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W.P.No.21681 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2023

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.21681 of 2023
and
W.M.P.No.21051 of 2023

K.Manju

... Petitioner

Vs.

1. The District Registrar,
Registration Department,
Govt. Of Puducherry,
Puducherry - 605 012.

2. Indumathi

... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari, calling for the entire records pertaining to the impugned order passed by the District Registrar, Puducherry, the 1st respondent herein vide his proceedings bearing No.4225/DRP-237/DRO/RD/2022/255 dated 17.05.2023 and quash the same.

For Petitioner : Mr.P.Suresh

For Respondents :
(for R1) : Mr.P.S.Kothanda Raman,
Government Advocate (Puducherry)
(For R2) : Mr.T.M.Naveen



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ORDER

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The writ on hand has been instituted to quash the order dated 17.05.2023, passed by the District Registrar (Puducherry).

2. The petitioner states that she is the owner of the property more fully described in the affidavit filed in support of the writ petition. The second respondent filed a complaint to cancel one settlement deed and four sale deeds executed in favour of the writ petitioner. The District Registrar conducted an inquiry under Section 68(2) of the Registration Act and cancelled the sale deed on the ground of fraud. Thus, the petitioner is constrained to move the present writ petition.

3. The main contention raised on behalf of the writ petitioner is that the District Registrar (Puducherry) has no powers to cancel the registered documents. In the absence of any such power, the District Registrar has cancelled all the documents by allowing a complaint filed by the second respondent.

4. It is brought to the notice of this Court that against the District Registrar, who passed the impugned order i.e., Mr.M.S.Ramesh, a criminal



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case was registered. That apart, the very same District Registrar i.e., M.S.Ramesh registered sale deeds in respect of the temple properties to a vast extent and those allegations are also under investigation. However, the learned Government Advocate appearing on behalf of the Government of Puducherry made a submission that no case has been registered under the Prevention of Corruption Act. When a public servant is involved in such nature of criminal cases, a case under Prevention of Corruption Act is also to be initiated. Thus, the first respondent must ensure that in the criminal case, provisions of Prevention of Corruption Act is also included for the purpose of proceeding with the criminal cases.

5. The powers of the Registering Authority under the provisions of the Registration Act, 1908, to cancel the registered documents are well enumerated by the three Judge Bench of the Hon'ble Supreme Court of India, in the case of **Satya Pal Anand vs. State of Madhya Pradesh and others**, reported in **(2016) 10 SCC 767**. The Relevant portion of said Judgment reads as under:-

“34. The role of the Sub-Registrar (Registration) stands discharged, once the documents is registered (see Raja Mohammad Amir Ahmad Khan) Section 17 of the 1908 Act deals with documents which require compulsory registration. Extinguishment deed is one



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such document referred to in Section 17 (1) (b). Section 18 of the same Act deals with documents, registration whereof is optional. Section 20 of the Act deals with documents containing interlineations, blanks, erasures or alterations. Section 21 provides for description of property and maps or plans and Section 22 deals with the description of houses and land by reference to government maps and surveys. There is no express provision in the 1908 Act which empowers the Registrar to recall such registration. The fact whether the document was properly presented for registration cannot be reopened by the Registrar after its registration. The power to cancel the registration is a substantive matter. In absence of any express provision in that behalf, it is not open to assume that the Sub-Registrar (Registration) would be competent to cancel the registration of the documents in question. Similarly, the power of the Inspector General is limited to do superintendence of Registration Offices and make rules in that behalf. Even the Inspector General has no power to cancel the registration of any document which has already been registered.”

6. Relying on the above Judgement, the learned counsel for the petitioners reiterated that the District Registrar erroneously exercised his jurisdiction by entertaining the complaint and adjudicated the issues on merits. In paragraph 36, the Hon'ble Supreme Court held as follows:-

“36. If the document is required to be compulsorily registered, but while doing so some irregularity creeps in, that, by itself, cannot result in a fraudulent action of the State Authority. Non-presence of the other party to the extinguishment deed presented by the Society before the Registering Officer by no



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standard can be said to be a fraudulent action per se. The fact whether that was done deceitfully to cause loss and harm to the other party to the deed, is a question of fact which must be pleaded and proved by the party making such allegation. That fact cannot be presumed. Suffice it to observe that since the provisions in the 1908 Act enables the Registering Officer to register the documents presented for registration by one party and execution thereof to be admitted or denied by the other party thereafter, it is unfathomable as to how the registration of the document by following procedure specified in the 1908 Act can be said to be fraudulent. As aforementioned, some irregularity in the procedure committed during the registration process would not lead to a fraudulent execution and registration of the document, but a case of mere irregularity. In either case, the party aggrieved by such registration of document is free to challenge its validity before the Civil Court.”

Therefore, the learned counsel for the petitioner submits that the impugned order is liable to be set aside.

7. Let us examine the reason given by the District Registrar, Puducherry, in the impugned order for declaring the registered documents as fraudulent deeds.

8. It is stated that the District Registrar initiated proceedings based on the circular issued by the Inspector General of Registration, Puducherry dated 05.08.2021, in connection with the execution of fraudulent



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registration of documents, as per the outcome of the direction of the Madurai Bench of Madras High Court in W.P.No.10177 of 2021 dated 17.06.2021.

9. Admittedly, there is no power provided under the Registration Act, 1908, for the District Registrar to cancel the document unlike Tamil Nadu amendment.

10. When the District Registrar has no power to adjudicate the civil rights of the parties, he ought not to have issued any such declaration declaring the registered document as “fraudulently registered deeds”. Such a power has been conferred only on the Civil Court and such declarations cannot be given based on summary proceedings.

11. In the event of declaring the document as fraudulent by the District Registrar, merely by conducting summary proceedings, it would infringe the civil rights of the parties regarding the properties and more so right to property is in the nature of constitutional right under Article 300-A of the Constitution of India and such right can be taken away only by the authority of law.



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12. The manner in which the allegation in the complaints are enquired into would apparently show that the District Registrar has exceeded his jurisdiction beyond the scope of the provisions of the Registration Act, 1908, since adjudication of the case on merits is impermissible.

13. In view of the facts and circumstances, the impugned order passed by the first respondent in proceeding bearing No.4225/DRP-237/DRO/RD/2022/255 dated 17.05.2023 is quashed. The second respondent is at liberty to approach the competent Civil Court of law for the purpose of establishing her right.

14. With these observations, the writ petition stands **allowed**. No costs. Consequently, connected miscellaneous petition is closed.

(sha)
Index : Yes
Speaking Order
Neutral Citation : Yes

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S.M.SUBRAMANIAM. J.,

(sha)

To

The District Registrar,
Registration Department,
Govt. Of Puducherry,
Puducherry - 605 012.

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