



W.P.No.3804 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.3804 of 2023

E.Harinath

.... Petitioner

-Vs-

1.Inspector General of Registration
No.100, Santhome High Road
Pattinapakkam, Chennai 600 028.

2.The District Registrar (Administration)
District Registrar Office
Chengalpattu Registration District
No.10, Kancheepuram High Road
Chengalpattu – 603 002.

3.M.Natesan

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the file of 2nd respondent pertaining to the notice dated 19.01.2023 bearing No.7777/B3/2022 and quash the same as without jurisdiction.

For Petitioner : Mr.J.Ravikumar

For Respondents : Mr.Yogesh Kannadasan
Special Government Pleader – for RR 1 & 2
Notice dispensed with - R3



W.P.No.3804 of 2023

WEB COPY

ORDER

The prayer sought for herein is for a Writ of Certiorari to call for the records on the file of 2nd respondent pertaining to the notice dated 19.01.2023 bearing No.7777/B3/2022 and quash the same as without jurisdiction.

2. In respect of Document Nos.143/2000, 1882/2000, 1884/2000, 1795/2002, 1796/2002, 6645/2007, 6646/2007, 2325/2012, 2977/2012 registered at the SRO Tiruppur, the 3rd respondent had given a complaint to the 2nd respondent to declare those documents as fraudulent or bogus documents and as a sequel, to cancel the documents. The said complaint given against the petitioner having been entertained by the 2nd respondent within the meaning of Section 77-A of the Registration Act, the 2nd respondent had issued summons dated 19.01.2023 to the petitioner directing him to show cause and also to appear before the 2nd respondent on 13.02.2023 with supporting documents to establish that the documents in question challenged by the 3rd respondent by way of such complaint, are genuine documents.

3. Aggrieved over the said summons issued by the 2nd respondent dated 19.01.2023, the petitioner has moved the present writ petition with aforesaid prayer.



W.P.No.3804 of 2023

4. Heard learned counsel for the petitioner who would submit that, insofar as the documents which are in question through a complaint made by the 3rd respondent is concerned, those documents are from the years 2000 to 2012. In respect of those documents admittedly the 3rd respondent filed a civil suit and that has been mentioned in the very complaint itself stating that to declare those documents as fraudulent documents admittedly the 3rd respondent has filed a civil suit which is pending since 2014 before the concerned court.

5. When that being so, as parallel proceedings, the 3rd respondent wanted to invoke Section 77-A of the Act and by thus, the present complaint given by the 3rd respondent ought not to have been entertained by the 2nd respondent, as the 2nd respondent does not have jurisdiction to entertain such complaint in view of the pendency of the suit on the very same issue.

6. Learned counsel for the petitioner would also rely upon a circular issued by the Inspector General of Registration (IGR) in Letter No.33760/U1/2022 dated 27.09.2022 under which the IGR has given certain category of cases and how those cases would fall under Section 77-A / 22-B of the Registration Act.

7. Relying upon this circular, learned counsel for the petitioner would further submit that, in the said circular, what is the meaning of forged document



W.P.No.3804 of 2023

has been given under various circumstances. None of the circumstances would apply to the documents in question against which the complaint has been given by the 3rd respondent. Therefore, even according to the circular issued by the 3rd respondent, the 2nd respondent does not have the jurisdiction to entertain the complaint given by the 3rd respondent. Therefore, the consequential summons issued by the 2nd respondent which is impugned herein would not sustain in the legal scrutiny. Hence, the learned counsel for the petitioner seeks the indulgence of this Court against the impugned communication.

8. Heard Mr.Yogesh Kannadasan, learned Special Government Pleader appearing for the official respondents. In view of the order that is going to be passed in this writ petition, notice to the 3rd respondent is hereby dispensed with.

9. Learned Special Government Pleader would submit that, the power vested with the 2nd respondent District Registrar is the statutory power vested under Section 77-A of the Act and that power being a quasi judicial power the District Registrar has to entertain such complaint given by any aggrieved party against the documents which have already been registered, which ought not to have been registered within the meaning of Section 22A / 22B of the Act and once the complaint is entertained, the District Registrar has to issue summons / notices to the complainant as well as persons against whom such complaint has



W.P.No.3804 of 2023

been given. He would also submit that the District Registrar under Section 77-A of the Act is also having suo motu power to ascertain whether any fraudulent transaction has taken place pursuant to which registration has taken place and by thus those documents would become fraudulent / bogus documents within the meaning of Section 22A / 22B. That power also since is vested with the District Registrar, there is every justification on the part of the 1st respondent to issue such summons pursuant to the complaint given by the 3rd respondent having been entertained by him. Therefore, the impugned summons cannot be said to be infirm one or without any jurisdiction.

10. Learned Special Government Pleader further submits that, insofar as the circular dated 27.09.2022 is concerned, illustrative circumstances have been stated by the IGR as to which circumstances would definitely fall under Section 22A / 22B of the Act. That does mean that the jurisdiction of the District Registrar would be denuded or taken away by the strict application of the circular alone because, it is settled proposition of law that, any circular issued by the authorities concerned would not override the power vested with any authority under the Statute. Therefore, on that ground the plea raised by the petitioner cannot be entertained, he contended.



W.P.No.3804 of 2023

11. I have considered the submissions made by both sides and have perused the materials placed on record.

12. The first contention of the learned counsel for the petitioner is that, a civil suit has already been filed in the year 2014 admittedly by the 3rd respondent, where the very same documents which are in question have already been questioned for seeking a declaration and when the civil suit is pending, without waiting for a decision to be taken by the civil court and to get a declaration to that effect, the 3rd respondent, to establish his case, cannot invoke Section 77A of the Registration Act as parallel proceedings.

13. If this kind of parallel proceedings is permitted to go on at the hands of the District Registrar concerned, then the Civil Court jurisdiction would be ousted and that is not the intention of the legislature in bringing the amendment especially Section 77-A of the Act.

14. He would also submit that, the documents in question are of the year 2000 to 2012. Therefore after 12 years, unmindful of the pendency of the suit, if the complaint is given in 2022, such complaint ought not to have been entertained at this length of time by the 2nd respondent. In this context, it is the further case of the petitioner that, in such circumstances the 2nd respondent does



W.P.No.3804 of 2023

have any jurisdiction to entertain such complaint in view of the specific instructions given by the IGR through the circular in Letter No.33760/U1/2022 dated 27.09.2022.

15. In fact this kind of arguments have been made by the respective counsels in earlier writ petitions, which have been decided by this Court recently. Some of the writ petitions, where I had an occasion to consider the similar plea raised by the petitioners therein, are as follows.

15 (a) In W.P.No.34486 of 2022 dated 22.12.2022, I have held as follows,

" 10. As has been pointed out by the learned counsel for the petitioners, whether a complaint given by any third party against the alleged transactions, which according to the complainant, may be a fraudulent one or forged one and while entertaining the complaint before conducting a full-fledged enquiry as to the merits of the case, whether it should be verified by the District Registrar as to whether the issue raised in the complaint involves in a civil dispute already has been pending or had been disposed or decided by a competent Civil Court and in that case what shall be done. Though this position has not been mentioned in the provisions of the Act, subsequently the Inspector General of Registration has issued the Circular dated 27.09.2022, where he has shown the five situations based on which the difference between the enquiry to be conducted under Section 68(2) and Section 77-A of the Act have been noted. Out of the five situations, the 5th situation is that the civil dispute will not be taken for enquiry, and that



W.P.No.3804 of 2023

would be made uniformly for both the enquiry either under Section 68(2) or under Section 77-A of the Act.

11. However, as has been stated by the learned Government Advocate even to arrive at a said decision by the District Registrar whether there is a civil dispute involved and already there has been a Civil Court decree or judgment to that effect whether that has to be taken into account for the purpose of coming to the conclusion that, the further enquiry need not be entertained as claimed by the complainant through the complaint itself, has to be arrived at by the District Registrar only after ascertaining the prima facie facts to be projected by both sides.

12. Therefore, for the limited purpose, the District Registrar, in the considered opinion of this Court, is empowered to issue summons to the persons against whom such complaint is made under Section 77-A of the Act. Therefore if not for a full-fledged enquiry to ultimately conclude the prayer sought for in the complaint at least for deciding the issue within the meaning of clause 5 of para 13 of the Circular dated 27.09.2022, such a limited enquiry is required to be conducted by the District Registrar. Therefore, for the said purpose if summons are issued by the 2nd respondent to the persons against whom such complaint is made, here it is the petitioner, cannot be found fault with. Therefore, this Court has no hesitation to hold that, insofar as the impugned summons are concerned, it cannot be stated that it was issued without jurisdiction of the 2nd respondent and therefore the petitioner has to respond to the impugned summon and appear before the 2nd respondent and put forth their case.

13. In this regard, it is for the 2nd respondent to take up the case to be projected both by the complainant as well as the petitioners



W.P.No.3804 of 2023

against whom such complaint has been given and to decide the same within the meaning of Section 77-A of the Act by taking into account of the situations mentioned in the Circular of the Inspector General of Registration dated 27.09.2022.

15(b). Following the the aforesaid judgment in W.P.No.34486 of 2022 dated 22.12.2022 in W.P.No.34794 of 2022 dated 23.12.2022, I have held as follows,

“ 8. In view of the said position taken by this Court in the said order referred to above and the petitioner is also similarly placed, this Court is inclined to dispose of this writ petition with the following order.

- *The petitioner is directed to respond to the impugned summons and appear before the 1st respondent and put forth his case.*
- *It is for the 1st respondent to take up the case to be projected both by the complainant as well as the petitioner against whom such complaint has been given and to decide the same within the meaning of Section 77-A of the Act by taking into account of the situations mentioned in the Circular of the Inspector General of Registration dated 27.09.2022.*
- *Till the disposal of the preliminary issue, the status quo in respect of the property in question shall be maintained.”*

15(c). In W.P.No.1249 of 2023 dated 20.01.2023, I have held as follows,



W.P.No.3804 of 2023

WEB COPY

5. *The power of the District Registrar under Section 77A of the Act when compared with Section 68(2) of the Act is wider, under which a detailed enquiry can be conducted by the District Registrar by giving an opportunity to both sides ie., the complainant and the persons against whom such complaint has been given and after hearing them, the documents in question has to be treated as fraudulent or bogus documents and in that case, direction can be given to the registering authority to cancel the same as bogus documents.*

6. *When such a power is vested with the District Registrar from 16.08.2022 while passing the order dated 13.10.2022 still the District Registrar has only stated that there has been no scope for conducting an enquiry under Section 68(2) as against which though appeal has been filed before the Deputy Inspector General of Registration, this Court feels that, instead of giving a mandamus to the Deputy Inspector General of Registration to consider the appeal dated 21.11.2022 the matter can be remitted back to the District Registrar concerned where the District Registrar can entertain a fresh complaint to be given in this regard by the petitioner against the documents in question under Section 77A of the Act and if such a complaint is given, the same can be decided after conducting a proper enquiry within the meaning of Section 77A of the Act.*

7. *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 petitioner to give a fresh complaint under Section 77A of the Registration Act, 1908 against the persons, who, according to the petitioner, are allegedly involved in the fraudulent registration of documents which*



W.P.No.3804 of 2023

are in question.

- *On receipt of such complaint, which would be filed by the petitioner, within a period of two weeks from the date of receipt of a copy of this order, the District Registrar, Krishnagiri shall entertain the complaint and after issuing notice to both the petitioner as well as the persons against whom such complaint is given, and after conducting a full fledged enquiry to that effect, orders shall be passed with regard to the veracity of the documents in question within the meaning of Section 77A of the Act within a period of 12 weeks from the date of receipt of such a complaint.*
- *It is made clear that the finding given by the District Registrar in the order dated 13.10.2022 shall not be taken into account and uninfluenced by the finding given, the complaint to be given by the petitioner under Section 77-A shall be considered independently on its own merits and a decision shall be taken within a period of two weeks from the date of receipt of such a complaint.*
- *Since the District Registrar, Krishnagiri is not a party to the writ petition, Registry is directed to mark a copy of this order to the said authority for information and further action.”*

15(d) In W.P.No.2047 of 2023 dated 30.01.2023, I have held as follows,

“ 8. As has been rightly pointed out by the learned Additional Government Pleader, it is the quasi judicial power vested with the District Registrar under Section 77-A of the Act. Therefore, if at all any complaint is received by the District Registrar against any document



W.P.No.3804 of 2023

registered against anyone who was instrumental to such registration making an allegation that it is a fraudulent or bogus document, certainly such complaint has to be entertained and after due enquiry quietus has to be given to the issue by the District Registrar concerned. Therefore, that kind of power being a quasi judicial power, by way of the recent amendment made in the Registration Act, especially under Section 77-A of the Act cannot be said to be a power which cannot be employed against the document registered in the year 2003. That kind of demarcation has never been made by the said provision of law by the legislature. Therefore, that kind of argument is liable to be rejected.

9. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order:

“That there shall be a direction to the 1st respondent to proceed with the complaint given by the 2nd respondent, however, by taking into account the reply / defence given by the petitioner dated 14.11.2022 and by giving an opportunity of being heard to the petitioner as well as the 2nd respondent, and the issue raised in the said complaint can be decided by the 1st respondent within the meaning of Section 77-A of the Act within eight weeks from the date of receipt of a copy of this order.”

15(e) In W.P.No.3165 of 2023 dated 07.02.2023, I have held as follows,

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

7. As has been rightly pointed out by the learned Additional Government Pleader that, it is the statutory duty cast upon the 2nd



W.P.No.3804 of 2023

respondent / District Registrar under Section 77A of the Act, where such a duty and power is given to the District Registrars to entertain such complaints making allegation that particular document is a fraudulent / bogus document within the meaning of Section 22-B of the Registration Act, and if so such complaint necessarily has to be entertained and after giving due opportunity to both sides and after conducting an enquiry as contemplated, then only a decision has to be taken by the District Registrar.

8. Only in that direction, the impugned summons have been issued as an initial step to the petitioner directing the petitioner to file his reply / defence along with supporting documents in support of his case and when that summons has been issued on 08.12.2022, the same has now been questioned by the petitioner. The three grounds on which the petitioner challenges the impugned summons have been indicated herein above.

9. However, this Court feels that insofar as those three grounds / reasons urged by the learned counsel for the petitioner are concerned, all these grounds can be agitated before the 2nd respondent and if these issues are specifically agitated before the 2nd respondent by way of written submission or written reply to be given by the petitioner, the same shall be objectively considered by giving fair opportunity of being heard to both sides by the 2nd respondent District Registrar and thereafter a decision can be made on merits and in accordance with law within a time frame and that would meet the ends of justice.

10. In view of the above, this Court is inclined to dispose of this writ petition with the following order.



- *It is open to the petitioner to file a written submission or reply with supporting documents raising proper defence or reply to the three reasons stated herein above.*
- *If any such reply is filed with supporting documents, the same shall be considered objectively by the 2nd respondent and after giving a fair opportunity of being heard to the petitioner as well as the 3rd respondent who is the complainant, a decision can be taken by the 2nd respondent on the complaint given by the 3rd respondent against the petitioner pertaining to the documents in question, on merits and in accordance with law within a period of twelve (12) weeks thereafter.*

16. All the grounds raised by the learned counsel for the petitioner in this writ petition have already been raised in those cases, which have been answered accordingly.

17. Moreover, as has been rightly pointed out by the learned Special Government Pleader, it is the statutory power under which quasi judicial power is vested with the District Registrar under Section 77-A of the Act to entertain the complaint from any aggrieved party against the documents, which according to the complainant, have been registered by the concerned registering authority against the import of Section 22-A and 22-B of the Act. Having entertained such



W.P.No.3804 of 2023

complaint, necessarily the District Registrar has to give an opportunity of being heard to both parties viz., the complainant as well as the persons against whom such complaint has been given. Only after giving such opportunity of hearing to both parties, the District Registrar has to take a decision as to whether the complaint has got any substance to go further and accordingly a decision can be taken by the District Registrar.

18. Insofar as the parallel proceedings theory as projected by the learned counsel for the petitioner is concerned, suit could have been filed by the 3rd respondent prior to the amendment made on 16.08.2022 in the Registration Act, but prior to that, the legal position was that, even a genuine person whose property is meddled with by way of fraudulent / bogus documents, to redress such grievance, he/she had to approach the civil Court to seek remedy and this has been fortified by the Full Bench judgment of this Court reported in **2011 (2) CTC 1, (Latif Estate Line India Ltd -Vs- Hadeeja Ammal)** as well as the judgment of the Hon'ble Supreme Court in **Sathya Pal Anand Vs. State of Madhya Pradesh and others** reported in **(2016) 10 SCC 767**. However, that position is completely changed in view of the amendment having been made and Sections 22-A, 22-B, 77-A and 77-B have been inserted in the Statute Book and the same were given effect from 16.08.2022.



W.P.No.3804 of 2023

19. After 16.08.2022, it is for the aggrieved party to invoke Section 77-A of the Act to give a complaint unmindful of the civil suit which has already been filed and is pending between the parties before the concerned civil Court. The right of the aggrieved party to go before the District Registrar invoking Section 77-A of the Act cannot be taken away or denuded merely because a civil suit is pending. Hence, the first argument made on behalf of the petitioner is liable to be rejected and accordingly it is rejected.

20. Insofar as the second argument that the circular issued by the IGR in Letter No.33760/U1/2022 dated 27.09.2022 does not contemplate any such circumstance in respect of the documents which are in question to entertain such complaint and to enquire the matter is concerned, this Court has already held in number of cases that, the circular issued by the IGR shall only be supplementary to the provisions of the Act and shall not have the supplanting effect on the provisions of the Act. If the Act contemplates a particular procedure to be adopted by the authority who is vested with the power of quasi judicial nature, such power cannot be denuded by any executive authority much less the Inspector General of Registration (IGR). Therefore, the IGR's circular in Letter No.33760/U1/2022 dated 27.09.2022 cannot be termed as an exhaustive one and under which alone the District Registrar cannot be expected to act by exercising the power under Section 77-A of the Act. Therefore, that argument



W.P.No.3804 of 2023

also made on behalf of the petitioner is to be rejected and accordingly it is rejected.

21. In that view of the matter, this writ petition is disposed of with the following order.

- That it is open to the petitioner to give reply with necessary documents to the 2nd respondent District Registrar, pursuant to the impugned summons dated 19.01.2023 within two weeks from the date of receipt of a copy of this order.
- Once such a reply as well as defence is given with documents, if any, by the petitioner, the same shall be considered and decided, of course by giving an opportunity of being heard to both the petitioner as well as the 3rd respondent complainant and accordingly the issue raised in the complaint given by the 3rd respondent shall be decided on merits and in accordance with law within the meaning of Section 77-A of the Act within a period of 12 (twelve) weeks thereafter.

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

09.02.2023

Index : Yes
Neutral Citation : Yes
Speaking Order
KST



WEB COPY



W.P.No.3804 of 2023

R. SURESH KUMAR, J.

KST

To

1. Inspector General of Registration
No.100, Santhome High Road
Pattinapakkam, Chennai 600 028.
2. The District Registrar (Administration)
District Registrar Office
Chengalpattu Registration District
No.10, Kancheepuram High Road
Chengalpattu – 603 002.

W.P.No. 3804 of 2023

09.02.2023