



W.P.Nos.4192 of 2018
etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.4192 of 2018 and

W.P.No.9650 of 2018 and W.M.P.No.11572 of 2018 and
W.P.No.14276 of 2018 and W.P.Nos.16978 & 16979 of 2018 and
W.P.No.20495 of 2018 and W.M.P.No.24080 of 2018 and
W.P.No.22005 of 2018 and W.M.P.No.25803 of 2018 and
W.P.No.23157 of 2018 and W.M.P.No.27056 of 2018 and
W.P.No.29760 of 2018 and W.M.P.Nos.34722 & 34724 of 2018 and
W.P.No.33213 of 2022 and W.M.P.Nos.32632 & 32633 of 2022 and
W.P.No.6534 of 2023 and W.P.No.12295 of 2023 and
W.P.No.13202 of 2023 and W.P.No.13293 of 2023 and
W.P.Nos.13631 of 2023, 13658 of 2023, 13683 of 2023,
13819 of 2023, 13937 of 2023, 14169 of 2023, 14195 of 2023,
14199 of 2023, 14822 of 2023 and 15363 of 2023,
W.P.No.15631 of 2023 and W.M.P.No.15122 of 2023
W.P.No.16437 of 2023, W.P.No.16441 of 2023 and
W.M.P.No.15813 of 2023 W.P.No.16836 of 2023

[28 WPs and 10 WMPs]

W.P.No.4192 of 2018:

1.A.Selvam

2.S.Chandrasekar

... Petitioners

Vs



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1.The Sub Registrar,
Dadagapatti Sub Registrar Office,
Dadagapatti, Salem District.

2.K.Venkatesan

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records from the first respondent in (i)Na.Ka.No.803/2017 dated 28.12.2017 and (ii) unilaterally cancellation of settlement deed dated 30.10.2009 vide document No.6092 of 2009 on the file of first respondent to quash the same and issue consequential direction to the first respondent to delete the entries that reflects the aforesaid document from the Encumbrance Certificate maintained by the first respondent herein.

For Petitioner : Mr.S.Ramkumar

For Respondents : Mr.T.Arunkumar
Additional Government Pleader for R1

: Mr.R.Subramanian
for Mr.N.Ravi for R2

COMMON ORDER

All these batch of Writ Petitions are filed to cancel the registered documents under the provisions of the Registration Act,1908.



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2. Primarily the grievances put forth before this Court are that the applications submitted by the aggrieved persons to cancel the documents are not decided in a speedy manner and are pending for an indefinite period, causing serious prejudice to the property rights of the aggrieved persons. Therefore, many writ petitions are filed just to dispose of the complaint filed by the aggrieved persons under the provisions of the Registration Act to cancel the registered documents. Some writ petitions are filed to dispose of the appeals which all are pending before the appellate authorities. In such writ petitions, the original authority has either rejected the complaint or allowed the complaint by cancelling the documents.

3. The anomaly in these aspects are to be rectified by regulating the administrative procedures to deal with all such complaints and appeals as the case may be.

4. Redressal of grievances by aggrieved persons under the Statute and Rules is a right ensured under the Constitution of India. No citizen shall be



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denied such an opportunity as contemplated under the Statute. Thus, the public authorities are duty bound to ensure that the complaints or appeals preferred under the Registration Act are dealt consistently in a systematic manner and disposed of by following the procedures and by affording an opportunity to all the parties.

5. Transparency in disposing of such complaints and appeals is the mandate under the Constitution. Transparency in public administration is the hallmark in the Constitution. In the event of regulating such procedures, all unnecessary litigations can be avoided and the aggrieved persons will be in a position to redress their grievances in an efficacious manner. In the context of the above grievances put forth by the petitioners in these batch of writ petitions, this Court requested the Inspector General of Registration to formulate procedures so as to ensure that the complaints and appeals preferred under the Registration Act are entertained and disposed of by following certain specific procedures, which must be implemented by the Subordinate officials functioning under the administrative control of the Inspector General of Registration.



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6. The learned Additional Government Pleader appearing for the respondents submitted a copy of the Circular No.1/2023 dated 10.06.2023 regulating the procedures to be followed to deal with the complaints and appeals preferred by the aggrieved persons.

7. Let us examine the scope of cancellation of registered document under Sections 22-A and 22-B of the Registration Act. Section 22-A denotes 'Refusal to register certain documents' by the registering authority. Section 22-B indicates 'Refusal to register forged documents and other documents prohibited by law.

8. It is not in dispute that the District Registrar and the Appellate Authority under the Registration Act are empowered to cancel the registered document on the grounds of 'forgery' and 'impersonation'. It is to be noted that the power conferred is to cancel the document registered and not to declare the civil rights of the parties or to adjudicate the other disputes with reference to the other documents, if any, registered or relied on by the parties to the complaint or appeal. The powers of the authorities under the



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Registration Act to cancel the registered documents cannot be expanded for the purpose of declaration of a particular document as null and void. To declare a document as null and void, the power vested with the Civil Court of law. Therefore, a distinction is to be drawn between declaration of document as null and void and cancellation of documents registered under the provisions of the Registration Act. Cancellation alone can be done by conducting summary procedures. Declaration is to be made by the Civil Court of law by conducting a full-fledged trial. Declaration by the Civil Court confers the civil right of the parties. In cancellation of document, the Registration under the Act alone goes, but the dispute if any remains.

9. The power of adjudication conferred under the Registration Act is to be exercised to identify whether there is any fraud apparent on record or impersonation on the face of it. If the fraud found apparent on the face of record is established or impersonation *per se* has been identified, then alone the competent authorities under the Registration Act is empowered to cancel the document. In all other circumstances, even if there is an *iota* of doubt regarding the other aspects on merits, the parties are to be relegated to the



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Civil Court of law for adjudication of their rights. The Registering Authority / Appellate Authority cannot exercise any powers to adjudicate the disputed issues between the parties in respect of certain facts and circumstances, even if narrated in the documents or in the complaint which all are sought to be cancelled. In order to clarify the circumstances if any document, the right of title derived by a person is enumerated and the documents previously registered are referred so as to indicate the title or ownership for the purpose of executing the document, then in such circumstances, the District Registrar is not empowered to go into the merits of those documents regarding the title or other facts and make a finding and cancel the documents. Such a power is not conferred. No doubt, the authorities competent are empowered to verify all those documents but they shall restrict themselves in exercising their powers for the purpose of making findings in respect of those facts. In nutshell, if the registration of the document is found to be fraud in violation of Sections 32 to 35 of the Registration Act, then alone the District Registrar is empowered to cancel the documents by invoking the powers under Section 77-A of the Registration Act, 1908.



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10. Part VI of the Registration Act, 1908 deals with 'Presenting documents for registration'. Section 32 enumerates 'Persons to present documents for registration'. Section 32-A deals with 'Registration by electronic means'. Section 32-AA denotes 'Compulsory affixing of photograph, etc.' Section 33 stipulates 'Power of attorney recognizable for purposes of section 32'. Section 34 deals with enquiry before registration by registering officer. Section 34-A enumerates 'Person claiming under document for sale of property also to sign document'. Section 34-B deals with 'Procedure for Registration of document of Power of Attorney relating to immovable property' and finally Section 35 deals with 'Procedure on admission and denial of execution respectively'.

11. In the context of the above provisions, if any fraud is identified, then the documents registered are to be cancelled. Pertinently, Section 35(2) of the Registration Act reads that “The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this



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Act, examine any one present in his office.” Sub-section 3 of Section 35

reads as under:

(3)(a) If any person by whom the document purports to be executed denies its execution, or

(b) If any such person appears to the registering officer to be a minor, an idiot or a lunatic, or

(c) if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution, the registering officer shall refuse to register the document as to the persons so denying, appearing or dead:

Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII.

1 [Provided further that the State Government may by notification in the Official Gazette, declare that any Sub-Registrar named in the notification shall, in respect of documents the execution of which is denied, be deemed to be a Registrar for the purpose of this sub-section and of Part XII.]”

12. With reference to the above provisions, if any discrepancy, inconsistency or fraud is identified, then the authority competent is empowered to invoke the powers conferred under the Registration Act and cancel the document.



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13. Often the authorities exceed their jurisdiction on account of misinterpretation of the provisions of the Act or due to misconceptions. A clear distinction is to be drawn with reference to the “administrative frauds” and the “fraud” in common parlance.

14. “Fraud” is an offence. Threefold actions are permissible for an aggrieved person, who is a victim of fraud. An administrative fraud is to be dealt with by the competent authorities under the Registration Act in respect of the documents registered. Secondly, an aggrieved person may initiate action under the Criminal law to convict a person. Thirdly, such person shall approach the competent Civil Court of law for the purpose of establishing his rights. All the threefold actions are permissible under the law and can be initiated simultaneously by the aggrieved persons. One action initiated under the Registration Act is not a bar for initiating other two available remedies both under the Criminal law and under the Civil law. Actions initiated under each branch is to be dealt with independently by the Courts and the competent authorities.

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15. Therefore, an administrative authority exercising the powers under the Registration Act should ensure that, he exercises the powers within the ambit of the Registration Act and any exercise of powers not vested in it by law would cause prejudice to the other party to establish his case before the competent Court of law, which is a trial natured proceedings. In other words, if civil rights are interfered in a summary proceedings, then such persons are losing their opportunity to establish their rights in a trial natured proceedings either before the Criminal Court of law or before the Civil Court of law. Therefore, authorities under the Registration Act, while conducting summary proceedings cannot venture into an adjudication of disputed issues between the parties. Only if the fraud is found apparent, then alone they should cancel the document and in respect of dispute regarding civil rights, parties are to be relegated to the Civil Court of law. Therefore, fraud in the context of the Registration Act is to be understood as “fraud apparent on the face of the record”, which alone empowers the Registering Authority to cancel the document. In respect of all other disputes in connection with the fraud they are to be dealt with only by the competent Court of law and not by the Registering Authority.



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16. It is relevant to consider Order VI Rule 4 of the Civil Procedure, which enumerates 'Particulars to be given where necessary' - *“In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.”*

17. Therefore, the Civil Procedure Code, 1908 stipulates that allegation of fraud or misrepresentation must be specifically pleaded. When the Code of Civil Procedure provides a mechanism to deal with the allegations of fraud in civil suits, then pleadings regarding fraud must be specific. The Registering Authority cannot adjudicate disputed issues with reference to fraud in common parlance.

18. Cancellation of a registered document has got an implication on the civil rights of the persons. Property right is a constitutional right conferred under Article 300A of the Constitution of India. Such a right can



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be interfered with only by the authority of law and certainly not through summary proceedings. Property rights if infringed through summary proceedings on the hands of the District Registrar would result in unconstitutionality. Thus, the scope of powers under the Registration Act to the District Registrars and the Appellate Authorities cannot be expanded for the purpose of adjudication of disputed issues of civil nature, which is conferred on the competent Court of law.

19. A distinction is to be drawn with reference to the procedures contemplated under the Code of Civil Procedure and the Registration Act. For example, any person executing a sale deed gets a property right. Once the property right is acquired by him through the sale deed, such right becomes a constitutional right. Thus, the said right can be taken away only by the authority of law. Such an authority of law must provide complete opportunity to the parties to adjudicate the issues based on the documents and evidences. The powers for adjudication of such nature is conferred to the Court of law. Thus, the said powers conferred on the Court of law cannot be transferred or conferred to the District Registrar under the



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provisions of the Registration Act and more so, such District Registrars are neither legally trained nor authorised to conduct such judicial proceedings.

The Registrars are Quasi-Judicial Authorities.

20. Pertinently, Chapter V, Section 31 of the Specific Relief Act, 1963 contemplates 'When cancellation may be ordered'. Sub-section (1) of Section 31 stipulates *“Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.”*

21. In view of the provisions of the Code of Civil Procedure and Specific relief Act, the Competent Civil Court of law is empowered to adjudicate the disputed facts between the parties by framing issues and by conducting trials and consider the validity of the documents registered under the Registration Act. Once the Competent Civil Court of law declares a registered document as null, void or invalid, thereafter under Section 89(4)



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of the Registration Act read with Rule 89 of the Civil Rules of Practice, the Registering Authority is bound to register the decree passed by the Civil Court in Book No.1. The mechanism provided under the Code of Civil Procedure, Specific Relief Act and Civil Rules of Practice at no circumstances be diluted. Thus, the scope under the Registration Act to cancel the documents on the ground of fraud or impersonation is undoubtedly limited. Comprehensive procedures contemplated under the Code of Civil Procedure, Civil Rules of Practice and the Specific Relief Act provide liberty to all the parties to establish and defend their case by producing documents and adducing evidence. Such a right of adjudication cannot be taken away by allowing the Registrar to declare the registered documents as null and void.

22. Section 22-B of the Registration Act reads as under:

“22-B. Refusal to register forged documents and other documents prohibited by law – Notwithstanding anything contained in this Act, the registering officer shall refuse to register the following documents, namely:



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1. *forged document;*
2. *document relating to transaction, which is prohibited by any Central Act or State Act for the time being in force;*
3. *document relating to transfer of immovable property by way of sale, gift, lease or otherwise, which is attached permanently or provisionally by a competent authority under any Central Act or State Act for the time being in force or any Court or Tribunal;*
4. *any other document as the State Government may, by notification, specify.”*

23. The very insertion of the above Section in Tamil Nadu Act 41 of 2022 dated 16.08.2022, amplifies that registration of a fraudulent document and certain document prohibited under law are to be refused. Refusal of registration would arise only in respect of documents presented after amendment. Therefore, in respect of documents already registered, the District Registrar cannot have power to cancel the document, wherein the allegations of fraud or impersonation have been raised. Thus, the provisions



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cannot have retrospective effect, so as to confer the power on the District Registrar to adjudicate the documents, which were registered prior to the amendment. All those cases have to be relegated to the Competent Civil Court of law for adjudication.

24. Rule 55 of the Registration Rules reads as under:

“55. It forms no part of a registering officer's duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document; but he is bound to consider objections raised on any of the grounds stated below:-

- (a) that the parties appearing or about to appear before him are not the persons they profess to be;*
- (b) that the document is forged;*
- (c) that the person appearing as a representative, assign or agent, has no right to appear in that capacity;*
- (d) that the executing party is not really dead, as alleged by the party applying for registration; or*
- (e) that the executing party is a minor or an idiot or a lunatic.”*



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25. Section 22-B of the Registration Act has to be read with Rule 55 of the Registration Rules. The Registering Authority, on receipt of any document for registration, if finds forged or registered through any unauthorised person is empowered to refuse registration. The circumstances as narrated under Rule 55 of the Registration Rules to be read along with the amended provision under Section 22-B of the Registration Act. Holistic reading of the above provisions would indicate that the Registering Authority is empowered to refuse registration, if the documents presented are found to be forged or impersonated.

26. It is just and necessary for the Inspector General of Registration to issue appropriate guidelines to all the District Registrars explaining their powers to conduct summary proceedings, on entertaining a complaint from any person to cancel the document on the ground of fraud or impersonation. In the absence of any such uniformity, there is a scope for inconsistency and possibility of infringement of property rights of the citizen, since infringement would lead to unconstitutionality. It is imminent to issue such guidelines without causing any loss of time.



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27. The learned Special Government Pleader and some of the learned counsel appearing on behalf of the petitioners raised issues relating to Limitation and also the application of the amendment provision inserted by the Tamil Nadu Act 41 of 2022 dated 16.08.2022, as to whether the provision will have prospective or retrospective effect.

28. It is brought to the notice of this Court that the issues in this regard are subjudiced before the Full Bench of this Court. Thus, those issues at present need not be dealt with by this Court in this batch of writ petitions.

29. Undoubtedly, Section 77-A of the Registration Act confers *suo motu* powers on the Registrar to initiate actions based on the complaint received from any person. If any registered document contravenes any of the ingredients under Section 22-A or Section 22-B, then the Registrar or the authority competent is empowered to cancel the document.

30. As pointed out earlier, the scope of cancellation of document under Section 77-A is to be restricted with reference to the frauds if any



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committed and identified under Sections 32 to 35 and in respect of other issues relating to civil disputes cannot be dealt with under the provisions of the Registration Act. Section 77-B provides an “Appeal”. Therefore, the authorities competent under the Registration Act are expected to borne in mind that no authority exceeds their jurisdiction or powers while dealing with the allegations of fraud or impersonation in the context of Sections 32 to 35 of the Registration Act.

31. Regarding the Circular now issued by the Inspector General of Registration, certain guidelines require amendments. In para 5 of the Circular, it is stated that based on the complaint seniority enquiry will be conducted, and the seniority number is directed to be communicated to the complainant through 'letter'. Instead of stating it as “letter”, it is to be stated as “Registered Letter”. Secondly, in para 6, it is stated that the cases of civil nature cannot be undertaken for adjudication. This phrase requires further clarification. Under Sections 22-A and 22-B of the Registration Act, certain circumstances are narrated for refusal of registration. Those circumstances stipulated in the Act requires no clarification as the authority competent is



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expected to understand the nature of restrictions imposed under Sections 22-A and 22-B of the Act. However, it is to be clarified that the “fraud or impersonation” under the Act are to be understood only with reference to the fraud on procedures, more specifically contemplated under Sections 32 to 35 of the Registration Act. In other words, it is to be clarified that violations of any one of the procedures contemplated under Sections 32 to 35 alone would empower the authorities to cancel the documents and in case of any *iota* of doubt regarding the civil rights or other disputes, the authorities are bound to relegate the parties to the Civil Court. Pendency of civil litigation pertaining to the documents is also a bar for entertaining a complaint and the said clarification is also to be incorporated in the Circular.

32. More importantly, after disposal of the complaint or appeal by the respective competent authorities, such orders passed must be communicated to the parties by registered post. It is made clear that the notice of enquiry should be communicated not only to the complainants and the respondents, but also to the persons, who are likely to be affected from and out of the



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registration and these circumstances are narrated more specifically under Section 77-A of the Act. The above aspects are to be clarified in the Circular now issued by the Inspector General of Registration in Circular No.1/2023 dated 10.06.2023. By incorporating the above aspects, the Inspector General of Registration shall issue a fresh Circular to the subordinate authorities, enabling them to deal with the complaints or appeals as the case may be.

33. In view of the facts and circumstances, the following orders are passed:

(i) In respect of the complaints pending before the District Registrars concerned and the appeals pending before the respective Appellate Authorities, the Inspector General of Registration shall direct all the authorities to follow Circular No.1/2023 dated 10.06.2023 strictly for the purpose of disposal of the complaints and the appeals in a consistent manner;



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(ii) The Inspector General of Registration is directed to incorporate the further clarifications as stated in this order and issue a fresh Circular within a period of two weeks from the date of receipt of a copy of this order;

(iii) The respondents are directed to relegate the parties to approach Civil Court of Law, in the event of disputed facts regarding civil rights exist between the parties.

(iv) In the event of violation of the guidelines issued by the Inspector General of Registration or the directions issued by this Court or any other lapses, negligence or dereliction of duty is found while performing the duties by the authorities, departmental disciplinary proceedings are to be initiated under the relevant Service Rules.

(v) The Inspector General of Registration is directed to conduct periodical Reviews as warranted under the Rules of Public Administration.



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34. With the above directions and clarifications, all the Writ Petitions stand disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation : Yes /No

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