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W.P.No.6068 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.6068 of 2023 and
W.M.P.Nos.6095 & 6097 of 2023

M.Chitra

... Petitioner

Vs

- 1.The Inspector General of Registration,
100, Santhome Road,
Chennai – 600 028.
- 2.The District Registrar,
District Registrar Office
102, State Bank Road,
Gopalapuram, Coimbatore – 641 018.
- 3.The Sub Registrar,
Thondamuthur Sub Registrar Office,
Narasipuram Road,
Thondamuthur, Coimbatore – 641 109.
- 4.The Tahsildar,
Perur, Coimbatore,
Tamil Nadu – 641 010.

5.S.Vennila

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records pertaining to the proceedings made in No.11813/Aa1/2021 passed by the 2nd respondent dated 06.12.2022 and to quash the same.



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For Petitioner : Mr.S.Karthikei Balan

For Respondents : Mr.Yogesh Kannadasan
Government Advocate for R1 to R4

ORDER

The prayer sought for herein is for a Writ of Certiorari calling for the records pertaining to the proceedings made in No.11813/Aa1/2021 passed by the 2nd respondent dated 06.12.2022 and to quash the same.

2. The 5th respondent seems to have given a complaint against the petitioner who purchased the property in question to enquire the matter and to find out whether the document in question under which property was purchased by the petitioner was a forged document and accordingly action shall be taken to prosecute the concerned persons within the meaning of Section 83 of the Registration Act.

3. The said complaint given by the 5th respondent having been enquired was decided by the 2nd respondent District Registrar through the order dated 06.12.2022.

4. In the said order, the District Registrar has found that the



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commissioning of offence can be easily found out within the meaning of

Section 82 of the Registration Act, therefore Section 83 proceedings i.e.

prosecution can be launched against the erring persons that was the finding

given by the 2nd respondent in the order dated 06.12.2022. The 2nd

respondent has further stated in the order that, insofar as cancellation of the

document in question such power has not been vested with the 2nd

respondent District Registrar and in this regard the 2nd respondent has

directed the parties to go before the Civil Court to get appropriate relief.

Aggrieved over the said order dated 06.12.2022, the petitioner has moved

the present writ petition challenging the said order.

5. Assailing the same, the learned counsel appearing for the petitioner would submit that, the petitioner purchased the property from the paternal uncle of the 5th respondent and therefore it cannot be treated as a fraudulent document, however the complaint in this regard given by the 5th respondent has been decided in favour of the 5th respondent by the impugned order dated 06.12.2022, where the learned counsel would point out that even though Section 77-A and other provisions like Sections 22A and 22 B had been given effect to in the Registration Act from 16.08.2022 whether



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knowing or unknowing of the said factor, the District Registrar passed the impugned order on 06.12.2022 only where the issue has not been dealt with in proper perspective in the eye of law in the context of Section 77-A of the Act, therefore on that ground also the impugned order has to go.

6. Heard Mr.Yogesh Kannadasan, learned Special Government Pleader appearing for the official respondents who would submit that since the complaint had been given by the 5th respondent well prior to 16.08.2022 as on the date of complaint since the amendment has not come into effect probably the 2nd respondent thought of deciding the said complaint only under the erstwhile provisions i.e. Section 68(2) read with Section 82 and 83 of the Registration Act and that exercise has now been done by the 2nd respondent which culminated in the impugned order. Therefore, the learned Special Government Pleader would further submit that, as against the impugned order since appeal is available before the Deputy Inspector General of Registration let the petitioner be relegated to go before the Appellate Authority, therefore on that ground the writ petition cannot be entertained, he contended.

7. In view of the order going to be passed in this writ petition, notice



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to the 5th respondent is hereby dispensed with.

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8. Even though it has been contended by the learned counsel for the petitioner that, it is not a fraudulent document in respect of which though findings given by the 2nd respondent through the impugned order, the other aspect of the issue as projected by the learned counsel for the petitioner that the enquiry was not conducted in the manner known to law especially in the context of Section 77-A of the Act is to be taken note of.

9. Since the amendment has come into effect from 16.08.2022 i.e. well before passing of the impugned order by the 2nd respondent, he should have taken into account the amendment especially Sections 22-A, 22-B and 77-A of the Registration Act and accordingly proper opportunity should have been given to the complainant as well as the persons against whom such complaint had been given and after giving proper opportunity of being heard to substantiate their contentions with documents, the enquiry should have been conducted and thereafter a decision could have been arrived at by the 2nd respondent.



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10. In this context, even though a finding has been given by the 2nd respondent in the impugned order that the commissioning of offence has been confirmed under Section 82 of the Act, therefore prosecution was directed to be launched under Section 83 of the Act, insofar as the cancellation of the document in question as sought for by the 5th respondent through her complaint is concerned, the parties have been relegated to go before the Civil Court as the earlier circular issued in this regard by the Inspector General of Registration alone has been taken into account unmindful of the power now vested with the 2nd respondent under Section 77-A of the Registration Act.

11. Therefore, at this juncture even if the veracity of the impugned order is taken up and decided it, on the latest position of law, if the petitioner is relegated to go before the Civil Court against the impugned order that would not serve the full purpose with regard to the fate of the document in question. Therefore this Court feels that, in view of the power now vested with the 2nd respondent District Registrar concerned under Section 77-A of the Act, this Court feels that the issue can be remitted back to the 2nd respondent himself for reconsideration under Section 77-A of the



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Registration Act as discussed herein above.

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

That the impugned order is set aside. The matter is remitted back to the 2nd respondent for reconsideration. While reconsidering the same, complaint given by the 5th respondent shall be taken into account along with any counter complaint given by the petitioner and in respect of which the complainant as well as the person against whom such complaint given by these parties shall be given summon separately and after giving opportunity of being heard enabling them to substantiate their respective contentions by filing documents by way of input, the 2nd respondent shall thoroughly enquire the matter and decide the same by scrupulously following the procedure contemplated by various orders passed by this Court in this regard in dealing with the matters under Section 77-A of the Registration Act and accordingly a final order shall be passed by the 2nd respondent within a period of twelve weeks from the



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