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W.P.No.3198 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.3198 of 2023
and W.M.P.No.3265 of 2023

1.R.Vijaya
2.R.Rajaji

.... Petitioners

-Vs-

1.The District Registrar
Kancheepuram,
Chinnaiyangulam
Orikkai, Kancheepuram.

2.Mrs.V.Sampathkumari

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for records and quash the proceedings initiated by the 1st respondent in Na.Ka.No.178/A2/2022 dated 30.12.2022 upon the complaint given by the 2nd respondent as being illegal and without jurisdiction.

For Petitioner : Mr.D.Baskar

For Respondents : Mr.P.Sathish
Additional Government Pleader – for R1
Notice dispensed with - R2



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ORDER

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The prayer sought for herein is for a Writ of Certiorari calling for records and quash the proceedings initiated by the 1st respondent in Na.Ka.No.178/A2/2022 dated 30.12.2022 upon the complaint given by the 2nd respondent as being illegal and without jurisdiction.

2. With regard to the document ie., Document No.327/1994 which is a power of attorney document registered at the Sub Registrar Office, Kancheepuram and Document No.9103/2007 on the file of the same SRO, it seems that the 2nd respondent had given a complaint against the petitioners before the 1st respondent within the meaning of Section 77-A of the Registration Act to enquire the matter and to declare that the documents in question as fraudulent / bogus documents and also seeking for a consequential relief to cancel those documents.

3. Having entertained the said complaint, the 1st respondent had issued summons on 30.12.2022 to the petitioners directing them to appear before the 1st respondent on 23.01.2023 along with a reply statement or defence statement with supporting documents substantiating their case. Aggrieved over the same, the present writ petition has been filed by the petitioners.



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4. Heard Mr.D.Baskar learned counsel for the petitioners, who would submit that the document which is in question ie., the Power of Attorney document is of the year 1994 that was registered 28 years back, based on which the sale was executed and registered as Document No.9103 of 2007 in the year 2007. Therefore, at this juncture, if such a complaint is given and based on which if enquiry is conducted by the 1st respondent, it would pave way for miscarriage of justice. According to the learned counsel for the petitioners, such a power is not vested with the 1st respondent either under Section 77-A or under Section 68(2) of the Act, because the complaint was given prior to 16.08.2022 ie., prior to the amendment of the Registration Act by which certain provisions like Section 77-A, 77-B, 22-A and 22-B were inserted in the Act.

5. Though such a preliminary objection has been raised on behalf of the petitioners, the same since has not been considered and the 1st respondent is likely to go ahead with the full fledged enquiry on the complaint given by the 2nd respondent against the petitioners, at this juncture the petitioners have moved the present writ petition with the aforesaid prayer.

6. Heard Mr.P.Sathish, learned Additional Government Pleader appearing for the 1st respondent. In view of the order that is going to be passed in this writ petition, notice to the 2nd respondent is hereby dispensed with.



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7. Learned Additional Government Pleader would submit that, though the complaint was given by the 2nd respondent prior to 16.08.2022 ie., before the amendment, since the same has not been disposed of even till 16.08.2022, the date on which since the new provisions have come into effect, as per the several orders passed by this Court, those pending complaints also have to be decided by the District Registrar concerned only under Section 77-A of the Act. Therefore, the summons recently issued dated 30.12.2022 to the petitioners giving a date of hearing on 23.01.2023 is only a summon within the meaning of Section 77-A of the Act to conduct an enquiry. Therefore, if any such defence or objection is available to the petitioners, they can very well place it before the 1st respondent and after considering the same, a decision would be taken by the 1st respondent, as that kind of statutory duty cast upon the 1st respondent cannot be curtailed or thwarted even by way of a Mandamus by this Court. Therefore, such a direction as sought for in this writ petition cannot be granted by this Court, learned Additional Government Pleader contended.

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



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9. If at all the petitioners have got any grievance that the preliminary objection raised by citing the age of the document which is in question has to be decided first is concerned, no doubt that can be taken as one of the grounds to oppose the complaint given by the 2nd respondent and in this regard if any such written reply by raising the said grounds is made by the petitioners, the same can very well be decided as a preliminary issue by the 1st respondent District Registrar. In this aspect, this Court is of the view that after the amendment is made by inserting certain provisions, nowhere it is stated that it is prospective or retrospective. Therefore, the law would presume that it can be a provision giving such power to the District Registrar to enquire the complaint given pertaining the documents registered even prior to 16.08.2022 unless and until a conclusive declaratory order is passed by this Court or any other competent Court about the prospective or retrospective nature of the amended provisions.

10. Therefore, by having this legal position in mind, the 1st respondent District Registrar can very well take up the preliminary objection to be raised by the petitioners in this regard as discussed above and accordingly the 1st respondent can come to a conclusion and if the 1st respondent decides to proceed with the complaint, it is open to the 1st respondent to do the same in accordance with law and on merits of the case by giving an opportunity of hearing to both sides.



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11. In that view of the matter, this Court is inclined to dispose of this writ

petition with the following order.

- It is open to the petitioners to file a written objection raising the said preliminary ground also as to the age of the document which is in question, based on which it is for the 1st respondent to take it as preliminary issue and to decide the same.
- If it is decided either way, accordingly the 1st respondent can proceed to go ahead with the enquiry of the complaint given by the 2nd respondent on merits and in accordance with law under Section 77-A of the Act even though complaint was given during the pre-amended period under Section 68(2) of the Act.
- The needful as indicated above shall be undertaken by the 1st respondent after receipt of such written objection from the petitioners, within a period of twelve (12) weeks thereafter.

12. With the above directions, this writ petition is disposed of. No costs.

Consequently, connected miscellaneous petition is closed.

07.02.2023

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Index : Yes/No

Neutral Citation : Yes/No

Speaking Order / Non-speaking order

KST



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To
The District Registrar
Kancheepuram,
Chinnaiyangulam
Orikkai, Kancheepuram.



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R. SURESH KUMAR, J.

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