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WP.No.13664 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2024

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

WP.No.13664 of 2023

R.Kumarasamy

.. Petitioner

Versus

1. The District Registrar [Salem West],
No.313, 3rd floor, Collectorate Building,
O/o.District Collector Office, Salem – 636 001.

2. The Sub Registrar,
Magudanchavadi Sub Registrar Office,
Sankari Taluk, Salem District.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 2nd respondent S.R.O, Magudanchavadi, Sankari Taluk, Salem District to accept the sale deed dated 03.02.2023 for registration thereby considering the petitioner's application for Pre-Registration Token Receipt No.TP /142645165/2023 dated 03.02.2023.

For Petitioner : Mr.N.Vijaya Basker

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



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ORDER

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2. This writ petition is filed for a direction, directing the 2nd respondent S.R.O, Magudanchavadi, Sankari Taluk, Salem District to accept the sale deed dated 03.02.2023 for registration thereby considering the petitioner's application for Pre-Registration Token Receipt No.TP /142645165/2023 dated 03.02.2023.

3. The case of the writ petitioner is that when he presented the partition for registration, the same was refused to be received and returned on the ground that as per the circular of the first respondent, the originals were not produced.

4. Heard learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents 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.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.”



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6. Considering the above and also of the fact the circular cannot override the statutory right and substantive provisions of law, the respondent cannot refuse the registration of the document citing non production of original. They can very well verify the certified copies available with them.

7. Such view of the matter, the petitioner shall present the sale deed dated 03.02.2023 within a period of one week from the date of receipt of a copy of this Order and the second respondent is directed to register the document within a period of fifteen days thereafter.

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

05.07.2024

dhk

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No



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N. SATHISH KUMAR, J.

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