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WP.No.15098 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2024

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

WP.No.15098 of 2024

V.Seshadri

.. Petitioner

Versus

1.The Inspector General of Registration
100, Santhome High Road
Chennai – 600 028

2.The District Registrar-Chennai South
Department of Registration
Integrated Building for Offices of Commercial Taxes
and Registration
Nandanam, Chennai – 600 035

3.The Sub Registrar
Sub-Registrar Office
Padappai, Chennai – 601 301

4.The Inspector of Police
S14, Peerankaranai Police Station
Chennai – 600 063

.. 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 pertaining to the impugned order Na.Ka.No.10667/AA1/2023 dated 01.04.2024 passed by the 2nd respondent and quash the same, and further direct the 3rd respondent to register the pending document No.P-223/2022 on the file of Padappai Sub-Registrar's Office and release the original registered release deed to the petitioner.



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For Petitioner : Mr.Krishna Ravindran
for Mr.P.Kavin Prabhu

For Respondents : Mr.Yogesh Kannadasan for R1 to R3
Special Government Pleader
Mr.S.Sugendran for R4
Additional Public Prosecutor

ORDER

Challenge has been made against the order passed by the authorities rejecting the registration on the ground that original document has not been presented and complaint given in this regard is also not found in online portal.

2.It is the case of the petitioner that the release deed has been executed by the sisters of the petitioner to release their share. However, the registering authorities have insisted for production of original parent document and refused to register the same. Hence, this writ petition.

3. It is the contention of the learned counsel for the petitioner that the original document is missing, he has given a complaint in this regard and also obtained C.S.R.No.112/2009. However, the authorities did not agree for that on the ground that the missing certificate does not finds place in the online portal.



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4. The learned Additional Public Prosecutor took notice for the fourth respondent and submitted that the online entries have been entered only from the year 2015 and prior to that missing certificate has not been uploaded.

5. Heard both sides and perused the materials placed on record. By consent of both parties, this writ petition is taken up for final disposal in the admission stage itself.

6. Since the very impugned order revolve around the uploading of the missing certificate in the online entries, this Court is of the view that no counter is required as the respondent Police submitted before this Court that missing certificate issued prior to the year 2015 is not uploaded in the online portal. Now, the document is refused to be rejected on the ground that the original document has not been produced. It is relevant to note that 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



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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.”

7. When the certified copy of original document is already produced and the issuance of certificate is not disputed by the Police Department, merely, because missing certificate is not uploaded in the online portal that cannot be a ground to hold that certificate is forged or fraudulently obtained.

8. When the Police Department has not disputed the issuance of lost certificate and certified copy of the original document is very much available, the authorities refusing to register the document cannot be sustained in the eye



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of law. They can very well go through the title by way of certified copy available with them.

9. Such view of the matter, the impugned order dated 01.04.2024 is set aside and there shall be a direction to the third respondent to register the document dated 31.10.2022 presented by the petitioner. Such exercise shall be completed within a period of 15 days from the date of receipt of a copy of this Order.

10. With the above direction, this writ petition is allowed. No costs.

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

N. SATHISH KUMAR, J.



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