IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.22655 of 2023
&
W.M.P.No.22119 of 2023

M.P.Hilta @ AnthuvaakaisThahilta ...Petitioner

Vs.

1.The District Registrar (Administration),
Mayiladuthurai Town,
Mayiladuthurai District.

2.The Joint Sub Registrar – I,
Mayiladuthurai Town,
Mayiladuthurai District.

3.The Executive Officer,
A/m. Parimala Renganathar Temple,
Mayiladuthurai Town,
Mayiladuthurai District. ..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the first respondent in his proceedings in Na.Ka.No.332/Aa6/2023, dated 21.02.2023 and quash the same.

For Petitioner : Mr.B.Jawahar

For Respondents 1 & 2 : Mr.D.Ravichander,
Special Government Pleader

For Respondent 3 : Mr.K.Karthikeyan,
Government Advocate

ORDER

The show cause notice dated 21.02.2023, issued by the District Registrar under section 77-A of the Registration Act is under challenge in the present writ petition.

2. The petitioner states that she purchased an extent of 7847 sq. ft. land in T.S.No.1206 and an extent of 202 sq. ft. of land in T.S.No.1229/1, totally measuring an extent of 8049 sq. ft., together with building thereon, situated at Mayiladuthurai Registration District, Joint Sub Registrar – I, Mayiladuthurai. The petitioner purchased the said land through a sale deed dated 05.11.2008, registered as document No.2177/2008.

3. The learned counsel for the petitioner states that the show cause notice now issued by the District Registrar under Section 77-A of the Act is beyond his jurisdiction and therefore, the show cause notice is liable to be set aside. To substantiate the said ground, the learned counsel for the petitioner reiterated that the third respondent temple, if at all claiming any title, has to approach the Civil Court of law. Contrarily, the District Registrar cannot cancel the registered sale deed of the year 2008. It is further contended that Section 77-A of the Act cannot have retrospective effect, so as to cancel the document which is registered, prior to the amendment made with effect from 16.08.2022.

4. Defending the above grounds, the learned Special Government Pleader contended that no doubt, Section 77-A was inserted by T.N. Act 41 of 2022 with effect from 16.08.2022. However, in the present case, Section 77-A is to be read in consonance with the Section 22-A of the Act, since the third respondent temple is claiming right over the property. The prospective and retrospective application of Section 77-A is also to be interpreted in the context of other provisions of the Registration Act. The third respondent temple has already raised an objection for registering the property belonging

to the temple. The subject property as per the revenue records belonged to the temple and therefore, in the present case, the temple property has been fraudulently alienated by the vendor to the petitioner in his favour.

5. The learned Government Advocate made a submission that the vendor of the petitioner was a tenant under the temple administration and in violation of the lease condition, he had fraudulently alienated the property in favour of the writ petitioner. Thus, the document itself is void as against the third respondent temple.

6. The amended provisions namely Sections 22-A, 22-B and 77-A are to be interpreted with reference to the object sought to be achieved under the Act.

7. Section 22-A was inserted by the T.N. Act 28/2012 dated 21.06.2012, with effect from 20.10.2016. Under Section 22-A, the Registering Authority is empowered to refuse to register certain documents, if there is an objection from the religious institutions and by the Government. Even in the absence of any such objections, if the Registering

authority has knowledge about the property which is belonging to the religious institutions or the Government, he is empowered to refuse registration. At the outset, knowledge of the registering authority under Section 22-A would be sufficient to refuse registration in respect of Government properties and the properties belonging to the religious institutions.

8. An important question to be answered is, whether the document registered, prior to the insertion of Section 22-A , 22-B are liable to be cancelled by invoking the powers under Section 77-A of the Registration Act.

9. Before considering the issue in this regard, it is relevant to keep the principles laid down by the Hon'ble Supreme Court of India in the case of ***R.Rajagopala Reddy Vs. Padmini Chandrasekharan*** reported in ***1995 (2) SCC 630***. The three Judges Bench of the Hon'ble Supreme Court of India dealt with the similar issue with reference to the provisions of the Benami Transactions (Prohibition) Act, 1988, and the relevant portions extracted as under:

"11. ...It is, however, true as held by the Division Bench that on the express language of Section 4(1) any right inhering in the real owner in respect of any property held benami would get effaced once Section 4(1) operated, even if such transaction had been entered into prior to the coming into operation of Section 4(1), and henceafter Section 4(1) applied no suit can lie in respect to such a past benami transaction. To that extent the section may be retroactive. To highlight this aspect we may take an illustration. If a benami transaction has taken place in 1980 and a suit is filed in June 1988 by the plaintiff claiming that he is the real owner of the property and defendant is merely a benamidar and the consideration has flown from him, then such a suit would not lie on account of the provisions of Section 4(1). Bar against filing, entertaining and admission of such suits would have become operative by June 1988 and to that extent Section 4(1) would take in its sweep even past benami transactions which are sought to be litigated upon after coming into force of the prohibitory provision of Section 4(1); but that is the only effect of the retroactivity of Section 4(1) and nothing more than that. From the conclusion that Section 4(1) shall apply even to past benami transactions to the aforesaid extent, the next step taken by

the Division Bench that therefore, the then existing rights got destroyed and even though suits by real owners were filed prior to coming into operation of Section 4(1) they would not survive, does not logically follow.

13. .... A conjoint reading of Section 82 of the Indian Trusts Act and Section 6(b), (d) and (e) of the General Clauses Act clearly enjoins that if suits are pending wherein the plaintiffs have put forward claims under the then existing Section 82 of the Indian Trusts Act such proceedings are to be continued by assuming that the repealing of Section 82 of the Indian Trusts Act has not been effected in connection with such pending proceedings.
... Even otherwise, it is now well settled that where a statutory provision which is not expressly made retrospective by the legislature seeks to affect vested rights and corresponding obligations of parties, such provision cannot be said to have any retrospective effect by necessary implication.

17. ...

"The presumption against retrospective operation is not applicable to declaratory statutes. As stated in Craies and approved by the Supreme Court:

> *'For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a preamble, and also the word "declared" as well as the word enacted.'*

But the use of the words 'it is declared' is not conclusive that the Act is declaratory for these words may, at times be used to introduce new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is to explain an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language 'shall be deemed always to have meant' is declaratory, and is in plain terms retrospective. In the absence of clear words

> *indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law when the Constitution came into force the amending Act also will be part of the existing law."*

19. Qua reason 4, we may refer to our discussion earlier that the words "no suit shall lie" as found in Section 4(1) and "no defence based on rights in respect of property shall be allowed" as found in Section 4(2) have limited scope and operation and consequently this consideration also cannot have any effect on the conclusion which can be reached in this case. As to reason 5, it is observed that even though suit may include appeal and further appeals in the hierarchy, at different stages of the litigation, Section 4(1) and Section 4(2) cannot be made applicable to these subsequent stages as already seen by us earlier. Otherwise, they would cut across the very scheme of the Act.

21. As a result of the aforesaid discussion it must be held, with respect, that the Division Bench erred in taking the view that Section 4(1) of the Act could be pressed in service in connection with suits filed prior to coming into operation of that section. Similarly the view that under Section 4(2) in all suits filed by persons in whose names properties are held no defence can be allowed at any future stage of the proceedings that the properties are held benami, cannot be sustained. As discussed earlier Section 4(2) will have a limited operation even in cases of pending suits after Section 4(2) came into force if such defences are not already allowed earlier. It must, therefore, be held, with respect, that the decision of this Court in Mithilesh Kumari case[1] does not lay down correct law so far as the applicability of Section 4(1) and Section 4(2) to the extent hereinabove indicated, to pending proceedings when these sections came into force, is concerned."

10. Let us now consider the legislative intention and the spirit of the amendments made under Section 22-A, 22-B and 77-A of the Registration Act. Section 22-A was inserted by T.N. Act 28 of 2012, with effect from 20.10.2016. Section 22-B was inserted by T.N. Act 41 of 2022, with effect from 16.08.2022. Section 77-A was also inserted by T.N. Act 41 of 2022, with effect from 16.08.2022.

11. Section 22-A provides power to the registering authority for refusal to register certain documents. Undoubtedly, such power is possible to be exercised prospectively. Thus, the very purpose and object of the insertion of Section 22-A in the Act is to prevent registration of document in respect of the properties belonging to the Government, local authorities, religious institutions etc.

12. Section 22-A(2) of the Act prevents registration of house sites without approval from the Planning Authority concerned under the relevant provisions of the statutes. Due approval from the Planning Authority is mandatory for conversion of a land as house sites and to register the same. Such powers also can be exercised prospectively.

13. Section 22-B of the Act deals with refusal to register forged documents and the documents prohibited in law. The registering authority is empowered to refuse the documents to register if it is found to be forged. Such powers can be exercised prospectively. Certain prohibited documents, if presented, can also be refused by the registering authority for registration.

Holistic reading and understanding of Sections 22-A and 22-B amplifies that the document presented relating to the registration of Government properties, properties belonging to the religious institutions, fraudulent document and documents prohibited under the law can be refused. Thus, exercise of powers by the registering authority under Section 22-A and 22-B would be possible prospectively.

14. Section 77-A of the Act empowers the registering authority to cancel the registered document in certain cases. Accordingly, the Registrar, either sou moto or on the basis of a complaint received from any person, is of the opinion that the registration of a document was made in contravention to Section 22-A or Section 22-B, shall issue a notice to the executant and all the other parties to the document and parties to the subsequent documents, if any, and all other persons, who are in the opinion of the Registrar being affected by the cancellation of the document to show cause as to why the registration of the document shall not be cancelled. By conducting a summary proceedings, the Registrar may cancel the document registered on any one of the grounds stipulated under Section 77-A of the Act.

15. Section 77-A of the Act indicates its application with prospective effect. There is no explicit expression under Section 77-A of the Act to comply with the provisions with retrospective effect, so as to cancel the documents which were registered prior to the amendment and insertion of Section 77-A of the Registration Act. Thus, generally Section 77-A of the Act is to be applied prospectively in respect of the documents registered between the individuals.

16. However, a distinction is to be necessarily drawn in respect of the document registered between the private parties and the documents registered against the Government properties, properties belonging to the religious institutions and the local authorities. The documents registered between the private parties, in respect of their private lands / properties, cannot be compared with the public / Government properties or the properties belonging to the religious institutions, which all are of public in character. Thus, it is imminent for the High Court to apply the Principles of Golden Rule of Interpretation, so as to ensure that the very purpose and object of the amendment and insertion of Section 77-A of the Act has been

effectively complied with reference to the private properties, Government properties and the properties belonging to the religious institutions. In this context, with assistance from the findings of the Hon'ble Supreme Court of India, in the case of ***R.Rajagopala Reddy Vs. Padmini Chandrasekharan*** cited (supra), retro-active application is to be adopted with reference to Section 77-A of the Registration Act for cancelling the document relating to the Government properties / Public properties and the properties belonging to the religious institutions. In respect of such public properties, the amended Section 77-A is to be applied retrospectively since those documents are of public character and infringing the right of “We People of India” under the Indian Constitution. Thus, retrospective application of Section 77-A of the Registration Act is conferred only with reference to the documents of public character falling under Section 22-A and 22-B of the Act.

17. Even before the amendment and insertion of Section 22-A, 22-B and 77-A of the Registration Act, law prohibits dealing of the Government properties by the private individuals without the knowledge or permission of the Government or the religious institutions and in violation of the

provisions of various Statutes including the special enactments, which all are in force. Several enactments and Rules are in force to protect the Government / Public properties and the properties belonging to the religious institutions. For the religious institutions, Hindu Religious and Charitable Endowments Act, Wakf Act etc., are in force. Several other enactments are in force to protect the Government properties. The provisions of such special statutes are prohibiting the private persons to deal with the Government / public properties and the prosperities belonging to the religious institutions without the approval of the competent authorities. Thus, registration of private properties between two private individuals at no circumstances be compared with the Government / Public properties and the properties belonging to the religious institutions. Thus, the private individuals registering documents pertaining to the private properties are entitled to invoke Section 77-A of the Act prospectively, but in respect of Public / Government properties and the properties belonging to the religious institutions, Section 77-A shall be exercised retrospectively by the competent authorities under the Act. The reason being registration of Public / Government properties and the properties belonging to the religious institutions are already prohibited even before the insertion of Section 77-A, under various special enactments applicable to the Government properties and the properties belonging to the religious institutions.

18. The registration of documents regarding private properties between private individuals, if infringes the civil rights of any third party or between the parties, any of the aggrieved parties may approach the competent authority under Section 77-A of the Act for cancellation of documents only prospectively and in respect of the documents which were registered after insertion of Section 77-A of the Act. Those documents registered prior to the amendment cannot be cancelled as there was no power vested on the competent authorities under the Registration Act to cancel the documents. Thus, the aggrieved persons has to approach the competent Civil Court of law for the purpose of declaring such documents null and void or otherwise.

19. Two situations are contemplated for the purpose of invoking Section 77-A of the Act by the competent authorities. Document registered

fraudulently or by impersonation, if established, is liable to be cancelled under Section 77-A of the Act. Fraud in common parlance cannot be a ground to cancel the registered documents. Fraud in the context of the provisions of the registration Act alone provides power to the authority to cancel the document under Section 77-A of the Act. Thus, violation of provisions of the Registration Act during the process of registration, if identified in the context of fraud or impersonation, would alone provide cause for invoking Section 77-A of the Act, and in respect of the fraud in common parlance, the parties have to be relegated to approach the competent Court of law.

20. Regarding the documents registered prior to the insertion of Section 77-A in the Registration Act, the parties have to be relegated to approach the competent Court of law, since prior to the insertion of Section 77-A of the Act, the competent authorities were not vested with the power to cancel the documents registered. However, in respect of the Government / public properties and the properties relating to the religious institutions are concerned, registration of those documents in violation of the special

enactments governing those properties were not taken into consideration at the time of registration. Thus, in respect of those public documents, retroactive implementation of Section 77-A is to be permitted. However, such retroactive application cannot be extended in respect of the private documents relating to the private properties. In the event of conferring such power, an anomalous situation would be created and lakhs and lakhs of documents registered prior to the insertion of Section 77-A would be brought under the scrutiny of the competent authorities under Section 77-A of the Act. More so, such registrations are done between the private parties on certain circumstances, which cannot be now gone into after a lapse of several years. Thus, those issues are to be decided only through the competent Court of law.

21. In the present case, the third respondent temple has already issued a notice under Section 78 of the Hindu Religious and Charitable Endowment Act in a proceeding dated 12.12.2022. If at all, the petitioner claims title over the property, he has to approach the competent Court of law. The competent authorities under the Hindu Religious and Charitable

Endowment Act is empowered to initiate action to evict the illegal occupants by following the procedures as contemplated under the Hindu Religious and Charitable Endowment Act.

22. In view of the facts and circumstances, the District Registrar, in the present case, is empowered to conduct an inquiry as contemplated under Section 77-A of the Registration Act to find out whether the registration made in respect of the properties belonging to the religious institutions are falling under Section 22-A of the Act and if so, by affording opportunity to all the parties, the prohibited documents registered may be cancelled by following the procedures.

23. With the above findings, the writ petition stands **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

02.08.2023

nl/sha
Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

S.M.SUBRAMANIAM, J.

nl/sha

To

1.The District Registrar (Administration),
Mayiladuthurai Town,
Mayiladuthurai District.

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