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W.P.(MD)NO.24368 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.11.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.24368 of 2023

Hitesh Ashokkumar Galani

... Petitioner

Vs.

1. The District Registrar,
Registration Department,
Madurai South, Palace Road,
Madurai.

2. The Sub Registrar,
Thirumangalam Sub Registrar Office,
Madurai District.

3. The IG of Registration,
Santhome, Chennai.

4. The State of Tamil Nadu,
Rep. by Secretary to Government,
Registration and Commercial Tax Department,
Chennai.

(R-3 & R-4 are suo motu impleaded
vide order dated 09.10.2023)

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified mandamus, to call for records in the impugned proceedings of the 2nd respondent in pending document No.P66/2023 dated 19.06.2023 and quash the same as illegal and consequently direct the respondents to accept



sale deed dated 27.04.2023 and register the same forthwith.

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For Petitioner : Mr.S.Kumar

For Respondents : Mr.S.Ra.Ramachandran,
Additional Government Pleader.

* * *

ORDER

Heard the learned counsel on either side.

2. The petitioner purchased two items of property from Delhi based vendor. One item of property measures 4 acre and 46 cents and is situated in Usilampatti; the other item measuring 89 cents of land is located in Thirumangalam. The sale deed was prepared and presented for registration before the Sub-Registrar, Thirumangalam. All the preliminary formalities were completed. But the document was not registered or released. The document was presented on 27.04.2023. On 19.06.2023, the Sub Registrar, Thirumangalam informed the petitioner that in view of the Circular dated 29.06.2022 issued by the IG of Registration, registration has to be done only at Usilampatti and not at Thirumangalam. Challenging the aforesaid stand of the second respondent, the present writ petition came to be filed.



3. Since reliance is placed on the IG's circular, I *suo motu* impleaded the IG of Registration, Santhome, Chennai and also the State of Tamil Nadu.

4. The learned counsel appearing for the writ petitioner called upon this Court to grant relief in view of Section 28 of the Registration Act 1908.

5. The learned Additional Government Pleader on the other hand submitted that the circular dated 29.06.2022 issued by the IG of Registration was only to prevent the registration of fraudulent documents. This Court should therefore appreciate the larger object behind issuance of such circular. He called upon this Court to sustain the impugned order and dismiss this writ petition.

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

7. Circular No.21090/C1/2022 dated 29.06.2022 issued by the IG of Registration reads as follows:-

“ It has come to the notice of this department from the report 1st and 2nd cited that fraudulent documents have been registered by unscrupulous people misusing the provision of



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Section 28 of the Registration Act, 1908 in respect of registration of documents in any one of the Sub Registrar Offices if schedule of properties lie in multiple jurisdictions. It is also noticed from the reports that the Registering Officers have also been misusing the provisions knowingly in connivance with the fraudsters.

Based on the report, a circular 3rd cited has been issued to curtail such misuse of Section 28 of the said Act if the owner of the properties is different.

In furtherance to the circular, the following additional guidelines are issued to curtail the misuse of the section even if the multi-jurisdictional properties belong to one owner.

1. No registering officer shall accept for registration of a deed containing more than one property (belonging to same owner) which are located in different Sub Registrar offices, wherein a very small/insignificant property (i.e.,



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a property having below 1/5th of extent or value when compared to other substantial properties) is added artificially with an extent to create artificial jurisdiction in the concerned Sub Registrar Office. The document should be returned to the presentant through a Check Slip advising him to present the document for registration before the SR office wherein the substantial portion of property lies within.

2. The registering officer shall not accept for registration of a deed containing more than one property which are located in different Sub Registrar offices, wherein, if a property has been purchased in the seller's name 90 days prior to the date of presentation of subject document and added in the subject document to create an artificial jurisdiction in the concerned Sub Registrar office. Such documents should be returned with check slip asking the registrant to present it in the SR office in which substantial portion of property lies.



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3. If an instrument comprising two properties(belonging to same owner) situate within the jurisdiction of different Sub Registrar offices and if it appears that both properties are found to be almost equal in proportion in respect of extent and value, then the document should compulsorily be kept pending and 'Status Report' regarding the other property situate in other Sub-Registrar office (as to any legal impediment with regard to the registration of the property) should be obtained from the other SR office through their respective Deputy Inspector General of Registration. The subject document may be registered if there are no legal impediments in respect of such other property as per the 'Status Report' received from the other SR office with the concurrence of the respective Deputy Inspector General of Registration.

4. This circular is issued based on the powers conferred under Section 69(1)(j) of the



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Registration Act, 1908.

5. District Registrar(Admin) and (Audit) should thoroughly check these kinds of registrations as to whether the procedure laid down in this circular was followed and send report to concerned DIG and IGR, in case any deviation or any act with malafide intention is found.

Deviation if any found in this regard will be viewed seriously. The concerned District Registrar(Admin) and (Audit) will also be held responsible for such inappropriate registrations occurred within their jurisdiction.

The receipt of this circular may be acknowledged hierarchically.”

8. Section 28 of the Registration Act reads as follows:-

“28. Place for registering documents relating to land.—Save as in this Part otherwise provided, (a) every document mentioned in clauses (a), (b), (c), (d), (e), (f), (g),



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(h) and (I) of sub-section (1) and sub-section (2) of section 17, insofar as such document affects immovable property, and in clauses (a), (b), (c) and (cc) of Section 18 shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate in the State of Tamil Nadu;

Provided that every document mentioned in clause (h) of sub-section (1) of section 17 may also be presented for registration in the office of the Sub-Registrar within whose jurisdiction the principal ordinarily resides.

(b) any document registered outside the State of Tamil Nadu in contravention of the provisions of clause (a) shall be jurisdiction to be null and void.”

9. It is well settled that if there is repugnance between a statutory provision and an executive circular. The statutory provision will prevail having regard to the principle of hierarchy of laws. The Hon'ble Apex Court in ***Ispat***

***Industries Ltd., V. Commissioner of Customs, Mumbai***

WEB COPY (2006) 12 SCC 583 observed as follows:-

“... it may be mentioned that according to the theory of the eminent positivist jurist Kelsen (The Pure Theory of Law) in every legal system there is a hierarchy of laws, and whenever there is conflict between a norm in a higher layer in this hierarchy and a norm in a lower layer the norm in the higher layer will prevail (see Kelsen's' The General Theory of Law and State). In our country, this hierarchy is as follows:-

(1) The Constitution of India;

(2) The Statutory Law, which may be either Parliamentary Law or Law made by the State Legislature;

(3) Delegated or subordinate legislation, which may be in the form of rules made under the Act, regulations made under the Act, etc.,

(4) Administrative orders or executive instructions without any statutory backing.”

10. At the same time, the contention advanced by the



learned Additional Government Pleader cannot be disregarded. If it is apparent that the circular has been issued to prevent misuse of Section 28 of the Registration Act 1908, Section 28 cannot be mechanically applied to facilitate the registration of fraudulent documents. Therefore, the registering authority can always conduct enquiry as contemplated in paragraph No.3 of the circular. If the sale deed contains more than one item in the schedule and major chunk of the property that is the subject matter of the conveyance is located within the jurisdiction of another Sub-Registrar office, it is always open to the registering authority to conduct enquiry as envisaged in paragraph No.3 of the circular. But then, such an enquiry will have to be speedily conducted and concluded. The party who presented the document for registration cannot be made to wait for an unreasonable period. I assume that the period of four weeks will be reasonable in such cases. In the case on hand, the second respondent had not conducted any such enquiry. He had mechanically shown the door to the writ petitioner. The petitioner's counsel submits that since the vendor had already taken purchase money for sale consideration, it would be



difficult for the petitioner to convince the vendor or the power agent to once again appear before Usilampatti Sub Registrar.

11. It is not in dispute that the preliminary formalities were concluded before the second respondent earlier. The only impediment is the aforesaid circular dated 29.06.2022. Such circular cannot prevail over Section 28 of the Registration Act 1908.

12. In this view of the matter, the impugned proceedings are set aside. The second respondent is at liberty to conduct enquiry if so advised as envisaged in paragraph No.3 of the circular. The enquiry shall be completed within a period of four weeks from the date of receipt of a copy of this order. If no adverse status report is received, the second respondent shall complete the registration process and release the document. This writ petition stands allowed on these terms. No costs.

22.11.2023

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

1. The District Registrar,
Registration Department,
Madurai South, Palace Road,
Madurai.
2. The Sub Registrar,
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G.R.SWAMINATHAN,J.

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