



WP(MD)No.3591 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.06.2023

CORAM:

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

WP(MD)No.3591 of 2016

K.Jebasingh Rathinaraj

: Petitioner

Vs.

1.The District Registrar,
District Collector's Office Campus,
Palayamkottai,
Tirunelveli.

2.G.Ephraim Bleson Noble
Through Father and Power Agent
Rev.Dr.Godfrey Washington Noble

: Respondents

[R.2 impleaded vide order dated 27.02.2023]

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus directing the respondent to conclude the enquiry that has been initiated in pursuant to the petitioner's complaint dated 26.06.2015 in connection with a fraudulent registration of settlement deed at the Office of the Sub-Registrar, Murappanadu, Thoothukudi District, vide Doc.No. 3056/2014 dated 28.08.2014, within a stipulated time limit.



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For Petitioner : Mr.R.Anand

For Respondents : Mr.Veera Kathiravan,
Additional Advocate General

Assisted by
Mr.M.Ramesh,
Government Advocate for R.1

Mr.M.Kannan for R.2

ORDER

This writ petition is filed by the petitioner for a mandamus directing the first respondent to conclude the enquiry, within a stipulated time limit, which was initiated pursuant to the petitioner's compliant dated 26.06.2015.

2.The case of the petitioner is that his mother owned certain properties in Keelavallanadu Village. When his mother was sick, his sister and her family forcefully took his mother and fraudulently registered a settlement deed vide Doc.No.3056 of 2014 dated 28.08.2014. The grievance of the petitioner is that he attended the enquiry based on his compliant dated 26.06.2015 for cancellation of the document, but no order was made by the District Registrar. Hence, he seeks for expeditious disposal of the enquiry.



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3.The petitioner by his representation sought for cancellation of the documents through Circular No.67, Registration Department, dated 03.11.2011. The issue in this petition is that no order was passed by the District Registrar pursuant to the enquiry. When this petition came up for hearing, the learned Counsel for the petitioner reported “no instructions” regarding the status of the enquiry and the learned Government Advocate also expressed his inability to provide any instructions regarding the condition of enquiry. Hence it is not known whether the enquiry pending under Circular No.67 is concluded or not.

4.The Inspector General of Registration vide his proceedings in letter No. 41530/u1/2017 dated 20.10.2017 withdrew Circular No.67 and the District Registrars were also informed to return the petitions received under Circular No. 67, subsequent to the decision of Hon’ble Supreme Court in ***Satya Pal Anand v. State of M.P.***, [(2016) 10 SCC 767]. In the said decision, the Hon'ble Supreme Court has held 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.



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5. Thereafter, for cancellation of registered documents, 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. However, this Court in *S.M. Hajabakruthen v. The Inspector General of Registration [W.P.(MD)Nos.14546 of 2022, etc., batch dated 27.03.2023]* has referred the issue regarding the applicability of Section 77A of the Act to the documents that were registered prior to its enactment, for consideration by a Larger Bench of this Court.

6. In view of the above position, this writ petition is disposed with a liberty to the petitioner to approach the competent civil Court, in case the enquiry under Circular No.67 has not been concluded. If any suit is filed by the petitioner, the same shall be entertained by the civil Court by excluding the period for which this writ petition was pending before this Court for the purpose of calculating the limitation period. Liberty is also granted to the writ petitioner to invoke Section



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77A of the Act upon the outcome of the reference made. There shall be no order as to costs.

Index : Yes / No
NCC : Yes / No
gk

20.06.2023

To

The District Registrar,
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Tirunelveli.



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B.PUGALENDHI, J.

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