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WP.Nos.20831 & 20436 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2024

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THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

WP.Nos.20831 & 20436 of 2022

Dr.M.Arunvel Kumar

.. Petitioner in W.P.No.20831 of 2022

M/s.Sri Balaji Granite
Rep by its Proprietor
Dr.M.Arunvel Kumar
S/o.Mr.Marimuthu
No.69, 2nd Main Road
V.G.P.Layout, 3rd Part
Palavakkam, Chennai – 600 041

.. Petitioner in W.P.No.20436 of 2022

Versus

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

2.The Sub Registrar
Sub – Registrar Office
No.29, South Mada Street
Thiruporur – 603 110

3.M/s.Anush Infrastructure Pvt. Ltd
2/1, Abu Garden
Rajiv Gandhi Salai (OMR)
Navalur, Chennai – 600 103

4.S.Mohan Kumar

.. Respondents in both WPs



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Common 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 of the 1st respondent bearing No.7094U1/2019 dated 20.05.2020 and the Encumbrance Certificate for the property at Survey Nos.98/1A2, 99/2A, 99/2B, 99/3A and 99/3B of Paiyanoor Village, Thiruporur Taluk, Chengalpattu District and S.Nos.89/3 and 89/3A1A1A of Paiyanoor Village, Thiruporur Taluk, Chengalpattu District respectively and quash the adverse entries therein with respect to the Sale Deeds executed in favour of the petitioners dated 20.01.2015 registered as Document Nos.1252 of 2015 and 1252 of 2015 respectively before the 2nd respondent.

In both WPs

For Petitioners : Mr.T.Gowthaman, Senior Counsel
for Mr.S.Roshan

For Respondents : Mr.B.Vijay for R1 & R2
Additional Government Pleader
Mr.P.Subba Reddy for R3
Mr.R.Thiyagarajan for R4

COMMON ORDER

Since, the challenge has been made to the very same order, this writ petition is heard together and disposed of by way of this common order.

2. Challenge has been made to the impugned order directing the entry in the encumbrance certificate to the effect that the document is registered despite the factum of the death of the power of attorney. Hence, these writ petitions are filed.



3. The brief facts leading to filing of these writ petitions are as follows:

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3.a. The third respondent/Company was the original owner of the property by virtue of a sale deed dated 23.03.2006. The Company represented by one of the director Mr.B.Venkatram Reddy executed a power of attorney in favour of the fourth respondent on 20.08.2009. Pursuant to the power of attorney, the fourth respondent sold the property in favour of the writ petitioner on 20.01.2015 for a total consideration of Rs.4,03,64,095/-. Thereafter, it appears that the document is also referred for determination of the value under Section 47-A. During such proceedings, the writ petitioner has filed a writ petition for release of the document. As per the directions of this Court after making necessary endorsement in the document, the document was released during the pending proceedings under Section 47-A. These facts are not in dispute.

3.b. It also appears that prior to the registration of the document, the Director of the Company, who executed the power of attorney appears to have died in the year 2013. Thereafter, for the first time, in the year 2018, a complaint has been filed before the Inspector General of Registration for cancellation of the document on two grounds, they are, since the person executing the power of attorney died in the year 2013, the document said to have been executed in the year 2015 is not valid and the second ground is to



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the effect that the property is worth about 60 crores, valued only for 4 crores and also the document has been released without property enquiry. In the above background, enquiry has been conducted by the Inspector General of Registration and passed the impugned order directing to make such entry in the encumbrance certificate. The Inspector General of Registration has also come to the conclusion that there are some orders obtained in the pending suit.

4. The learned Senior Counsel for the petitioner submitted that the power of attorney is executed not by any individual to apply the principle that power dies with the person. The company is still in existence and company being legal entity, the act done by the company is binding. Pursuant to the said power of attorney, the fourth respondent sold the property in the year 2015 and so far, sale deed is not in challenge. Therefore, it is the submission that what could not be achieved in the civil court is sought to be achieved before the authorities. Hence, the impugned order cannot be sustained in the eye of law. The suits referred in the impugned order is no way connected to the writ petitioner. Hence, challenges the order.

5. The counter is filed by the third respondent admitting that the



Company has given power of attorney, but, it is stated that since there is no seal of the company, board resolution as mandated under Section 293(1)(a) of the Companies Act is not passed. Life certificate is also not produced. Hence, according to the third respondent, without proper enquiry document was released without determining the proper value.

6. Heard both sides and perused the materials placed on record. By consent of both parties, these writ petitions are taken up for final disposal.

7. The very nature of the counter itself indicate that what all the pleadings ought to be established in the civil court is sought to be established in the writ petition. Be that as it may, I am confining only with the impugned order, whether such order is well within the ambit of law.

8. It is relevant to note that as admitted by the respondents, execution of the power of attorney by the Company is not disputed. Company, a legal entity has executed the power and a person, one of the representative who had signed the document dies later. It cannot be said that the entire power executed by the company dies with such person namely the representative of the company. Pursuant to such power, sale deed was executed in the year 2015, no materials



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whatsoever placed before this Court to show that sale deed has been challenged in the Civil Court. Whereas for the first time, a complaint was given before the District Registrar in the year 2018, that too, after three years. When the right to challenge the document has been extinguished by operation of law, an application has been given before the registering authorities in the year 2018 seeking to cancel the sale deed. Such course, in fact, is against the very fundamental of civil law. Whether the document executed in a fraudulent manner or not is a matter of evidence. It has to be pleaded and proved before the competent Civil Court. Therefore, just based on mere allegations before the authorities, registered document cannot be annulled as a matter of right.

9. Of course, in the impugned order annulment is not made, but the fact remains that entry is made pursuant to the impugned order, that, in fact, will take away the rights of the owner to deal with the property. Such things cannot be allowed as long as document is not challenged. Whether there is a forgery involved in the document or special resolution of the company is available or not is a matter of evidence, it has to be decided in Civil Court in a pending suit, if any. The very power of attorney indicate that there was a meeting in that Company and the power was executed in pursuant to the said meeting. That implies that there was a resolution in the company, all these facts are



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established before the Court. Therefore, based on the allegations, impugned order cannot be passed as long as the Company has not challenged such deeds within the time. Hence, the order impugned cannot be sustained in the eye of law. Since there was no materials to establish the allegations before the authorities, the impugned order stands quashed.

10. Accordingly, these writ petition stands allowed. No costs. Let the parties establish their rights in the pending suit, if any, in the manner known to law.

20.06.2024

dhk

Index : Yes/No

Neutral Citation : Yes/No

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N. SATHISH KUMAR, J.



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