necessary implication are required to be taken into account by the statute or the Constitution. Furthermore, Rule 55-A is a delegated legislation which cannot go beyond the scope of the Parent Act viz., the Registration Act as well the Transfer of Property Act which is the substantive law governing the transfer of immovable properties. Hence, the first proviso is clearly ultra vires and unconstitutional.”

9. Pertinently, the petitioner in the present case, produced the certified copy of the sale deed obtained from the authority competent. While so, submission of non-traceable certificate would be irrelevant and the proviso clause did not bar registration, in the event of producing the certified copy of the document. In the absence of any document including original document, non-traceable certificate would be relevant and cases in which the certified copies are produced, then the non-traceable certificate from the Police Department becomes unnecessary.

10. This being the factum, the impugned refusal check slip issued by the respondent is untenable. Accordingly, the impugned check slip dated



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09.11.2022 is quashed and the respondent is directed to register the document, if the document presented by the petitioner is otherwise in accordance with the provisions of the Act and Rules. The delay occurred on account of the present writ petition stands condoned and the respondent is directed to register the document presented by the petitioner without reference to the delay.

11. With these above directions, this Writ Petition stands allowed. No costs.

08.06.2023

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

To

The Sub-Registrar
Alandur Sub Registrar Office
15/17, Military Quarters
Alandur, Chennai – 600 016.



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S.M.SUBRAMANIAM, J.

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