



W.P(MD)No.8276 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2023

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THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD)No.8276 of 2023

A.Muthukumaran

... Petitioner

Vs.

1.The Sub Registrar,
Joint-1 Sub-registration office,
Sivagangai District.

2.The Inspector of Police,
Economic Offices Wing,
Virudhunagar District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of refusal check slip passed by the 1st respondent in RFL/No.1 Join Sub-Registrar Sivagangai/4/2023 dated 28.02.2023 and quash the same consequently direct 1st respondent to register the petitioner settlement deed dated 28.02.2023 within a time frame fixed by this Court.

For Petitioner : Mr.R.Devaraj

For Respondents : Mr.M.Prakash
Additional Government Pleader



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ORDER

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The writ petition has been filed in the nature of certiorarified mandamus seeking records relating to an order of the first respondent / Sub Registrar Joint-I, Sub Registration Office, Sivagangai District, who had issued refusal check slip in RFL/No.1 Joint Sub Registrar, Sivagangai /4/2023 dated 28.02.2023 and quash the same.

2. The petitioner also seeks that the first respondent should be directed to register the settlement deed dated 28.02.2023 which had been presented by the petitioner herein. In the affidavit filed in support of the writ petition, it had been stated that the properties to an extent of 2.66 acres and 28 cents in Survey Nos. 163/3 and 163/7 respectively at Kuturavepatti Village, Sivagangai, originally belonged to one Rakkammal. She had then sold it to one Arunachalam. Arunachalam then sold it to V.Kumaran. V.Kumaran then sold it to one Sekar. The petitioner had purchased the properties from Sekar by sale deeds dated 21.10.2014 registered as document Nos.1921/2014 and 1922/2014 in the jurisdictional Sub Registrar Office. The petitioner claims to be in possession and also claims that patta has also been issued to the petitioner.



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3. The petitioner also stated that he wanted to settle the properties in favour his daughter and had presented the settlement deed for registration before the first respondent. The impugned order was passed by the first respondent in which, it had been stated that the settlement deed could not be registered consequent to a letter which had been issued by the second respondent, Inspector of Police, Economic offences Wing, Virudhunagar District, stating that with respect to the subject property, no transaction should be registered and no encumbrance should be created.

4. The learned counsel stated that similar issue had come under the consideration earlier before learned Single Judges of this Court and cited one example in an order dated 28.01.2022 in ***W.P.No.30874 of 2018 K.Arasu and others Vs Sub Registrar, Sub Registration Office, Perundurai, Erode District and others***. In that particular case, the facts had been stated in paragraph 2 and the reasonings have been given in paragraph-6 which are extracted below:

"2.The grievance of petitioners is that, the petitioners are accused in Crime No.15 of 2017 for the offences under Section 420 of I.P.C., r/w Section 4 of the Price Chits and Money Circulation Scheme (Banning) Act, 1978 @ 420 of I.P.C., and Section 5 of TNPID Act, 1997. Now, the investigation in the above case is pending and the properties has not been attached so far. In the



meantime, the 2nd respondent sent a communication to the 1st respondent not to register any document in the above said survey numbers. Alleging that, the 2nd respondent has no power to direct the 1st respondent not to register any document, the present Writ Petition has been filed.

6. Admittedly, so far, the properties are not attached under TNPID Act and no proceedings has been initiated under Section 102 of Cr.P.C. In those circumstances, the question is whether the second respondent has power to direct the 1st respondent not to register any document. It is pertinent to note that under Section 22-A of Tamil Nadu Registration Act, the Registrar has power to refuse to register document mentioned therein. Now, the properties involved in the present Writ Petition do not fall within anyone of the categories mentioned therein. In the said circumstances, the 1st respondent cannot refuse to register any document based on the representation made by the 2nd respondent. That apart, in absence of any attachment, the 2nd respondent does not have any power to make a request to the 1st respondent. This Court, in number of cases, have consistently held that, in these kind of cases, the investigating authority has no power to direct the Registrar to refuse to register documents. Considering those circumstances, as the 2nd respondent has no power to direct the 1st respondent to stop the registration, I am inclined to set aside the order passed by the 2nd respondent. Accordingly, this Writ Petition is allowed and the impugned order dated 25.06.2018 passed by the 2nd respondent is set aside. However, it is open to the 2nd respondent to proceed with the



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investigation in the criminal case and take steps to file a final report.

No costs. Consequently, connected Writ Miscellaneous Petitions are closed."

5. The learned counsel stated that the second respondent has no such authority, calling upon the first respondent not to register any document with respect to the properties concerned. It is also stated that the properties are not attached by the TNPID Court and not even proceedings under Section 102 Cr.P.C., had been initiated. In the instant case, the facts are different. Consequent to the investigation, I am informed that C.C.No.18 of 2013 had been taken cognizance by the Special Court for TNPID cases at Madurai and trial is on going.

6. It is to be noted that the petitioner claims that the accused therein is his vendor's vendor. But if it is to be found that amounts deposited with the vendor's vendor has been misutilized for purchase of properties and after purchase of properties, if those properties had been sold, then the depositors rights would also had to be examined and kept in mind. That is also paramount. It is not necessary that an attachment order has to be passed as on date. The vendor's vendor is not the owner of the property but if the source of money is traced and if it is found during course of trial, that utilising the amount



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deposited, the vendor's vendor had purchased this particular property, then after analyzing such evidence, the TNPID Court can pass any order as it deems fit and necessary depending on the evidence adduced. Trial is still in progress. It is stated that witnesses have been examined and therefore the issue of attachment of property cannot and would not arise till a judgment is passed.

7. It is to be kept in mind that the Criminal Ordinance of the year 1944 provides for attachment of property and such finding can be given only when the evidence adduced by the prosecution and countered by the accused therein, is rifled and analyzed by the particular Court. That opportunity must be given to the Court and this Court cannot be used as a parallel proceedings to circumvent that particular aspect. The facts stated in the judgment referred, are different as in that case, final report had been filed and consequent to investigation in only a few of the matters and several final reports have not been filed. In the instant case, final report has been filed and has been taken cognizance and trial is in progress. Let the trial end. The petitioner is always at liberty to seek clarification from that particular Court about the transaction which he intends to enter and after getting necessary clarification, if at all clarification is issued by the learned judge can proceed further. It is to be noted that the document presented is only a settlement deed by the family members of



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the petitioner and therefore, there is no immediate loss for the petitioner herein by the settlement deed being held over by the respondents. I am not convinced by the arguments advanced.

8. This writ petition stands dismissed. That the petitioner is given an opportunity to approach the particular Court seeking clarification as stated above. No costs.

12.04.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No

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To

1.The Sub Registrar,
Joint-1 Sub-registration office,
Sivagangai District.

2.The Inspector of Police,
Economic Offices Wing,
Virudhunagar District.



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C.V.KARTHIKEYAN, J.

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