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W.P.No.218 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.218 of 2023 and
W.M.P.No.206 of 2023

S.Varadharajan

... Petitioner

Vs

1.The District Registrar (Admn.)
District Registrar Office
No.1, Thiruvannamalai Road,
Krishnagiri – 635 001.

2.G.Palanisamy

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Prohibition forbearing the 1st respondent from proceeding with the complaint of the 2nd respondent dated 13.08.2022.

For Petitioner : Mr.T.Mohan

for Mr.P.Muthusamy

For Respondents : Mr.Yogesh Kannadasan

Special Government Pleader for R1

ORDER

The prayer sought for herein is for a Writ of Prohibition forbearing the 1st respondent from proceeding with the complaint of the 2nd respondent dated 13.08.2022.



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2. Mr.T.Mohan, learned counsel appearing for the petitioner has projected the petitioner's case to the following effect:

(i) That there are two documents which had already been registered before the concerned Registering Authority viz., Document Nos.3106/2007 and 2753/2015 on the file of the Uthangarai Sub Registrar Office, Krishnagiri District.

(ii) In respect of these documents, the 2nd respondent had given a complaint to the 1st respondent District Registrar under Section 77-A of the Registration Act, 1908 to conduct an enquiry and to cancel those documents as fraudulent or forged documents.

(iii) Entertaining the said complaint, the 1st respondent had issued a notice on 10.10.2022 challenging the said notice seeking a writ of prohibition restraining the 1st respondent from entertaining such application or complaint from the 2nd respondent to enquire the matter under Section 77-A of the Act, the petitioner has moved the present writ petition with the aforestated prayer.



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3. He would also submit that, the reason for moving the present writ petition seeking writ of prohibition against the 1st respondent is that, primarily in respect of the documents i.e. Document Nos.3106/2007 and 2753/2015 already a proceedings had been issued by the 1st respondent viz., the District Registrar, Krishnagiri by order dated 24.02.2016 whereunder the District Registrar had directed the private respondents, who set the law in motion to file the complaint against those documents, to approach the Civil Court to get their relief as no orders could be passed by the 1st respondent.

4. He has also pointed out that, subsequently in respect of Document No.3106/2007 along with Document No.2753/2015 as well as Document Nos.625/2001, 678/2001 and 2116/2006 yet another complaint had been given by private parties before the 1st respondent who having enquired the matter had passed an order on 24.05.2019 where also the findings given by the 1st respondent was that, as per the notification or circular issued by the Inspector General of Registration, it cannot be declared that those documents are fraudulent documents as such a power to cancel those documents as fraudulent is not vested with the District Registrar concerned, the parties can be relegated to go before the Civil Court to establish their right.

5. The learned counsel also invited the attention of this Court about



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the subsequent order passed by the I.G. of Registration dated 13.08.2021

where Document No.678/2001 was dealt with under Section 68(2) of the Registration Act where also a same view had been expressed by the I.G. of Registration and ultimately the District Registrar had passed an order stating that, the veracity of the document which was in question whether it is a forged document or fraudulent document can be gone into only by the Civil Court, therefore the parties can be relegated to go before the Civil Court and there was no ground to take action under Sections 82 and 83 of the Registration Act, hence accordingly the said order was passed on 13.08.2021 by the District Registrar concerned.

6. As against which appeal had been filed by the private parties that appeal also is pending before the I.G. of Registration.

7. When that being the position, already three proceedings have been issued by the District Registrar concerned and against the last such order passed by the District Registrar, when appeal was filed by the aggrieved party, that appeal also having been entertained, which was pending before the I.G. of Registration, at this juncture once again yet another complaint has



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come in respect of the very same documents against the petitioner before the 1st respondent and he, instead of rejecting the said complaint at the threshold, having entertained the same, has issued a summon, which is impugned herein, to the petitioner to appear before the 1st respondent for enquiry within the meaning of Section 77-A of the Act. Therefore according to the learned counsel for the petitioner, the 1st respondent is to be prohibited from exercising his power under Section 77-A of the Act in view of the peculiar facts and circumstances as three orders have already been passed in respect of the very same documents, therefore once again such a complaint even under Section 77-A of the Act cannot be entertained, therefore on that ground the learned counsel for the petitioner seeks indulgence of this Court.

8. Heard Mr.Yogesh Kannadasan, learned Special Government Pleader appearing for the 1st respondent and in view of the order going to be passed in this writ petition, notice to the 2nd respondent is hereby dispensed with.

9. The learned Special Government Pleader for the 1st respondent



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would submit that, those three orders passed by the District Registrar at the earlier occasions were made only prior to the amendment made in the Registration Act that has come into effect only from 16.08.2022 under which some Sections have been inserted viz., Sections 22-A, 22-B, 77-A as well as 77-B of the Act.

10. In view of the said amendments, whatever the documents which were presented before the Registering Authority can be rejected on the ground that, if it is not registerable within the meaning of Section 22-A and 22-B of the Act and against such Sections 22-A and 22-B, if any registration had already been done, especially under Section 22-B which can be treated as a fraudulent or bogus document, the aggrieved party can very well approach the District Registrar under Section 77-A of the Act and if such a complaint is given to cancel the document as a fraudulent or bogus one, such complaint can be entertained and enquired by the 1st respondent in whose favour the power is vested with as a District Registrar under Section 77-A of the Act. Therefore the learned Special Government Pleader would submit that, in view of the amendment having been made when such a complaint has come against those documents to declare that as a fraudulent document



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and a consequential direction to the Registering Authority to cancel those documents, the 1st respondent in exercising of the power under Section 77-A of the Act had issued the summons, therefore the said summon cannot be questioned and if at all the petitioner has got a presentable case and has got a ground to oppose the third parties or the 2nd respondent that can be taken before the 1st respondent in the 77-A proceedings and not before this Court invoking the extraordinary jurisdiction of Article 226 of the Constitution, he contended.

11. I am in full agreement with the said submissions made by the learned Special Government Pleader for the 1st respondent in this matter.

12. Insofar as the three proceedings already been issued, which have been heavily relied upon by the learned counsel for the petitioner is concerned, those three proceedings have been issued where the orders passed by the 1st respondent i.e. the then District Registrar concerned, such kind of power to declare a document as fraudulent one and to investigate those documents, the District Registrar concerned is not empowered at that time and therefore in those cases the parties are relegated to go before the



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Civil Court concerned especially to get a declaration to that effect.

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13. As against which even though appeal filed before the I.G. of Registration having been entertained and it is pending, in view of the amendment made subsequently that has come into effect from 16.08.2022 under which Section 77-A has been inserted which has empowered the District Registrar concerned to entertain such a complaint under Section 77-A of the Act from any aggrieved party against any registered document to declare it as a fraudulent document and consequently to give a direction to the Registering Authority to cancel those documents, on that ground that such kind of complaint can very well be entertained by the District Registrars within the meaning of Section 77-A of the Act that is in fact the import of Section 77-A and that is also the intention of the legislature who thought it to bring such an amendment to the Registration Act first time in the Country.

14. Having taken note of all these developments, this Court feels that if at all the petitioner has got a presentable case and has got a ground to



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oppose the prayer sought for by the 2nd respondent before the District Registrar under Section 77-A of the Act by citing the proceedings as referred to above already passed in the very same documents those defence can very well be taken by the petitioner and those documents can be filed by the petitioner before the 1st respondent District Registrar in the 77-A proceedings and if those defence are taken and these proceedings are filed before the 1st respondent, he can very well take into account and having considered the said ground to be taken by the petitioner, the needful can be undertaken by the 1st respondent by deciding the said complaint given by the 2nd respondent within the meaning of Section 77-A of the Act. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

It is open to the petitioner to file all those proceedings referred to above, which have already been passed by the 1st respondent in respect of the very same documents along with some other documents and the petitioner can also take such a defence before the 1st respondent that in respect of the aforesaid documents in question already a decision has been taken by the 1st respondent well prior to the amendment came into effect i.e. Section 77-A of the Act and such kind of defence if any taken by the petitioner and documents to be filed by the petitioner can



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very well be considered and accordingly the 1st respondent can pass a reasoned order by taking note of those earlier developments or earlier proceedings issued in this regard as a defence of the petitioner and accordingly final orders shall be passed by the 1st respondent within a reasonable period preferably within a period of 60 days from the date of production of those documents as well as the defence on the part of the petitioner after giving an opportunity of being heard to both the petitioner as well as the 2nd respondent who was the complainant.

15. With these directions, this Writ Petition is disposed of. No costs.

Consequently, connected miscellaneous petition is closed.

09.01.2023

Index : Yes/No

Speaking Order : Yes/No

Sgl

To

The District Registrar (Admn.)



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District Registrar Office
No.1, Thiruvannamalai Road,
Krishnagiri – 635 001.

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R.SURESH KUMAR, J.

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