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W.P.(MD)NO.29648 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 14.12.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.29648 of 2023

1. K.Sathakathullah
2. K.Hidayadhulla

... Petitioners

Vs.

1. The Sub Registrar,
Manaparai Taluk,
Trichy District.

2. N.Sudha

3. S.Kulanthaivelu

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned refusal check slips issued by the 1st respondent in his proceedings refusal number - RFL/Manapaarai/393/2023 dated 07.12.2023 and RFL/Manapaarai/394/2023 dated 07.12.2023 and quash the same as illegal, arbitrary and in violation of the provisions of the Registration Act, 1908 and consequently directing the 1st respondent to register the sale deeds dated 07.12.2023 executed by the petitioners, within the stipulated time fixed by this Court.



For Petitioners : Mr.B.Saravanan,
Senior Counsel,
for Mr.D.Kirubakaran.

For R-1 : Mr.K.Balasubramani,
Special Government Pleader.

* * *

ORDER

Heard the learned Senior counsel appearing for the writ petitioners and the learned Special Government Pleader appearing for the first respondent.

2. The petitioners want to sell the petition-mentioned property. When the document was presented for registration, the registering authority declined to register the same on the ground that the Encumbrance Register indicates the existence of the earlier sale agreement. Challenging the refusal check slip issued by the registering authority, the present writ petition came to be filed.

3. As rightly pointed out by the learned counsel appearing for the writ petitioner, the issue raised in this writ petition is no longer *res integra*. The Hon'ble Division Bench of this Court was called upon to answer the issue if once sale agreement has been registered by the vendor, the subsequent



documents in respect of the immovable property can refuse to be registered by the Registrar. Answering the said question, the Hon'ble Division Bench held as follows:

“38. It is also brought to our notice about the new circular in No.24011/C1/2020 dated 08.10.2020. It is the contention of the learned Additional Advocate General that the Registrar has power to regulate the registration in order to prevent fraud and hence, the Registrar is having powers under the Registration Act to regulate the registration and the right to refuse the document and that such power is available under Section 71 of the Registration Act. Such contention is not acceptable for the simple reason that the circular bars transfer of property on the ground that when a lease is already executed in respect of the property, without expiry of the lease, transfer cannot be permitted or without consent of lessee no registration is permissible. Further, insisting a no objection from mortgagee before registration is also against the very substantive provision of



law. If any property is sold with existing mortgage, the transferee steps into the shoes of mortgagor. He has the right to redeem the property by paying the mortgage money. Therefore in the name of regulating the registration, any circular which is in the nature of violating the substantive provision of law, which deals with the transfer of property, then such circular cannot stand in the eye of law. If the contention of learned Advocate General that without seeking declaration and cancellation of the agreement of sale, subsequent agreement or transaction cannot be registered, is accepted then such restriction, in fact, infringes the very Constitutional right of the citizen provided under Article 300 A of the Constitution.”

4. Applying the aforesaid ratio, the impugned refusal check slip is quashed and the petitioner is permitted to re-present the document in question and the first respondent shall entertain the same and register it and release it subject to fulfilment of the other usual formalities.



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5. This writ petition is allowed. No costs.

14.12.2023

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

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To:

The Sub Registrar,
Manaparai Taluk,
Trichy District.



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G.R.SWAMINATHAN,J.

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