



W.P.No.19280 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.19280 of 2023
and W.M.P.No.18530 of 2023

Dr.Arunvel Kumar

... Petitioner

Vs.

1.The District Registrar [Administration],
Chengalpattu District,
Chengalpattu.

2.Mr.M.Sukumar Reddy,
Managing Director,
M/s.Anush Infrastructure Private Ltd.,
No.908-B, Radiance Shine Apartments,
OMR, Rajiv Gandhi Salai,
Kazhipuattur,
Chennai – 603 103.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the first respondent in proceedings Na.Ka.No.7389/ 23/2022 dated 31.05.2023 and quash the same.



W.P.No.19280 of 2023

For Petitioner	: Mrs.Hema Muralikrishnan for Mr.L.Muralikrishnan
For R1	: Mr.T.Venkatesh KUmār Special Government Pleader
For R2	: Mr.Thirumalai Balaji for Mr.P.Subba Reddy

ORDER

The order passed by the District Registrar under Section 77A of the Registration Act in proceedings dated 31.05.2023 is under challenge in the present writ petition.

2.The petitioner states that he is the absolute owner and in possession and enjoyment of the property viz., agricultural land situated in Panaiyur Village, Chengalpattu District to an extent of 26.71 cents. The petitioner purchased the property under three sale deeds dated 20.01.2015 from the second respondent.

3.Dispute arose in respect of alienation of the property and civil suits in O.S.Nos.81/2017, 31/2018 and 185/2018 was instituted. All the three



W.P.No.19280 of 2023

civil suits are pending as of now before the competent Court of law. Earlier, the second respondent M/s.Anush Infrastructure Private Limited filed a writ petition in W.P.No.13745 of 2015 and this Court passed an order on 21.09.2020 as follows:

“2.When the Writ Petition was taken up for hearing, Mr.P.Subba Reddy, learned counsel appearing for the petitioner submitted that the petitioner had already filed Civil Suits in O.S.Nos.82 of 2017, 31 of 2018 and 185 of 2018 on the file of the District Munsif Court, Chengalpet and the Civil Suits are pending. Further, the learned counsel submitted that the petitioner would prosecute the suits and that in view of the pendency of the Civil Suits between the parties, the Writ Petition may be closed.

3.Recording the submission made by the learned counsel for the petitioner, since the petitioner had already filed Civil Suits as stated above, the Writ Petition stands closed. No costs. Consequently, the connected miscellaneous petition is also closed.”

4.After passing an order in the above writ petition, the second respondent filed a complaint before the District Registrar under Section 77A of the Registration Act to cancel the documents of the year 2015. The



W.P.No.19280 of 2023

District Registrar conducted summary proceedings and cancelled the document through the impugned proceedings dated 31.05.2023.

5.The learned counsel for the petitioner mainly contended that Section 77A of the Registration Act cannot have retrospective application to cancel the documents registered long before. In the present case, the document was registered in the year 2015 and the writ petition filed by the second respondent was closed and thereafter, complaint was filed and entertaining the said complaint in violation of the provisions of the Act, the District Registrar cancelled the document, more so, three civil suits are pending between the parties.

6.The learned counsel for the petitioner relied on the judgment of this Court in W.P.No.19329 of 2023 dated 25.07.2023, wherein the following observations are made:

“5.The legislative intention of the amendment and insertion of Section 77A in the Act would not confer powers for its retrospective application, so as to cancel the documents registered several decades back. All those documents which



were registered long years back were governed under the provisions of the Act and those documents were either subjected to civil proceedings before the Civil Court of law or criminal proceedings or otherwise.

6.Let us now consider the scope of Section 22A, Section 22B and Section 77A of the Act together for the purpose of better understanding of the scope of Section 77A of the Act.

7.Section 22A of the Act provides refusal to register certain documents by the registering authority. Widely, the provision covers Government properties and the properties belonging to the religious institutions. Sub Section 2 stipulates that, in respect of the instrument relating to the transfer of ownership of lands converted as house sites with a permission for development, such lands must be approved by the planning authority for the purpose of registration.

8.Section 22B denotes refusal to register forged documents and other documents prohibited by law. Accordingly, the Registering Officer shall refuse to register the following documents: (1)forged document, (2)document relating to transaction, which is prohibited by any Central Act or State Act for the time being in force, (3)document relating to transfer of immovable property by way of sale, gift, lease or otherwise, which is attached permanently or



provisionally by a competent authority under any Central Act or State Act for the time being in force or any Court or Tribunal and (4)any other document as the State Government may, by notification, specify. Section 22B was inserted by Tamil Nadu Act 41 of 2022 with effect from 16.08.2022. Therefore, Section 22B must be read along with Section 77A of the Act, which was also inserted by the Tamil Nadu Act 41 of 2022. Thus, the legislative intention is to be carved out through harmonious understanding of Section 22B and 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



WEB COPY



W.P.No.19280 of 2023

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 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.

11. Pertinently, Section 53 of the Transfer of Property Act, 1882 deals with fraudulent transfer. Accordingly, every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed. Section 53 unambiguously stipulates that, even a



fraudulent document is only voidable and not a void document. In respect of voidable documents, there is an option for the parties to rectify the fraud and make it valid and therefore, the documents registered prior to the insertion of Sections 22A, 22B and 77A cannot be subjected to cancellation under Section 77A of the Act.

12. Therefore, there are certain circumstances where a voidable document under Section 53 of the Transfer of Property Act, may be validated with the consent of the parties. That being the legal position in respect of such fraudulent documents, which are registered, the power to cancel conferred on the District Registrar cannot be given retrospective effect, so as to cancel the documents, which were registered several years or decades back.”

7. In view of the facts and circumstances, the parties are at liberty to establish their respective rights before the competent Civil Court of law. Accordingly, the impugned order passed by the District Registrar in proceedings Na.Ka.No.7389/23/2022 dated 31.05.2023 is quashed.



W.P.No.19280 of 2023

8.The writ petition stands allowed accordingly. No costs.

Consequently, connected miscellaneous petition is closed

16.08.2023

Index : Yes/No

Speaking order/Non-Speaking Order

Neutral Citation : Yes /No

cse

To

The District Registrar [Administration],
Chengalpattu District,
Chengalpattu.



WEB COPY



W.P.No.19280 of 2023

S.M.SUBRAMANIAM, J.

cse

W.P.No.19280 of 2023

16.08.2023