



W.P.No.32427 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2023

CORAM

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.P.No.32427 of 2023

Rajathi

... Petitioner

Vs.

The Sub-registrar
Sub-registrar Office
Thathagapatti
Salem, Tamil Nadu 636 010

... Respondent

PRAYER: The writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for records of the Impugned Refusal Check Slip issued by the respondent in Refusal Number RFL / Thathagapatti/61/2023 dated 31.10.2023 and quash the same as illegal and consequently direct the respondent to register and release the Settlement Deed dated 28.10.2023 bearing temporary registration No.TP/162614859/2023, presented on the file of the respondent authority.

For Petitioner : Mr.S.Dinuprashanth

For Respondents : Mr.Yogesh Kannadasan



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ORDER

The writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for records of the Impugned Refusal Check Slip issued by the respondent in Refusal Number RFL / Thathagapatti/61/2023 dated 31.10.2023 and quash the same as illegal and consequently direct the respondent to register and release the Settlement Deed dated 28.10.2023 bearing temporary registration No.TP/162614859/2023, presented on the file of the respondent authority.

2.Learned counsel for the petitioner submitted that the original sale deed bearing No.2592 of 1984 went missing prior to the year 2005. Having lost the original sale deed, the petitioner approached the respondent authority and applied for issuance of certified copy of the lost document. The respondent authority, after verification of the same, issued the certified copy of the sale deed bearing No.C.No.629 of 2005 dated 05.10.2005. When the petitioner herein wanted to settle the property in favour of her son, the respondent authority passed the impugned refusal check slip, despite the information given to the respondent that



the original sale deed was lost in the year 2005 and produced the certified copy.

It is further submitted that the petitioner is an aged lady and she wants to settle down her property in favour of her son. The learned counsel also relied upon the decision of this Court in W.P.No.2758 of 2023 in The Federal Bank Ltd., Vs. The Sub Registrar and another, dated 08.02.2023, wherein this Court has struck down the first proviso to Rule 55A(i) of the Registration Rules. The learned counsel stated that in paragraph No.23, this Court has specifically held as follows;

"23. If the original is lost, it is not understood as to why a certified copy of the document obtained from the file of the concerned SRO cannot be produced? When the best evidence is not available, the best course is to produce certified copy which is the next best available alternative. Instead, the third proviso requires the executant to obtain a non-traceable certificate and effect paper publication."

Accordingly, the learned counsel for the petitioner prays for quashing of the impugned refusal check slip.

3.Rule 55(A)(i) of the Registration Rules is very clear that while producing any document for registration, the Registrar shall not register the same, unless the



presentant produces the previous original deed by which the executant acquired right over the subject property and an Encumbrance Certificate pertaining to the property obtained within ten days from the date of presentation. There are four provisos to Rule 55(A)(i). The above said judgment only to the first proviso and the aforesaid Rule has been struck down by this Court, but other provisos are still in force in the statute. When the learned counsel fails to furnish the facts as to who has lost the original sale deed and the place of missing etc., he need not follow the third proviso.

4. It is a settled proposition of law that if any document is found to be missing, then the owner of the document has to approach the Police. If the Police is unable to trace the lost document, they will issue a non-traceable certificate. To obtain non-traceable certificate from the Police, there are certain procedures to be followed, the details of the document and date and place of missing of the document has to be published in any one of the vernacular newspaper to trace the lost document effectively. Only after completing the above said formality, the non-traceable certificate can be obtained from the Police. The executant along with that certificate and the registration copy of the prior document, shall



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approach the Registrar for registration.

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5. Admittedly, the petitioner neither produced the previous original deed nor the Non traceable certificate obtained from the competent authority. Therefore, third proviso to Rule 55(A)(i) has not been complied with. Hence, the petitioner is not entitled to the relief as she has sought for and the citation referred to by the learned counsel for the petitioner is not applicable to the present case on hand.

6. With the above observation, this writ petition stands dismissed. However, it is open to the petitioner to comply with the third proviso to Rule 55(A)(i) of Tamil Nadu Registration Rules and to re-present the document. If the document is re-presented for registration before the Registrar, after complying the third proviso, the Registrar concerned may consider the same, if the same is otherwise in order. No costs.

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Index : yes / no
Neutral citation



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P.VELMURUGAN, J.

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To

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