



W.P.No.14777 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Orders Reserved on : 14..06..2024

Orders Pronounced on : 01..07..2024

Coram

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Writ Petition No.14777 of 2023

and

W.M.P.No.14313 of 2023

K.Madhaiyan

..... Petitioner

-Versus-

The Sub Registrar,
Palacode,
Dharmapuri District.

..... Respondent

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondent in Refusal Check Slip in Refusal No.RFL/Palacode/60/2022 dated 20.10.2022 and to quash the same as illegal, incompetent and ultravires and for a consequential direction to the respondent to register the sale deed dated 20.10.2022.

For Petitioner : Mr.J.Pradeep

*For Respondent : Mr.L.S.M.Hasan Fizal,
Addl. Government Pleader*



W.P.No.14777 of 2023

ORDER

WEB COPY

Challenge in this writ petition is to the Refusal Check Slip dated 20.10.2022 issued by the respondent refusing to register the sale deed dated 20.10.2022 executed by the petitioner in favour of one Nandhini.

2.0. The case of the petitioner in brief is as follows:

2.1. The petitioner and his brother-Irusan jointly purchased the land measuring an extent of 10.5 cents comprised in S.No.558/A5B situated at Karagadahalli village, Palacode Taluk, Dharmapuri District through sale deed dated 02.03.2011 registered as Doc.No.1095/2011. Thereafter, there was a partition effected among the brothers themselves and the same was registered as Doc.No.1277/2011 dated 18.04.2011. Ever since the date of partition, the petitioner has been in possession and enjoyment of the property allotted to him under the partition deed including the land measuring an extent of 4620 square feet comprised in S.No.558/A5B allotted to him under the partition deed as absolute owner which is the subject matter in the sale deed in question. He was also given a separate patta for the properties allotted to him.

2.2. The petitioner decided to sell 4620 square feet of land to one Nandhini and when he presented the sale deed on 20.10.2022 for registration, the respondent refuse dto register the sale deed on the groudn that plot



W.P.No.14777 of 2023

measuring an extent of 4620 square feet in S.No.558/A5B is an unapproved plot. Hence, the writ petition.

3. A detailed counter affidavit has been filed by the respondent Sub Registrar, Palacode inter alia contending that there was a partition in respect of larger extent of land in S.No.558/A between one Erusan, Maathaiyan and Mathaiyan (petitioner herein) and based on such partition, Maathaiyan executed a sale deed for 3924 square feet by creating a passage in S.No.558/1 and that the sale deed was registered as Doc.No.3057/2011. Thereafter, a power of attorney was executed in respect of 40.50 cents by one Erusan and two others in favour of Pandurangan which was registered as Doc.No.928/2016. Based on such power of attorney, sale deeds were executed in respect of 2339 square feet of land (Doc.No.1306/2016); 1326 square feet (Doc.No.1400/2016); 1289.75 square feet (Doc.No.1435); 1267.5 square feet (Doc.No.1436/2016); and 1326 square feet (Doc.No.1687/2016). Thereafter, Maadaiyan registered a plot measuring an extent of 1309.5 square feet vide Doc.No.1890/2016. Further, several sale transactions were made by Erusan and two others. A pathway admeasuring 1320 square feet was gifted to the Commissioner, Palacode Panchayat by way of registered Doc.No.25606/2022. After the several sales, now a remaining extent of 4620 square feet is left in the unapproved



W.P.No.14777 of 2023

layout which cannot be sold without proper approval from the District Town Planning Office and Panchayat (Local Body) as per Section 22-A (2) of the Registration Act, 1908. The petitioner was advised to get approval from the authorities concerned. The order passed by the respondent refusing to register the sale deed citing the bar contained in Section 22-A(2) of the Registration Act cannot be found faulted with.

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

5. The learned counsel for the petitioner vehemently submitted that out of the larger extent which was developed and plotted out as house sites, several plots were sold to various persons much prior to the amendment brought in by Tamil Nadu State Act to the Registration Act by inserting Section 22-A and only a meagre extent of 4260 square feet of land alone was left unsold.

6. The main contention of the learned counsel for the petitioner is that the road has been formed recently and gift was made in favour of Commissioner, Palacode Panchayat Union under Registered Doc.No.2506/2022. Therefore, the clarification upon which reliance was placed by the respondent cannot be applied to the facts of the petitioner's case. According to the learned counsel, the clarification issued by the Government of Tamil Nadu under letter Ref Letter



W.P.No.14777 of 2023

No.359/J2/2020-1, dated 16.03.2020, Commercial Taxes and Registration (J2)

Department, .359 dated 16.03.2020 to the letter of the Inspector General of Registration letter dated 03.01.2020 in reference Letter No.52889/C1/2019 would clearly to go show that remaining extent of land left unsold in the vast extent of land which was developed as house sites can be dealt with by the owner and there is no bar for registration.

7. Per contra, the learned Additional Government Pleader would contend that the road has been gifted in favour of the Commissioner, Palacode Panchayat Union only in 2022 which would indicate that the road has been newly formed and therefore, the letter relied upon by the petitioner is not application to the present case.

8. A careful perusal of the facts of the present case would make it clear that the the land was originally allotted under a registered partition deed in 2011. One of the allottees namely, one Maathaiyan dealt with his share in the property allotted to him under the partition deed and sold different extent of land to various persons as house sites from 2011 onwards. Thereafter, the purchasers from the said Maathaiyan had later on entered into various transactions of sale. Now the remaining extent of land measuring an extent of 4260 square feet of land which has been retained by the petitioner has been



W.P.No.14777 of 2023

sold to Mrs.M.Nandhini, the daughter of the petitioner and when the sale deed was sought to be registered, the respondent refused to register the sale deed citing the bar contained in Section 22-A of the Registration Act and the circular issued by the Inspector General of Registration.

9. Now a question arises whether the petitioner is prohibited from dealing with the remaining extent of land which he retained from out of the larger extent of land developed as house sites?

10. It is relevant to extract hereunder Section 22-A of the Registration Act,1908:

“22-A. Refusal to register certain documents .—

Notwithstanding anything contained in this Act, the registering officer shall refuse to register any of the following documents, namely:—

(1) instrument relating to the transfer of immovable properties by way of sale, gift, mortgage, exchange or lease,—

(i) belonging to the State Government or the local authority or Chennai Metropolitan Development Authority established under section 9-A of the Tamil Nadu Town and Country Planning Act, 1971;

(ii) belonging to, or given or endowed for the purpose of, any religious institution to which the Tamil Nadu Hindu Religious and Charitable Endowments Act,



W.P.No.14777 of 2023

1959 is applicable;

(iii) donated for Bhoodan Yagna and vested in the Tamil Nadu State Bhoodan Yagna Board established under section 3 of the Tamil Nadu Bhoodan Yagna Act, 1958; or

(iv) of Wakfs which are under the superintendence of the Tamil Nadu Wakf Board established under the Wakf Act, 1995, unless a sanction in this regard issued by the competent authority as provided under the relevant Act or in the absence of any such authority, an authority so authorised by the State Government for this purpose, is produced before the registering officer;

(2) instrument relating to the transfer of ownership of lands converted as house sites without the permission for development of such land from planning authority concerned:

Provided that the house sites without such permission may be registered if it is shown that the same house site has been previously registered as house site.

Explanation I.—For the purpose of this section ‘local authority’ means,—

(i) any Municipal Corporation constituted under any law for the time being in force; or

(ii) a Municipal Council constituted under the Tamil Nadu District Municipalities Act, 1920 ; or

(iii) a Panchayat Union Council or a Village



W.P.No.14777 of 2023

Panchayat constituted under the Tamil Nadu Panchayats Act, 1994 ; or

(iv) any other Municipal Corporation, that may be constituted under any law for the time being in force.

Explanation II.—For the purpose of this section ‘planning authority’ means the authority constituted under section 11 of, and includes the Chennai Metropolitan Development Authority established under section 9-A of the Tamil Nadu Town and Country Planning Act, 1971;

(3) instrument relating to cancellation of sale deeds without the consent of the person claiming under the said sale deed.”

11. Proviso to Section 22-A(2) of the Registration Act makes it very clear that the lands converted as house sites without the permission for development of such land from planning authority concerned and substantial number of plots have already been registered then there is no bar for subsequent registration. However, in the instant case the fact remains that various house sites have already been sold by way of registered documents. The remaining extent of land has been held by the petitioner which was in fact subject matter in the compromise decree and allotted to the petitioner. If the owner of the land is totally prohibited from dealing with the property in any manner, the same in fact violates the constitutional right guaranteed under Article 300-A of the



W.P.No.14777 of 2023

Constitution of India.

WEB COPY

12. No doubt, Section 22-A deals with refusal to register instrument relating to transfer of ownership of lands converted as house sites without the permission for development of such land from planning authority concerned. The object of Section 22-A is to prohibit unauthorized conversion of agricultural and other lands without any permission from the authority concerned and to sell the same as house sites. However, if a vast extent of land has already been sold as house plots, and in respect of the remaining extent of land, if land owner is prohibited from selling the same, it would certainly take away the constitutional right guaranteed under Article 300-A of the Constitution of India. At the most, amendment brought in by the Tamil Nadu State Act by inserting 22-A restricts the registration of sale of unapproved house sites. But it does not mean that such property cannot be sold for any other purpose for better use even for horticulture or raising nursery etc., or keep it as garden, etc. Therefore, it cannot be said that the owner of such immovable property cannot deal with such property in any manner with the third party. This court is therefore of the view that the only restriction at the most is with regard to the use of the land for construction without proper approval. As stated earlier even though it is an unapproved house site, the same could be used for some other purposes other



W.P.No.14777 of 2023

than construction like gardening or keep it as vacant site or for agricultural or horticultural activities and therefore, prohibiting the total sale of such land in the considered view of this court would in fact violates the constitutional right guaranteed under Article 300-A of the Constitution of India.

13. Thus, the provision contained in Section 22-A of the Registration Act, 1908 cannot be interpreted to mean that it totally restricts the sale of the property retained by the owner of an unapproved layout. At the most such restriction could be applied only in respect of the sale of such land as house site for the purpose of construction without the permission for development of such land from planning authority concerned. Therefore, in the case of sale of such land for any other purpose other than housing development, in the considered view of this court registration cannot be refused.

14. As rightly pointed out by the respondent in his counter affidavit, the property intended to be sold by the petitioner in favour of her daughter- Mrs.M.Nandhini on 20.10.2022 was a part of an unapproved layout and it was not admittedly, registered earlier as plot but was retained by the petitioner. However, merely because the subject land was a part of the unapproved layout, it cannot be said that remaining extent of such land cannot be permitted to be dealt with by the owner of the land for any other purpose other than



W.P.No.14777 of 2023

construction of building.

WEB COPY

15. It is also to be noted here that a clarification issued by the Commercial Taxes and Registration (J2) Department, Government of Tamil Nadu, under letter Ref Letter No.359/J2/2020-1, dated 16.03.2020 to the letter of the Inspector General of Registration letter dated 03.01.2020 in reference Letter No.52889/C1/2019 would make it clear that 'layout' means (i) division of land into plots exceeding 8 (eight) in numbers in Chennai Metropolitan Planning Area; (ii) division of land into plots by introducing a new road or street in areas other than Chennai Metropolitan Area. Therefore, as long as there was no new road or street introduced, there is no bar for registration of sale under sub-section (2) of Section 22-A. It may be appropriate to take note of clarification issued by the Commercial Taxes and Registration Department dated 16.03.2020 under Letter No.359/J2/2020 in response to the letter of the Inspector General of Registration dated 03.01.2020 which reads as under:-



W.P.No.14777 of 2023



காங்கிரஸ் பத்திரிகை (பிடிபிடி 2) மூலம்,
தாருமபாளம் தொண்டர்,
சென்னை-8.

மேற்காண்: 35813/2020-1, பப். 18.03.2020

பெருந்தேர்,
பி.கே. என். பாய்லாண்டியன், இ.ஆ.ய.
மேலே குறுக்காகக் கொண்டு வந்தார்.

01090E



பெரிய
புதித்துறையுள் தோண்டி,
கொண்ட - 28.

உண்பதை,

செய்தல்: புதிதாய்தான் - அந்தக் கிணத்தில் பூக்கள் வளரவில்லை என்று நினைத்து அதைப் பூக்கள் வளர்ப்பதற்காக - சிறப்பாகச் செய்தல் - செய்தல்.

പാത്രം: പ്രിൻസിപ്പൽ ഡയറക്ടർ ഓഫ് ഫണ്ട് ഫണ്ട് ഫണ്ട് ഫണ്ട് ഫണ്ട്
03/01/2020

மாண்புமிகு கலாநாயகர் அவர்கள் கருத்துக்கு அங்கீகரிக்கப்பட்டது. மாண்புமிகு பேரவைத் தலைவர் அவர்கள் பேசிய செய்தி பற்றித் திரு. கோவை. சேஷராஜா பேசியபோது 1995ஆம் ஆண்டு பிப்ரவரி மீட்டிங் 22-ஆம்நாள், திருவி. சென்னைப்பட்டது. ஆயுதப்படைகள், சிங்கப்பாது செறிவான அமைப்பிலிருந்து.

[illegible]

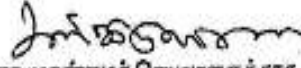


WEB COPY

- 4 -

		மீளவும் வீட்டு மனையாகப் பதிவு செய்வது 1908ஆம் ஆண்டு பதிவுச் சட்டத்தின் பிரிவு 22ஏ(2)க்கு மாறாக இருக்காது.
6.	அதிக விஸ்தீரணமுள்ள விவசாய நிலத்தில் அதனை மனைப்பிரிவாக மாற்றாமல் அதில் ஒரு பகுதி மட்டும் (குறிப்பாக 5 சென்ட் தனிமனை) வீட்டு மனையாக தான் ஏற்பாடு அல்லது கிரைய ஆவணமாக பதிவு செய்தல்.	வரிசை எண் 1ல் அளிக்கப்பட்ட தெளிவுரையே இதற்கும் பொருந்தும்.

தங்கள் உண்மையுள்ள,



அரசு முதன்மைச் செயலாளருக்காக
12/7/2023

Further, the clarification issued above under Sl.No.1 would make it clear that if the remaining lands retained by the owner/promoter is only a meagre extent and no other land in that Survey Number, then , that land also can be registered.

16. The clarification issued above would indicate that the bar contained under Section 22-A is only with regard to unapproved lay out which was formed without the permission for development from planning authority concerned and new roads or streets have been laid after the amendment and not in respect of the Unapproved Layout prior to the amendment came into being. Such view of the mater as the land was plotted out as house sites and sold long



W.P.No.14777 of 2023

back, registration of sale deed executed by the petitioner for the remaining extent of land retained and held by the petitioner in favour of Mrs.M.Nandhini cannot be refused. Larger extent of land was already dealt with in the year 2011 itself though the house sites were unapproved one and thereafter, the purchasers of such house plots entered into various transactions quite a number of years prior to Section 22-A came to be inserted in the Registration Act, 1908. The respondent was not able to establish the fact that the road was formed recently. Therefore, merely because road has been gifted to the local body very recently , it cannot be said that such road was formed recently.

17. As already held herein above, land left out in the layout, though it was an unapproved layout, can be used for any purposes other than housing development. Even any one of the adjacent land owners may wish to purchase such land for the purpose of using it as vacant land or for any other purpose other than housing development. Therefore, transfer of such land cannot be said to be totally prohibited, if transfer of such land is totally prohibited, it would certainly violate the constitutional right guaranteed under Article 300-A of the Constitution of India. The very object of introducing Section 22-A by way of Tamil Nadu Act is only to restrict conversion of agricultural land or any other land as unapproved house sites without the permission for development of such



W.P.No.14777 of 2023

land from planning authority concerned. Therefore, bar contained under Section 22-A cannot be applied in a mechanical fashion and registration cannot be refused and restraining the owner of such land from using the land for any other purposes other than housing development.

18. Merely because a Gift Deed has been executed in favour of the Local Body gifting the road, it cannot be presumed that such road was newly formed only in 2022. As long as no new road was formed, it may not be proper on the part of the respondent to refuse to register the sale deed presented by the petitioner for registration.

19. In the light of the above discussions, the refusal check slip impugned in the writ petition is liable to be set aside. The writ petition succeeds accordingly.

In the result, the writ petition is allowed. The refusal check slip impugned in the writ petition is set aside. The respondent is directed to register the sale deed presented by the petitioner for registration within a period of 15 days from the date of receipt of a copy of this order. No costs. Consequently, connected WMP is closed.

Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
kmk

01..07..2024



W.P.No.14777 of 2023

WEB COPY

1.The Sub Registrar, Palacode, Dharmapuri District.



WEB COPY



W.P.No.14777 of 2023

N.SATHISH KUMAR.J.,

kmk

Pre Delivery Order
in
W.P.No.14777 of 2023

01..07..2024