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WP.No.16079 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2024

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

WP.No.16079 of 2024

Manonmani

.. Petitioner

Versus

1. The Inspector General of Registration
No.100, Santhome High Road,
Chennai – 600 028

2. The District Registrar
Office of the District Registrar
Erode

3. The Sub Registrar,
Office of the Sub-Registrar Office
Chennimalai, Erode

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 3rd Respondent vide refusal check slip No. RFL/Chennimalai/15/2024 and quash the same and consequently direct the 3rd respondent to register the sale deed dated 28.03.2024.

For Petitioner : Mr.S.K.D.Rajasekar

For Respondents : Mr.P.Anandakumar
Government Advocate



WP.No.16079 of 2024

ORDER

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2. It is the grievance of the writ petitioner that when the sale deed was presented for registration, the second respondent refused to register the same on the ground that as per the circular of the first respondent, the originals were not produced.

3. Heard learned counsel for the petitioner and the learned Government Advocate appearing for the respondents and perused the materials available on record.

4. 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



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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.”

5. 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 certificate available with them.



WP.No.16079 of 2024

6. Such view of the matter, the refusal check slip issued by the third respondent is set aside. The third respondent is directed to register the sale deed dated 28.03.2024 without insisting the production of originals within a period of 15 days from the date of receipt of a copy of this Order.

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

10.07.2024

dhk
Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No



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To,



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N. SATHISH KUMAR, J.

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