



W.P.No.13058 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.05.2024

CORAM:

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

W.P.No.13058 of 2024

Malliga
W/o.Manikkam

...Petitioner

Vs

The Sub Registrar,
Pappireddypatti Sub-Registrar,
Pappireddypatti, Dharmapuri.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent herein pertaining to his proceeding in RFL/Pappireddypatti/14/2024 dated 29.04.2024 and quash the same and further direct the respondent herein to register the settlement deed and return the same to the petitioner.

For Petitioner : Mr.M.Selvam

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



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ORDER

On the ground that the original has not been produced, the Sub Registrar, Pappireddipatti, has issued the refusal check slip.

2. The very same issue was the subject matter of consideration in W.P.No.2759 of 2023. The learned Single Judge has passed the following order on 08.02.2023 in W.P.No.2759 of 2023.

“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



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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.”

3. Subsequently following that order, the learned single Judge in W.P.No.9802 of 2024 had held that a circular cannot override the Statutory right of the substantive provisions of law and that the respondent cannot refuse to register a document when the original has not been produced.



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4. Respectfully following the above two verdicts of this Court referred to supra, the impugned proceedings dated 29.04.2024 is quashed and the respondent is directed to register the document produced by the petitioner.

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

30.05.2024

Index: Yes
Non-speaking order
Neutral Citation : No

ssa/mk

To

The Sub Registrar,
Pappireddypatti Sub-Registrar,
Pappireddypatti, Dharmapuri.

V.LAKSHMINARAYANAN.J.,



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