



W.P.No.8063 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2024

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.8063 of 2019

and

W.M.P.Nos.8667 and 8668 of 2019

A.Kalimulla Khan

... Petitioner

VS.

1.The Inspector General of Registration,
Santhome High Road,
Chennai-600004.

2.District Registrar,
Kancheepuram

3.The Joint 2 Sub-Registrar,
Kancheepuram

4.R.Vijayaraghavan

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the proceedings of the 2nd respondent in No.1681/A2/2018 dated 09.05.2018 quash the same.



W.P.No.8063 of 2019

For Petitioner : M/s.A.B.Fathima Sulthana
For R1 to R3 : Mr.T.Chezhiyan
Additional Government Pleader
For R4 : No Appearance

ORDER

Aggrieved by an order passed by 2nd respondent holding that Document No.3503/2013 registered on the file of 3rd respondent was a fraudulent document and liable to be cancelled, the petitioner has come by way of this writ petition.

2. According to the petitioner, the property comprised in Survey Nos.8/1 Part, 8/2 Part, 7/2 Part and 7/1 Part of No.54, Sevilimedu Village, within the limits of Kanchipuram Municipality was sold by its original owner Sri Kanchi Kamakoti Peedapathy Jagatguru Sri Sankarachariar in favour of Kanchipuram Central Co-operative Bank's Employees Co-operative Building Society by registered Sale Deed dated 25.11.1970 after obtaining necessary permission from the Commissioner of HR and CE, Chennai. The said Society formed layout and sold the plots to various



W.P.No.8063 of 2019

persons. One C.A.Rajagopal purchased Plot No.67 under Sale Deed dated 15.12.1972. Thereafter, he settled the property in favour of his son R.Krishnan vide Settlement Deed dated 06.06.2013. The Settlee-R.Krishnan obtained patta for the said property in Patta No.5428 in his name and his property was sub-divided as Survey No.7/1B29. The said R.Krishnan sold the property to petitioner's vendor namely A.T.Abdul Rahman under Sale Deed dated 08.01.2014. From above said A.T.Abdul Rahman, the petitioner purchased the property by Sale Deed dated 06.11.2014 registered as Document No.7128 of 2014 on the file of the 3rd respondent.

3. When the petitioner applied for Encumbrance Certificate of the property purchased by him on 31.12.2018, he found that based on the complaint made by 4th respondent, the 2nd respondent cancelled the Sale Deed in favour of petitioner's vendors vendor namely R.Krishnan by impugned order. It is the specific case of the petitioner before passing the impugned order cancelling the sale in favour of R.Krishnan, the petitioner was not issued with any notice.



W.P.No.8063 of 2019

4. The learned counsel appearing for the petitioner would submit that cancellation of petitioner's parent document would automatically result in invalidation of the Sale Deed in favour of the petitioner and therefore, the 2nd respondent before passing the impugned order ought to have issued notice to the petitioner and hence, the impugned order is liable to be set aside for violation of principles of natural justice.

5. Though the 4th respondent was served and his name appeared in the cause-list, there is no representation for him.

6. The 3rd respondent filed his counter affidavit and resisted the claim of the petitioner on the ground that the 2nd respondent conducted an enquiry and found that Document No.3503/2013 was registered by impersonation. Therefore, the 2nd respondent passed the impugned order giving his finding with regard to the fraudulent nature. However, it is stated by the 3rd respondent in his counter affidavit that the 2nd respondent has not made any order cancelling the registration of the Document No.3503/2013 as claimed by the petitioner.



W.P.No.8063 of 2019

7. Though in the impugned order there is no specific direction cancelling the document in question, there is a clear finding by the 2nd respondent the said document was registered by playing impersonation. In fact, the 2nd respondent directed the 3rd respondent to take necessary criminal action against the persons involved in impersonation. It is also seen from the Encumbrance Certificate produced by the petitioner in the typed-set of papers, the Official Respondents made entries in the records regarding cancellation of Document No.3503/2013 and all other subsequent documents including the Sale Deed in favour of the petitioner based on the impugned order.

8. Though there is no specific direction in the impugned order cancelling the document questioned before him, based on the adverse finding made by the 2nd respondent, the entries have already been made by the respondent in the registration record regarding the cancellation of the document. Before passing an order, which will have adverse impact on the petitioner, the 2nd respondent should have issued notice to the petitioner and all other persons, who are affected by such an order. In the case on hand, the 2nd respondent issued notice only to the parties to the Document



W.P.No.8063 of 2019

No.3503/2013 and persons who purchased the property by way of subsequent document including the petitioner have not been served with notice. The impugned order is clear violation of principles of natural justice and therefore, it is liable to be set aside.

9. It is also brought to the notice of this Court the Section 77A of the Registration Act which enables the 2nd respondent to cancel the registered document was struck down by the Division Bench of this Court in ***M.Kathirvel vs. The Inspector General of Registration*** (W.P.No.10291 of 2022 etc., batch, dated 02.08.2024). Therefore, the impugned order which has been passed obviously in exercise of power available to 2nd respondent under Section 77A of the Registration Act should automatically go by virtue of the above said order passed by the Division Bench of this Court. Therefore, I am inclined to allow the writ petition by setting aside the order impugned in this writ petition on both the grounds namely violation of principles of natural justice and also non-availability of enabling provision empowering the 2nd respondent to cancel the document.



W.P.No.8063 of 2019

10. In view of the discussion made earlier, the Writ Petition stands allowed and the impugned order passed by the 2nd respondent in No.1681/A2/2018 dated 09.05.2018 is quashed. No costs. Consequently, the connected writ miscellaneous petitions are closed.

12.08.2024

Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
dm

To

1. The Inspector General of Registration,
Santhome High Road,
Chennai-600004.
2. District Registrar,
Kancheepuram
3. The Joint 2 Sub-Registrar,
Kancheepuram



WEB COPY



W.P.No.8063 of 2019

S.SOUNTHAR, J.

dm

W.P.No.8063 of 2019

12.08.2024