



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.10502 of 2024

G.Somasundaram

...

Petitioner

versus

The Sub-Registrar,
Sub-Registrar Office,
Perundurai,
Erode District.

...

Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the Refusal Check Slip in refusal number RFL/Perundurai/21/2024 dated 14.03.2024 and to quash the same as illegal, incompetent and ultravires and consequently direct the respondent to register the Partition deed dated 30.01.2024 executed by the petitioner and two others and for consequential orders.

For Petitioner : Mr.M.Guruprasad

For Respondent : Mr.L.S.M.Hasan Fizal
Additional Government Pleader



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ORDER

By consent of both sides, this Writ Petition is disposed of at the stage of admission itself.

2. This Writ Petition is filed to quash the Refusal Check Slip in Refusal Number : RFL/Perundurai/21/2024 dated 14.03.2024 and consequently direct the respondent to register the same.

3. It is the grievance of the writ petitioner that when the partition deed was presented for registration, the respondent refused to register the same on the ground that the suit is pending.

4. Heard learned counsel for the petitioner and the learned Additional Government Pleader for the respondent and perused the materials available on record.

5. I have perused entire records. This Court in ***Federal Bank Vs. Sub Registrar and two others*** in ***W.P.No.2759 of 2023 dated 08.02.2023***, has held as follows :-



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“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.”

6. Considering the above and also the fact that the circular cannot override the statutory rights and substantive provisions of law, the respondent cannot refuse the registration of the document. Mere pendency



of the suit will not be a bar for registering of the document. If any document is registered pending the suit, the same will be subject to the result of the suit.

7. Such view of the matter, the Refusal Check Slip in Refusal Number : RFL/Perundurai/21/2024 dated 14.03.2024 issued by the respondent is set aside. The respondent is directed to register the partition deed dated 30.01.2024 within a period of one month from the date of receipt of a copy of this order.

8. With the above directions, this Writ Petition is allowed. No costs.

18.04.2024

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To

The Sub-Registrar,
Sub-Registrar Office,
Perundurai,
Erode District.

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N.SATHISH KUMAR, J.

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