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W.P.No.19239 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2023

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.19239 of 2023
and
W.M.P.No.18471 of 2023

T.S.T.Kaznavi

...Petitioner

-Vs-

1.The District Registrar,
South Chennai, Fanepet,
Nandhanam, Chennai – 35.

2.Menaka

3.T.Arockia Dass
Trustee-India Bible Camp Ministries [IBCM],
Plot No.29, Gopal Nagar,
Old Perungalathur, Chennai – 63.

...Respondents

*[R3 impleaded as per order dated
25.07.2023 made in W.M.P.No.19230/2023]*

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records from the first respondent in connection with Ref.No.14014/E2/2022 dated 15.07.2022 purportedly issued under Section 77A of Registration Act and quash the same.



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For Petitioner : Mr.V.Prakash, Senior Counsel
for Mr.K.Krishnamoorthy

For R1 : Mr.D.Ravichander
Special Government Pleader

For R3 : Mr.S.Viswanathan

ORDER

The Writ on hand has been instituted questioning the validity of the notice dated 15.07.2022 issued by the first respondent under Section 77A of the Registration Act (hereinafter referred to as 'the Act').

2. The petitioner states that he is the absolute owner of the property more fully described in the present Writ Petition. The petitioner is the subsequent purchaser in respect of the subject property. The second respondent filed a complaint before the first respondent District Registrar under Section 77A of the Act to cancel the registration made during the year 2004. Based on the complaint, the impugned notice has been issued for the purpose of conducting an enquiry.



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3. The learned Senior Counsel appearing for the petitioner mainly contended that the first respondent lacks jurisdiction, since the document was registered in the year 2004 and other documents in the years 2005, 2006 and 2007. In respect of the documents registered several years back, if summary proceedings are allowed, the same would cause prejudice to the interest of the owners, who purchased the property subsequently or otherwise. It is even as per the impugned notice, the documents sought to be cancelled were of the years 2002, 2004, 2005, 2006 and 2007. That being the factum, whether the District Registrar is empowered to exercise the powers under Section 77A of the Act with retrospective effect, so as to cancel the documents registered long back is to be considered.

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



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

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.



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WEB COPY 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,



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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 those documents registered several years back. The amendment effected from 16.08.2022 has not



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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



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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.

13. Yet another apprehension is that the District Registrars are not empowered to adjudicate the disputed facts. Under Section 77A of the Act, they are empowered to conduct summary proceedings and to identify fraud



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or impersonation with reference to the provisions of the Registration Act, more specifically, the procedures as contemplated under the Act and Rules.

In the event of allowing the District Registrars to adjudicate the documents registered prior to the amendment, necessarily, they will have to adjudicate the disputed facts and the background of the title and otherwise, which cannot be done. More so, fraud was not defined prior to the insertion of Sections 22A, 22B and 77A of the Act. This Court, in the case of ***M.Revathy Vs. The Inspector General of Registration, Chennai and others passed in W.P.No.16999 of 2023, dated 08.06.2023***, had dealt with this issue and held as follows:-

"5. The powers conferred to the District Registrar to cancel the document under the grounds of fraud or impersonation cannot be expanded by adjudicating the title, ownership or disputed issues between the parties. The District Registrars are empowered to conduct summary proceedings and if the allegations i.e. fraud or impersonation are apparent on the face of the record, then alone the documents registered are to be cancelled but not otherwise. Therefore, the District Registrars cannot



conduct a trial natured proceedings by adjudicating the title deeds or other documents produced by the respective parties. Only if prima facie case has been established for cancellation on the ground of fraud or impersonation, then alone the District Registrar has to pass orders for cancellation of document.

....

7. It is relevant to consider Order VI Rule 4 of the Code of Civil Procedure which enumerates 'Particulars to be given where necessary' - "In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading."

8. Therefore, it is mandatory that the party pleading fraud should plead properly and establish through documents. When the Code of Civil Procedure contemplates that the persons pleading fraud should establish through pleading and documents. Such a



procedure cannot be adopted by the District Registrar under the Registration Act since summary proceedings are contemplated. Thus, the District Registrar is duty bound to draw a distinction between the summary proceeding and the trial natured proceedings with reference to the Registration Act and the Code of Civil Procedure. Whenever adjudication of various documents regarding fraudulent activities are to be established, the parties are to be relegated to to the Civil Court for adjudication by establishing the ground of fraud or impersonation or otherwise.

9. Cancellation of a document has got a larger repercussion on the civil rights of the persons. Property right is a constitutional right conferred under Article 300A of the Constitution of India. Such a constitutional right can be interfered only by the authority of law and certainly not through the summary proceedings. Property right if infringed by conducting a summary proceedings on the hands of the District Registrar, the same would result in an unconstitutionality and therefore, the scope of the powers under the Registration Act to the District



Registrars cannot be expanded for the purpose of adjudication of civil disputes or the civil rights, which is conferred through the conveyances, documents etc.

10. A distinction is to be drawn with reference to the procedures contemplated under the Code of Civil Procedure and the Registration Act since the consequences of cancellation of any document is causing infringement of property right directly. For example, any person executing a sale deed gets a property right. Once the property right is acquired by him through the sale deed, such right becomes a constitutional right. Thus, the said right can be taken away only by the authority of law. Such an authority of law must provide complete opportunity to the parties to adjudicate the issues based on the documents and evidences. The powers for adjudication of such nature is conferred to the Court of law. Thus, the said powers conferred on the Court of law cannot be transferred or conferred to the District Registrar under the provisions of the Registration Act and more so, such District Registrars are neither legally trained nor authorised to conduct such judicial proceedings. The Registrars are Quasi-Judicial Authorities.



11. Pertinently, Chapter V Section 31 of the Specific Relief Act, 1963 contemplates 'When cancellation may be ordered'. Sub-section (1) of Section 31 stipulates "Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled."

12. In view of the provisions of the Code of Civil Procedure and Specific relief Act, the Competent Civil Court of Law is concerned to adjudicate the disputed facts between the parties by framing issues and by conducting trials, so as to consider the validity of the documents registered under the Registration Act. Once the Competent Civil Court of Law declares that a registered document is null and void and invalid, thereafter under Section 89(4) of the Registration Act read with Rule 89 of the Civil Rules of Practice, the Registering Authority is bound to register the decree



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passed by the Civil Court in Book No.1. The mechanism provided under the Code of Civil Procedure, Specific Relief Act and Civil Rules of Practice at no circumstances be diluted in view of the provisions of the Registration Act by indirectly conferring the powers of the Civil Court on the District Registrar to invalidate the documents. Thus, the scope under the Registration Act to cancel the documents on the ground of fraud or impersonation is undoubtedly limited. While conducting a summary enquiry, if the District Registrar finds that there is a prima facie proof to establish fraud or impersonation, then alone the document is to be cancelled. Therefore, in respect of any iota of doubt on the prima facie case, the District Registrar is not empowered to adjudicate the issues on merits and is bound to relegate the parties to the Civil Court of law on adjudication. Comprehensive procedures contemplated under the Code of Civil Procedure, Civil Rule of Practice and the Specific Relief Act provides liberty to all the parties to establish and defend their case by producing documents and adducing evidence. Such a right of adjudication cannot be taken away by



allowing the Registrar to declare the registered documents as null and void.

13. Section 22(B) of the Registration Act reads as under:

“22.B. Refusal to register forged documents and other documents prohibited by law – Notwithstanding anything contained in this Act, the registering officer shall refuse to register the following documents, namely:

- 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;*
- 4. any other document as the State Government may, by notification, specify.”*

The very insertion of Tamil Nadu Act 41 of 2022 dated 16.08.2022, amplifies that registration of a fraud document and certain document prohibited under law are to be refused. Refusal of registration would arise only in respect of documents presented after amendment. Therefore, in respect of documents already registered, the District Registrar cannot have



power to cancel the document, wherein the allegations of fraud or impersonation have been raised. Thus, the provisions cannot have retrospective effect, so as to confer the power on the District Registrar to adjudicate the documents, whichever is registered prior to the amendment. All those cases have to be relegated to the Competent Civil Court of Law for adjudication.

14. Rule 55 of the Registration Rules reads as under:

55. It forms no part of a registering officer's duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document; but he is bound to consider objections raised on any of the grounds stated below:-

- (a) that the parties appearing or about to appear before him are not the persons they profess to be;*
- (b) that the document is forged;*
- (c) that the person appearing as a representative, assign or agent, has no right to appear in that capacity;*
- (d) that the executing party is not really dead, as alleged by the party applying for registration; or*
- (e) that the executing party is a minor or an idiot*



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or a lunatic.

15. Amendment made in Section 22-B of the Registration Act goes along with Rule 55 of the Registration Rules. The Registering Authority, on receipt of any document for registration, if finds forgery or registered through any unauthorised person is empowered to refuse registration. The circumstances as narrated under Rule 55 of the Registration Rules also to be read along with the amended provision of Section 22-B of the Registration Act. Holistic reading of the above provisions would indicate that the Registering Authority is empowered to refuse registration if the document presented are found to be forged or impersonated."

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 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



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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.

15. In view of the aforesaid facts and circumstances, the impugned order dated 15.07.2022 passed by the first respondent is quashed. Consequently, the parties are at liberty to workout their remedies before the competent Civil Court of law in the manner contemplated. Accordingly, the



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Writ Petition stands allowed. No costs. Connected miscellaneous petition is

also closed.

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Index:Yes

Neutral Citation:Yes

Speaking order

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To

The District Registrar,
South Chennai, Fanepet,
Nandhanam,
Chennai – 35.



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S.M.SUBRAMANIAM, J.

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