



W.P.No.426 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Orders Reserved on : 14..06..2024

Orders Pronounced on : 01..07..2024

Coram

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Writ Petition No.426 of 2022

D.Rajamanickam

..... Petitioner

-Versus-

The Sub Registrar,
Salem (West),
95/412, Mullai Nagar,
Near Saibaba Temple,
Suramangalam,
Salem 636 005.

..... Respondent

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondent in Refusal Check Slip bearing Refusal Number: RFL/1-Joint Sub Registrar Salem West/13/2021 dated 01.09.2021 and the Check Slip dated 01.09.2021 and to quash the same and to further direct the respondent to accept the settlement deed dated 01.09.2021 executed by the petitioner in favour of his son-D.R.Mohan and register the same.

For Petitioner : *Mrs.Radha Gopalan,*
Senior Counsel for
Ms.Bhargavi Gopalan

For Respondent : *Mr.L.S.M.Hasan Fizal,*



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*For Petitioner : Mrs.Radha Gopalan,
Senior Counsel for
Ms.Bhargavi Gopalan
Addl. Government Pleader*

ORDER

Challenge in this writ petition is to the Refusal Check Slip dated 01.09.2021 issued by the respondent refusing to register the settlement deed dated 01.09.2021 executed by the petitioner in favour of his son-D.R.Mohan and register the same.

2.0 The case of the petitioner in brief is as follows:

2.1. The petitioner, his wife-Madheswari and Son-T.R.Mohan purchased a piece of land admeasuring 2.65 Acres out of 2.95 Acres, comprised in Ward No.7, T.S.No.1268 which is now Salem Town Ward B Block 38, Town Survey No.8 along with one Srinivasan Son of Govindarajan and V.Devarajan, Son of Vijayan from one A.N.Balakrishnan Son of Sengodagounder and others through sale deed dated 08.01.1997 registered as Doc.No.21/1998 on the file of the Sub Registrar, Salem Town. Further, one of the purchasers namely V.Devarajan along with his wife T.Nirmala and others purchased lands in the same survey number from the very same vendor by way of sale deed dated 08.01.1997 registered as Doc.No.20/1998.

2.2. The petitioner, his wife and son along with others and Devarajan, his



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wife and others had purchased the above mentioned landed properties only in order to develop the same by plotting out as house sites and therefore, they joined together and executed a General Power of Attorney dated 09.02.2000 in favour of D.R.Mohan which was registered as Doc.No.51 of 2000. Accordingly, the lands were developed into house sites after forming roads and a few plots had also been sold out. Thereafter, due to some disputes arose among the promoters, some of the agreement-holders filed civil suits in O.S.Nos.61 of 2003, 62 of 2003, 63 of 2003 and 84 of 2003 on the file of the Subordinate Judge, Salem. Pending suits, the parties entered into a compromise and the same was reduced into writing. Accordingly, based on a compromise entered into and a joint memo of compromise dated 14.09.2009, the learned II Additional Subordinate Judge, Salem, by judgement and decree dated 28.04.2011 disposed of the suit in O.S.N.61 of 2023 recording the settlement. The decree in O.S.No.61 of 2023 on the file of the II Additional Subordinate Judge, Salem, was registered on 12.01.2012 as Doc.No.123/2012 on the file of the Office of the Sub Registrar, Salem.

2.3. According to the petitioner, the property which is the subject-matter in the settlement deed was retained by the land owners/promoters after selling all other house sites. Under the compromise decree some of the house sites were



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allotted to the petitioner. Pursuant to such compromise decree, the petitioner sold some of the house sites to various persons and executed a settlement on 23.06.2020 in favour of one V.Bakkiyam, who is the wife of Vijayan and the settlement was registered as Doc.No.1787/2020. In respect of the remaining extent of land which he has retained, when he presented a settlement deed in favour of his son in respect of 2362.5 square feet of land comprised in Resurvey Ward No.J Block 38, T.S.No.53, which is now 53/46 and 3508 square feet comprised in Resurvey Ward J, Block 38, T.S.No.53, which is now Resurvey No.53/47, the same was refused to be registered by the respondent citing the bar contained under Section 22-A of the Registration Act, 1908 and the Circular No.29945/C1/2015 dated 21.06.2017 issued by the Inspector General of Registration directing the petitioner to get approval of the Department of Town and Country Planning and Development Officer (DTCP) as it is an unapproved house site. It is this order which is now under challenge in the present writ petition.

2.4. The grievance of the petitioner is that since the house sites had already been sold, the provisions contained in Section 22-A of the Registration Act, 1908 and the circular issued by the Inspector General of Registration would not apply to the facts of his case.



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3. A detailed counter affidavit has been filed by the Joint 1 Sub Registrar (In charge), Sub Registrar, Salem (West). The Officer while admitting that the property which is the subject matter of the settlement deed was one of the properties in the compromise decree which was registered as Doc.No.123/2012 on the file of the Office of the Sub Registrar, Salem, inter alia contended that though it is averred by the petitioner in the affidavit filed in support of the writ petition that the plots intended to be sold were not part of the layout or the civil court proceedings referred to in the affidavit, the same subject matter of properties in settlement deed was not registered earlier as plots, which is barred by statute and the circulars issued by the Inspector General of Registration. An amendment to the Registration Act, 1908 was introduced by way of Tamil Nadu Act 2 of 2009 by inserting Section 22-A of the Registration Act, 1908. As per the provisions of the Registration Act, 1908 and G.O.Ms.No.123, Commercial Taxes and Registration Department, dated 20.10.2016, unapproved house sites cannot be transferred in any form and therefore, the respondent refused to register the settlement deed presented by the petitioner for registration and hence, the respondents prays for dismissal of the writ petition.

4. Heard the learned counsel appearing for the petitioner and the learned



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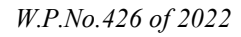
Additional Government Pleader appearing for the respondent

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5.1 The learned counsel for the petitioner vehemently submitted that out of 2.65 Acres owned by the petitioner and others and the other extent of land owned by Devarajan, were jointly developed and plotted out as house sites much prior to the amendment brought in by Tamil Nadu State Act to the Registration Act by inserting Section 22-A.

5.2. That apart, it is the contention of the learned counsel for the petitioner that the suit has been filed in O.S.No.61 of 2003 on the file of the II Additional Subordinate Judge, Salem wherein subject matter of property was allotted to the petitioner. The decree dated 28.04.2011 made in O.S.NO.61 of 2003 on the file of the II Additional Subordinate Judge, Salem, was registered as Doc.No.123/2012 on 12.01.2022. Pursuant to the said decree, property was settled by the petitioner in favour of third parties by way of document registered as Doc.NO.1787/2020. Therefore only with regard to the remaining extent of land retained by the petitioner when the same was sought to be settled in favour of his son, the registering authority refused to register the document citing the circular issued by the IG as well as bar contained under Section 22-A of the Registration Act.

5.3. According to the learned counsel for the petitioner the said circular



would not apply to the facts of case of the petitioner.

8. On perusal of the admitted facts, it is very clear that a larger extent of land was originally purchased by the petitioner and others in the year 1997 and the same was developed as house sites and several house sites were sold to various persons before the Tamil Nadu Act 28 of 2012 by which Section 22-A has been inserted in the Central Act and the amendment which came into effect on 21.06.2012. Many of the purchasers have filed suits in O.S.Nos.61 of 2003, 62 of 2003, 63 of 2003 and 84 of 2003 on the file of the Subordinate Judge,



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Salem and among other suits, suit in O.S.No.61 of 2003 ended in a compromise decree. The property which is the subject matter in the settlement deed in question which is mentioned as B-schedule in the compromise decree was allotted to the petitioner. The decree in O.S.NO.61 of 2003 was registered under Doc.No.123 of 2012.

9. The above document would clearly go to show that a larger extent was already developed as house sites and substantial number of plots were already sold to various persons and the remaining extent of land which was allotted to the petitioner was retained by him.

10. Now a question arises whether the petitioner is prohibited from dealing with the remaining extent of land which he retained from out of the larger extent of land developed as house sites?

11. It is relevant to extract hereunder Section 22-A of the Registration Act,1908:

“22-A. Refusal to register certain documents .—

Notwithstanding anything contained in this Act, the registering officer shall refuse to register any of the following documents, namely:—

(1) instrument relating to the transfer of immovable properties by way of sale, gift, mortgage, exchange or lease,—



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(i) belonging to the State Government or the local authority or Chennai Metropolitan Development Authority established under section 9-A of the Tamil Nadu Town and Country Planning Act, 1971;

(ii) belonging to, or given or endowed for the purpose of, any religious institution to which the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 is applicable;

(iii) donated for Bhoodan Yagna and vested in the Tamil Nadu State Bhoodan Yagna Board established under section 3 of the Tamil Nadu Bhoodan Yagna Act, 1958; or

(iv) of Wakfs which are under the superintendence of the Tamil Nadu Wakf Board established under the Wakf Act, 1995, unless a sanction in this regard issued by the competent authority as provided under the relevant Act or in the absence of any such authority, an authority so authorised by the State Government for this purpose, is produced before the registering officer;

(2) instrument relating to the transfer of ownership of lands converted as house sites without the permission for development of such land from planning authority concerned: Provided that the house sites without such permission may be registered if it is shown that the same house site has been previously registered as house site.

Explanation I.—For the purpose of this section ‘local



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authority' means,—

- (i) any Municipal Corporation constituted under any law for the time being in force; or
- (ii) a Municipal Council constituted under the Tamil Nadu District Municipalities Act, 1920 ; or
- (iii) a Panchayat Union Council or a Village Panchayat constituted under the Tamil Nadu Panchayats Act, 1994 ; or
- (iv) any other Municipal Corporation, that may be constituted under any law for the time being in force.

Explanation II.—For the purpose of this section 'planning authority' means the authority constituted under section 11 of, and includes the Chennai Metropolitan Development Authority established under section 9-A of the Tamil Nadu Town and Country Planning Act, 1971;

(3) instrument relating to cancellation of sale deeds without the consent of the person claiming under the said sale deed.”

12. Proviso to Section 22-A(2) of the Registration Act makes it very clear that the lands converted as house sites without the permission for development of such land from planning authority concerned and substantial number of plots have already been registered then there is no bar for subsequent registration. However, in the instant case the fact remains that various house sites have already been sold by way of registered documents. The remaining extent of



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land has been held by the petitioner which was in fact subject matter in the compromise decree and allotted to the petitioner. If the owner of the land is totally prohibited from dealing with the property in any manner, the same in fact violates the constitutional right guaranteed under Article 300-A of the Constitution of India.

13. No doubt, Section 22-A deals with refusal to register instrument relating to transfer of ownership of lands converted as house sites without the permission for development of such land from planning authority concerned. The object of Section 22-A is to prohibit unauthorized conversion of agricultural and other lands without any permission from the authority concerned and to sell the same as house sites. However, if a vast extent of land has already been sold as house plots, and in respect of the remaining extent of land, if land owner is prohibited from selling the same, it would certainly take away the constitutional right guaranteed under Article 300-A of the Constitution of India. At the most, amendment brought in by the Tamil Nadu State Act by inserting 22-A restricts the registration of sale of unapproved house sites. But it does not mean that such property cannot be sold for any other purpose for better use even for horticulture or raising nursery etc., or keep it as garden, etc. Therefore, it cannot be said that the owner of such immovable property cannot deal with



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such property in any manner with the third party. This court is therefore of the view that the only restriction at the most is with regard to the use of the land for construction without proper approval. As stated earlier even though it is an unapproved house site, the same could be used for some other purposes other than housing like gardening or keep it as vacant site or for agricultural or horticultural activities and therefore, prohibiting the total sale of such land in the considered view of this court would in fact violates the constitutional right guaranteed under Article 300-A of the Constitution of India.

14. Thus, the provision contained in Section 22-A of the Registration Act, 1908 cannot be interpreted to mean that it totally restricts the sale of the property retained by the owner of an unapproved layout. At the most such restriction could be applied only in respect of the sale of such land as house site for the purpose of construction without the permission for development of such land from planning authority concerned. Therefore, in the case of sale of such land for any other purpose other than housing development, in the considered view of this court registration cannot be refused.

15. Admittedly, the counter affidavit filed by the respondent in this case would indicate that the property intended to be settled by the petitioner in favour of his son was not a part of the layout. That being the position, when the



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subject land was not part of the layout and it was retained by the petitioner, it cannot be said that such remaining extent of land cannot be permitted to be dealt with by the owner of the land for any other purpose other than housing development.

16. It is also to be noted here that a clarification issued by the Commercial Taxes and Registration (J2) Department, Government of Tamil Nadu, under letter Ref Letter No.359/J2/2020-1, dated 16.03.2020, to the letter of the Inspector General of Registration letter dated 03.01.2020 in reference Letter No.52889/C1/2019 would make it clear that 'layout' means (i) division of land into plots exceeding 8 (eight) in numbers in Chennai Metropolitan Planning Area; (ii) division of land into plots by introducing a new road or street in areas other than Chennai Metropolitan Area. Therefore, as long as there was no new road or street introduced, there is no bar for registration of sale under sub-section (2) of Section 22-A. It may be appropriate to take note of clarification issued by the Commercial Taxes and Registration Department dated 16.03.2020 under Letter No.359/J2/2020 in response to the letter of the Inspector General of Registration dated 03.01.2020 which reads as under:-



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காரைக்கல் மதுரை பதிவு(பெயர்) துறை,
தமிழக அரசு, சென்னை-8.

பெயர்: 375/பெயர்/2020-1, நாள்: 18.03.2022

அதிகாரி,
பெ. த. ம. பதிவு(பெயர்) துறை,
தமிழக அரசு, சென்னை-8.

010906



பெயர்:
பதிவு(பெயர்) துறை,
தமிழக அரசு, சென்னை-8.

தமிழக அரசு,

பெயர்: பதிவு(பெயர்) - காரைக்கலில் பதிவு செய்யப்பட்ட பதிவு(பெயர்) துறை, நாள்: 18.03.2022.

பெயர்: பதிவு(பெயர்) துறை, நாள்: 18.03.2022.

பெயர்: பதிவு(பெயர்) துறை, நாள்: 18.03.2022.

பெயர்:	பதிவு(பெயர்) துறை:	பதிவு(பெயர்) துறை:
1.	தமிழக அரசு, சென்னை-8.	தமிழக அரசு, சென்னை-8.



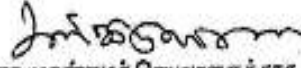
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		மீளவும் வீட்டு மனையாகப் பதிவு செய்வது 1908ஆம் ஆண்டு பதிவுச் சட்டத்தின் பிரிவு 22ஏ(2)க்கு மாறாக இருக்காது.
6.	அதிக விஸ்தீரணமுள்ள விவசாய நிலத்தில் அதனை மனைப்பிரிவாக மாற்றாமல் அதில் ஒரு பகுதி மட்டும் (குறிப்பாக 5 சென்ட் தனிமனை) வீட்டு மனையாக தான ஏற்பாடு அல்லது கிரைய ஆவணமாக பதிவு செய்தல்.	வரிசை எண் 1ல் அளிக்கப்பட்ட தெளிவுரையே இதற்கும் பொருந்தும்.

தங்கள் உண்மையுள்ள,



அரசு முதன்மைச் செயலாளருக்காக
12/7/2022

Further, the clarification issued above under Sl.No.1 would make it clear that if the remaining lands retained by the owner/promoter is only a meagre extent and no other land in that Survey Number, then , that land also can be registered.

17. The clarification issued above would indicate that the bar contained under Section 22-A is only with regard to unapproved lay out which was formed without the permission for development from planning authority concerned and new roads or streets have been laid after the amendment and not in respect of the Unapproved Layout prior to the amendment came into being.



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Such view of the matter as the layout was formed in 2020 and several plots had already been sold, registration of settlement deed executed by the petitioner for the remaining extent of land retained and held by the petitioner in favour of his son cannot be refused. As already held such land can be used for any purposes other than housing development. Even any one of the adjacent land owners may wish to purchase such land for the purpose of using it as vacant land or for any other purpose other than housing development. Therefore, transfer of such land cannot be said to be totally prohibited, if transfer of such land is totally prohibited, it would certainly violate the constitutional right guaranteed under Article 300-A of the Constitution of India. The very object of introducing Section 22-A by way of Tamil Nadu Act is only to restrict conversion of agricultural land or any other land as unapproved house sites without the permission for development of such land from planning authority concerned. Therefore, bar contained under Section 22-A cannot be applied in a mechanical fashion and registration cannot be refused and restraining the owner of such land from using the land for any other purposes other than housing development.

18. In the light of the above discussions, the refusal check slip impugned in the writ petition is liable to be set aside. The writ petition succeeds



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accordingly.

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In the result, the writ petition is allowed. The refusal check slip impugned in the writ petition is set aside. The respondent is directed to register the settlement deed presented by the petitioner for registration within a period of 15 days from the date of receipt of a copy of this order. No costs.

Index : yes / no

01..07..2024

Neutral Citation : yes / no

Speaking / Non Speaking Order

kmk

To

1.The Sub Registrar, Salem (West), 95/412, Mullai Nagar, Near Saibaba Temple, Suramangalam, Salem 636 005.



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N.SATHISH KUMAR.J.,

kmk

Pre Delivery Order
in
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01..07..2024