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W.P. No. 26055 of 2024.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.09.2024

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P. No.26055 of 2024

Shantha Samuel

..Petitioner

Vs.

The Sub Registrar,
Office of Sub Registrar,
Kotagiri, The Nilgiris.

...Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent impugned order pertaining to Refusal Check Slip number RFL/Kotagiri/73/2024 dated 09.08.2024 and quash the same as illegal and consequently direct the respondent / Sub-Registrar Kotagiri to register the Settlement Deed dated 08.08.2024 executed by the petitioner without insisting for the production of the parent documents.

For Petitioner : Mr. J. Saravana Vel
For Respondent : Mr. T. Chezhiyan,
Additional Government Pleader



ORDER

WEB COPY Aggrieved by the refusal check slip issued by the respondent, the petitioner has come before this Court by way of writ petition.

2. The petitioner executed a settlement deed in respect of subject property and presented the same for registration before the respondent. The registration was refused mainly on the ground that the petitioner failed to produce the original title documents.

3. It is the case of the petitioner that the properties situated in Survey Nos.824/2, 824/3, 824/6, 824/8, 824/1, 824/4, 824/5, 824/7 at Naduhatty village, Kotagiri Taluk, Nilgiris District was originally purchased by her father and his younger brother in the year 1954. The father of the petitioner died in the year 1971. Thereafter, the brother of petitioner's father executed a release deed in the year 1976 releasing his share in the property in favour of petitioner and her mother. The mother of the petitioner died in the year 2017. Thus, the petitioner is claiming absolute right over the property. It is further stated by the petitioner in the affidavit filed in support of this petition that original title



documents were misplaced and she filed a police complaint regarding the same on 21.12.2023 on the file of the Inspector of Police, Kotagiri and CSR was also issued in CSR.No.378 of 2023.

4. The learned counsel for the petitioner submits that failure to produce the original title document is not a ground for rejection of the document presented for registration. The learned counsel also submits that the petitioner is ready to file an affidavit regarding the misplacement of the document.

5. The learned Additional Government Pleader, who is taking notice for the respondent, by relying on Rule 55-A of Rules framed under Registration Act, submitted that unless the original title documents are produced, the respondent cannot register the documents.

6. The issue involved in this writ petition regarding the failure to produce the original title documents at the time of registration was covered by the decision of this Court in the case of ***Venugopal Vs The Inspector General of Registration in W.P.No.22270 of 2024***. The relevant observations of this



Court reads as follows:-

*“16. The Proviso 3 to Rule 55-A does not say Non-Traceable Certificate shall be issued by police within a time frame. We cannot expect the petitioner, who presented the document for registration to wait endlessly expecting Non-Traceable Certificate. Further, Section 23 of Registration Act compels presentant to present the document for registration within four months. Hence, presentant cannot wait indefinitely for non-traceable certificate by Police. The Proviso 3 to Rule 55-A(i) does not mention any time limit for issue of non-traceable certificate. Hence, if Police Authorities failed to issue certificate within time to enable presentant to comply with Section 23 of Registration Act, there is a danger of document being refused as presented out of time. Therefore, following the order passed by the Division Bench of this Court in **M.Ariyanatchi** case, this Court directs the 2nd respondent to register the document on petitioner fulfilling certain conditions, which can be treated as substantial compliance of Proviso 3 to Rule 55-A.*



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17. As mentioned earlier, failure to produce original title document is not a ground to refuse registration provided petitioner satisfy third proviso to Rule 55-A(i). Therefore, the impugned Refusal Check Slip issued by the 2nd respondent in RFL / CHENNIMALAI / 25 / 2024, dated 30.04.2024 is quashed and the petitioner is directed to represent the document before the 2nd respondent within a period of two weeks from today, along with an affidavit mentioning the fact of loss of original title document and untraceability of the same. The petitioner shall also enclose newspaper advertisement issued by him in leading Tamil newspapers having wide circulation in Erode District. The Newspaper advertisement shall disclose loss of original title deed and intention of the Seller to convey the property. On fulfilment of these two conditions, the 2nd respondent is directed to register the same.

18. Therefore, the Writ Petition stands allowed with the above directions. No costs.”



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7. In view of the settled position, the impugned order passed by the respondent is set aside and the petitioner is directed to represent the document within a period of two weeks from the date of receipt of copy of this order along with her affidavit mentioning the misplacement of the document and the newspaper publication regarding the missing of the document. The petitioner shall also file the copies of the Death Certificates of her father and mother and legal heir certificate. On production of the documents as indicated above, the respondent shall register the same if it is otherwise in order.

8. With these observations, the writ petition stands allowed. No costs

05.09.2024

Index : Yes/No

Neutral Citation : Yes/No

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To

The Sub Registrar,

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Office of Sub Registrar,
Kotagiri, The Nilgiris.

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S.SOUNTHAR, J.
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