



W.P.No.5152 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.5152 of 2023

P.M.Duraisamy

.... Petitioner

-Vs-

1.The District Registrar
Registration Department
District Registration Office
Gobichettipalayam
Erode District.

2.The Joint Sub Registrar No.1
O/o The District Registration Office
Gobichettipalayam, Erode District.

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in his refusal check slip Refusal Number. RFL1 Number Joint Sub Registrar Gobichettipalayam / 3/ 2023 dated 12.01.2023 by the 2nd respondent quash the same and direct the 2nd respondent to register the document presented by petitioner for registration of sale deed pertaining to S.Nos. 257 /2 to 9 and S.No. 336/ 1 situated at Lakkampatty and Kalingiam B Village Gobichettipalayam a total extent of 2.40.48 acres without insisting original document.



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For Petitioner : Mr.S.P.Yuvaraj
For Respondents : Mr.Yogesh Kannadasan
Special Government Pleader

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in his refusal check slip Refusal Number. RFL1 Number Joint Sub Registrar Gobichettipalayam / 3/ 2023 dated 12.01.2023 by the 2nd respondent quash the same and direct the 2nd respondent to register the document presented by petitioner for registration of sale deed pertaining to S.Nos. 257 /2 to 9 and S.No. 336/ 1 situated at Lakkampatty and Kalingiam B Village Gobichettipalayam a total extent of 2.40.48 acres without insisting original document.

2. In the impugned communication, the 2nd respondent has stated that the original document must be produced within the meaning of Rule 55-A of the Registration Rules, without which the document presented by the petitioner cannot be taken up for registration.

3. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents.



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4. Insofar as the said reason cited by the 2nd respondent in the impugned communication is concerned, the issue has already been decided in number of cases of similar nature and recently I had an occasion to consider similar issue in W.P.No.30320 of 2022 dated 20.02.2023 in the matter of M/s.Cholamandalam Investment and Finance Co., Ltd., -Vs- Inspector General of Registration and Others, where I had taken the following view.

“ 17. Insofar as Rule 55-A(i) is concerned, no doubt it has been a new insertion and has been brought into the Rule book only from 05.09.2022. Once the Rule has come into force, certainly the officers like the Registering Authorities have to abide by the said Rule and therefore, they imposed them to get NOC or clearance to remove the encumbrance like mortgage, attachment etc., otherwise the document i.e., the sale certificate presented by each of the petitioners would not be considered for registration.

18. No doubt, Rule 55-A under the various provisos deals with several circumstances. In the first proviso, it deals with an encumbrance as to mortgage, orders on attachment of property, sale agreement or lease agreement, which exists over the property, in that case, Registering Officer shall not register such documents if the time limit for filing of suit is not lapsed or NOC is not granted by the appropriate authority or raising of the attachment is not done as the case may be.

19. In all these cases, either attachment or mortgage still existing therefore, that has to be removed by approaching the competent Court or NOC must have been obtained and produced



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before the Registering Authority by the presenter of the document concerned and in the absence of the same, the sale certificate produced by or presented by the petitioners for registration need not be considered, that is the stand taken by the Registering Authority, of-course inconsonance with the first proviso to Rule 55-A(i) as stated supra.

*20. However, if we look at the latest judgment of the learned Judge in **Federal Bank's** case as cited supra in W.P. No. 2758 of 2023 dated 08.02.2023 is concerned, the learned Judge exhaustively has dealt with this issue, therefore, the following portions of the said order are usefully referred hereunder:*

“ 19. The effect of the first proviso, is to virtually nullify the aforesaid statement of law by the Supreme Court which is binding law under Article 141. That apart, even if an order of attachment is made, any sale deed registered thereafter would be automatically void only against all claims enforceable under the attachment under the provisions of Section 64 of the Code of Civil Procedure. For example, if the attachment is made for recovery of sum of Rupees One lakh and the property value is more than One Crore, it cannot be said that entire property cannot be dealt. Such case sale is void only against claim of Rupees One Lakh and its interest and not in entirety.

20. These issues have been thoroughly deliberated and elaborately discussed in Ramayee's case, which has also been affirmed by the Supreme



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Court, this Court is of the view that the effect of the first proviso is to set at naught to the above declaration of law by the Supreme Court and the Division Bench and it nullifies the several provisions of the Transfer of Property Act, as stated above. The authorities under the Registration Act have no jurisdiction to make rules which have the direct and immediate effect of restraining transactions which are permitted under the Transfer of Property Act. Such a restriction would be clearly illegal and violative of a citizen's right to deal with his property and would clearly infringe Article 300-A of the Constitution. It does not bear repetition that Article 300-A has now been recognised as a human right [Vidya Devi v State of Himachal Pradesh, 2020 2 SCC 569].

21. In State of Rajasthan v. Basant Nahata, (2005) 12 SCC 77, which was also a case concerning the provisions of the Registration Act, the Supreme Court held that a subordinate legislation under the said Act which is not backed up by any statutory guideline under the substantive law and opposed to the enforcement of a legal right, was invalid. In this case also, Rule 55-A being a subordinate legislation does not have any statutory guideline (for instance like the transactions mentioned in Section 22-A&B) and is opposed to the enforcement of substantive legal rights under the Transfer of Property Act. The first proviso is, therefore, invalid as it goes beyond the powers



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conferred on the Inspector General of Registration and is clearly ultra vires and unconstitutional to the Parent Act as well as the substantive provisions of the Transfer of Property Act.

22. Similarly, the second proviso requires the executant to produce a revenue record to show his “right over the subject property” where the property is ancestral in character and there is no original deed available. Even a tax receipt can be produced under this proviso which is opposed to the fundamental principle of law that revenue records are not documents of title [State of A.P. v Star Bone Mill and Fertilizer Company, 2013 9 SCC 319]. Production of revenue documents to verify the source of title only demonstrates complete ignorance of the settled position of law.

23. Similarly, the third proviso also defies logic. If the original is lost, it is not understood as to why a certified copy of that document obtained from the file of the concerned SRO cannot be produced. When the best evidence is not available, the best course is to produce a certified copy which is the next best available alternative. Instead, the third proviso requires the executant to obtain a non-traceable certificate and effect paper publication.



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24. *It is also well settled by the decision of the Supreme Court in J.K. Industries Ltd. v. Union of India, (2007) 13 SCC 673 that a subordinate legislation may be struck down as arbitrary or contrary to statute if it fails to take into account vital facts which expressly or by necessary implication are required to be taken into account by the statute or the Constitution. Furthermore, Rule 55-A is a delegated legislation which cannot go beyond the scope of the Parent Act viz., the Registration Act as well the Transfer of Property Act which is the substantive law governing the transfer of immovable properties. Hence, the first proviso is clearly ultra vires and unconstitutional.*

....

26. *In view of the above, as this Court has held that the first proviso to Rule 55-A has been found to be invalid and ultra vires, the respondent cannot refuse to register the document placing reliance on the aforesaid proviso."*

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.*



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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



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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 Federeal 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



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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 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. Already number of orders to that effect have been passed by this Court and in an order of this Court, a learned Judge of this Court has held that, the very Rule 55-A itself is unconstitutional. When that being the position, by relying upon the said rule the 2nd respondent cannot insist to produce the original



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document / parent document. The 2nd respondent can accept the certified copy of the original document / parent document which the petitioner can produce and on receipt of the same, the 2nd respondent can proceed to register the document in question if it is otherwise in order.

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

- That the impugned refusal check slip dated 12.01.2023 is set aside and the matter is remitted back to the 2nd respondent for reconsideration.
- While reconsidering the same, the 2nd respondent shall, without insisting on the original parent document and only on verifying the certified copy of the document, which shall be duly produced by the petitioner, the 2nd respondent can proceed to register the document in question if it is otherwise in order and the needful shall be undertaken by the 2nd respondent within a period of four weeks from the date of receipt of the certified copy of the parent document from the petitioner.

7. With the above directions, this writ petition is disposed of.

No costs.

22.02.2023

Index : Yes/No
Speaking Order / Non-speaking order
KST



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To

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- 1.The District Registrar
Registration Department
District Registration Office
Gobichettipalayam
Erode District.
- 2.The Joint Sub Registrar No.1
O/o The District Registration Office
Gobichettipalayam, Erode District.



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R. SURESH KUMAR, J.

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