



WP(MD)Nos.2592 of 2016, etc., batch

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

WP(MD)Nos.2592, 8836, 13463, 14636 of 2016
and
WMP(MD)No.10852 of 2016

WP(MD)No.2592 of 2016:-

S.Essakipandian

: Petitioner

Vs.

The District Registrar,
District Registration Office,
Palayamkottai Collector Office,
Kokirakulam, Tirunelveli,
Tirunelveli District – 627 009.

: Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus directing the respondent to consider the petitioner's representation dated 13.04.2015.

For Petitioner : Mr.A.R.Kannappan

For Respondent : Mr.Veera Kathiravan,
Additional Advocate General
Assisted by
Mr.M.Ramesh,
Government Advocate

Mr.S.Srinivasa Raghavan, Amicus Curiae



WP(MD)Nos.2592 of 2016, etc., batch

WP(MD)No.8836 of 2016:-

C.Vijayaraj

: Petitioner

Vs.

1.The District Registrar,
Office of the District Registrar,
Registration Department,
Pudukottai.

2.The Joint Sub Registrar II,
Pudukottai.

3.A.Jothi

4.N.Ramanujam

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus directing the first respondent to initiate appropriate action against the respondents 3 & 4 after conducting enquiry as per Circular No.67, dated 03.11.2011, by considering the petitioner's representation dated 06.01.2016.

For Petitioner : Mr.J.Anandkumar

For Respondents : Mr.Veera Kathiravan,
Additional Advocate General
Assisted by
Mr.M.Ramesh,
Government Advocate
for R.1, R.2

No appearance for R.3, R.4

Mr.S.Srinivasa Raghavan, Amicus Curiae



WP(MD)Nos.2592 of 2016, etc., batch

WP(MD)No.13463 of 2016:-

M.Bilavendiran

: Petitioner

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Vs.

1.The Sub Registrar,
Tiruverumbur,
Vin Nagar, 12th Cross,
Kailashnagar,
Kattar, Trichy – 19.

2.The District Registrar,
District Registrar's Office,
District Court Complex,
Cantonment,
Tiruchirappalli – 1.

3.The Inspector General of Registration,
100, Santhome High Road,
Pattinampakkam,
Chennai – 600 028.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus directing the second respondent to consider and pass orders on the representation dated 05.04.2016 submitted by the President, Pudhu Theru Village, Navalpattu Panchayat, Tiruchirappalli District.

For Petitioner : Mr.M.Ashok Kumar

For Respondents : Mr.Veera Kathiravan,
Additional Advocate General
Assisted by
Mr.M.Ramesh,
Government Advocate

Mr.S.Srinivasa Raghavan, Amicus Curiae



WP(MD)Nos.2592 of 2016, etc., batch

WP(MD)No.14636 of 2016:-

Venkatammal

: Petitioner

Vs.

1.The District Registrar (Admin),
Office of the District Registrar,
Dindigul.

2.Pitchai

3.Pandi

4.Vadivel

5.Velmurugan

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus directing the first respondent to consider the petitioner's representation dated 30.06.2016 and pass appropriate orders.

For Petitioner : Mr.V.Pasumpon

For Respondents : Mr.Veera Kathiravan,
Additional Advocate General
Assisted by
Mr.M.Ramesh,
Government Advocate for R.1

No appearance for R.2, R.3, R.5

Mr.R.M.Makesh Kumaravel for R.4

Mr.S.Srinivasa Raghavan, Amicus Curiae



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COMMON ORDER

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The reliefs sought in these writ petitions are for an appropriate action as per Circular No.67, Registration Department, dated 03.11.2011, for the reason that some registered documents have been fraudulently created on the petitioners' property.

2.The brief facts of the cases are as follows:-

2.1.**WP(MD).No.2592 of 2016** was filed by its petitioner with a prayer to consider the petitioner's representation dated 13.04.2015.The case of the petitioner is that he purchased the subject land vide Doc.No.1738 of 1999 dated 31.08.1999. On collusion of one Sangupandian, Raja, Maharaja and Balvannan, power of attorney vide Doc.No.735 of 2006 was forged with respect to the petitioner's property and subsequently, a sale deed vide Doc.No.367 of 2007 was also created. The petitioner also claims that on the enquiry conducted by the respondent / District Registrar, the forgers have also admitted the guilt, but the respondent has not passed the order for cancellation of the document. Hence he seeks remedy under Circular No.67.



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2.2.WP(MD).No.8836 of 2016 was filed by its petitioner to take action against the respondents 3 & 4 after conducting an enquiry under Circular No.67, by considering the representation dated 06.01.2016. The case of the petitioner is that he entered into a sale agreement with the third respondent on 19.01.2014 and paid a sum of Rs.2,00,000/- as advance. He claims that thereafter the third respondent evaded execution of the sale deed and to his surprise, she sold the property to a third party under Doc.Nos.4058 & 4059 of 2014 dated 08.09.2014. The petitioner claims that this sale deed was fraudulently executed by the third respondent impersonating her father and hence, he approached the respondent for cancelling the same under Circular No.67.

2.3.WP(MD).No.13463 of 2016 was filed by its petitioner for a direction to the second respondent to pass orders on the representation dated 05.04.2016. The petitioner has filed this petition as the Vice-President of the Pudhu Theru Village, Navalpattu Panchayat. The case of the petitioner is that seven persons from his village have created a forged partition deed concerning a village property vide Doc.No.561 of 2014 dated 13.10.2014. Hence, he seeks to cancel the same by invoking Circular No.67.



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2.4.WP(MD).No.14636 of 2016 was filed by its petitioner to direct the first respondent / District Registrar to consider her representation dated 30.06.2016.

The case of the petitioner is that she is the owner of the subject property by the judgment dated 25.11.2004 in O.S.No.73 of 2000, passed by the learned District Munsif, Nilakottai. She further claims that, suppressing the civil Court decree, the respondents 2 to 5 executed a fraudulent sale deed with respect to the property. Hence, she seeks to cancel the same by invoking Circular No.67.

3.Since the relief sought for in all these writ petitions is for cancelling a fraudulently registered document, based on Circular No.67, Registration Department, dated 03.11.2011, all these petitions are tagged together and are disposed of by way of this common order.

4.Initially, there was no provision under the Registration Act for the cancellation of any document registered by a Registering Officer. The Inspector General of Registration has issued Circular No.67 dated 03.11.2011, setting out the procedures to deal with fraudulent registration through impersonation or false documents. The Inspector General of Registration has recorded that the department was receiving several complaints of fraudulent registration which was



increasing day by day and the punitive action under Sections 82 and 83 of the Registration Act was not sufficient to cure the aggrieved. Therefore, to provide relief, this Circular was issued providing certain procedures to deal with such complaints of fraudulent registration received by the District Registrar (Admin) of respective Districts. This Circular has been issued based on the principles laid down by the Hon'ble Andhra Pradesh High Court in ***Yanala Malleshwari v. Ananthula Sayamma*** [(2007) 1 CTC 97] and the Hon'ble Supreme Court in ***Indian Bank v. Satyam Fibres (India) Pvt Ltd.*** [(1996) 5 SCC 550], wherein, it was held as follows:-

“Inherent power are powers which are resident in all courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the Constitution of the Tribunals or Courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behavior. This power is necessary for the orderly administration of the Court's business.”

5.This Circular was challenged in a batch of writ petitions before this Court in ***WP(MD).No.5908 of 2013 etc., batch in Ramasamy v. State of Tamil Nadu*** [(2014) 4 LW 221]. This Court, by judgment dated 17.07.2014, refused to interfere



by tracing the powers of the Registrar to Section 68 of the Registration Act and Section 21 of the General Clauses Act.

6.The Hon'ble Supreme Court in ***Satya Pal Anand v. State of M.P., [(2016) 10 SCC 767]*** passed an authoritative pronouncement that the power to cancel the registration is a substantive matter and in the absence of any express provision on that behalf, it is not open to assume that the Registering Officer would be competent to cancel the registration of the documents in question. The Hon'ble Supreme Court also held that the power of Registrar under Section 68 of the Registration Act is of superintendence which does not confer any power to cancel a document which was already registered. The Apex Court further held that the role of the Sub-Registrar stands discharged, once the document is registered and the power conferred under Section 68 of the Registration Act cannot be invoked to cancel the registration of documents. After the decision in ***Satya Pal Anand's*** case (supra), the Inspector General of Registration vide his proceedings in letter No. 41530/u1/2017 dated 20.10.2017 withdrew Circular No.67, dated 03.11.2011 and the District Registrars were also informed to return the petitions received under Circular No.67.



7. Subsequently, the Inspector General of Registration issued another Circular in letter No.41530/u1/2017 dated 08.11.2017 for enquiry in case of fraudulent transactions to be conducted under Section 68(2) of the Registration Act, 1908, by the District Registrars. The Circular also made it clear that the District Registrar shall not go into the issue of deciding the title of the parties during the enquiry. In view of the decision of the Hon'ble Supreme Court in **Satya Pal Anand's** case (supra), the District Registrar, under Section 68(2) of the Act by this Circular, shall only record the finding that the document is registered in a fraudulent manner and he cannot cancel it.

8. Now, the State of Tamil Nadu brought an amendment to the Registration Act vide the Registration (Tamil Nadu Second Amendment) Act, 2021. By this amendment, Sections 22B, 77A, 77B, 81A and 81B were inserted in the Registration Act. Section 77A provides the power to the Registrar to cancel the registered documents, if found to be fraudulent. For sake of convenience, Section 77A is extracted hereunder:-

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

(1) The Registrar, either suo moto 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.”

9. In view of this amendment, this Court was of the view to dispose of these batch of writ petitions to seek remedy under Section 77A of the Registration Act instead of Circular No.67. However, a learned Single Judge of this Court [Hon'ble Mr. Justice G.R.Swaminathan] in ***E.Geetha Helan Alexandria v. The Joint Sub-Registrar No.I***, [WP(MD).No.6947 of 2019 dated 02.01.2023] by applying the ratio of Hon'ble Supreme Court in ***CIT v. Vatika Township (P) Ltd.***, [(2015) 1 SCC 1] that unless a contrary intention appears, legislation presumed not to be intended to have a retrospective operation and that the law passed today cannot apply to events of the past, has held that Section 77A is not applicable retrospectively. Since Circular No.67 has now been withdrawn vide letter No. 41530/u1/2017 dated 20.10.2017 and in view of the ratio in ***Geetha Helan***



Alexandria's case (supra), Section 77A of the Act can be implemented only to documents that were fraudulently registered after 18.08.2022.

10.However, yet another learned Single Judge of this Court [Hon'ble Mr. Justice R.Suresh Kumar] in ***E.Harinath v. Inspector General of Registration, [W.P.No.3802 of 2023 dated 09.02.2023]*** has directed the authorities to take action under Section 77A of the Act in respect of documents which were registered before the insertion of Section 77A i.e., before 18.08.2022.

11.In view of these two views regarding Section 77A of the Act being prospective or retrospective, a learned Single Judge of this Court [Hon'ble Mr. Justice C.V.Karthikeyan] in ***S.M. Hajabakruthen v. The Inspector General of Registration [W.P.(MD) Nos. 14546 of 2022 Batch dated 27.03.2023]*** has referred the following issues for consideration by a Larger Bench of this Court:-

“i) whether the recitals in a document presented for registration, can be examined to determine that such document was fraudulently executed or registered?

ii) whether a document in which the recitals alone are questioned can be considered only as voidable which would normally necessitate the filing of the suit to set aside the particular document or whether



even those documents can be cancelled by the Sub Registrar under Section 77A of the Registration Act?

iii) whether exercise of power under Section 77A must be restricted to registration of documents in contravention to Section 22-A or 22-B of Registration Act, 1908 alone? and

iv) whether the exercise of such power under Section 77A of the Registration Act can be prospective in nature or retrospective in nature?”

12. In view of the above position and in order to maintain judicial discipline, this Court disposes of these writ petitions with liberty to the petitioners to approach the competent civil Court and if any suit is filed, the same shall be entertained by the civil Court by excluding the period for which the writ petitions were pending before this Court for the purpose of calculating the limitation period. Liberty is also granted to the writ petitioners to invoke Section 77A of the Act, upon the outcome of the reference made.

13. This Court places on record its appreciation to Mr.S.Srinivasa Raghavan, learned Amicus Curiae for assisting the Court.



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There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
NCC : Yes / No
gk

20.06.2023

To

- 1.The District Registrar,
District Registration Office,
Palayamkottai Collector Office,
Kokirakulam, Tirunelveli,
Tirunelveli District – 627 009.
- 2.The District Registrar,
Office of the District Registrar,
Registration Department,
Pudukottai.
- 3.The Joint Sub Registrar II,
Pudukottai.
- 4.The Sub Registrar,
Tiruverumbur,
Vin Nagar, 12th Cross,
Kailashnagar,
Kattar, Trichy – 19.
- 5.The District Registrar,
District Registrar's Office,
District Court Complex,
Cantonment,
Tiruchirappalli – 1.



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6.The Inspector General of Registration,
100, Santhome High Road,
Pattinampakkam,
Chennai – 600 028.

7.The District Registrar (Admin),
Office of the District Registrar,
Dindigul.



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WP(MD)Nos.2592 of 2016, etc., batch

B.PUGALENDHI, J.

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**WP(MD)Nos.2592, 8836,
13463, 14636 of 2016**

20.06.2023