



W.P.No.1782 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2024

CORAM :

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.1782 of 2020

and

W.M.P.No.2066 of 2020

1.K.Kathirvel

2.K.Ponnammal

... Petitioners

Vs.

1.The Deputy Superintendent of Police,
Economic Offences Wing II,
Namakkal,
Namakkal District.
(Crime No.6 of 2013)

2.The Sub Registrar,
Mallasamudiram SRO,
Namakkal District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records relating to the impugned order made in C.No.154/DSP/EOWII/NKL/2018 dated 22.10.2018 passed by the first respondent and quash the same.

For Petitioners : Mr.M.Ganesh
for Mr.N.Manoharan

For Respondents : Mr.P.Anandakumar
Government Advocate



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ORDER

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This Writ Petition has been filed seeking for issuance of a certiorari, to call for the records relating to the impugned order made in C.No.154/DSP/EOWII/NKL/2018 dated 22.10.2018 passed by the first respondent and quash the same.

2. The brief facts of this case are as follows:-

2.1. According to the petitioner, the properties measuring to an extent of 19.57 Acres were owned by one Late V.P.Pakchi Raja by virtue of the Sale Deeds dated 30.08.2010 (Doc.No.4612/2020), 25.10.2010 (Doc.No.4613/2010), 13.01.2011 (Doc.No.121/2011), 13.01.2011 (Doc.No.125/2011), 20.01.2011 (Doc.No.176/2011), 01.08.2011 (Doc.No.3113/2011) and 23.02.2011 (Doc.No.862/2011). He sold the entire properties to the petitioners vendors namely S.Balakrishnan and G.Rajarathinam under two Sale Deeds dated 23.04.2012 (Doc.Nos.1772 and 1773 of 2012).

2.2. The petitioners came to know the above properties, and thoroughly verified the marketable title, revenue records and encumbrance certificates in respect of the subject matter lands and purchased the entire extent



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of 19.57 Acres under the following four Sale Deeds, namely:-

- i. Document No.1460 of 2018 in the name of the first petitioner.
- ii. Document No.1461 of 2018 in the name of the first petitioner.
- iii. Document No.1462 of 2018 in the name of the second petitioner.
- iv. Document No.1463 of 2018 in the name of the second petitioner.

2.3. After the purchase, the petitioners have submitted an application dated 14.06.2018 for transfer of mutation entries in their names. The Zonal Deputy Tahsildar, Tiruchengode has considered the application of the petitioners and the report of the Village Administrative Officer, Tiruchengode, and passed two Patta Transfer Orders dated 13.07.2018 and 16.07.2018. Thereafter, the Tahsildar, Tiruchengode had issued Patta in favour of the petitioners. Accordingly, the petitioners have been in actual and exclusive possession and enjoyment of the said properties as its absolute owners. While so, the first respondent registered a case in Crime No.6 of 2013 on 19.11.2013 against one Jaisankar and his wife Jayalakshmi for the offence under Sections 406, 420, 468 and 307 of IPC on the basis of the complaint given by Late V.P.Pakchi Raja alleging that the accused in Crime No.6 of 2013 had siphoned the sale price received from the said S.Balakrishnan and G.Rajarathinam. After



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investigation, the first respondent police filed police report in C.C.No.398 of 2014 on the file of the Judicial Magistrate Court, Rasipuram, Namakkal District against the 1st accused Jaisankar and the 2nd accused Jayalakshmi. The case was taken on file on 07.11.2014. During the course of trial, the witnesses were examined and the trial is at the fag end.

2.4. At this juncture, the first respondent has sent the impugned order dated 22.10.2018 to the second respondent/jurisdiction Sub Registrar by directing him not to entertain any documents for registration. In fact, such order has not been communicated to the petitioners. The entire analysis of the police report with reference to the ingredients of the penal provisions quoted above would clearly show that the subject matter properties purchased by the petitioners are no way related to the case in C.C.No.398 of 2014. Hence, challenging the order dated 22.10.2018 in C.No.154/DSP/EOWII/NKL/2018 passed by the first respondent, the petitioner has approached this Court by way of filing the present writ petition.



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3. Learned counsel appearing for the petitioners submitted that the impugned order dated 22.10.2018 passed by the first respondent is per se illegal and the first respondent is not authorized or empowered to pass the impugned order either under the Criminal Procedure Code or under the Registration Act, 1908 or under any other law for the time being in force. He further submitted that by passing the impugned order and also by sending it to the second respondent, the first respondent ought to have send a report to the Government for initiating action under Section 3 of the Criminal Law Amendment Ordinance, 1944.

4. Learned counsel appearing for the petitioners further submitted that in a similar case, this Court in **W.P.No.11221 of 2015 dated 27.07.2015, in V.Sundaram Vs. The Deputy Superintendent of Police, Economic Offences & Wing, Kancheepuram District**, has held that the Police Department cannot give any letter to the Registration Department in order to register the Sale Deed and cannot give any objection not to register any Deed/Document pertaining to any Survey Number which is extracted hereunder for better appreciation and understanding:



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“12. This Court is in complete agreement with the law laid down by the Full Bench of the Bombay High Court and the Kerala High Court with regard to the power of the police officer to seize immovable properties under Section 102, Cr.P.C. The Deputy Superintendent of Police, by couching the impugned communication in a camouflaged language, is in fact, indirectly attaching the properties of the accused via the backdoor, which is not permissible. If the Deputy Superintendent of Police is desirous of safeguarding the interest of the depositors, he should have immediately taken steps to send a report to the Government for initiating action under Section 3 of the Criminal Law Amendment Ordinance and not through such a subterfuge.

13. The order impugned is indeed arbitrary exercise of power and is therefore, violative of Article 14 of the Constitution of India. It is always open to the Investigating Officer to call for information from the sub registrar about the property holdings of an accused. He can also ask the Sub-Registrar to inform him, if any transaction concerning the properties of the accused, is registered. He cannot prohibit the Registrar from registering a document. ”

5. Learned counsel appearing for the petitioners has also relied on the Judgment of this Court in **W.P.No.6701 of 2016 dated 24.02.2016 in G.S.Senthilnathan Vs. The Deputy Superintendent of Police, Namakkal District and another**. Relevant paragraphs is extracted hereunder:-

“7. In the present case, as could be seen from the impugned communications, the 2nd respondent has identified the property of the petitioner to initiate action for attachment under the provisions of the Act. But even prior to the Government passed necessary order, the 2nd respondent sent



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*a communications, dated 25.03.2015 & 09.07.2015 to the 3rd respondent stating that the registration in respect of the property of the petitioner should be undertaken only on the clearance of the Court. If at all the 2nd respondent feels it appropriate in order to safeguard the interest of the defacto-complainant who was cheated by the petitioner's vendors and to ensure that the petitioner shall not derive benefits from the property, which he procured by means of misappropriated funds, he could very well take steps by sending a report to the State Government seeking to initiate action under Section 3 of the Act for attaching the property. Therefore, as rightly contended by the learned counsel appearing for the petitioner, the 2nd respondent cannot arrogate to himself the power to issue such a veiled threat to the Sub-Registrar/3rd respondent and thereby prohibit the transaction in respect of the property. In this regard, it is worthwhile to refer the decision of this Court rendered in very similar circumstances, in **V.Sundaram v. The Deputy Superintendent of Police, Economic Offences & Wing, Kancheepuram District**, vide order, dated 27.07.2015 in W.P.No.11221 of 2015, wherein, after following the decisions of the Full Bench of Bombay High Court and the Kerala High Court, it has been held as under in para 12 and 13:*

“12. This Court is in complete agreement with the law laid down by the Full Bench of the Bombay High Court and the Kerala High Court with regard to the power of the police office to seize immovable properties under Section 102 Cr.P.C. The Deputy Superintendent of Police, by couching the impugned communication in a camouflaged language, is in fact, indirectly attaching the properties of the accused via the backdoor, which is not permissible. If the Deputy Superintendent of Police is desirous of safeguarding the interest of the depositors, he should have immediately



taken steps to send a report to the Government for initiating action under Section 3 of the Criminal Law Amendment Ordinance and not through such a subterfuge.

13. The order impugned is indeed arbitrary exercise of power and is therefore, violative of Article 14 of the Constitution of India. It is always open to the Investigating Officer to call for the information from the Sub Registrar about the property holdings of an accused. He can also ask the Sub Register to inform him, if any transaction concerning the properties of the accused is registered. He cannot prohibit the Registrar from registering a document. ”

8. In view of the above discussion, I am of the view that the impugned communications of the 2nd respondent are liable to be quashed. Further, if a document is presented for registration in compliance with the provisions under the Registration Act, the Sub-Registrar cannot deny the registration of the same unless there is interim order from the competent Court restraining him from registering the document and he is empowered to deny the registration of the document within the frame of provisions of the Registration Act and Rules framed thereunder, particularly, on the grounds enunciated under Rule 55, viz., if the document is forged, impersonation by the parties, if the executing party is a minor or a lunatic, etc. Therefore, in the absence of any interim order from the competent Court nor any of the grounds available under Rule 55, the Sub Registrar cannot deny the registration.

The Writ Petition is allowed and the impugned communications of the respondents as well as the 3rd respondent are hereby set aside. Consequently, connected



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Miscellaneous Petitions are closed. No costs.”

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6. In the case on hand the first respondent/Deputy Superintendent of Police (DSP), Economic Offences Wing II, Namakkal District has sent the impugned order dated 22.10.2018 to the second respondent/Sub Registrar, Mallasamudiram Sub Registrar Office, Namakkal District, not to entertain any documents for registration, based on which, the second respondent has refused to register any documents. In the above similar matters, this Court has held that the Police Department cannot give any letter to the Registration Department in order to register the Sale Deed and cannot give any objection not to register any Deed/Document. The above said principles/ratio laid down by this Court is squarely applicable to the present case.

7. In view of the above factual matrix of the case and the principles/ratio laid down by this Court, the impugned order dated 22.10.2018 passed by the first respondent is quashed. The second respondent/Sub Registrar, Mallasamudiram Sub Registrar Office, Namakkal District, is hereby directed to register the Deed/Documents presented by the petitioners if



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otherwise in order, within the period of eight weeks from the date of receipt of a copy of this order.

8. In the result, this writ petition stands allowed with the above observation and direction. No costs. Connected Writ Miscellaneous Petition is closed.

03.07.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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To

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Namakkal,
Namakkal District.
(Crime No.6 of 2013)

2.The Sub Registrar,
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