



W.P(MD)No.4497 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.4497 of 2023

R.Sakunthala

... Petitioner

Vs

1.The District Registrar (Administration),
Tirunelveli District.

2.The Sub Registrar,
Office of the Sub Registrar
Gangaikondan,
Tirunelveli District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the first respondent to cancel the documents no. 1402/2006, 1193/2007 and 1513/ 2008 on the file of the second respondent, by invoking section 77A of the Tamil Nadu Amendment in the Registration Act, and in the light of his finding in his proceeding No. 4379/E1/2015, dated 27.06.2016 by disposing the petitioner's petition dated ni. 08.2022 pending before him.



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For Petitioner : Mr.R.Suriyanarayanan

For Respondents : Mr.S.Shanmugavel
Additional Government Pleader

ORDER

Heard the learned counsel on either side.

2.The petitioner seeks cancellation of documents that were executed and registered in the years 2006, 2007 and 2008. The petitioner wants this Court to direct the first respondent to cancel the registration of the said documents by invoking Section 77-A of the Registration Act, 1908. The said provision was introduced in the statute book only last year. Vide order dated 02.01.2023 in WP(MD)No.6947 of 2019 (*E.Geetha Helan Alexandria and 4 ors vs. Joint Sub Registrar No.2 and 2 ors*), I had held that Section 77-A is not retrospective. Section 77-A of the Act reads as follows :

“77-A.Cancellation of registered documents in certain cases.—

(1) The Registrar, either suo motto or on a complaint received from any person, is of the opinion, that registration of a document is made in contravention of section 22-A or section 22-B, shall issue a notice to the executant and all the parties to the document and parties to subsequent documents, if any, and all



other persons who, in the opinion of the Registrar, may be affected by the cancellation of the document, to show cause as to why the registration of the document shall not be cancelled. On consideration of reply, if any received therefor, the Registrar may cancel the registration of the document and cause to enter such cancellation in the relevant books and indexes.

(2)The power under sub-section (1) may also be exercised by the Inspector General of Registration.”

The above provision was inserted vide Tamil Nadu Act 41 of 2022. This Act amended the Registration Act, 1908 in its application to the State of Tamil nadu. It came into force on 16.08.2022. Section 1(3) of the amending Act reads that it shall come into force at once. Section 5 of the General Clauses Act, 1897 is as follows :

“5.Coming into operation of enactments.—(1) Where any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent,—

(a) in the case of a Central Act made before the commencement of the Constitution, of the Governor-General, and

(b) in the case of an Act of Parliament, of the President.]

.....

(3) Unless the contrary is expressed, a 4 [Central Act] or Regulation shall be construed as coming into operation



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immediately on the expiration of the day preceding its commencement.”

Section 5 of the Tamil Nadu General Clauses Act, 1891 is as follows :

“5. Commencement of future Acts.(1) Where any Act to which this Chapter applies is not expressed to come into operation, on a particular day, then, it shall come into operation, on the day on which the assent thereto of the Governor, the Governor-General or the President, as the case may require, is first published in the *Official Gazette*.

(2) In every such Act, the date of such publication as aforesaid shall be printed either above or below the title of the Act and shall form part of the Act.

Tamil Nadu Act 41 of 2022 received presidential assent on 06.08.2022. It was published in Tamil Nadu Government Gazette No.428 on 16.08.2022. Therefore, from the use of the expression “at once”, one can conclude that the amending Act came into force on 16.08.2022. There is nothing in the amending Act to indicate that Section 77-A was intended to be retrospective. The Hon'ble Supreme Court in *CIT v. Vatika Township (P) Ltd., (2015) 1 SCC 1* held that the established Rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation and that law passed today cannot apply to events of the past. This has been reaffirmed in the recent decision reported in *Live Law 2021 SC 419*.



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3.A doubt may arise if on account of the employment of the expression “inserted”, Section 77-A of the Act can be taken as having retrospective operation. In Oxford Advanced Learner's Dictionary, “insert” has been defined as “putting something between two things”. In P.Ramanatha Aiyar's Advanced Law Lexicon, “insert” has been defined in the following terms :

“To place text into a document between characters that are already in the document ;
something added in a document”.

Section 77-A has been inserted by the amending Act after Section 77 of the principal Act. Nothing really turns on the usage of the word “inserted”. In fact, whenever through State amendments, provisions are added in the principal Acts, the expression used is “inserted”. For instance, Section 34-B was inserted vide Tamil Nadu Act 29 of 2012 with effect from 02.12.2012.

4.Salmond on Jurisprudence in the chapter on “precedent” writes thus :

“the theory of case law is that a judge does not make law ; he merely declares it ; and the overruling of a previous decision is a declaration that the supposed rule never was law. Hence any intermediate transactions made on the strength of the supposed rule are governed by the law established in the overruling decision. The overruling is retrospective, except as



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regards matters that are res judicatae, or accounts that have been settled in the meantime.”

But the same principle will not apply in the case of legislations. In the absence of express statutory authorisation or necessary implication, legislation cannot operate retrospectively. This principle has been affirmed time and again. Of course, if the amendment is clarificatory in nature, then, different considerations will apply.

5.Question arose if a settlement deed executed before the coming into force of the Senior Citizens Act can be cancelled by invoking Section 23 of the said Act. A learned Judge of this Court in the decision reported in **(2018) 6 CTC 21 (K.Neelavathy v. The District Magistrate)** held that the power under Section 23 of the Act cannot be exercised in respect of a document that was executed before the Act came into force. The same approach has to be adopted here also. The petitioners cannot take advantage of circulars that were issued subsequently or statutory amendments that came into force later. It is true that the I.G of Registration issued circulars and instructions under Section 68 of the Registration Act after withdrawing circular No.67 dated 03.11.2011. Such instructions came to be issued in 2018. The circulars are also prospective and will apply to documents registered after the said circulars were issued. Section



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77-A of the Act will apply only in respect of documents registered after 16.08.2022.

6.The approach indicated above can be justified by applying the principle “reductio ad absurdum”. If it can be shown that absurd consequences will ensue if the alternative view is taken, then, the alternative view is erroneous as a matter of logical necessity. If Section 77-A is taken as retrospective, where do we draw the line ?. It will be like 'crossing the Rubicon'. It will be passing a point of no return. In one case before me, the petitioner therein sought a direction to the authority for cancelling a document registered in the year 1982 by invoking Section 77-A. If the provision is applied retrospectively, there would be no end. Settled and concluded transactions would be upset and sought to be reopened. Article 300A of the Constitution recognizes right to property. Innocent and bonafide persons who have purchased on the strength of registered transactions will have sleepless nights. Speculative litigations will become the order of the day. The noble object with which the amendment has been introduced may be nullified. The doctrine of repose that underlies any statute or provision of limitation will be given a go-bye. A civil suit seeking the relief of cancellation of a document has to be filed within a period of three years. If I accept the petitioner's argument, I will have to hold that what a civil court cannot do, a statutory authority can do.



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7.I cannot issue any direction to the authority as sought for only for the reason that the legislature has not expressly or by necessary implication declared Section 77-A of the Act to be retrospective. The petitioner has to necessarily go before the jurisdictional civil Court. Granting such liberty to the petitioner, this Writ Petition is dismissed. I make it clear that non-grant of relief in this writ petition will not in any way affect the rights of the writ petitioner. There shall be no order as to costs.

02.03.2023

Index : Yes / No

Internet : Yes / No

NCC : Yes / No

MGA/skm

To

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Tirunelveli District.

2.The Sub Registrar,
Office of the Sub Registrar
Gangaikondan,
Tirunelveli District.



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G.R.SWAMINATHAN, J.

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