IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.10981 of 2024

Vimala ... Petitioner

versus

The Sub-Registrar,
Singanallur Sub-Registrar Office,
Coimbatore 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 refusal number RFL/Singanallur/23/2023 dated 18.05.2023 issued by the respondent and to quash the same as illegal, incompetent and ultravires and consequently direct the respondent to register the Release Deed dated 18.05.2023 executed by the petitioner.

For Petitioner : Mr.M.Guruprasad

For Respondent : Mr.Yogesh Kannadasan
Special Government Pleader

ORDER

This Writ Petition has been filed challenging the refusal slip dated 18.05.2023 issued by the respondent whereby he refused to register the Release Deed presented by the petitioner for registration.

2. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondent.

3. The registration is refused mainly on the ground that the original document of the Sale Deed and the Encumbrance Certificate have not been produced.

4. I have perused the entire records. This Court in ***Federal Bank Vs. Sub Registrar and two others*** (***W.P.No.2759 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. Hence, the refusal check slip issued by the respondent is set aside. The respondent is directed to register the Release Deed dated 18.05.2023 without insisting the insisting the production of original within a period of one month from the date of receipt of a copy of this Order.

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

23.04.2024

Speaking order / Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No

sri

To

The Sub-Registrar,
Singanallur Sub-Registrar Office,
Coimbatore District.

N.SATHISH KUMAR, J.

sri

W.P.No.10981 of 2024

23.04.2024
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