



WEB COPY

W.P.No.10124 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.10124 of 2023

and

W.M.P.No.10149 of 2023

Ramalingam

... Petitioner

Vs.

1.The Inspector General of Registration,
Department of Revenue and Disaster Management,
Government of Puducherry.

2.The District Registrar,
Registration Department,
Office of District Registrar, Saram
Government of Puducherry.

3.Loganadin Camalessane

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for records relating to the impugned order of the 1st respondent in No.4225/REGN/A3/DRO/2021 dated 05.08.2021 and the consequential impugned notice of the 2nd respondent in No.4225/DRP-119/DRO/RD/2022/1600 dated 21.09.2022 and quash the same as without authority and ultra vires to the Registration Act, 1908.



For Petitioner	: Mr.K.S.Ilangovan For M/s.Achari and Antoni
For R1 & R2	: Mr.P.S.Kothanda Raman Government Advocate [Puducherry]
For R3	: No Appearance

ORDER

The writ on hand has been instituted questioning the validity of the circular issued by the 1st respondent / Inspector General of Registration (Puducherry) in circular dated 05.08.2021.

2. The impugned circular provides power to the District Revenue Officer to cancel the registration of documents on the ground of fraud and impersonation. The District Registrars are conferred with the power to conduct an enquiry under Section 68(2) of the Registration Act, 1908. The impugned circular provides procedures by invoking Section 69 of the Act.

3. The petitioner states that he is the absolute owner of the property in No.36, 10th Cross, Main Road Corner, Anna Nagar, Nellithoppu, Pondicherry. He purchased the property from one Mr.Nava Bharathi by way of a registered sale deed dated 08.05.2017 registered as Document No.5735



of 2017. The traces towards the above sale way back to the year 1981, where one Jayamani sold the property to one Kamalatchi by way of registered sale deed dated 05.06.1981 vide Document No.1212 of 1981. The said Kamalatchi sold the property to one Rekha on 03.07.2007. The said Rekha in turn sold the property to the vendor to the petitioner, who is Mr.Nava Bharathi vide sale deed dated 24/2012 in Document No.266 of 2012.

4. The 3rd respondent submitted a complaint to the 2nd respondent, who in turn issued an impugned notice dated 21.09.2022 based on impugned circular issued by the Department of Revenue and Disaster Management dated 05.08.2021. The petitioner has chosen to challenge the circular as well as the circular notice issued by the 2nd respondent based on the complaint filed by the 3rd respondent.

5. The learned counsel for the petitioner mainly contended that the 1st respondent has no power to issue any such circular under the provisions of the Registration Act. Unlike the Tamil Nadu Act 41 of 2022 inserting Section 77-A of the Registration Act, no such amendment effected, as far as the Government of Puducherry is concerned.



6. Therefore, the question arises, whether the Inspector General of Registration is empowered to issue circular conferring the powers on the District Registrar to cancel the registered document by conducting an enquiry in the form of summary proceedings.

7. In this regard, Three Judges Bench of the Hon'ble Supreme Court of India in the case ***Satya Pal Anand vs. State of M.P.***, reported in **(2016) 10 SCC 767**, held as follows:

“34. The role of the Sub-Registrar (Registration) stands discharged, once the document is registered (see Raja Mohammad Amir Ahmad Khan [State of U.P. v. Raja Mohammad Amir Ahmad Khan, AIR 1961 SC 787]). Section 17 of the 1908 Act deals with documents which require compulsory registration. Extinguishment deed is one such document referred to in Section 17(1)(b). Section 18 of the same Act deals with documents, registration whereof is optional. Section 20 of the Act deals with documents containing interlineations, blanks, erasures or alterations. Section 21 provides for description of property and maps or plans and Section 22 deals with the description of houses and land by reference to



WEB COPY

W.P.No.10124 of



government maps and surveys. There is no express provision in the 1908 Act which empowers the Registrar to recall such registration. The fact whether the document was properly presented for registration cannot be reopened by the Registrar after its registration. The power to cancel the registration is a substantive matter. In absence of any express provision in that behalf, it is not open to assume that the Sub-Registrar (Registration) would be competent to cancel the registration of the documents in question. Similarly, the power of the Inspector General is limited to do superintendence of Registration Offices and make rules in that behalf. Even the Inspector General has no power to cancel the registration of any document which has already been registered.

35. The procedure for registration of documents is spelt out, inter alia, in Part VI of the 1908 Act. Section 32 of the said Act reads thus:

***“32. Persons to present documents for registration.—**Except in the cases mentioned in Sections 31, 88 and 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office—*



WEB COPY

W.P.No.10124 of



(a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or
(b) by the representative or assignee of such person, or
(c) by the agent of such person, representative or assign, duly authorised by power of attorney executed and authenticated in manner hereinafter mentioned.”

36. If the document is required to be compulsorily registered, but while doing so some irregularity creeps in, that, by itself, cannot result in a fraudulent action of the State Authority. Non-presence of the other party to the extinguishment deed presented by the Society before the Registering Officer by no standard can be said to be a fraudulent action per se. The fact whether that was done deceitfully to cause loss and harm to the other party to the deed, is a question of fact which must be pleaded and proved by the party making such allegation. That fact cannot be presumed. Suffice it to observe that since the provisions in the 1908 Act enables the Registering Officer to register the documents presented for registration by one party and execution thereof to be admitted or



WEB COPY

W.P.No.10124 of



denied by the other party thereafter, it is unfathomable as to how the registration of the document by following procedure specified in the 1908 Act can be said to be fraudulent. As aforementioned, some irregularity in the procedure committed during the registration process would not lead to a fraudulent execution and registration of the document, but a case of mere irregularity. In either case, the party aggrieved by such registration of document is free to challenge its validity before the civil court.”

8. The Government of Puducherry assumed the powers to cancel the registered document, which is not conferred otherwise under the provisions of the Registration Act. Assumption of powers, in the absence of any specific provision under the Act is impermissible in law. The powers are not traceable and therefore, the consequential circular issued is untenable. Power to cancel the document would result in serious repercussion and would also cause prejudice to the parties. Such powers must be conferred specifically in enactment and cannot be substituted by way of issuing a circular.



WEB COPY

9. In view of the judgment (cited *supra*) and considering the fact that the power to cancel the registered document is not traceable under the Registration Act, the circular cannot stand in the scrutiny of law. More so, there is no amendment brought by the Government of Puducherry unlike the Tamil Nadu Government amendment.

10. The Government of Puducherry has to consider the plaint of the persons, who suffered fraudulent documents and accordingly, initiate appropriate action to bring amendment to the Registration Act akin to that of the amendment inserted by Tamil Nadu Act 41 of 22. Similar amendment to that of Section 22-A of the Tamil Nadu amendment Act is also to be considered by the Government of Puducherry for the purpose of protecting the Government properties and also the properties belonging to the religious institution.

11. In view of the sky-rocketing market value of the immovable properties such amendments are of paramount importance to safeguard the interest of the citizen, Government and the religious institution. Thus, the Chief Secretary to Government may initiate appropriate action for effecting necessary amendments in the interest of public.



W.P.No.10124 of

12. That being the factum, the circular is liable to set aside.

Accordingly, the circular of the 1st respondent in No.4225/REGN/A3/DRO/2021 dated 05.08.2021 and the consequential impugned notice of the 2nd respondent in No.4225/DRP-119/DRO/RD/2022/1600 dated 21.09.2022 are quashed.

13. With the above directions, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

17.07.2023
(2/2)

Jeni
Index : Yes
Neutral Citation : Yes
Speaking order

Note: *The Registry High Court is directed to communicate the copy of this order to the Secretary to Government, Law Department, Puducherry.*



W.P.No.10124 of

To

- 1.The Inspector General of Registration,
Department of Revenue and Disaster Management,
Government of Puducherry.
- 2.The District Registrar,
Registration Department,
Office of District Registrar, Saram
Government of Puducherry.
- 3.The Secretary to Government (Law),
Law Department,
Government of Puducherry,
First Floor, B Block,
Chief Secretariat,
Goubert Avenue,
Puducherry – 605 001.



WEB COPY



W.P.No.10124 of

S.M.SUBRAMANIAM, J.

Jeni

W.P.No.10124 of 2023

17.07.2023
(2/2)