



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.21692 of 2023 &
W.M.P.Nos.21066 & 21067 of 2023

Great Lakes Multi-State Cooperative
Housing Society Limited,
No.76/190, South Car Street,
Srivilliputhur in Virudhunagar District,
Represented by its The Chief Executive Officer,
S.Sakthivel

... Petitioner

Vs.

- 1.The Inspector General of Registration,
100, Santhome High Road,
Chennai – 600 028.
- 2.The Deputy Inspector General of Registration,
Chennai Zone,
Chennai.
- 3.The District Registrar (Administration),
In the Cadre of Assistant Inspector General of Registration,
Anna Nagar, Chennai.
- 4.The Sub Registrar (In the Cadre of District Registrar),
Anna Nagar, Chennai – 600 040.
- 5.Pankajam
- 6.R.Subburam

... Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records pertaining to the Special Power of Attorney dated 21.10.2016 in Document No. 326 of 2016 on the file of Sub Registrar, Anna Nagar, Chennai executed by the 5th respondent to the 6th respondent and quash the same.

For Petitioner : Mr.S.R.Rajagopal, Senior Counsel,
for Mrs.T.Kokilavane

For Respondents 1 to 4 : Mr.D.Ravichander,
Special Government Pleader

ORDER

The writ on hand has been instituted questioning the validity of the special power of attorney dated 21.10.2016 in document No.326/2016 on the file of the Sub Registrar, Anna Nagar, Chennai executed by the fifth respondent to the sixth respondent.

2. The petitioner is a Multi-State Cooperative Housing Society registered under the provisions of the Multi-State Cooperative Societies Act (Central Act), 2002. The principal object of the Society is to promote the interests of its members to attain their economic and social betterment, as people's institution based on self-help and mutual and in accordance with the cooperative principles.



WEB COPY

W.P.No.21692 of



3. The petitioner society purchased a vacant site in S.No.16/18 to the extent of 16 cents at Alandhur Village in Chennai District from the fifth respondent/S.Pankajam and her deceased brother Pakkirisamy for a valuable sale consideration. The document was registered on 17.05.2013 in document No.853/2013 on the file of the Joint-1 Sub Registrar, Tenkasi District.

4. The petitioner states that they have been purchasing properties for the benefit of its members and there are several disputes exist in respect of purchase of immovable properties.

5. Learned Senior Counsel appearing on behalf of the writ petitioner mainly contended that the impugned Special power of attorney executed by the fifth respondent Pankajam is directly in violation of section 64-A and 17(1)(h) of the Registration Act. When the subject property situates in Alandhur, the special power of attorney was executed at Anna nagar. Therefore, the Sub Registrar at Anna Nagar has no jurisdiction to register the document and thus, the impugned special power of attorney is liable to be set aside.

6. The learned Senior Counsel contended that the document impugned i.e., special power of attorney reveals that the executant is temporarily



residing at Anna Nagar and is a permanent resident of No.440A, Kollupattarai Steet, Neelapadi, Radhanallur, Athipuliyur Village and Post, Kilvelur Taluk, Nagapattinam District. The said fact was also not verified by the Sub Registrar, Anna Nagar, before registering the special power of attorney presented by the fifth respondent for registration.

7. The learned Senior Counsel relied on the judgment of the Hon'ble Supreme Court in the case of Asset Reconstruction Company (India) Limited vs. S.P.Velayutham & Others in Civil Appeal Nos.2752-2753 of 2022, wherein the Apex Court held that the writ Court has got jurisdiction to entertain the writ petition filed challenging a registered document. The following observations are relied on for the purpose of substantiating the said ground:

" A declaration that a document is null and void, is exclusively within the domain of the civil court, but it does not mean that the High Court cannot examine the question whether or not mean that the Registering Authority performed his statutory duties in the manner prescribed by law. It is well settled that if something is required by law to be done in a particular manner, it shall be done only in that manner and not otherwise, is certainly within the



WEB COPY

W.P.No.21692 of



jurisdiction of the High Court under Article 226. However, it is needless to say that the High courts may refuse to exercise jurisdiction in cases where the violations of procedure on the part of the Registering Authority are not gross of violations do not shock the conscience of the Court. Lack of Jurisdiction is completely different from a refusal to exercise jurisdiction."

8. Relying on the above observations made by the Hon'ble Supreme Court of India, the learned Senior Counsel emphasised that the alternate remedy contemplated under the Act needs to be dispensed with in such circumstances. More so, the Sub Registrar, in the present case, knowing the fact that he has no jurisdiction, registered the document at the instance of the fifth respondent and thus, the petitioner may not get an effective remedy before the authorities and therefore, the writ petition is to be entertained.

9. In support of the contention, the learned Senior Counsel relied on the orders of the Madurai Bench of Madras High Court dated 25.01.2023 in W.P.(MD).No.28238/2022, wherein the general power of attorney dated 23.06.2022 executed by the respondents 5 to 9 in favour of the tenth respondent was quashed by the Court in respect of the property. In the said



order, the place for registering documents relating to land under section 28 and also the procedures where instrument of power of attorney presented in office of Sub-Registrar relates to immovable property not situate in sub-district under section 64-A of the Registration Act were considered by the Court. By citing both the provisions, the power of attorney was set aside by the Madurai Bench of Madras High Court in the above order. Therefore, it is contended that the present special power of attorney executed by the fifth respondent is also to be set aside. It is brought to the notice of this Court that the said order has been confirmed by the Division Bench of this Court in W.A(MD).No.484/2023 dated 18.04.2023.

10. Perusal of the orders would reveal that the facts in particulars were not considered by the Court, while setting aside the power of attorney which was under challenge before the Madurai Bench of Madras High Court and therefore, this Court has to examine the facts and circumstances pertaining to the case on hand. Blanket application of certain orders may cause prejudice to the parties. The facts in particular are to be considered by the Court in respect of the case on hand and therefore, this Court is inclined to consider the present facts and circumstances for the purpose of applying the orders relied on by the petitioner.



WEB COPY

11. The learned Special Government Pleader seriously raised an objection by stating that those orders may not have any application in respect of the case on hand, in view of the fact that the special power of attorney now under challenge is not relating to an immovable property. Therefore, section 64-A or 17(1)(h) has no application and thus, the contention raised on behalf of the writ petitioner for entertaining the writ petition is untenable.

12. The learned Special Government Pleader drew the attention of this Court with reference to the special Power of Attorney dated 21.10.2016 executed by the fifth respondent in favour of the sixth respondent. The learned Special Government Pleader drew the attention of this Court with reference to the contentions in entirety set out in the impugned special power of attorney. First two paragraphs of the special power of attorney states about the reason for execution of special power of attorney, ie., preliminary paragraphs. Paragraph 1 onwards, the powers conferred to the agent have been stipulated. It is relevant to extract the entire clauses in the impugned power of attorney, which would be relevant to understand the nature of the power given by the fifth respondent in favour of the sixth respondent and it reads as under:



WEB COPY

W.P.No.21692 of



"1.To appoint any advocate/pleader/counsel as may be necessary for prosecuting or defending any suit or proceedings in the matters relating to the above mentioned property and to sign vakalatnamas, warrant of attorney in favour of any solicitor, advocate, pleader or counsel engaged on my behalf.

2. To commence, prosecute, enforce, defend, answer or oppose all notices, suits, and other legal proceedings and demands touching any of the matters aforesaid or any other matters in relation to the above mentioned property and also if thought fit to enter into a compromise, refer to arbitration, abandon, submit to judgment or become non-suited in any such action or proceedings as aforesaid before any court of law.

3. To Sign, declare and/or affirm any complaints, written statements, petitions, consent petition, affidavits, memorandum of appeal or any other document or paper in our name in any legal proceedings or in any way connected therewith.

4. To deposit and receive documents and moneys in and from any court or courts and/or any other person or authority in my name and give valid receipts and discharge therefor.

5. To hold, defend possession, manage and maintain the property described above and to do al such acts that



WEB COPY

W.P.No.21692 of



may be necessary for securing the interests of the true owner of the above mentioned property.

6. To prepare, sign, declare and file declarations, statements, applications or return connection with the above mentioned property before any governmental or statutory authority as may be required under any law or laws now prevailing or as may in future become applicable.

7. To present any deed/document that has been executed by me before the concerned Sub Registrar for being registered in accordance with law and to do on my behalf all formalities for due completion of such registration and for receiving back such registered document on my behalf.

8. And generally our said attorney shall have the power to do all such acts, deeds and things that may be necessary for the aforementioned purpose /purposes on my behalf and that I could have lawfully done, if personally present

9. The power agent shall maintain proper accounts and vouchers in respect of the above mentioned property and should produce the same as and when demanded. No consideration has been paid in pursuance of this power of attorney."



13. Relying on the above clauses, the learned Special Government Pleader reiterated that nowhere in the impugned special power of attorney, power to deal with the property has been conveyed, nor schedule of property has been provided in the impugned special power of attorney. It confers power to the sixth respondent to engage lawyers, defend the suits, prosecute the persons and do certain activities related to the legal proceedings. Since the power of attorney impugned is unconnected with the immovable property section 64-A and section 17(1)(h) have no application. Thus, the petitioner if at all aggrieved, has to approach the competent authority under section 77A of the Act for the purpose of cancellation of document.

14. Let us now consider the spirit of section 17(1)(h) of the Registration Act, which stipulates about the document of which registration is compulsory. Sub section 1(h) states that “Instruments of Power of Attorney relating to immovable property other than those executed outside India”.

15. The above provision unambiguously states that power of attorney relating to Immovable property alone is compulsorily registerable under



section 17(1)(h) of the Act.

16. Section 28 denotes the place for registering documents relating to land which reads as under:

“28. Place for registering documents relating to land.- Save as in this Part otherwise provided, every document mentioned in section 17, sub-section (1), clauses (a), (b), (c) [(d) and (e), section 17. sub-section (2), insofar as such document affects immovable property,] and section 18, clauses (a), (b) [(c) and (cc),] shall be presented for registration in the office of a Sub Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate.

Provided that every document mentioned in clause (h) of sub-section (1) of section 17 may also be presented for registration in the office of the Sub-Registrar within whose jurisdiction the principal ordinarily resides.”

17. Section 28 also specifically speaks about documents relating to land. Further, it stipulates that the whole or some portion of the property to which such document relates, is situate in the state of Tamil Nadu. Therefore, the very spirit of section 28 amplifies that the document must be relatable to a property/land and in such an event, there must be a schedule of property in



the document.

WEB COPY

18. The learned Senior Counsel solicited the attention of this Court with reference to clause 5 of the impugned special power of attorney which states that "To hold, defend possession, manage and maintain the property described above and to do all such acts that may be necessary for securing the interests of the true owner of the above mentioned property."

19. In the context of the above clause, one cannot form an opinion that the present special power of attorney has been given to deal with any property in particular. It is only to hold, defend possession, manage and maintain the property described and does not indicate any particular property nor any schedule has been provided, in the document and therefore, the clauses general in nature providing general power to deal with the legal matters pertaining to the property belonging to the parties. Therefore, such general power given cannot be construed as a document relating to land which is compulsorily registerable under section 17 (1)(h) of the Act and also under section 28 of the Act with reference to place of registration.

20. Even clause 7 is whispering about the presentation of deed/document, pertaining to the property. However, what all are the



properties which all are to be dealt with by the power of attorney holder has not been stipulated. Therefore, it is to be construed that the special power has been given to deal with the legal issues pertaining to the properties belonging to the fifth respondent in general.

21. Section 17(1)(h) when specifically states that if the power of attorney relates to an immovable property, then the specification of the Immovable property must be mentioned in the power of attorney. In the absence of any specification, the registering authority may not be in a position to presume and therefore, the question of invoking section 28 would not arise at all.

22. Section 28 of the Act is to be applied only if the details and particulars of the land has been specifically stipulated in the power of attorney and in the absence of any such specification, the registering authority cannot form an opinion that the property situates in a particular place or otherwise. The very spirit of section 28 reveals that place for registering documents relating to land. Therefore, the details regarding the land is the material fact for the application of section 28 of the Act.



WEB COPY

W.P.No.21692 of



23. Section 64 of the Act deals with procedures where document relates to land in several sub-districts. Section 64-A stipulates procedure where instrument of power of attorney presented in office of Sub-Registrar relates to immovable property not situate in sub-district.

24. Section 64-A indicates that “Every Sub-Registrar on registering an instrument of Power of Attorney including instrument of revocation or cancellation of such Power of Attorney relating to immovable property not situate in his own sub-district, shall make a copy and send the same together with a copy of the map or plan (if any) mentioned in section 21, to every other Sub-Registrar in whose sub-district the whole or any part of such property is situate and such Sub-Registrar shall file the same in this Book No.1: Provided that where such instrument relates to immovable property in several districts, shall forward the same to the Sub-Registrars concerned, under intimation to the Registrar of every district in which any part of such property is situate.”

25. The cogent and holistic reading of the provisions would indicate that the property details/descriptions are essentially required for the purpose of invoking the said provisions. In the absence of any description of the



property, the jurisdiction with reference to section 64-A of the Act cannot be exercised at all. Therefore, section 17(1)(h), Section 28 and Section 64-A would be applicable only if the special power of attorney has been registered or power has been conferred to deal with the Immovable properties, wherein descriptions /details relating to the properties are explicitly provided in the Power of Attorney.

26. In the absence of any such details, the power of attorney would not fall under the above provisions and therefore, such powers are to be construed as special power conferred to deal with the legal matters and in the present case, to represent the case or to deal with the properties generally.

27. The executor of the special power of attorney herself is not sure about her right over any property. That exactly is the reason why she is unable to give description of the property. The above facts are traceable from the introductory paragraphs where the fifth respondent / executor of the impugned special power of attorney has stated as follows:

“ Whereas I had executed certain agreements/deeds pertaining to the lands comprised in Survey No.16/7, admeasuring 18 cents and Survey



No.16/18, admeasuring 50 cents, T.S.No.6/3, Ward H, Block No.20, Alandhur Village, Alandhur Taluk [formerly Tambaram Taluk], Kancheepuram District including the Sale Deed dated 02.05.2011, registered as document No.1747 of 2011, on the file of the Sub Registrar, Alandur and Sale Deed dated 31.08.2012, registered as Document No.853 of 2013, on the file of the Joint I Sub Registrar, Thenkasi, **under the premise that the said lands belonged to my late husband, Mr.Ramasamy.**

Whereas by taking advantage of the fact I am an illiterate, I have been cheated by the purchasers in the above documents, including the said Great Lakes Multi-State Co-operative Society Ltd. and I have now learnt that the above mentioned deeds strangely reflect my husband's name as Ramasamy Reddiar. Pursuant thereto various civil and criminal cases have emerged and owing to my old age, I am not in a position to follow and manage the same personally and manage the affairs of the above said property and as such I deem it necessary and imperative to appoint the above said Mr.Subburamm, as my Power of Attorney Agent, to do inter alia in my name and on my behalf, the following acts, deeds and things, viz.,”



WEB COPY

28. The introductory paragraphs in the impugned power of attorney reveals that the executor has no knowledge about the properties in her name and she is of the opinion that she had been cheated by few purchasers. Under those circumstances, she has executed the power of attorney in favour of the sixth respondent to appoint advocate, to prosecute the persons or to defend the cases in respect of the properties generally and there is no specification or description relating to the immovable properties relatable to a place or taluk or district. In the absence of any such descriptions, the power of attorney may not be in a position to invoke section 17(1)(h), section 28 and section 64-A of the Registration Act. Thus, the place for registration becomes immaterial.

29. Even in cases where such error, fraud or impersonation has been committed, the parties aggrieved have to approach the competent authority i.e, the District Registrar under section 77A of the Registering Act.

30. The power of judicial review of the High Court under Article 226 of the Constitution of India is to ensure the processes through which a decision has been taken by the competent authority in consonance with the statutes



WEB COPY

and rules in force, but not the decision itself. High Court cannot adjudicate the disputed facts which are of complex in nature and such an adjudication must be done by the competent authorities with reference to the documents in original and the evidences available on record.

31. In the event of setting aside such registered documents in writ proceedings merely based on certain representations, it would result in causing prejudice to either of the parties. Further, such determination would do no service to the cause of justice and the parties will be back again to the High court by way of further litigations. Contrarily an effective adjudication may be undertaken by the authority under section 77 A of the Act by affording opportunity to all the parties and by verifying the original records. The factual findings of the original authority and the appellate authority would be of greater assistance to the High Court for the purpose of effective exercise of the judicial powers of review under Article 226 of the Constitution of India. Therefore, exhausting the statutory remedy is of paramount importance.

32. Exhausting the statutory remedy is the rule and dispensing with the



same is an exception. It is not as if the High Court lacks power under Article 226 of the Constitution of India to set aside a document. But the effectiveness and the likelihood of prejudice to be caused to the parties are to be weighed before exercising the powers of judicial review. This exactly is the reason why the Apex Court is repeatedly emphasising that the disputed facts cannot be adjudicated in a writ proceeding under Article 226 of the Constitution of India.

33. In the present case, the learned Senior Counsel appearing on behalf of the petitioner made a submission that the petitioner is a Multi-State Cooperative Society and they will have to face multiplicity of litigation. The said ground cannot be a reason to dispense with the statutory remedy contemplated under the Act. The legislative intention for providing such statutory remedies at no circumstances be undermined by the High Court and such intentions are to be respected for an effective disposal of cases through adjudications.

34. As far as the order passed by the learned Single Judge of Madurai Bench of Madras High Court is concerned, there was no factual adjudication



and in the present case, the nature of impugned special power of attorney would be sufficient to form an opinion that it is not directly relatable to the particular property or land and there is no description of property in the impugned special power of attorney and therefore, section 17(1)(h), 28 and 64A are not applicable and thus, those cases are of no avail to the petitioner.

35. Even in certain circumstances, the Court passing an order without noticing the provisions of law or without adjudicating the facts involved in a case. Such orders need not be followed as a precedent in all other cases. If at all any error occurs, the same need not be followed perpetually and those orders denuded to loose its status as precedent.

36. In this context, the Hon'ble Division Bench of this Court in the case of **Director of Sericulture Department vs. K.Kumar** reported in **2015 (4) CTC 241**, considered the binding nature of the orders, relying on the judgment of Honourable Supreme Court, which reads as under:

"34. It is true that consistency helps the parties to a litigation to know where they stand. But, when it is brought to the notice of the Court that on most of the earlier occasions, several similarly placed employees obtained orders at the stage of



WEB COPY

W.P.No.21692 of



admission, on the ground that the issue is already covered by a decision of this Court and that it was only in this manner that several employees got a benefit that was not legitimately due to them, the Court cannot shut its eyes and choose to prefer maintenance of discipline rather than upholding public interest.

35. As a matter of fact, the greatness of the Court lies only in its courage and ability to correct its mistakes. Justice is more precious than discipline. This was the principle that the Supreme Court highlighted in A.R.Antulay vs. R.S.Nayak [AIR 1988 SC 1531]. It was observed in the said decision that "in rectifying an error, no personal inhibitions should debar the Court because no person should suffer by reason of any mistake of the Court." The Supreme Court focused on the elementary rule of justice that no party should suffer due to the mistake of the Court. Therefore, this Court should not feel shackled either by the rules of procedure or by the principles of propriety, when it is so glaring that a gross injustice has been done to the State (1) by writ petitions getting allowed at the stage of admission and (2) by getting those orders implemented under threat of contempt.



This is especially so when the earliest decision that was followed in all other cases, did not decide the scale of pay to be granted for Selection and Special Grades. Hence, the second contention of the writ petitioners is also liable to be rejected.

41. In Union of India v. Kartick Chandra Mondal [(2010) (2) SCC 422], the Supreme Court, relying upon its previous decisions in various cases including the one in State of Bihar v. Upendra Narayan Singh [(2009) 5 SCC 69], held that Article 14 is a positive concept and that it cannot be enforced in a negative manner. The Court further held that if an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity or illegality or for passing a wrong order. Interestingly, the decision of the Supreme Court in Kartick Chandra Mondal was subsequent to the decision in Maharaj Krishan Bhatt and the decision in Maharaj Krishan Bhatt is also referred to in Kartick Chandra Mondal."

37. The Hon'ble Supreme Court of India in the case of **Basawaraj and**



Another vs. Special Land Acquisition Officer reported in (2013) 14 SCC

81, held as follows:

WEB COPY

“It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provisions does not envisage negative equality but has only a positive aspect. Thus, is some other similarly situated persons have been granted some relief / benefits inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or Court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order”.



WEB COPY

W.P.No.21692 of



38. In view of the facts and circumstances and considering the fact that the special power of attorney is not relatable to a particular property, the contentions raised by the petitioner with reference to sections 17(1)(h), 28 and 64A is inapplicable and thus, the petitioner is at liberty to approach the competent authority under section 77A of the Act. In the event of forming an opinion by the authority that there is no fraud or impersonation under the Registration Act, the parties are to be relegated to approach the competent civil court of law for the purpose of adjudication of disputed facts and for establishing their civil rights.

39. With these observations, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

24.07.2023

nl

Index : Yes

Speaking order

Neutral Citation : Yes



WEB COPY

W.P.No.21692 of



To

- 1.The Inspector General of Registration,
100, Santhome High Road,
Chennai – 600 028.
- 2.The Deputy Inspector General of Registration,
Chennai Zone,
Chennai.
- 3.The District Registrar (Administration),
In the Cadre of Assistant Inspector General of Registration,
Anna Nagar, Chennai.
- 4.The Sub Registrar (In the Cadre of District Registrar),
Anna Nagar, Chennai – 600 040.



WEB COPY

W.P.No.21692 of



S.M.SUBRAMANIAM, J.

nl

W.P.No.21692 of 2023

24.07.2023