IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.25581 of 2022 &

WMP.Nos.24578 &24579 of 2022

S.Raja ... Petitioner

Vs

1. The Secretary,
Commercial Taxes and Registration [H] Department,
Ezhilagam, Chennai – 600 005.

2. The Inspector General of Registration,
Office of the Inspector General of Registration,
100, Santhome High Road, Mylapore, Chennai – 600 004.

3. The Deputy Inspector General of Registration,
Integrated Complex for Commercial Tax & Registration Department,
Panepet, Nandanam, Chennai – 600 035.

4. The Assistant Inspector General of Registration,
District Registrar [Administration], South Chennai. ... Respondents

Prayer:- Writ Petition filed, under the Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the order dated 10.08.2022 in Na.Ka.No. 13846 / E2 / 2022 passed by the 4th respondent and consequential suspension order by the 1st Respondent in G.O (2D) No. 71 dated 30.08.2022 and quash the same and further direct the 1st respondent to revoke the suspension order dated 30.08.2022.

For petitioners : Mr.C.Manisankar, Sr.Counsel
Mr.Anantharangan

For Respondents : Mr.P.Balathandayutham
Special Government Pleader

ORDER

This Writ Petition has been filed to quash the impugned order dated 10.08.2022 passed by the fourth respondent and consequential suspension order by the first respondent in G.O (2D) No.71 dated 30.08.2022 and direct the first respondent to revoke the suspension order dated 30.08.2022.

2. The writ petitioner has been placed under suspension as per the impugned Order dated 30.08.2022 in G.O.Ms.2D 71 of the first respondent based on the letter of the Inspector General of Registration dated 10.08.2022. The said suspension Order has been passed pursuant to the enquiry report of the District Registrar dated 10.08.2022 in an enquiry conducted in respect of

certain transaction relating to the Survey No.167, 167[2] and 183 and certain documents have been registered in respect of those survey numbers and in the enquiry it is found that despite there was an Order of attachment passed by the Debt Recovery Tribunal, suppressing those attachments, the documents have been registered by the persons on presentation of those documents. Therefore, action is sought against the registering authority who was in-charge at the relevant point of time . After inquiry, it is recommended that a departmental proceedings will be initiated against the authorities who are in-charge while registering those documents,. Pursuant to the same now suspension Order has been passed, which has been challenged in the present Writ Petition.

3. The learned Senior Counsel appearing for the petitioner submitted that the very impugned Order dated 10.08.2022 which is passed for passing an Order of suspension placing the petitioner under suspension in G.O.Ms.No.2 [D] No.71, itself has been quashed by this Court in a Writ Petition in W.P.No.34867 of 2022 by an Order dated 23.12.2022. In such view of the matter, once the very foundation itself is gone, the impugned Order cannot be sustained in the eye of law.

4. Whereas, the learned Special Government Pleader appearing for the respondents submitted that now the charge memo has been issued and they may be permitted to complete the enquiry in this regard. Further, it is the contention of the respondents in the counter that if the writ petitioner has verified the title properly, he ought not have registered and the documents and non verifying the relevant records violates the circular No.18233 dated 08.11.2013. Hence, opposed the Writ Petition.

5. The very crux of the charge is that the petitioner has not made proper enquiry with regard to the title while registering certain documents presented by the executant. As rightly pointed out by the learned Senior Counsel appearing for the petitioner, the very action itself has been initiated on the basis of the initial finding recorded in an enquiry report dated 10.08.2022. It is very curious to note that the said inquiry report itself has been quashed by this Court in W.P.No.34867 of 2022 dated 23.12.2022. Therefore, this Court is of the view that when the very foundation itself is not there to take action, now the Registration Department cannot continue the disciplinary proceedings on the basis of the findings recorded in the so called enquiry report dated 10.08.2022, since, it has already been quashed by this Court.

6. Be that as it may. The charge against the petitioner is that he has not done proper verification of the title and made an enqiry as per the circular of the year 212, issued by the Inspector General of Registration. In this regard, this Court is of the view that such a circular cannot over ride the substantial provision of law. This aspect has been settled in **N.Ramayee V. Sub-Registrar, Registration Department 2020 (6) CTC 697** reported in **2020 (6) CTC 697,** wherein this Court has held that the registering officer cannot go into title of the document presented. However, they can demand correction of mistakes found in the document. While refusing to registration, as per 162 of Registration Rules, the reason has to be recorded by the registering authority and it has been further held that except the documents filed within the ambit of Section 22[A] of Tamil Nadu Registration Act, the Registrar has no power to refuse to register a document.

7. It is to be noted that merely because successive transfer has been created in respect of one particular survey number, the registering authority cannot refuse to register the document and it is the risk of the purchaser. Therefore, any subsequent rights created, the same will be subject to the rights already created in respect of the same property. Hence, the very

initiation of the departmental proceedings against the petitioner, in view of this Court, is not sustainable in the eye of law, when this Court has already held that such a circular will not over ride the substantial provision of law, the same circular cannot be put against the officer, who registered the document. In such view of the matter, the impugned Order is liable to be quashed.

8. Accordingly, this Writ Petition is allowed and the impugned Order of the first respondent dated 30.08.2022 is quashed. No costs. Consequently, connected miscellaneous petitions are closed.

22.09.2023

Index:Yes/No

Neutral Citation : Yes/No

vrc

To,

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N.SATHISH KUMAR, J.

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