



W.P.(MD)No.399 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.10.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.399 of 2021

and

W.M.P.(MD).No.5054 of 2022

G.Kalaiselvan

... Petitioner

Vs.

- 1.The Inspector General
Registration Department,
Chennai.
- 2.The Deputy Inspector General,
Registration Department,
Tiruchirappalli.
- 3.The District Registrar
Tiruchirappalli,
Tiruchirappalli District.
- 4.The Sub Registrar,
K.Sathanur,
Trichirappalli District.
- 5.V.P.Seetharaman
- 6.A.S.Sundaram



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7.Srinivasan

8.S.Anand

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the 1st respondent to take appropriate action for initiating criminal prosecution under Section 83 of the Registration Act, 1908 as against the respondents Nos. 4 to 8 based on representation dated 28.10.2020 in light of Circular No. 41530/U1/2017 dated 08.11.2017.

For Petitioner : Mr.H.Jasima Yasmin
for Ajmal Associates

For R-1 to R-4 : Mr.R.Ragavendran,
Government Advocate

For R-5, R-6 &
R-8 : Mr.S.K.Mani

For R-7 : No Appearance

ORDER

This Writ Petition has been filed for the issue of writ of mandamus directing the first respondent to initiate criminal prosecution under Section 83 of the Registration Act, 1908, against respondent Nos.4 to 8 based on the representation dated 28.10.2020.

2. Heard the learned counsel on either side.



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3. The case of the petitioner is that the petitioner and his family members entered into a Joint Development Agreement with the fifth respondent Company for construction of apartments. The petitioner alleges that the fifth respondent committed fraud and created a forged sale deed in the name of the Company with respect to the undivided share in the property. Therefore, according to the petitioner, the fifth respondent and also the Sub Registrar, who had entertained the document are liable to be prosecuted under Section 83 of the Registration Act, 1908. A representation was made in this regard and since the same was not considered, the present Writ Petition has been filed before this Court.

4. The fifth respondent has filed a detailed counter affidavit and the allegations made by the petitioner has been denied and the fifth respondent has sought for the dismissal of this Writ Petition.

5. The background facts in this case have been dealt with in the earlier Writ Petition filed in W.P.(MD).No.10177 of 2021, dated



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17.06.2021 and the relevant portions in the order are extracted hereunder:
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11. In the present case, the second respondent, after conducting an enquiry, has found the transaction to be a fraudulent one and thereby, the document executed in favour of the fifth respondent has become nonest in the eye of law. It is stated that this order has also become final. Once such orders are passed, there is no requirement to cancel the document and it is enough if a necessary entry is made in the Encumbrance Certificate itself reflecting the proceedings of the concerned Authority declaring the transaction to be a fraudulent one. Once such an entry is made in the records, it automatically reverses the earlier registration of the fraudulent document. This procedure becomes even more important, since the continuation of the early entry made at the time when the transaction took place and which has been subsequently declared to be fraudulent, will virtually prevent the real owner of the property to deal with his property. Therefore, in all such cases, once an order is passed by the Authority declaring the transaction to be fraudulent and it has become final, the same has to be recorded in the relevant register and it



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must be reflected in the Encumbrance Certificate.

It is brought to the notice of this Court that when the circular was issued by the Inspector General of Registration in Letter No.41530/U1/2017, dated 31.07.2018, Clause 6 (a) and (b) specifically provides for such an entry being made and for proper appreciation, the same is extracted hereunder:-

“6. Hence, all the District Registrars are hereby directed to do the following:-

a) If fraudulent registration is proved, apart from directing the Registering Officers to file police complaints against the fraudsters, specific orders to be passed directing the Registering Officers for making entry in the relevant indexes and also in the copies of documents. The entry in index (ii) shall be made as “ The registration of document is found as fraudulent vide proceedings of the District Registrar (Proceeding No. and dated to be noted) due to----- (the findings to be given briefly)”. The same note has to be made as a footnote in the relevant copies of documents filed and to be signed by the Registering Officer. If it is scanned document, then the note has to be made in a separate white paper, signed by the



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Registering Officer and to be linked to the main document.

(b) District Registrars in his/her proceedings should direct the Registering Officers that no registration of documents should be done based on the fraudulent document as declared by the District Registrar. But, the genuine owner of the property in question should be allowed to proceed with further registration irrespective of the occurrence of the fraudulent registration with respect to the said property.”

12. It is clear from the above circular that the order passed by the competent Authority declaring a transaction to be a fraudulent one and where such order has become final, necessary entry has to be made in index. That apart, a foot note must also be made in the relevant copies of the documents. This safeguard is being given only to ensure that an innocent third party should be made aware that such an order has been passed and that he is not misled to enter into a transaction with regard to a document, which has been held to be a fraudulent one. This procedure will at least save the time of the real owner of the



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property, who need not unnecessarily knock the doors of a Civil Court.

13. It is made clear that this procedure must be scrupulously followed in all cases, where the transaction has been declared to be a fraudulent one by the competent Authority and such order has become final. The Inspector General of Registration shall refer to this order and issue a circular to all the Sub Registrar Offices across Tamil Nadu and direct them to strictly follow the directions issued in the earlier circular dated 31.07.2018.

14. In view of the above, this Court is inclined to interfere with the impugned communication of the third respondent and accordingly, the same is quashed. There shall be a direction to the third respondent to take steps to record the proceedings of the second respondent, dated 30.04.2019 in the relevant books and the same should be reflected in the Encumbrance Certificate. This will effectively reverse the earlier entry that was made when the sale deed was executed in favour of the fifth respondent and which has been subsequently held to be a



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fraudulent transaction. This process shall be completed by the third respondent within a period of two weeks from the date of receipt of a copy of this order.”

6.Pursuant to the above order, the petitioner filed W.P. (MD).No.10433 of 2021 before this Court seeking for the removal of the entries made in the Encumbrance Certificate qua the sale deed that was registered as Document No.656 of 2018, dated 12.02.2018. This Writ Petition was considered and disposed of by this Court by an order dated 22.06.2021 and the relevant portions are extracted hereunder:

“8. In view of the above, once the authorities under the enactment have held transactions to be fraudulent, necessary entry has to be made in the relevant books and it must also be reflected in the encumbrance certificate. This Court in the above judgment has given a direction to the Inspector General of Registration to instruct all the Sub-Registrars to adopt this procedure in cases of this nature. Hence, there shall be a direction to the fourth respondent to make necessary entry in the relevant register regarding the orders passed by the second and



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third respondents and the same shall also be reflected in the encumbrance certificate. On such entry being made, it will effectively reverse the earlier entry that was made at the time of registration of the sale deed by the fifth respondent. This process shall be completed by the fourth respondent within a period of two weeks.

9. The learned counsel appearing on behalf of the respondents 5 to 7 submitted that the second and third respondents have not held the transactions to be fraudulent and it was only held that the sale deed executed by the fifth respondent is beyond the authority given under the power of attorney document. In the considered view of this Court, the findings of the second and third respondents virtually nullifies the document executed by the fifth respondent, since it has been categorically held that it is beyond the authority given to the power attorney agent. Under such circumstances, even though the second and third respondents have not specifically used the expression fraudulent transaction, the effect of the order will virtually nullify the transaction and hence, it has to be necessarily notified in the



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concerned books and reflected in the encumbrance certificate. It is made clear that if the respondents 5 to 7 are aggrieved by the proceedings of the second and third respondents, they have to necessarily approach the competent civil Court to establish their right and work out their remedy in accordance with law. The order passed in this Writ Petition will not stand in the way of the respondents 5 to 7 to work out their remedy in the manner know to law.”

7. The above order passed by this Court became a subject matter of challenge in W.A.(MD).No.1339 of 2021. This Writ Appeal was disposed of by an order dated 06.10.2023 and the relevant portions in the order are extracted hereunder:

“2. Learned counsel appearing for the first respondent brought to our notice that during the pendency of this writ appeal, arbitration clause was invoked by the respective parties on the very same issue and the Arbitrator adjudicated the issue and passed an award and being not satisfied with the award passed by the Arbitrator, an Arbitration Original Petition No.658 of 2022 has been instituted, which is now sub judiced by the



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Principal Bench of this Court.

3. In view of the above submission, reserving the rights of the parties to the lis to adjudicate their rights in the pending arbitration original petition, this writ appeal is closed. No costs. Consequently, connected miscellaneous petition is closed.”

8. It is clear from the above that the parties have now been relegated to agitate the dispute in the pending Arbitration Petition No.658 Of 2022 filed under Section 34 of the Arbitration Act before the Principal Bench of this Court. The final result in this petition will have a lot of bearing in the relief that has been sought for by the petitioner in this writ petition. In the instant Writ Petition, the petitioner wants to take action both against the private respondents as well as the Sub Registrar for the alleged fraudulent sale deed that was registered.

9. In view of the above, it will be more appropriate to await for the final result in the arbitration petition and depending upon the result in the petition. It is left to the petitioner to revive the claim made in the present Writ Petition. Except giving this clarity, no further orders are



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required to be passed in this present Writ Petition.

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10. This Writ Petition is disposed of with the above terms. No costs. Consequently, the connected miscellaneous petition is closed.

10.10.2023

NCC:yes/no

Index:yes/no

Internet:yes/no

tsg

To

1.The Inspector General
Registration Department,
Chennai.

2.The Deputy Inspector General,
Registration Department,
Tiruchirappalli.

3.The District Registrar
Tiruchirappalli,
Tiruchirappalli District.

4.The Sub Registrar,
K.Sathanur,
Trichirappalli District.



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N.ANAND VENKATESH, J.

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