



W.P(MD)No.36 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:13.03.2023

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD).No.36 of 2023
and WMP(MD)No.54 of 2023

1. P.Samuthiram

2. P.Murugan

... Petitioners

Vs

The Sub Registrar (Incharge),
Office of the Sub-Registrar,
Srivilliputtur Town,
Virudhunagar District.

... Respondent

Prayer:Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned refusal check slip in Refusal No. RFL/Srivilliputtur/42/2022, dated 19.11.2022 and to quash the same as arbitrary and illegal and consequently direct the respondent herein to register the Sale Deed, dated 18.11.2022 presented by the petitioners herein.

For Petitioners :Mr.Thirunavukkarasu

For Respondent :Mr.C.Satheesh
Government Advocate



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ORDER

The Writ Petition has been filed in the nature of certiorarified mandamus, seeking interference with a refusal check-slip in Refusal No. RFL/Srivilliputtur/42/2022, dated 19.11.2022 and to direct the Sub Registrar, Srivilliputtur Town, Virudhunagar District to register the sale deed, dated 18.11.2022, presented by the petitioners herein.

2.In the refusal check-slip, the respondent required the following documents namely, original deed in Doc.No.1293, which was a partition deed of the year 1951, an Othi deed (ஒத்தி பத்திரம்), which was executed in the year 1972 as Doc.No.509 and an additional Othi deed, which was executed in the year 1972, as Doc.No.1614. It was stated by the respondent that the cancellation of the othi deeds, the death certificate and the legal heir certificate also be produced.

3.It is stated by the learned counsel for the petitioner with respect to the death certificate and other documents, that they already been produced. The other documents had been sought on the basis of Rule 55(A) of the Registration Rules, introduced by amendment in the Government Gazette on 2/6



05.09.2022. That particular Rule had come up for consideration before a learned Single Judge of this Court, in ***Federal Bank Ltd., rep. by its Senior Manager Vs Sub Registrar and others in W.P.No.2758 of 2023***, decided on 08.02.2023 and reported in ***2023 SCC Online Mad 878***. The learned Single Judge after examining the said rule, had observed as follows:

“21. In State of Rajasthan v. Basant Nahata, (2005) 12 SCC 77, which was also a case concerning the provisions of the Registration Act, the Supreme Court held that a subordinate legislation under the said Act which is not backed up by any statutory guideline under the substantive law and opposed to the enforcement of a legal right, was invalid. In this case also, Rule 55-A being a subordinate legislation does not have any statutory guideline (for instance like the transactions mentioned in Section 22-A&B) and is opposed to the enforcement of substantive legal rights under the Transfer of Property Act. The first proviso is, therefore, invalid as it goes beyond the powers conferred on the Inspector General of Registration and is clearly ultra vires and unconstitutional to the Parent Act as well as the substantive provisions of the Transfer of Property Act.

27. Sec.83(2)of G.S.T.Rule makes it clear that every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section



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(1). Therefore, provisional attachment made by the second respondent vide order dated 18.12.2021 has ceased to have effect, after expiry of a period of one year. There is no material to show any final order of attachment, or any subsequent order passed by the second respondent pursuant to the aforesaid order. Therefore, this Court is of the view that the impugned order dated 17.10.2022 is liable to be quashed.

28. In view of the foregoing reasons, the respondent cannot refuse to register the Sale Certificate as sought for by the petitioner. Consequently, the impugned order in Na.Ka.No.538/2022 dated 17.10.2022 is quashed. The first respondent is directed to register the Sale certificate within a period of 15 days from the date of receipt of copy of the order.”

4. In view of the above pronouncement, the petitioner is directed to represent the sale deed, which had been returned by the Sub-Registrar, Srivilliputtur Town, Virudhunagar District on or before 24.03.2023, along with a copy of the judgment. The respondent is directed to examine the law laid down in the aforementioned Judgment. If the documents presented is otherwise in order, the Sub Registrar, Srivilliputtur Town, Virudhunagar District may register the same, on or before 13.04.2023.



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5. With the above directions, this Writ Petition stands disposed of.

No costs. Consequently, connected miscellaneous petition is closed.

13.03.2023

NCS : Yes/No
Index : Yes/No
Internet: Yes/No

PNM

To

The Sub Registrar (Incharge),
Office of the Sub-Registrar,
Srivilliputtur Town,
Virudhunagar District.



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C.V.KARTHIKEYAN,J.

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ORDER IN
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