



W.P.No.4918 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.4918 of 2023
and
W.M.P.No.4931 of 2023

Manjuladevi

... Petitioner

Vs

The Sub Registrar,
Kodumudi Sub Registrar Office,
Erode District.

... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order made in refusal Check Slip dated 30.12.2022 in RFL/Kodumudi/38/2022 quash the same and consequently direct the respondent to register the Sale Deed dated 30.12.2022 by verifying the Certified copy of the parent document bearing No.335 of 1977 and Encumbrance Certificates, without insisting for Original Parent Deed.

For Petitioner : Mr.T.Maha Vishnu
for Mr.R.Prabakar

For Respondent : Mr.Yogesh Kannadasan
Special Government Pleader



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ORDER

The petitioner presented a document for registration which has been refused in refusal Check Slip dated 30.12.2022 by the respondent, challenging the same, the present writ petition has been filed.

2. Heard Mr.T.Maha Vishnu, learned counsel appearing for the petitioner and Mr.Yogesh Kannadasan, learned Special Government Pleader appearing for the respondent.

3. The reason cited by the respondent through the impugned refusal slip is that, the parent document in original should have been filed by the petitioner, then only the document presented for registration would be considered within the meaning of Rule 55-A of the Registration Rules.

4. Insofar as the said reason cited by the respondent is concerned, the issue has already been engaged in number of cases before this Court and a recent order has been passed by this Court in Writ Petition Nos.30320 of 2022, 2672, 3828, 4307 and 4308 of 2023, where, I had an occasion to consider a similar issue and the relevant portion of the said order is extracted hereunder:



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“21. By making all these reliance of the earlier judgments of the Division Bench of this Court in *Ramayee's* case (cited supra) and also various other orders passed by the Hon'ble Supreme Court, the learned Judge has held that the first proviso to Rule 55-A(i) since been found to be invalid and ultra vires the respondent (therein) cannot refuse to register the documents placing reliance on the aforesaid proviso.

22. Thereby, the learned Judge not only has declared that first proviso to Rule 55-A(i) is ultra vires, has further declared that in view of the declaration having been made, the Registering Authority cannot refuse to register the documents placing reliance on the said proviso.

23. Though it was argued by the learned Special Government Pleader that the State is preferring or taking steps to prefer intra-court appeal against the said judgment of the learned Judge, as on date the prevailing law would be that first proviso to Rule 55-A(i) has been struck down as it has been declared as ultravires and therefore, the reliance cannot be placed by the respondents side on the said proviso i.e., first proviso to Rule 55-A(i) and that cannot be the reason for refusing the registration of the sale certificates respectively filed by these writ petitioners.



24. Insofar as the **Bank of Baroda's** case as stated supra is concerned, it was rendered on 07.07.2021 and in this context though argument was advanced by the learned Special Government Pleader that it was rendered prior to the amendment made in this regard i.e., before the first proviso to 55-A(i) was brought into the statute book, the import of the said order stated in paragraph 12 can be usefully referred hereunder:

“12. In the said judgment, the learned Judge, having considered the earlier decisions of this Court, has held in unequivocal terms that, the issue raised therein was no longer res integra. The learned Judge has further held that, consistently it has been held by this Court that the order of attachment is not a ground to refuse the registration of sale certificate. The learned Judge has further stated that, the Court need not once again undertake an exercise and it is enough if the settled law is once again reiterated.”

25. Therefore, even prior to amendment made to the Rule, the law has been settled to that extent for more than one occasion, where it has been held that the attachment is not a ground to refuse the registration of the sale certificate.

26. Exactly what has been held by this Court, now by way of plugging the hole the State thought it to bring this amendment to the Rule book by inserting the Rule 55-A(i) with so many provisos including the first provisos, thereby, the law



already been declared by this Court was sought to be negated.

27. Even though making of such a scheme of Registration Act is permissible to the Competent legislature whether the authority, who is empowered to make sub-ordinate legislation can make provisions of law taking away the right or abrogating the same, which has already been vested with the authority/citizen of this country, this in fact has been dealt with by the learned Judge in *Federal bank's* case cited supra.

28. Such a right of the party to transfer the property by issuance of sale certificate by the competent authority cannot be denuded or taken away by merely bringing a sub-ordinate legislation like Rule 55-A(i) and therefore, I am in agreement with the learned Judge, who has declared that the first proviso to Rule 55-A(i) is ultra vires to the Constitution. Following the said judgment of the learned Judge, I have no hesitation to hold that the reasons stated by the Registering Authority for refusing to register the respective sale certificates are concerned, is totally untenable and therefore, those reasons, in the impugned order, in the eye of law would not be sustained. In the result, the following orders are passed in these writ petitions:

- ♦ That the impugned orders in these writ petitions are set aside and as a sequel, there shall be a direction to the respondents i.e., corresponding Registering Authority in each of the cases, to accept the sale certificate presented



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by the respective petitioners for registration and in this context, without insisting upon any NOC or clearance of attachment as provided under first proviso to Rule 55-A(i) as stated supra, the respective Registering Authority shall proceed to register the documents if it is otherwise in order that too without insisting any stamp duty in view of the law already been declared by the Hon'ble Supreme Court as discussed herein above.

- ◆ The needful as indicated above shall be undertaken by the respondents/Registering Authority in each of the writ petitions within a period of six(6) weeks from the date of receipt of a copy of this order. ”

5. In view of the said settled legal position in view of the number of orders having been passed by this Court especially the aforesaid order which is a recent one, this Court has no hesitation to hold that the said reason cited by the respondent through the impugned communication would not stand in the legal scrutiny, therefore this Court is inclined to dispose of this writ petition with the following orders:

That the impugned order is set aside and the matter is remitted back to the respondent for reconsideration. While reconsidering the same, on production of the certified copy of



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the parent document by the petitioner, the document presented by the petitioner shall be considered for registration if it is otherwise in order and needful should be undertaken by the respondent within a period of six weeks from the date of receipt of a copy of this order.

6. With this direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Speaking Order : Yes / No

Sgl

To

The Sub Registrar,
Kodumudi Sub Registrar Office,
Erode District.



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R.SURESH KUMAR, J.

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