



WP(MD)No.18691 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.01.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)Nos.18691 of 2022

and

WMP(MD)Nos.13597 & 13598 of 2022

Great Lakes Multi-State Cooperative
Housing Society Limited, No.76/190, South Car Street,
Srivilliputhur in Virudhunagar District
Rep.by its Chief Executive Officer
S.Sakthivel

... Petitioner in both cases

Vs.

- 1.The Inspector General of Registration,
No.100, Santhome High Road, Chennai – 600 028.
- 2.The Deputy Inspector General of Registration,
St.Mark Street, Palayamkottai, Tirunelveli – 627 002.
- 3.The District Registrar (Administration), Tenkasi.
- 4.The Joint No.1 Sub Registrar, Tenkasi, Tenkasi District.
- 5.S.P.Velayutham
- 6.R.Pankajam

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records pertaining to the impugned order passed by the 3rd respondent, the District Registrar, Tenkasi District in Tenkasi, vide an Order No.2515/A2/2022 dated 1.7.2022 declaring



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the Registration of the Property in S.No.16/18 of Alandur Village in Chennai to the extent of 50 Cents in Document No.853 of 2013 dated 31-08-2012 on the file of the 4th respondent, the Joint Sub Registrar No.1, Tenkasi as fraudulent registration and other directions viz. 1 to make a note in the Index-II of the document and 2. to Register FIR against the concerned persons under Section 83 of the Registration Act and quash the same.

For Petitioner : Mr.G.Rajagopalan, Senior Counsel
for Mr.A.Robinson

For Respondents : Mr.R.Baskaran,
Additional Advocate General
assisted by Mrs.S.Jeyapriya,
Government Advocate for R1 to R4

Mr.M.Mahaboob Athif for R5

ORDER

Heard the learned Senior Counsel appearing for the petitioner, the learned Additional Advocate General appearing for the respondents 1 to 4 and the learned counsel appearing for the fifth respondent. The sixth respondent has not been served. But the learned counsel for the petitioner informs the court that no relief is sought against the sixth respondent.

2.The petitioner is a Multi-State Cooperative Housing Society. The petitioner purchased a piece of land measuring 50 cents in Alandhur Village, Kanchipuram District. The petitioner also purchased a small piece of land



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situated at Tenkasi. The sixth respondent and one Selvaraj joined together and executed sale deed dated 31.08.2012 which was registered as Document No.853 of 2013 on the file of the Joint No.1 Sub Registrar, Tenkasi. The fifth respondent herein submitted a petition dated 11.10.2021 for endorsing Doc No.853 as fraudulent. Enquiry was conducted by the District Registrar (Administration), Tenkasi who vide order dated 01.07.2022 directed that entry will be made in the Encumbrance Register that the said document is fraudulent and that further transactions should not be registered. A direction was further given for criminal prosecution. Challenging the same, the present writ petition came to be filed.

3.The learned Senior Counsel appearing for the petitioner primarily contended that the impugned order is bereft of jurisdiction and called upon this Court to set aside the same and allow this writ petition as prayed for.

4.The learned Additional Advocate General as well as the learned counsel appearing for the fifth respondent submitted that the writ petition is not maintainable. They pointed out that the petitioner has preferred an appeal before the second respondent and even prayed for interim relief. When the petitioner has filed an appeal before the second respondent questioning the order of the District Registrar (Administration), Tenkasi, it is



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not open to the petitioner to parallelly maintain the writ petition. The learned Additional Advocate General specifically submitted that if a document had been fraudulently registered, the authorities under the Registration Act can always characterise such a document as fraudulent. In this case, to strengthen the hands of the authority, a circular was issued in the year 2018. Since the impugned order is in consonance with the relevant statutory provision and the circular issued in the year 2018, the impugned order of the authority can very well be sustained. The learned Additional Advocate General also drew my attention to the order dated 24.08.2021 made in CMP No.4547 of 2018 etc in W.A No.59 of 2016. The sixth respondent herein had filed an interim application to implead herself in the said writ appeals. The impleading petitions were dismissed by rendering certain adverse findings as to her very identity. This according to the learned counsel for the respondents is more than sufficient to show that the document in question is fraudulent. The learned Additional Advocate General also would add that the impugned order passed by the third respondent is in consonance with the findings set out in the aforesaid order dated 24.08.2021 passed by the Hon'ble Division Bench in the impleading petition filed by the fifth respondent. They pressed for dismissal of the writ petition.



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5.I carefully considered the rival contentions and went through the materials on record.

6.I consciously refrain from going into contentious issues. I confine myself to certain undisputed facts alone. The impugned order was passed based on the complaint lodged by the fifth respondent. The fifth respondent figured as a party respondent in WP No.33462 of 2014. Vide order dated 04.01.2016, the said writ petition was allowed and the claim made by the fifth respondent herein over the petition mentioned property, which was a part of the larger extent of property and that was the subject matter of the said writ petition, was rejected and the Document No.2179 of 2007 dated 05.07.2007 was set aside. Aggrieved by the same, S.P.Velayutham filed WA Nos.59 and 60 of 2016 before the Hon'ble Division Bench which vide order dated 28.09.2021 set aside the order passed by the learned Single Judge. Challenging the same, the original petitioner, Asset Reconstruction Company filed Civil Appeal No.2752-2753 of 2022 before the Hon'ble Supreme Court which vide order dated 04.05.2022, set aside the order of the Hon'ble Division Bench. The order of the learned Single Judge was restored. The Review Petition filed by S.P.Velayutham is also said to have been dismissed.



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7. Even though the learned Additional Advocate General would claim that the authorities will have inherent power to characterise a registered document as fraudulent and pass consequential directions, but no authority or precedent has been cited before me to support such a wide proposition. Administrative authorities can never be conferred with any inherent power. The power of the authority will have to be traced to some specific legal provision or at least it should be deducible from the broad scheme of things. Taking note of the fact that several fraudulent transactions are being registered, the Government of Tamil Nadu had issued Circular No.67 dated 03.11.2011 to deal with the menace. The validity of the said circular was put to challenge. But the said circular itself was withdrawn by the Government in the year 2017. Vide proceedings dated 20.10.2017, several orders passed under the aforesaid circular were recalled. Thereafter, Circular bearing Letter No.No. 41530/U1/2017 dated 09.04.2018 was issued. That was followed by yet another circular bearing Na.ka.No.36928/C3/2021 dated 08.10.2021. Obviously invoking the provisions of the aforesaid circular dated 09.04.2018, the fifth respondent had lodged his complaint. The impugned order makes specific reference to the circular dated 31.07.2018 as the basis for passing the impugned order.



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8.It is not in dispute that the said circular on the basis of which the impugned order came to be passed was issued subsequent to the execution and registration of the said document. As already pointed out, the said document was executed in the year 2012 and registered in the year 2013. The said circular in question was issued in the year 2017 and 2018. The only question that calls for consideration is whether on the basis of the subsequently issued circulars, transactions that were registered prior in point of time can be labelled as fraudulent. Salmond on Jurisprudence states that while a judgment of a court is always retrospective, any legislation would ordinarily be prospective. If a legislation has to be made retrospective in operation, there must be an express provision to that effect. A circular issued by the executive cannot claim higher status. No circular can operate retrospectively.

9.Vide order dated 02.01.2023 in WP(MD)No.6947 of 2019, I had held as follows :

“5.It is beyond dispute that Circular No.67 dated 03.11.2011 has been withdrawn and an instruction has also been issued by the IG of Registration that all orders passed under Circular No.67 dated 03.11.2011 will have to be rescinded and recalled.



6.The next question that arises is whether the petitioners can fall back on Section 77-A of the Registration Act. It 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 amendment was introduced vide Tamil nadu Act 41 of 2022. It came into force on 16.08.2022. 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 presumed not to be intended to have a



retrospective operation and that law passed today cannot apply to events of the past. Section 77-A has not been made retrospective.

7.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. If Section 77-A of the Registration Act cannot be retrospective, I fail to understand as to how such circulars can be retrospective. The circulars are also prospective and will apply to documents registered after the said circulars were issued. Section 77-A of the Act will apply only in respect of documents that were registered after 16.08.2022."

In as much as the circulars issued by the third respondent were not holding the field during the relevant time when the documents executed and



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registered, the order impugned in this writ petition has to be necessarily set aside.

10.I must of course deal with one another contention by the learned counsel for the fifth respondent. It is true that the petitioner herein filed an appeal before the second respondent challenging the impugned order. The question is whether on this ground, this writ petition should be dismissed as not maintainable. It is well settled that consent will not confer jurisdiction. No amount of acquiescence will make an order legal if it is otherwise not legal. Merely because the petitioner filed a non-statutory appeal before the second respondent challenging the impugned order, that will not take away the right of the petitioner to move this Court on the ground of jurisdiction. The learned counsel for the fifth respondent relied upon the decision reported in (1995) 1 SCC 1 and (2005) 1 SCC 604 in this regard. The contention of the learned counsel for the fifth respondent is that a litigant cannot be allowed to embark upon parallel remedies. In the cases referred to by the learned counsel for the fifth respondent, the orders in question did not suffer from want of jurisdiction. To an order suffering from a very fundamental defect as in the case on hand, the aforesaid doctrine cannot be applied.



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11. In this view of the matter, I hold that the petitioner cannot be non-suited on the ground that appeal filed by the petitioner is still pending before the second respondent. The order impugned in this writ petition is set aside. The writ petition is allowed. I make it clear that I have not gone into the rival claims of the parties herein. The order impugned in this writ petition is set aside solely on the ground of want of jurisdiction. All the contentions of the fifth respondent are left open. No costs. Connected miscellaneous petitions are closed.

24.01.2023

Index : Yes / No
Internet : Yes/ No
SKM

To

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G.R.SWAMINATHAN, J.

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