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W.P.No.19399 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.19399 of 2023 &
W.M.P.No.18673 of 2023

M/s. Arihant Technocast India Pvt Ltd,
Represented by its Director Mr.S.Murugesan,
S.F.No.554/1 & 557, Swaminathapuram Road,
Vadavalli Village, Periyaputhur, Annur Taluk,
Coimbatore – 641 697

... Petitioner

Vs.

- 1.The Inspector General of Registration,
Santhome High Road,
Chennai – 28.
- 2.The District Registrar (Administration),
Asst. Inspector General of Registration,
Coimbatore.
- 3.Sub Registrar,
Mettupalayam,
Coimbatore.
- 4.Ajay Ghosh
- 5.Thulasimani @ Thulasiammal



6.Rajiv Mohan

7.Muthammal

8.Marudhachalam

9.Parvathi

10.Selvan

11.Chandran

12.Jothimani

13. Santhi

14.Kandasami

15.Suseela

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the second respondent in his proceedings dated 24.03.2023 bearing No.118/E2/2022 cancelling the sale deed 8493 of 2006 and 2160 of 2009 on the file of the Sub Registrar, Mettupalayam and quash the same as Ultravirus and without jurisdiction and consequently direct the second and third respondents to remove the entires/remarks made in the encumbrance certificate of the petitioners property in SF.Nos.555 and 565, Vadavalli Village, Avinashi Taluk (Presently Annur Taluk), Mettupalayam, Coimbatore, measuring an extent of 32.98 cents.



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For Petitioner : Mr.S.Mukunth, Senior Counsel,
for M/s.Sarvabhauman Associates

For Respondents 1 to 3 : Mr.D.Ravichander
Special Government Pleader

For Respondent 4 : Mr.R.Nalliappan

ORDER

The order dated 24.03.2023 passed by the District Registrar under section 77A of the Registration Act is under challenge in the present writ petition.

2. The petitioner purchased the subject property in the year 2006 and 2009 respectively. The revenue records were also mutated in the name of the petitioner. The petitioner is in peaceful possession and enjoyment of the subject property. It is not in dispute that the contesting respondent in the present writ petition instituted a civil suit in O.S.No.2532 of 2013 on the file of the III Additional District Munsif Court, Coimbatore and the case was subsequently transferred to Annur Munsif Court, Coimbatore District. The



civil suit is pending. While so, the contesting respondent filed a complaint before the District Registrar under section 77A of the Registration Act, which was entertained and the District Registrar conducted a summary proceeding and allowed the complaint by cancelling the documents registered in favour of the writ petitioner in the year 2006 and 2009.

3. The learned senior counsel appearing on behalf of the writ petitioner mainly contended that the application of amended provision under section 77A of the Registration Act cannot be exercised for the purpose of cancelling the documents, which were registered long before and more so, prior to the amendment. In the event of conferring such power to the District Registrar, an anomalous situation would be created and several documents will become the subject matter of section 77A of the Registration Act. Such retrospective application of the provision would cause prejudice, since during the relevant point of time when the documents were registered, there is no provision to cancel such documents.

4. The learned counsel appearing on behalf of the contesting respondent raised an objection by stating that the documents were



fraudulently registered and the District Registrar after considering the grounds raised between the parties cancelled the documents and more so, the petitioner has not preferred an appeal contemplated under section 77B of the Registration Act. Thus, the writ petition is liable to be rejected.

5. This court has considered the issues relating to the application of section 77A of the Registration Act in W.P.No.19239 of 2023 dated 25.07.2023 and the relevant portions of the said order are extracted hereunder:

“4. Without going into the allegations of fraud or impersonation, this Court has to consider the repercussions in the event of conducting summary proceedings for the purpose of cancelling the documents registered long back. The amendment was made under the Tamil Nadu Act 41 of 2022 with effect from 16.08.2022 and accordingly, Section 77A was inserted. The provision is ambiguous with reference to its retrospective application. The consequence of retrospective application is to be considered by the Courts. If unguided powers are provided to the District Registrars to cancel the documents, irrespective of the time of registration, the same would result in an



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anomalous situation where the documents registered several decades back also may be the subject matter for cancellation under Section 77A of the Act.

.....

9. Therefore, necessarily, the Court has to form an opinion that in respect of the documents falling under Section 22B of the Act, if sought to be cancelled, then the Registrar is empowered to cancel the documents under Section 77A of the Act. In respect of other documents registered prior to the amendment, one has to understand that those documents are to be dealt in accordance with the law prevailing at the time of registration either by approaching the Civil Court of law or otherwise. When all those documents registered prior to the amendment of the year 2022 are subjected to Section 77A of the Act, then this Court is afraid that an anomalous situation would be created by approaching the District Registrar for the purpose of adjudication of disputed issues with reference to those documents registered several years back. The amendment effected from 16.08.2022 has not intended to do so nor the provision expressly provides any such retrospective application. Prior to amendment, Section 22A and



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Section 22B was not in force. Thus, Section 77A cannot have retrospective effect. In other words, Section 77A must be read in conjunction with Section 22A and Section 22B of the Act. Insertion of all these three Sections are to be understood holistically to avoid any inordinance.

10. Article 59 of the Limitation Act, 1963 stipulates that, to cancel or set aside any instrument or decree for rescission of a contract, the period of limitation is three years. Therefore, even for setting aside an instrument or a decree or for rescission of a contract the period of three years has been contemplated under the Limitation Act, the documents registered several years back or decades back cannot be the subject matter for cancellation of those documents under Section 77A of the Act.

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14. In the present Writ Petition, disputed issues exist between the parties. Even the second respondent herein was a party respondent in yet another Writ Petition filed by one Mr.T.Arockia Dass in W.P.No.754 of 2023, wherein this Court passed an order on



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10.01.2023. Therefore, the dispute between the parties cannot be resolved by way of summary proceedings under Section 77A of the Act. Normally, amendments under the Statutes are intended for prospective effect, unless retrospective effect has been expressly made under the amendment. Presumptive retrospective implementation of the amendments in the Statutes would cause larger repercussion and would result in disastrous consequences. Lakhs and lakhs of documents registered prior to the amendments will be placed for adjudication before the Registrar to cancel those documents on personal or on varieties of reasons. Therefore, in the absence of any specific provision to implement the amendment retrospectively, the power conferred through amendment is to be exercised with prospective effect with reference to the documents registered subsequent to the amendment and insertion of Sections 22A, 22B and 77A of the Act. Thus, the petitioner as well as the complainant in the present case have to redress their respective grievances before the competent Civil Court of law.”

6. In view of the principles laid down in the Judgment cited supra, the impugned order is liable to be interfered with. In such circumstances,



relegating the party to prefer an appeal will become a futile exercise and thus, this Court is inclined to dispense with the appeal to be preferred under section 77B of the Act.

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7. In view of the facts and circumstances, the order impugned passed by the District Registrar in the proceedings No.118/E2/2022 dated 24.03.2023 is quashed. The parties are at liberty to adjudicate the issues in the pending suit or by instituting a fresh proceeding as the case may be to establish their civil rights based on the documents and evidence available on record.

8. With these directions, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Speaking order
Neutral Citation : Yes

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S.M.SUBRAMANIAM, J.

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