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W.P.No.15890 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.15890 of 2024

Saraswathi Venkataraman

...

Petitioner

versus

1.The Inspector General of Registration,
Chennai - 600 028.

2.The Deputy Inspector General of Registration,
Thanjavur - 613 010.

3.The Sub-Registrar,
Kuthalam,
Mayiladuthurai - 609 801.

...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to impugned proceedings dated 04.06.2024 made in RFL/Kutthalam/31/2024 issued by the third respondent, quash the same and consequently direct the third respondent to register and release the Settlement Deed dated 04.06.2024 presented by the petitioner.

For Petitioner : Mr.P.Swaminathan

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



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ORDER

By consent of both sides, this Writ Petition is disposed of at the stage of admission itself.

2. This Writ Petition is filed to quash the Refusal Check Slip in Refusal Number : RFL/Kutthalam/31/2024 dated 04.06.2024 and consequently direct the third respondent to register the same.

3. It is the grievance of the writ petitioner that when the settlement deed was presented for registration, the third respondent refused to register the same 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 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.2759 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.”

6. Considering the above and also of the fact the circular cannot

override the statutory right and substantive provisions of law, the third respondent cannot refuse the registration of the document citing non production of original. They can very well verify the certificate available with them.

7. Such view of the matter, the Refusal Check Slip in Refusal Number : RFL/Kutthalam/31/2024 dated 04.06.2024 issued by the third respondent is set aside. The third respondent is directed to register the settlement deed dated 04.06.2024 within a period of one month from the date of receipt of a copy of this order.

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

19.06.2024

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To

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N.SATHISH KUMAR, J.

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