



W.P.(MD) Nos.15128 and 15129 of 2022 &
W.M.P.Nos.17439 and 17403 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12.01.2023

Coram:

The Hon'ble Mrs.Justice **V.Bhavani Subbaroyan**

W.P. (MD) Nos.15128 and 15129 of 2022 and
W.M.P.Nos.17439 and 17403 of 2022

P.Jeganathan	...Petitioner in W.P.No.15128 of 2022
P.Rajasekar	...Petitioner in W.P.No.15129 of 2022

Vs.

1. The Inspector General of
Registration,
Door No.100, Santhome High Road,
Foreshore Estate,
Pattinapakkam, Chennai – 600 028
2. The District Registrar (Administration)
Madurai South;
3. The Joint Sub Registrar No.1,
Madurai, South
4. The Executive Officer cum
Joint Commissioner,
Arulmighu Mariamman Temple,
Teppakulam, Madurai – 625 009



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Prayer in Writ Petitions: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ Certiorarified Mandamus calling for the records relating to the impugned enquiry notices dated 06.05.2022; 03.06.2022 respectively in Na.Ka.No.3759/ A2/2022 and quash the same and consequentially forbearing the second respondent from conducting any enquiry in pursuance of the impugned enquiry notice for cancellation of the registered sale deeds dated 12.12.1990 and 13.12.1990 bearing document nos.5334 of 1990, ; 5332 of 1990, 5336, 5337 of 1990 and the registered settlement deed dated 28.11.2012; 10.03.2021 bearing Document Nos.9386, 2903 of 2012 and to pass further orders respectively.

For Petitioners : Mr.J.Barathan

For Respondents : Mr.K.S.Selvaganesan
Additional Government Pleader
for R1 to R3

Mr.V.R.Shanmuganathan for R4

COMMON ORDER

Since the issue involved in both the petitions are one and the same, they are taken up together and a common order is being passed.

2. Challenging the impugned enquiry notices dated 06.05.2022; 03.06.2022 respectively in Na.Ka.No.3759/A2/2022 and

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consequentially to forbear the respondents from conducting any enquiry in pursuance of the impugned enquiry notice for cancellation of the registered sale deeds dated 12.12.1990 and 13.12.1990 bearing document nos.5334 of 1990, ; 5332 of 1990, 5336, 5337 of 1990 and the registered settlement deeds dated 28.11.2012; 10.03.2021 bearing Document Nos.9386, 2903 of 2012 and to pass further orders, the petitioners have come forward with these Writ Petitions.

2(i). The case of the petitioners is that the petitioner in W.P.(MD) No.15128 of 2022 and father of the petitioner in W.P.(MD) No.15129 of 2022 had purchased a portion of the subject property bearing Old Door No.690, New Door No.3, Town Survey No.1181, Ezhuthanikara Street, South Masi Street, Madurai Town through a sale deed dated 13/12/1990 bearing Document Nos. 5334 and 5332 of 1990 respectively. The petitioners' wives purchased portion of the subject property through sale deeds dated 13.12.1990 bearing document nos. 5336 and 5337 of 1990 and they are in peaceful possession and enjoyment of the subject property from the date of purchase. The petitioner and his wife in W.P.(MD) Nos.15128 of 2022 jointly executed a registered settlement deed dated 28/11/2012 for the subject property

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in favour of their grandchildren and the said settlement deed had been registered as Document No.9386 of 2012 on the file of the Joint Registrar No.II, Madurai South. Further, the petitioner and his wife in W.P.(MD) No.15129 of 2022 purchased the portion of subject property through sale deed dated 13.12.1990 bearing Document No.5337 of 1990.

(ii) The subject property originally belonged to one, Maruthamuthu Pillai, son of Katha Pillai@Kathavaraya Pillai and he executed a Will dated 07/04/1983. Under the said Will, he had created a charge over the subject property for running some charities. there is no total dedication of the subject property for the purpose of the charities mentioned therein. The charities are being continued to be done till date. While that being so, the 2nd respondent has issued the impugned enquiry notice dated 06/05/2022; 03.06.2022 calling for an enquiry on 30/05/2022; 20.06.2022, respectively. The petitioners appeared before him and was served with a copy of the petition dated 04/05/2022 filed by the 4th respondent to cancel, annul and delete the registered sale deeds, the registered settlement deed and the registered partition deed in respect of the subject properties by claiming that an absolute

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dedication of subject properties had been made by original owner, Marimuthu Pillai and alienations made by his wife, Rajathi through sale deeds are not valid.

(iii) Further, 2nd respondent has no power, authority and jurisdiction to conduct any enquiry for canceling any document registered 30 years ago and the circular dated 31/07/2018 in No. 4153/U1 / 2017 issued by the 1st respondent has no retrospective effect and statutory force. Moreover, Sections 22A and 22B of the Registration Act, 1908 also have no retrospective effect. The Section 22B had not been notified till date. If the 4th respondent claims that the sale deeds of the year, 1990 are invalid and that there is absolute dedication of the subject properties, he has to approach the competent Civil Court for necessary declaration and for recovery of possession. Hence seeking to quash the said notice, the petitioners have filed these petitions.

3. The learned counsel for the petitioners would submit that since the 2nd respondent did not even grant any breathing time and intimated that he would pass an order cancelling the documents, the petitioners have approached this Court. Unless the petitioners are prevented by quashing the impugned notices, they will be put to irreparable loss and



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on the other hand, the respondents may not be prejudiced in any manner.

4. Per contra, the learned counsel for the respondents would submit that the writ petitions are premature owing to the fact that the proceedings dated 6/5/2022 is only an enquiry notice issued by the 2nd respondent. It is a settled principle that a show cause notice is not amenable to Writ Jurisdiction except having it been issued without jurisdiction or against provision of any statute. That apart, the combined reading of Sections 22A, 69[2], 82 and 83 of the Registration Act, 1908 and the various circulars issued by the 1st respondent makes it clear that the registering authority is enabled to hold an enquiry on the fraudulent registrations and for further action. The properties which are covered in the impugned enquiry and the other properties originally belonged to one Marimuthu Pillai son of S.Kulandaivelu Pillai. He had executed a registered Will dated 7/4/1983 vide Document No. 107/1983 on the file of the Joint No.3 Sub Registrar, Madurai, bequeathing his properties to one K.Maruthamuthu Pillai with conditions that such vesting is for managing the properties without any power of alienation or encumbrance and further that the said properties are absolutely

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dedicated for performance of specific endowments attached to Arulmigu Mariamman Thirukoil, Theppakulam, Madurai, which were performed by him and which were enumerated in the said Will, thereby seeks to dismiss the Writ Petitions.

5. The learned counsel for the 4th respondent by way of a counter, would submit that in the said Will, K.Maruthamuthu Pillai, was specific that his wife, viz., Rajathi Ammal is not living with him and have deserted him and therefore, she has no right or interest in the said properties. Further, the Will is clear that in case, if said Maruthamuthu Pillai does not have any issues, the properties shall be managed by the fit person appointed by the Government for the performance of the said kankaryams. The testator had created a specific endowment, which is a religious institution within the meaning of Section 6[18] of the Hindu Religious Charitable Endowment Act 1959. Therefore, it is needless to state that there cannot be alienation of the said properties in violation of Section 34 of the Hindu Religious Charitable Endowment Act 1959, which if any would be abinitio void. From that point of view, Section 22 A of the Registration Act also gets attracted after its introduction to the Act. Therefore registration, if any, for those properties should be



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declared to be void, in view of Section 34 of the Hindu Religious Charitable Endowment Act 1959 Act and Section 22 A of the Registration Act.

6. Lastly, it is the contention of the learned counsel for the 4th respondent that the office file of this respondent reveals that in the year 1985, the said Rajathi Ammal had raised a dispute with the temple administration that the Will said to be executed by her husband is not genuine and that said Maruthamuthupillai cannot have any connection with the properties. On the otherhand, the said Maruthamuthupillai had approached the temple administration claiming that the said Rajathiammal is preventing him from performing the specific endowment as per the Will. The said Rajathiammal, suppressing the registered Will executed by her husband and also the fact that the properties have been dedicated absolutely to the temple for performance of specific endowments, claiming herself as legal heir of the deceased Marimuthupillai had gone to the Registrar Office, Parasala, Kerala and have registered documents and sold the properties, some in the name of petitioner in W.P (MD) No. 15128 of 2022, viz., P.Jegannathan and some in the name of Patchaippan Asari,

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father of petitioner in W.P.(MD).No. 15129 of 2022. If the said Rajathiammal was genuine she would not have gone to Parasala to register a property at Madurai. Further, the principle of “Res Ipsa Loquitor” viz things speaks for itself, squarely applies to the case on hand, thereby contended to dismiss the petitions.

7. Heard the learned counsel on either side and perused the documents placed on record.

8. It is important to note that the impugned enquiry before the 2nd respondent is to find out whether the transactions made by the petitioners and their predecessor are fraudulent or not.

9. As far as the Power of the Registrar to conduct enquiry is concerned, the Inspector General of Registration has issued circular in the Letter No.41530/U1/2017 dated 8.11.2017, wherein it is held as follows:-

“(a) District Registrar (Admin) shall receive such petitions from the aggrieved parties and register the same in the Register of Complaints in the following format:

Sl. No	Name and address of the applicant	Document No and SR Office Name	Name and address of the executants, claimants and witnesses
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(b) After entering the complaint, he/she shall issue notices to the executants, claimants of the documents and witnesses if found necessary to appear for the enquiry and he/she should enquire the registering officer and if needed, call for the records from the Revenue Department and also shall summon the respective village Administrative Officer (VAO) to appear before him with the Village Accounts.

(c) Once the enquiry is completed by following the summary procedure, he/she shall pass orders to this effect, recording his/her findings. It is instructed that the District Registrars (Admin) shall pass a speaking order by way of a proceedings and the same shall have to be communicated to the petitioner through Registered post under Acknowledgment (RPAD), District Registrars (Admin) should complete the enquiry within two months period in each case and if the parties are not appearing for more than two summons, ex-parte order shall be passed based upon the documents, evidences and witnesses available. While issuing summons also, the mode of registered post under Acknowledgment (RPAD) alone shall be adopted.

(d) It is further emphasized that the procedure prescribed above is only to deal with fraudulent registration which are resulted due to the reason that the Registering Officers not adhered to the instructions/circulars/provisions of Act/Rules. Further, it is emphasized that this circular should in no way be construed to mean that the District Registrar (Admin) shall go into the issue of deciding the title....”

10. In continuation to Letter No.41530/U1/2017 dated 31.07.2018 and 09.11.2018 in a Circular dated 31.07.2018, the Inspector General of Registration has observed the following:

“5.Now it has come to my knowledge that speaking orders have been passed by District Registrars as per the circular 3rd cited. For the cases of proven fraud the further action from the department ends with directing the Registering Officer to file police



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complaint against the fraudsters concerned. But the original owners could not register their documents since the fraudulent document appears in the Encumbrance Certificate as genuine registration. Due to these encumbrance entries, the real owners succumb to the pressure of the fraudsters and in fact these entries act as an encouraging factor for the fraudsters for repeating such instances.

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 date 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 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.”

11. It is settled principle of Law that the Registering Authorities cannot be silent spectators to fraudulent transactions or cannot register all documents presented before them blindly. It is true that they do not have power for cancellation of documents. The **Hon'ble Apex Court in**

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a case reported in (2004) 3 SCC 440 [Special Director & Anr Vs.

Mohd. Ghulam Ghouse & Anr] at Paragraph No.5 has held as follows:

“5.This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show cause notice was totally non est in the eye of law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show cause notice and take all stands highlighted in the writ petition. Whether the show cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the Court. Further, when the Court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold by the interim protection granted.”

That apart, the Hon'ble Supreme Court in Malladi Drugs and



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**Pharma. Ltd. vs. Union of India (UOI) (18.03.2004 - SC) reported in
MANU/SC/0407/2004 among other things has observed as follows:-**

“The High Court, has, by the impugned judgment held that the Appellant should first raise all the objections before the Authority who have issued the show cause notice and in case any adverse order is passed against the Appellant, then liberty has been granted to approach the High Court.

.....in our view, the High Court was absolutely right in dismissing the writ petition against a mere show cause notice. We see no reason to interfere. The appeals stand dismissed. There will be no order as to costs.”

and this Court had repeatedly held that the Registering Authorities are entitled to enquire into fraudulent transactions and if found to be fraudulent, could nullify the registration.

12. In the present case on hand, the impugned Enquiry notice has been issued based on the provisions of Act and Rules, the claim that circulars were not approved by Government and not published in Gazette, do not have any relevance to the case on hand. Apart from that, the circulars issued by the 1st respondent is based on the orders of this Court to prevent fraudulent transactions and therefore, the



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petitioners cannot contend that the same is unlawful or unenforceable.

13. Though elaborate submissions are made by the learned counsel for the petitioners and the learned counsels for the respondents with regard to the dispute, this Court is not inclined to go into all these aspects, since the Writ Petitions itself have been filed only when the impugned notices have been received by the petitioners. The counter filed by the 4th respondent does not disclose that there was any enquiry

conducted therein prior to the issuance of the impugned notice or thereafter. However, the 2nd respondent being the competent authority is entitled to consider whether the complaint made by the Executive Officer cum Joint Commissioner of Arulmighu Mariamman Temple that the document no.1154/1990 has been fraudulently registered in Parasala, Kerala or not, the parties are bound to produce all documents they rely upon to enable the authority to conduct enquiry and pass appropriate orders. In any event, the question of quashing the impugned proceedings does not arise. However, while rejecting the prayer sought for, the petitioners are directed to appear before the 2nd

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respondent and produce all the relevant documents in support of their claim about the property in question and this direction shall be complied with by the petitioners within a period of three weeks from the date of receipt of a copy of the order. Thereafter, the 2nd respondent, after notice to the petitioners and any other person, who are likely to be affected, hear the parties and pass reasoned order within a period of eight weeks thereafter. Interim Stay already granted by this Court on 13.07.2022, subsequently, extended on 16.11.2022 till 22.11.2022, stands vacated.

In the result, the Writ Petitions are dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

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Speaking Order / Non speaking order
Index: Yes /No
Internet :Yes / No
ssd

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To

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V.BHAVANI SUBBAROYAN, J.

ssd

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