



W.P.No.15457 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.15457 of 2017

and

W.M.P.Nos.16742 & 16743 of 2017

K.Kanchana

... Petitioner

Vs.

1. Union of India,
Union Territory of Puduchery,
Rep.by the Secy to Govt,
Dept. of Revenue & Disaster Management,
Govt of Puducherry, Puducherry - 605 001.

2. The Inspector General of Registration,
Govt. of Puducherry, Puducherry - 605 001.

3. The District Registrar,
Registration Department,
Govt. of Puducherry,
Puducherry - 605 001.

4. The Sub - Registrar,
Office of the Sub - Registrar,
Oulgaret, Puducherry.

5. P.Gomathi

6. G.Sakthivel

7. Sankar

... Respondents



W.P.No.15457 of 2017

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari, calling for the records relating to the order dated 21.11.2015 made in D.R.P.No.21 / 2015 / 1367 on the file of the 3rd respondent and the Registration of the said order dated 21.11.2015 as Doc. No.26445 / 2015 on the file of the 4th respondent and quash the same.

For Petitioner	: Mr.T.P.Manoharan, Senior Counsel M/s.K.P.Jotheeswaran
For Respondents	:
(for R1 to R4)	: Mr.P.S.Kothanada Raman, Govt. Advocate (Puducherry)
(for R5)	: Not ready in Notice
(for R6 to R7)	: No Appearance

ORDER

The order passed by the 3rd respondent in proceeding dated 21.11.2015, cancelling the Sale Deed, Settlement Deed and Power of Attorney is under challenge in the present writ petition.

2. The petitioner states that based on the Partition Deed dated 03.11.1975, a Power of Attorney Deed, Settlement Deed and Sale Deed were executed. The fifth respondent filed a complaint before the third respondent / District Registrar for cancellation of all the three documents



W.P.No.15457 of 2017

based on the circular issued by the Second respondent / Inspector General of Registration on 18.3.2015.

3. The learned Senior Counsel appearing on behalf of the petitioner mainly contended that the second respondent is not vested with the power to issue any such circular for cancellation of documents and no power has been conferred to him under the Registration Act. Thus, the circular cannot be the basis for the purpose of cancelling the Settlement Deed, Sale Deed and Power of Attorney Deed.

4. The issue raised in this regard has been considered by this Court in W.P.No.2092 to 2023 dated 14.06.2023 and the relevant paragraphs are extracted herein under :

“9. 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



W.P.No.15457 of 2017

17 of the 1908 Act deals with documents which require compulsory registration. Extinguishment deed is one 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.”



W.P.No.15457 of 2017

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10. Relying on the above Judgement, the learned counsel for the petitioners reiterated that the District Registrar erroneously exercised 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 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



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W.P.No.15457 of 2017

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.

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

12. 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, only in connection with the execution of fraudulent registration of documents, as per the out come of the direction of the Madurai Bench of Madras High Court in W.P.No.10177 of 2021 dated 17.06.2021.

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

14. However, the learned Additional Government Pleader (Puducherry) states that an enquiry has been undertaken pursuant to the rules in force. Be that as it may be, the District Registrar



W.P.No.15457 of 2017

has analyzed the facts by considering the documents filed by the parties. It is recorded that the 1st opposite party before the District Registrar admitted the fact regarding the creation of fraudulent documents in favour of the 2nd opposite party namely Tmt.Kamala Kumari Meera @ Meera for an extent of 1 Are and 11 Centaire, which he had sold the whole extent in proper, but Thiru.Sathiyamurthy, has no right or authority to execute a sale deed vide Document No.3642 of 2007 dated 21.06.2007, in favour of Tmt.Malar W/o.Thiruvengadam for 3,600 Sq.ft, which is nothing but a fraudulent registration. Based on such wrong sale deed subsequent sale deed in Document No.5593 of 2012 dated 13.12.2012, which also registered in the Sub-Registry, Oulgaret, Puducherry, also remains as a fraudulent registration.

15. Perusal of the findings made by the District Registrar would reveal that he had gone into the details of the documents presented between the parties and considered the rights of the parties to execute documents.

16. The constitutional Courts have repeatedly held that the registering authority is not empowered to go into the civil rights of the parties. The competent Civil Court of law alone is empowered to declare the civil rights and the registering authority has no jurisdiction or authority to adjudicate the disputed facts regarding the civil rights of the parties in the present case.

17. The District Registrar has gone into the allegations set out in the complaint regarding the rights of the parties. The



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W.P.No.15457 of 2017

findings amplify that Thiru.Sathiyamurthy S/o. Purushothaman has no right or authority to execute subsequent sale deed referring the power deed.

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19. Fraud or impersonation in the context of the Registration Act, 1908, is distinguishable. For fraud in the common parlance have wider connotation and meaning and the said general meaning of “fraud” cannot be adopted in respect of the documents registered under the Registration Act.

20. In the event of fraud being committed by any person, threefold actions are provided for an aggrieved person. Firstly, an aggrieved person may file a complaint to prosecute the persons under the Criminal Law. Secondly, such person is entitled to approach the Civil Court for establishing his civil rights.

21. Thirdly, he can approach the competent authorities for cancelling the registered documents. As far as the administrative action under the provisions of the Registration Act is concerned, the definition of fraud cannot be expanded for the purpose of adjudication of civil disputes.

22. Only in the event of fraud apparent on record, the registering authority can interfere but not otherwise. Therefore, the registering authority is not empowered to usurp the power of the Civil Court. Such exercise of powers act akin to the powers of the Civil Court. Even if there is any iota of doubt regarding civil rights, the parties are to be relegated to the Civil Court of Law for



W.P.No.15457 of 2017

WEB COPY

the purpose of establishing their rights.

23. In the present case, the question arises by declaring a registered document as fraudulently registered deeds, what would be the consequence.

24. The learned Additional Government Pleader (Puducherry) appearing on behalf of the Government of Puducherry states that the documents were not cancelled. Therefore, the petitioner has not established any grievances. However, the impugned order declares that the documents registered are fraudulently registered deeds.

25. Such declaration has got civil consequences, as the parties are benefited from and out of such declaration and may claim certain rights in respect of the properties. Therefore, the power exercised by the Registering Authority for issuing such declaration is to be considered by this Court.

26. 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.

27. In the event of declaring the document as fraudulent



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W.P.No.15457 of 2017

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 of constitutional right and Article 300 A of the Constitution of India gets violated, since such right can be taken away only by the authority of law.

28. 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.

29. In view of the facts and circumstances, the order impugned is without jurisdiction. Consequently, the order issued by the District Registrar in proceeding No.4225/P-85/DRP/2022/1221/108 dated 03.11.2022 is quashed. Accordingly, the writ petition stands allowed.”

5. In view of the judgment cited supra, the impugned order in the present writ petition has got no legs to stand on. Accordingly, the impugned order passed by the third respondent in D.R.P.No.21 / 2015 / 1367 dated 21.11.2015 and by the fourth respondent as Doc. No.26445 / 2015 dated 21.11.2015 , are quashed.



W.P.No.15457 of 2017

WEB COPY

6. Accordingly the writ petition stands **allowed**. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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26.07.2023

Index : Yes

Speaking Order

Neutral Citation : Yes

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WEB COPY



W.P.No.15457 of 2017

S.M.SUBRAMANIAM. J.,

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W.P.No.15457 of 2017

26.07.2023