



Writ Petition No.14825 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.02.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.14825 of 2022
and WMP.No.14028 of 2022

A.R.Mohamed Sarjun

... Petitioner

-Vs-

1. The Sub-Registrar,
Thiruporur Sub-Division,
Thiruporur – Chingleput District.
2. The District Registrar [Administration]
Chingleput District.
3. The Inspector General of Registration,
Santhome High Road, Santhome,
Chennai – 600 028.
4. Mrs.Indirani

... 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 comprised in the proceedings of the 2nd respondent bearing Na.Ka.No.2465/A3/2020 dated 19.10.2020 and quash the same and consequently issue a direction to the 1st respondent to delete all entries made in the Encumbrance Register pertaining to document No.946 of 1974 in respect of Sale Deed dated 17.06.1974 pursuant to the



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proceedings of the 2nd respondent bearing Na.Ka.No.2465/A3/2020 dated 19.10.2020 and receive documents for registration which are presented by the petitioner and the legal heirs of the deceased Abdul Rawoof for the purpose of registration.

For Petitioner : Mr.T.T.Ravichandran
For Respondents : Mr.Yogesh Kannadasan
Special Government Pleader [R1
to R3]
Mr.D.Ashok Kumar [R4]

ORDER

The prayer sought for herein is for a writ of certiorarified mandamus to quash the impugned proceedings of the 2nd respondent bearing Na.Ka.No.2465/A3/2020 dated 19.10.2020 and consequently issue a direction to the 1st respondent to delete all entries made in the Encumbrance Register pertaining to document No.946 of 1974 in respect of Sale Deed dated 17.06.1974 pursuant to the proceedings of the 2nd respondent bearing Na.Ka.No.2465/A3/2020 dated 19.10.2020 and receive documents for registration which are presented by the petitioner and the legal heirs of the deceased Abdul Rawoof for the purpose of registration.



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2. In respect of document No.946/1974 registered at Thiruporur Sub-Registrar's office, the fourth respondent had given a complaint to the second respondent District Registrar to enquire the matter and to declare the document as fraudulent one and to register the same in Index-II under Section 68(2) of the Registration Act, 1908 [in short, 'the Act'].

3. The second respondent having entertained the complaint given by the fourth respondent completed the enquiry and passed order on 19.10.2020, under which, the document in question has been found to be a fraudulent or bogus document and a consequential direction given to register it in Index -II. Aggrieved over the same, the petitioner has moved the present writ petition challenging the order passed by the second respondent dated 19.10.2020.

4. It is a case of the petitioner as projected by Mr.T.T.Ravichandran, learned counsel appearing for the petitioner that the petitioner's father purchased the property in 1974 from the erstwhile owner, since then he has been in possession and enjoyment of the property and the petitioner's father died in 2014, thereafter, the petitioner



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inherited the property and has been in possession and enjoyment of the same.

5. When that being so, if at all any complaint is given by the fourth respondent dated 31.08.2020, based on which, enquiry is to be conducted, the second respondent should have given notice to the petitioner being the present owner of the property, without giving notice to the petitioner since the alleged enquiry was completed and order impugned has been passed by the second respondent, on that ground itself the impugned order would not stand in the legal scrutiny, he contended.

6. On the other hand, Mr.Yogesh Kanndasan, learned Special Government Pleader appearing for the respondents 1 to 3 would submit that, a notice dated 22.09.2020 had been issued by the second respondent in favour of one Elumalai, who was the erstwhile owner of the property and therefore, it cannot be stated that, no notice had been given before finalizing the issue by passing the impugned order by the second respondent.



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7. The learned counsel, who is appearing for the fourth respondent has contend that, it is not only the 1974 document, but also his earlier document in 1960 also were found to be a bogus and if the earlier document itself is found to be a bogus one, from whom if the petitioner's father claimed to have purchased the property in 1974 that would be automatically a forged one, therefore, even by giving a notice either to the petitioner or his father, they cannot improve the case, therefore, further notice to the petitioner would be an empty formality, without which, the order passed by the second respondent can very well be sustained, he contended.

8. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

9. The property in question was purchased by the petitioner's father in the year 1974 by way of registered sale deed, thereafter, the petitioner's father died in 2014, thereupon the petitioner claimed to have inherited the property and has been enjoying the same as claimed by him.



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When that being so, since the document viz., 946 of 1974 was objected in the complaint given by the fourth respondent, before deciding as to whether, it is a forged one or genuine one, the second respondent ought to have issued a notice to the person in whose favour the 1974 document has been registered or atleast whose legal heir and in this case, since the person in favour of whom 1974 document was registered is no more, his son the present petitioner should have been given a notice and without giving notice to the petitioner, if any decision is made by the second respondent, where the 1974 document is declared to be a bogus or fraudulent one certainly that will prejudice the interest of the petitioner. Hence, the impugned order passed by the second respondent without any notice to the petitioner would be an infirm one and on that ground itself, it is liable to be interfered with.

10. In the result, the following orders are passed in this writ petition:

- ◆ That the impugned order is set aside and the matter is remitted back to the second respondent with a direction to the second respondent to expand the scope of the enquiry not confined with



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Section 68(2) of the Act but also under Section 77-A of the Act and accordingly, by giving opportunity to both the petitioner as well as the fourth respondent, the issue shall be considered and decided by the second respondent within a period of eight(8) weeks from the date of receipt of a copy of this order.

With this direction, this writ petition is disposed of. No costs.

Connected miscellaneous petition is closed.

23.02.2023

Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
mp

To

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R. SURESH KUMAR, J.

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