



WEB COPY

W.P.Nos.21535 & 21570 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.21535 & 21570 of 2023 &
W.M.P.Nos.20905, 20907, 20942 & 20943 of 2023

- 1.P.Sengodan
- 2.A.Se.Angammal
- 3.A.S.Prabhu
- 4.M/s.Sri SPK Real Estate,
Rep. By is Managing Partner A.S.Prabhu
49, Street No.2, Brindhavan Nagar,
Koottapalli, Thiruchengode,
Namakkal District – 637 214.

... Petitioners in both W.Ps.

Vs.

- 1.Inspector General of Registration,
100, Santhome High Road, Chennai – 600 028.
- 2.The District Registrar (Administration),
District Registrar Office, Namakkal – 637 003.
- 3.The Sub Registrar,
Thiruchengode, Namakkal District.
- 4.A.S.Suganthi alias V.Suganthi

... Respondents in both W.Ps.

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records relating to



W.P.Nos.21535 & 21570 of

the orders bearing Na.Ka.No.3979/A2/2023 dated 22.06.2023 and Na.Ka.No.3969/A2/2023 dated 19.06.2023 passed by the second respondent and quash the same.

For Petitioner : Mr.T.P.Manoharan, Senior Counsel
for M/s.Fox Mandal and Associates

For Respondents 1 to 3 : Mr.T.Venkatesh Kumar,
Special Government Pleader

For Respondent 4 : Mr.M.Santhanaraman

COMMON ORDER

Two writ petitions are filed challenging the orders passed by the District Registrar (Admin), Namakkal under section 77A of the Registration Act cancelling the registered documents.

2. The petitioners state that they have presented a reconstitution deed of partnership and the same was registered under the Registration Act and subsequently, cancelled by the second respondent / District Registrar (Admin) deed document of reconstitution deed of partnership firm and the reconstitution was also cancelled.

3. At the outset, two registrations made were cancelled through two separate orders.



WEB COPY

4. The learned Senior Counsel appearing on behalf of the writ petitioners mainly contended that two separate notices were not issued to the writ petitioners for the purpose of conducting enquiry. Based on the notice issued in respect of one document, the District Registrar conducted enquiry and cancelled both the registered documents by passing separate orders and therefore, the petitioners were not provided with an opportunity to defend their case properly.

5. It is contended that the District Registrar has gone into the merits regarding the partnership details and adjudicated the dispute between the parties, despite the fact that there is an arbitration clause agreed between the parties. The District Registrar has no power to adjudicate such disputed facts with reference to the partnership deed executed between the parties. Thus, the exercise of power by the District Registrar is beyond the scope of the provisions of section 77A of the Registration Act.

6. The learned Senior Counsel further raised a ground that the parties should have been relegated to invoke the arbitration clause for adjudication of the disputed issues. Based on the arbitration clause, the District Registrar



is empowered to initiate further action. In the present case, even before invoking the arbitration clause, the District Registrar conducted an enquiry and cancelled the Registered documents and thus, the orders impugned are liable to be set aside.

7. The learned Special Government Pleader appearing on behalf of the official respondents, based on the written instructions raised an objection by stating that the petitioners have not exhausted the appellate remedy contemplated under section 77B of the Registration Act. In respect of the case of the petitioners, the District Registrar found fraud apparent on record and even there is a discrepancy / contradiction in the partnership name. Therefore, the District Registrar cancelled the registered documents. When there is a fraud apparent on record within the ambit of the Registration Act or impersonation, then the District Registrar is empowered to cancel the document by invoking section 77A of the Act. Thus, there is no infirmity in respect of the orders passed.

8. The learned counsel appearing on behalf of the contesting respondent/ complainant made a submission that there is a fraud apparent



which was established before the District Registrar, who in turn verified the previous documents and found that there is a discrepancy in the partnership name and the said act created certain implications and repercussions and therefore, the District Registrar cancelled the documents and thus, the writ petitions are liable to be rejected.

9. It is needless to state that the District Registrar is empowered to cancel the registered documents by invoking section 77A of the Registration Act. However, the District Registrar has to ascertain whether there is any fraud or impersonation apparent on record, within the scope of the provisions of the Registration Act and in the event of other disputes of civil nature or based on transactions or otherwise, then the parties are to be relegated to the competent civil court.

10. However, in the present case, the petitioners have raised several grounds on merits which cannot be adjudicated in the writ proceedings. All such disputes are to be resolved by conducting a rowing enquiry with reference to the documents. The appellate remedy has been contemplated under section 77B of the Registrtration Act. Remedy of appeal is efficacious. Exhausting the appellate remedy is the rule. Entertaining a writ petition dispensing with the appellate remedy is an exception.



WEB COPY

11. Factual findings of the original authority and the appellate authority would be of greater assistance to the High Court for the purpose of exercise of the powers of Judicial Review in an effective manner. Thus, the importance of an appellate remedy contemplated under the statute has no circumstances to undermine by the Courts.

12. The legislative intention for providing an appellate remedy in a statute is to ensure the correctness of the order passed by the original authority and such legislative intention need not be diluted by dispensing with the appellate remedy unnecessarily or in a causal manner. In the event of dispensing with the appellate remedy, in all circumstances, the very purpose and object of the appellate remedy would be defeated. More so, High Court cannot adjudicate certain disputed facts in writ proceedings.

13. The power of judicial review under Article 226 of the Constitution of India cannot be expanded for the purpose of adjudication of such disputed facts and in the event of doing so, the same would cause prejudice to either of the parties. The power of Judicial review is to ensure the process through which a decision has been taken by the competent authorities, but not the



decision itself. Therefore, the petitioners in the present case necessarily have to exhaust the appellate remedy contemplated under section 77B of the Registration Act.

14. In view of the facts and circumstances, the petitioners are at liberty to prefer an appeal in the manner contemplated under the Act.

15. With these observations, both the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

20.07.2023

nl

Index : Yes
Speaking order
Neutral Citation : Yes



W.P.Nos.21535 & 21570 of



To

1. Inspector General of Registration,
100, Santhome High Road, Chennai – 600 028.

2. The District Registrar (Administration),
District Registrar Office, Namakkal – 637 003.

3. The Sub Registrar,
Thiruchengode, Namakkal District.



WEB COPY

W.P.Nos.21535 & 21570 of



S.M.SUBRAMANIAM, J.

nl

W.P.No.21535 & 21570 of 2023

20.07.2023