IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **10.07.2024**

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

WP.No.18097 of 2024

S.Vivekanandan .. Petitioner

Versus

1. The District Registrar [Admin], Chennai South Office,
   Commercial Tax and Registration Department,
   Fanepet Nandanam, Chennai – 600 015.

2. The District Registrar, Chennai South Joint – II,
   No.9, Jeenis Road, Saidapet, Chennai – 600 015.

3. R.Aarthi .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the first and second respondents to register the sale deed dated 07.06.2023 vide pending No. P114 of 2023 n the file of second respondent on the production of certified copy of settlement deed dated 24.04.2015 in Doc. No. 1003/2015 registered on the file of the second respondent after getting a declaration in the form of sworn affidavit form he executants of the sale deed in favour of the petitioner.

For Petitioner : Mr.D.Murugan

For Respondents : Mr.P.Anandhakumar
Government Advocate – R1 & R2

ORDER

Since no adverse Order has been passed against the third respondent, notice to her is dispensed with. With the consent of both sides, this Writ Petition is taken up for final disposal at the admission stage itself.

2. This writ petition is filed to direct first and second respondents to register the sale deed dated 07.06.2023 vide pending No. P114 of 2023 n the file of second respondent on the production of certified copy of settlement deed dated 24.04.2015 in Doc. No.1003/2015 registered on the file of the second respondent after getting a declaration in the form of sworn affidavit form he executants of the sale deed in favour of the petitioner.

3. Heard learned counsel for the petitioner and the learned Government Advocate appearing for the respondents 1 and 2 and perused the materials available on record.

4. The case of the petitioner is that petitioner entered into a sale agreement with the third respondent for purchasing the subject property. As the third respondent had not come forward to register the sale deed, the petitioner filed a suit in O.S.No.544 of 2022 before the Additional District

Judge, Chengalpet. During the pendency of the suit, the third respondent came forward to register the sale deed. When the sale deed was presented for registration the same was refused to be registered on the ground that original settlement deed executed by the sister of the third respondent has not been produced. Challenging the same, the present Writ Petition has been filed.

5. I have perused entire records. This Court in **Federal Bank Vs. Sub Registrar and two others** in **W.P.No.2758 of 2023 dated 08.02.2023**, has held as follows :

> "22. Similarly, the second proviso requires the executant to produce a revenue record to show his "right over the subject property" where the property is ancestral in character and there is no original deed available. Even a tax receipt can be produced under this proviso which is opposed to the fundamental principle of law that revenue records are not documents of title [State of A.P. v Star Bone Mill and Fertilizer Company, 2013 9 SCC 319]. Production of revenue documents to verify the source of title only demonstrates complete ignorance of the settled position of law.

23. Similarly, the third proviso also defies logic. If the original is lost, it is not understood as to why a certified copy of that document obtained from the file of the concerned SRO cannot be produced. When the best evidence is not available, the best course is to produce a certified copy which is the next best available alternative. Instead, the third proviso requires the executant to obtain a non-traceable certificate and effect paper publication.

24. It is also well settled by the decision of the Supreme Court in J.K. Industries Ltd. v. Union of India, (2007) 13 SCC 673 that a subordinate legislation may be struck down as arbitrary or contrary to statute if it fails to take into account vital facts which expressly or by necessary implication are required to be taken into account by the statute or the Constitution. Furthermore, Rule 55-A is a delegated legislation which cannot go beyond the scope of the Parent Act viz., the Registration Act as well the Transfer of Property Act which is the substantive law governing the transfer of immovable properties. Hence, the first proviso is clearly ultra vires and unconstitutional.

25. In the case at hand, provisional attachment was passed by the G.S.T. authorities. The registration of the Sale Certificate was rejected for this reason. It is relevant to note that the petitioner was a prior mortgagee in the year 2017, whereas the provisional attachment was passed by the G.S.T. authorities on 18.12.2021. This order has already lapsed by operation of law. In this regard, it is useful to extract Sec.83 of The Central Goods and Service Tax Act, 2017 which reads as follows:

"83. Provisional attachment to protect revenue in certain cases:

(i) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the tax able person in such manner as may be prescribed.

(ii) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under subsection (1)."

26. In view of the above, as this Court has held that the first proviso to Rule 55-A has been found to be invalid and ultra vires, the respondent cannot refuse to register the document placing reliance on the aforesaid proviso.

27. Sec.83(2)of G.S.T.Rule makes it clear that every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1). Therefore, provisional attachment made by the second respondent vide order dated 18.12.2021 has ceased to have effect, after expiry of a period of one year. There is no material to show any final order of attachment, or any subsequent order passed by the second respondent pursuant to the aforesaid order. Therefore, this Court is of the view that the impugned order dated 17.10.2022 is liable to be quashed."

Inspite of the above settled position of law, repeatedly refusing to registration of the document has become an Order of the day. Considering the fact that the

Circular cannot override statutory right and substantive provision of law, the respondent cannot refuse to register the document citing non production of original. They can very well verify the certified copies available with them.

6. Accordingly, this Writ Petitioner is disposed with a direction to the first and second respondents to register the Settlement Deed dated 07.06.2023 vide pending document No.P114 of 2023 on the file of the second respondent on production of the certified copy of the settlement deed dated 24.04.2015 without insisting on the original document within a period of fifteen days from the date of receipt of a copy of this Order. No costs.

10.07.2024

vrc

Index :Yes/No
Internet :Yes/No
Neutral Citation : Yes/No

To,

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   Commercial Tax and Registration Department,
   Fanepet Nandanam, Chennai – 600 015.

2. The District Registrar, Chennai South Joint – II,
   No.9, Jeenis Road, Saidapet, Chennai – 600 015.

N. SATHISH KUMAR, J.

vrc

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