



WEB COPY



W.P.No.26315 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.26315 of 2024
and
W.M.P.No.28753 of 2024

Tamil Evangelical Lutheran Church
Rep. by its Convener
G.Victor Jesudoss,
S/o.Gurunathan,
Property Recovery Committee,
P.B.86, Tranqubar House,
Trichirapalli-620 001.

... Petitioner

Vs.

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

2.The District Registrar,
Coimbatore District,
Registrar Office, Coimbatore.

3.The Joint-1 Sub-Registrar,
Registrar Office,
Coimbatore.

4.A.Kamaleshwaran

5.A.Prasanna Anguraj

6.Raya Pudhparaj,

...Respondents



W.P.No.26315 of 2024

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari, Call for the records relating to the 2nd respondent dated 25.04.2023 bearing reference Na.Ka.No.1054/C2/2023 issued by the 2nd respondent herein and all proceedings pursuant thereto and quash the same as being without jurisdiction illegal, arbitrary, malafide, in violation of principles of natural justice and time barred.

For Petitioner : M/s.Abinesh Babu

For Respondents : M/s.R.Venkatachalam for R5
: No appearance for R.1 to R3
: Not ready in notice - R4 & R6

ORDER

The above Writ Petition is filed to call for the records relating to the 2nd respondent dated 25.04.2023 bearing reference Na.Ka.No.1054/C2/2023 issued by the 2nd respondent herein and all the proceedings pursuant thereto and quash the same as being without jurisdiction illegal, arbitrary, malafide, in violation of principles of natural justice and time barred.

2. Brief facts which have culminated in the filing of the above Writ Petition are hereinbelow briefly set out.



W.P.No.26315 of 2024

3. The petitioner is a registered society. It owns several properties and is running several educational and other institutions in and around the State of Tamil Nadu, Kerala, Karnataka and Puducherry. In the year 1962, the Church of Sweden Mission of India, a registered society had transferred several properties situate in Madurai, Coimbatore, Pollachi, Tirupathur, Dindigul etc; to the petitioner vide an Indenture dated 10.05.1962 registered as document no.2040/1960, on the file of the Joint Registrar No.IV, Madurai. The petitioner has since then been in the absolute possession and enjoyment of the said property.

4. The petitioner leased out one of its properties in Coimbatore measuring 20844 Sq.ft. in old Old Town Survey No.1028/2, New Town Survey No.1030/1 (part) bearing door no.20-29, ward No.2, Block No.18, Insmail Rawther Road, Coimbatore to M/s.SCM International Impex Pvt. Ltd. for a period of 29 years under a lease deed dated 13.02.2013, registered as document no.2435 of 2017, on the file of the 3rd respondent herein. It appears that the 4th respondent had filed a petition claiming a right to the subject property on the ground that he is the President of the Kremmer Sandegren Foundation and that the Church of Sweden Mission at India had merged with his foundation and therefore the properties



W.P.No.26315 of 2024

belonged to them. In the said petition, the 4th respondent had alleged that the petitioner had forged document Nos.157/1962 and 2040/1962 and usurped the properties of Kremmer Sandegren Foundation and therefore, the 4th respondent had requested the 2nd respondent to cancel the lease deed registered by the petitioner as document no.2435/2017. The 2nd respondent had thereupon passed the impugned order dated 25.04.2023 cancelling the lease deed executed by the petitioner. Challenging the same, the petitioner is before this Court.

5. Heard the learned counsel on either side.

6. The constitutional validity of Section 77-A, 77-B and 22-B of the Registration Act which have been introduced by the Registration [Tamil Nadu Second Amendment Act] 2021 [Act 91 of 2022] and its retrospective operation had been referred to the Division Bench in the case of ***M.Kathirvel Vs. Inspector General of Registration Department of Registration and Others*** reported in (2024) 4 CTC 769. The division bench after tracing the history of the enactment and considering the various judicial precedence had held as follows:-

"84. The object of Registration Act is only to



W.P.No.26315 of 2024

WEB COPY

maintain public record in relation to immovable properties. Merely because a document executed by a person without title is registered, that does not affect the title of true owner. In other words, the question of title cannot be decided merely on the basis of registered documents of conveyance, even though such documents may be considered as evidence of transactions. Cancellation of a registered instrument after the transfer of right in immovable property is often the subject matter of suit under Section 31 or Section 34 of the Specific Relief Act. By registration, the Registering Officer only gives the seal of approval to the instrument and by registration, the Registering Officer does not recognise the title of individuals. Registration is a formality to complete the transfer of conveyance between two parties. A power conferred on the registering authority to cancel the registration is not therefore provided under the Act unless the document of conveyance or cancellation is signed by both parties.

Even though the object of Registration Act and the



W.P.No.26315 of 2024

WEB COPY

amending Act are not different from the grounds on which the cancellation of registered deeds can happen under Section 77-A, we are of the view that the impugned legislation is nothing but creation of a new forum in the place of Civil Court. This cannot be permitted by constitutional Courts to protect the rights of parties to the documents.

85. Even the Civil Court's jurisdiction to cancel the instrument is only when the transaction as such, is hit by any provisions of Indian Contract Act for being void or voidable. Article 56 of Schedule to Limitation Act deals with suits to declare the forgery of an instrument issued or registered. The limitation for filing a suit is three years from the date of execution or from the date when the plaintiff comes to know about the registration. Article 59 of Schedule to Limitation Act prescribes three years for filing a suit to cancel or to set aside an instrument or decree. Limitation starts when the facts entitling the plaintiff to have the instrument or



W.P.No.26315 of 2024

WEB COPY

decree cancelled or set aside become known to the plaintiff. Section 27 of the Limitation Act extinguish the right to property at the determination of the period limited to any person for instituting a suit for possession of any property. The principle underlying Section 27 of the Limitation Act is that a person who is having a right to possession fails to file a suit within the prescribed period of limitation, will leave his title in favour of the party in possession. Now under Section 77-A of the Registration Act without any restriction, even documents which were registered some decades ago, can be challenged and the registration of the same can be cancelled on specific grounds which are enumerated under Section 22-A and Section 22-B. In the counter affidavit, the respondents have admitted this position and supported the enactment on the principle of equity. Even though a suit filed under Section 31 of Specific Relief Act is dismissed on the ground of limitation, power under Section 77-A can still be exercised by the Registrar. This situation renders the enactment



W.P.No.26315 of 2024

WEB COPY

unconstitutional being contrary to the doctrine of separation of power.

86. When judicial Forum administered by qualified and trained judges who are accountable and guided by procedures, norms, principles and precedents is available, providing parallel remedy before executive authority to decide as to the legal sanctity of registered documents, is unconstitutional. There is no certainty to any documents of conveyance if an executive authority is given unguided power which can also be misused to invalidate even genuine transaction in the absence of proper guidelines by legislation."

Thereafter upon considering a few cases which had been decided by the Registrar and which was the subject matter of challenge, the division bench had held as follows:-

" From the above discussion on this issue and from perusal of the records including the orders of Registrar under Section 77-A in some of the cases and the principles laid down by Hon'ble Supreme Court



W.P.No.26315 of 2024

WEB COPY

above referred to, this Court is unable to sustain the impugned provision, particularly, Section 77-A and has no hesitation to strike down Section 77-A for being contrary to the fundamental principle that judicial power to decide substantial rights of the parties involving complicated issues on facts and law resulting in serious legal implications affecting the property rights of parties to the transactions cannot be delegated to executive authorities."

7. Therefore, in the light of the above judgement striking down Section 77-A of the Registration Act as unconstitutional, the impugned order cannot be sustained and accordingly the Writ Petition is allowed and the impugned order passed by the 2nd respondent dated 01.02.2022 is set aside. No costs. Consequently, the connected Miscellaneous Petition is closed.

08.11.2024

(shr)

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No



W.P.No.26315 of 2024

To
WEB COPY

1. Inspector General of Registration
No.100, Santhome High Road,
Santhome, Chennai-600 028
2. The District Registrar,
Coimbatore District,
Registrar Office, Coimbatore.
3. The Joint-1 Sub-Registrar,
Registrar Office,
Coimbatore.



WEB COPY



W.P.No.26315 of 2024

P.T. ASHA. J.,

(shr)

W.P.No.26315 of 2024
and
W.M.P.No.28753 of 2024

08.11.2024