



W.P.No.13099 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.13099 of 2023
and
W.M.P.No.12862 of 2023

Mahindra World City Developers
Ground Floor, Mahindra Towers,
No.17/18, Patulous Road,
Chennai – 600 002.

...Petitioner

Vs.

1.Inspector General of Registration,
100, Santhome High Road, Mullima Nagar,
Mandavelipakkam, Raja Annamalai Puram,
Chennai, Tamil Nadu – 600 028.

2.District Registrar, Chengalpattu
JCK Nagar, Chengalpattu,
Tamil Nadu – 603 002.

3.Sekhar

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Prohibition, prohibiting the 2nd respondent from initiating any proceedings pursuant to Na.Ka.No.4431/A3/2022 dated 06.10.2022.



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For Petitioner : Mr.Srinath Sridevan
Senior Counsel
For Ms.Aishwarya S Nathan

For R1 & R2 : Mr.T.Arunkumar
Additional Government Pleader

ORDER

The writ of Prohibition has been instituted to prohibit the 2nd respondent from initiating any proceedings pursuant to Na.Ka.No.4431/A3/2022 dated 06.10.2022.

2. The proceedings dated 06.10.2022 is an enquiry call letter issued by the 2nd respondent / The District Registrar, Chengalpattu to the petitioner as well as to the complainant to participate in the enquiry held on 14.11.2022 at 11:30 a.m. As far as the said impugned call letter is concerned, it lost its relevance, since as per the impugned notice, the enquiry was already held on 14.11.2022 and the present writ petition has been filed on 05.04.2023, after a lapse of about 5 months.

3. The learned Senior counsel appearing on behalf of the petitioner mainly contended that the writ petition has been instituted to prohibit the 2nd respondent from initiating any proceedings.



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4. Such omnimous relief cannot be granted by the High Court, since the power of enquiry is conferred on the authority under the provisions of the Act. If the authorities are generally prohibited to conduct an enquiry, it would cause prejudice to the complainant, who is otherwise entitled to adjudicate the issues on merits and in accordance with law. Thus, on receipt of complaint, the competent authority under the Act must issue summons to the parties, conduct an enquiry and thereafter pass final orders by following the procedures.

5. Intermittent intervention by the High Court during the process of enquiry need not be made in a routine manner. The 2nd respondent / District Registrar is a quasi-judicial authority and empowered to consider legal grounds raised between the parties. If at all the petition is not maintainable or otherwise, such grounds also can be raised by the petitioner before the District Registrar during the course of enquiry. Contrarily, High Court need not adjudicate disputed facts between the parties.



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6. In the present case, the petitioner states that the complaint is untenable, since the sale deed has not been questioned before the competent authority. That apart, the mortgage of the property with the Bank was also prior to the date of complaint and therefore, the complaint ought not to have entertained by the 2nd respondent / District Registrar.

7. All such grounds are to be adjudicated with reference to the documents and evidences available on record. High Court cannot conduct a roving enquiry and decide such disputed facts.

8. Power of judicial review under Article 226 of the Constitution of India is to ensure the processes, through which, a decision is taken by the competent authority in consonance with the Statutes and Rules in force, but not the decision itself. Thus, the scope of power of judicial review cannot be expanded for the purpose of adjudicating the disputed issues merely based on the Xerox copies of the papers filed before this Court in a writ proceedings.

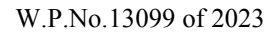


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9. Such disputes are to be adjudicated in a trial natured proceedings, wherein the parties are to be examined, if required. Therefore, the High Court is expected to exercise restraint in such matters, where the parties raise certain disputed facts with reference to the property right, mortgage etc.,

10. The learned Senior counsel for the petitioner submitted the copy of the order passed in W.P.No.10291 of 2022 dated 06.03.2023, wherein this Court referred the issue relating to Section 77-A of the Registration Act. The point of reference in the said writ petition was, whether Section 77-A of the Registration Act will have a prospective or retrospective effect.

11. However, in the present case, the 2nd respondent / District Registrar has to adjudicate the basic facts and then only the question of considering retrospective or prospective effect would arise. In the absence of determining the facts, such question would not arise at all. In other words, the facts in this case are to be adjudicated with reference to the complaint and thereafter, the question of application, whether it is retrospective or prospective would arise. Mere pendency of the writ petition



would not preclude the competent authority from deciding the issues on merits and in accordance with law.

12. In the event of forbearing such Statutory authorities from exercising their powers and deciding the issues, the aggrieved persons may not be in a position to redress their grievances.

13. Several issues were raised before the Hon'ble High Court and the Hon'ble Supreme Court of India and the same are pending for years together. Therefore, prohibiting the authorities at the initial stage and keeping the matter pending for several years would result in injustice to the parties, who all are approaching Statutory authority for redressal of their grievances.

14. Therefore, the issue before the Hon'ble Division Bench regarding application of Section 77-A of the Registration Act, whether prospective or retrospective is one aspect of the matter and the adjudication regarding the complaint given by the person is to be considered by the competent authorities.



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15. The learned Additional Government Pleader relied on the judgment of the Hon'ble Supreme Court of India in the case of ***Union of India and another Vs. Kunisetty Satyanarayana, in Appeal (Civil) No.5145 of 2006 dated 22.11.2006***, wherein the Hon'ble Supreme Court of India made the following observations:

“It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board vs. Ramdesh Kumar Singh and others JT 1995 (8) SC 331, Special Director and another Vs. Mohd. Ghulam Ghouse and another AIR 2004 SC 1467, Ulagappa and others Vs. Divisional Commissioner, Mysore and others 2001 (10) SCC 639, State of U.P. vs. Braham Datt Sharma and another AIR 1987 SC 943 etc. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry



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the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.”

Even the said judgment was reiterated by the Apex Court in Seimen's case.

16. The learned Senior counsel for the petitioner made a submission that the judgment relied on by the learned Additional Government Pleader is relating to show cause notice and therefore, there is no application with reference to the facts in the present case.

17. In respect of the present writ petition, the impugned notice is an enquiry call letter. No writ against an enquiry call letter is entertainable in a routine manner. When the enquiry call letter has been issued by a quasi-judicial authority under the provisions of the Act, then the parties are expected to participate in the enquiry for the purpose of defending the case by availing the opportunity to be provided by such authority. Contrarily, the



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High Court cannot adjudicate such issues in a writ proceedings, when the authorities have already initiated action to conduct the enquiry.

18. In the present case, the enquiry notice was issued on 06.10.2022 and the present writ petition was filed on 05.04.2023 and the date of enquiry fixed also lapsed. This being the factum established, the writ petitioner is not entitled for the relief as such sought for in the present writ petition.

19. However, the writ petitioner is at liberty to participate in the process of enquiry and defend his case in the manner known to law.

20. With this liberty, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes
Speaking order
Neutral Citation: Yes

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To
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- 1.The Inspector General of Registration,
100, Santhome High Road, Mullima Nagar,
Mandavelipakkam, Raja Annamalai Puram,
Chennai, Tamil Nadu – 600 028.
- 2.The District Registrar, Chengalpattu
JCK Nagar, Chengalpattu,
Tamil Nadu – 603 002.



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S.M.SUBRAMANIAM, J.

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