



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-03-2024

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM
And
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

WA No.3391 of 2023
And
CMP No.27724 of 2023

Netvantage Technologies Pvt Ltd.,
Represented by its Authorised Signatory
Mr.Pankaj Nath,
Having Registered Office at:
Vijaya (1st Floor) 17,
Barakhamba Road,
New Delhi-110 001.

.. Appellant

-VS-



WEB COPY

1.The Inspector General of Registration and Stamps,
No.100, Santhome High Road,
Chennai-600 028,
Tamil Nadu,
India.

2.The Deputy Registrar,
Sankara Naidu Street,
Thiruppathiripuliyur,
Cuddalore,
Tamil Nadu-607 002.

3.The District Registrar,
Office of the District Registrar Complex,
63/40, Perumal Koil Street,
Gingee Road,
Tindivanam-604 001.

4.Durai

5.Ilavarasan

6.Venkatesan

7.Balaguru

.. Respondents

Writ Appeal is preferred under Clause 15 of Letters Patent against the order passed by this Court in WP No.20423 of 2023 dated 01.11.2023.



WEB COPY

WA No.3391 of 2



For Appellant : Mr.V.Raghavachari,
Senior Counsel for
Ms.Deepika Murali.

For Respondents-1 to 3 : Mr.B.Vijay,
Additional Government Pleader.

For Respondents-4 to 7 : Mr.M.V.Seshachari

J U D G M E N T

[JUDGMENT OF THE COURT WAS DELIVERED

BY S.M.SUBRAMANIAM, J.]

The present writ appeal has been filed challenging the order dated 01.11.2023 passed in WP No.20423 of 2023.

2. The writ petitioner-Company is the appellant before us.

3. The appellant purchased the subject property in Survey Nos.215/1B, 216/1C, 216/2B, 217/2 and 227/2 vide document No.4078 of



2007 dated 28.09.2007. The vendor to the appellant purchased the said property on 21.12.2004. The respondents 4 to 7 claiming title over the subject property submitted an application before the District Registrar-third respondent, seeking cancellation of the documents registered in favour of the vendor to the appellant in the year 2004 and the appellant in the year 2007. The District Registrar conducted summary proceedings and cancelled the said two Sale Deeds as fraudulent. An appeal under Section 77-B of the Registration Act [hereinafter referred to as the 'Act', in short], was filed before the first respondent-Inspector General of Registration, who in turn, confirmed the order passed by the District Registrar. Thus the appellant instituted the writ proceedings, challenging the order passed by the District Registrar under Section 77-A and the appellate order passed under Section 77-B of the Act.

4. The Writ Court formed an opinion that the title dispute exist between the appellant and the respondents 4 to 7 and therefore, the parties have to approach the Competent Civil Court of Law for the purpose of resolving the issues. Since the writ petition was disposed of, without granting the relief to the appellant-Company, they have chosen to file the



present writ appeal.

5. Mr.V.Raghavachari, learned Senior Counsel, appearing on behalf of the petitioner, would contend that power to cancel the Sale Deed had not been conferred to the District Registrar during the relevant point of time. Thus the application entertained for cancellation of Sale Deed, per se, is without jurisdiction. The Appellate Authority and the Writ Court have not considered the jurisdictional point raised by the appellant and therefore, the present writ appeal is to be considered.

6. Mr.B.Vijay, learned Additional Government Pleader, appearing on behalf of the respondents 1 to 3, would oppose the contentions raised on behalf of the appellant by stating that the Circular No.67 dated 03.11.2011 issued by the Inspector General of Registration was in force still 08.11.2017. Further an enquiry was conducted by the District Registrar by affording opportunity. That apart, the validity of the Circular had been upheld by the Writ Court. For all these reasons, the writ order is to be confirmed.



7. Perusal of Section 68 of the Act, reveals that Power of Registrar to superintend and control the Sub-Registrars are conferred. The very Chapter itself stipulates that controlling powers of the Registrars and Inspector General. Sub Section (2) to Section 68 enumerates that "every Registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act, which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him or in respect of the rectification of any error regarding the book or the office in which any document has been registered".

8. Section 68(2) of the Act, must be read along with Sections 32 to 35 of the Act, wherein the procedures are contemplated for registration. Therefore, the scope of Section 68(2) of the Act, cannot be expanded for the purpose of cancellation of Sale Deed by conducting summary enquiry. If such powers are exercised, then the District Registrars are usurping the powers of the Civil Court of Law, which is impermissible. To cancel the Sale Deed, the trial nature proceedings are warranted. Such an exercise cannot be made by the Registering Authority or the District



Registrar under the Registration Act. Therefore, Section 68(2) of the Act, must be purposively interpreted, so as to form an opinion that the errors, omissions or violations during the course of registration or violations of procedures under the Act, alone can be rectified. Section 68 of the Act, is not intended to cancel the Sale Deed otherwise registered in accordance with the procedures as contemplated under the Act.

9. Fraud or impersonation cannot be interpreted in common parlance. Fraud or impersonation in the context of Sections 32 to 35 of the Act, alone provides power to the Registering Authority to conduct an enquiry and carry out necessary corrections or otherwise. Power to initiate prosecution is conferred under Section 83 of the Act. However, such powers conferred under the Act, would not provide jurisdiction to cancel the Sale Deed registered otherwise made by following the procedures as contemplated under the Act and the Rules framed thereunder.

10. In this context, the Inspector General of Registration rightly issued Circular in letter No.41530/U1/2017 dated 31.07.2018. Therefore, the Competent Authorities dealing with registrations and conducting



enquiry, are to be sensitised with reference to the Circular and the scope of interference under Section 68 of the Act.

WEB COPY

11. Sections 77-A and 77-B of the Act, was inserted by TN Act No.41 of 2022 with effect from 16.08.2022. The said provision was inserted pursuant to the directions issued by the Division Bench of the High Court of Madras. Sections 77-A and 77-B of the Act, would have prospective application for entertaining an application to cancel the documents, more specifically, documents registered after 16.08.2022. Sections 77-A and 77-B of the Act, cannot have retrospective application, so as to cancel the documents, which were registered prior to 16.08.2022. If Section 77-A of the Act, is interpreted, so as to give power to the District Registrar to cancel the documents, which were registered prior to 16.08.2022, the same will result in an anomalous situation, where many people will be tempted to file application under Section 77-A of the Act, to cancel the documents, registered several decades before. More-so, there is no express provision under Section 77-A of the Act, conferring power with retrospective effect. In the absence of any express clause, providing retrospective application of Section 77-A of the Act, the District Registrars/Appellate Authorities are



expected to exercise the power prospectively from the date of amendment inserted under Sections 77-A and 77-B of the Act.

WEB COPY

12. Let us now consider the scope of Section 22-A, Section 22-B and Section 77-A of the Act, together for the purpose of better understanding of the scope of Section 77-A of the Act.

13. Section 22-A of the Act, provides refusal to register certain documents by Registering Authority. Widely, the provision covers Government properties and the properties belonging to Religious Institutions. Sub-Section (2) stipulates that, in respect of the instrument relating to transfer of ownership of lands converted as house sites with a permission for development, such lands must be approved by the Planning Authority for the purpose of registration.

14. Section 22-B of the Act, denotes refusal to register forged documents and other documents prohibited by law. Accordingly, the Registering Officer shall refuse to register the following documents:

(1) forged document,



WEB COPY



(2) document relating to transaction, which is prohibited by any Central Act or State Act for the time being in force,

(3) document relating to transfer of immovable property by way of sale, gift, lease or otherwise, which is attached permanently or provisionally by a Competent Authority under any Central Act or State Act, for the time being in force or any Court or Tribunal and

(4) any other document as the State Government may, by notification, specify. Section 22-B was inserted by Tamil Nadu Act No.41 of 2022 with effect from 16.08.2022. Therefore, Section 22-B must be read along with Section 77-A of the Act, which was also inserted by the Tamil Nadu Act 41 of 2022. Thus, the legislative intention is to be carved out through harmonious understanding of Section 22-B and Section 77-A of the Act.

15. Therefore, necessarily, the Court has to form an opinion that in respect of the documents falling under Section 22-B of the Act, if sought to be cancelled, then the Registrar is empowered to cancel the documents under Section 77-A of the Act. In respect of other documents registered prior to the amendment, one has to understand that those



documents are to be dealt in accordance with the law prevailing at the time of registration by approaching the Civil Court of law. When all those documents registered prior to the amendment of the year 2022 are subjected to Section 77-A of the Act, then this Court is afraid that an anomalous situation would be created by approaching the District Registrar for the purpose of adjudication of disputed issues with reference to those documents registered several years back. The amendment effected from 16.08.2022 has not intended to do so nor the provision expressly provides any such retrospective application. Prior to amendment, Section 22-A and Section 22-B was not in force. Thus, Section 77-A cannot have retrospective effect. In other words, Section 77-A must be read in conjunction with Section 22-A and Section 22-B of the Act. Insertion of all these three Sections are to be understood holistically to avoid any inordinance.

16. Article 59 of the Limitation Act, 1963 stipulates that, to cancel or set aside any instrument or decree for rescission of a contract, the period of limitation is three years. Therefore, even for setting aside an instrument or a decree or for rescission of a contract the period of three



years has been contemplated under the Limitation Act, the documents registered several years back or decades back cannot be the subject matter for cancellation of those documents under Section 77-A of the Act.

17. Pertinently, Section 53 of the Transfer of Property Act, 1882 deals with fraudulent transfer. Accordingly, every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed. Section 53 unambiguously stipulates that, even a fraudulent document is only voidable and not a void document. In respect of voidable documents, there is an option for the parties to rectify the fraud and make it valid and therefore, the documents registered prior to the insertion of Sections 22-A, 22-B and 77-A of the Act, cannot be subjected to cancellation under Section 77-A of the Act.

18. Therefore, there are certain circumstances where a voidable document under Section 53 of the Transfer of Property Act, may be validated with the consent of the parties. That being the legal position in respect of such fraudulent documents, which are registered, the power to



cancel conferred on the District Registrar cannot be given retrospective effect, so as to cancel the documents, which were registered several years or decades back.

19. Yet another apprehension is that the District Registrars are not empowered to adjudicate the disputed facts. Under Section 77-A of the Act, they are empowered to conduct summary proceedings and to identify fraud or impersonation with reference to the provisions of the Registration Act, more specifically, the procedures as contemplated under the Act and Rules. In the event of allowing the District Registrars to adjudicate the documents registered prior to the amendment, necessarily, they will have to adjudicate the disputed facts and the background of the title and otherwise, which cannot be done. More so, fraud was not defined prior to the insertion of Sections 22-A, 22-B and 77-A of the Act.

20. The powers conferred to the District Registrar to cancel the document under the grounds of fraud or impersonation cannot be expanded for adjudicating the title, ownership or disputed issues between the parties. The District Registrars are empowered to conduct summary proceedings



and if the allegations i.e. fraud or impersonation are apparent on the face of the record, then alone the documents registered are to be cancelled but not otherwise. Therefore, the District Registrars cannot conduct a trial nature proceedings by adjudicating the title deeds or other documents produced by the respective parties. Only if *prima facie* case has been established for cancellation on the ground of fraud or impersonation, then alone the District Registrar has to pass orders for cancellation of document.

21. It is relevant to consider Order VI Rule 4 of the Code of Civil Procedure which enumerates -Particulars to be given where necessary-

"In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading."



22. Therefore, it is mandatory that the party pleading fraud should plead properly and establish through documents. When the Code of Civil Procedure contemplates that the persons pleading fraud should establish through pleading and documents. Such a procedure cannot be adopted by the District Registrar under the Registration Act. since summary proceedings are contemplated. Thus, the District Registrar is duty bound to draw a distinction between the summary proceeding and the trial nature proceedings with reference to the Registration Act and the Code of Civil Procedure. Whenever adjudication of various documents regarding fraudulent activities are to be established, the parties are to be relegated to to the Civil Court for adjudication by establishing the ground of fraud or impersonation or otherwise.

23. Cancellation of document has got larger repercussion on the civil rights of the persons. Property right is a constitutional right conferred under Article 300A of the Constitution of India. Such a constitutional right can be interfered only by the authority of law and certainly not through the summary proceedings. Property right if infringed



by conducting a summary proceedings from the hands of the District Registrar, the same would result in an unconstitutionality and therefore, the scope of the powers under the Registration Act to the District Registrars cannot be expanded for the purpose of adjudication of civil disputes or the civil rights, which is conferred through the conveyances, documents etc.

24. A distinction is to be drawn with reference to the procedures contemplated under the Code of Civil Procedure and the Registration Act, since the consequences of cancellation of any document is causing infringement of property right directly. For example, any person executing a sale deed gets a property right. Once the property right is acquired by him through the sale deed, such right becomes a constitutional right. Thus, the said right can be taken away only by the authority of law. Such an authority of law must provide complete opportunity to the parties to adjudicate the issues based on the documents and evidences. The powers for adjudication of such nature is conferred to the Court of law. Thus, the said powers conferred on the Court of law cannot be transferred or conferred to the District Registrar under the provisions of the Registration Act and more so, such District Registrars are neither legally trained nor authorised to



conduct such judicial proceedings. The Registrars are Quasi~Judicial Authorities.

WEB COPY

25. Pertinently, Chapter V Section 31 of the Specific Relief Act, 1963 contemplates - When cancellation may be ordered-. Sub~section (1) of Section 31 stipulates "Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled."

26. In view of the provisions of the Code of Civil Procedure and Specific relief Act, the Competent Civil Court of Law is empowered to adjudicate the disputed facts between the parties by framing issues and by conducting trials, so as to consider the validity of the documents registered under the Registration Act. Once the Competent Civil Court of Law declares that a registered document is null and void, thereafter under Section 89(4) of the Registration Act read with Rule 89 of the Civil Rules of Practice, the Registering Authority is bound to register the decree passed by the Civil



Court in Book No.1. The mechanism provided under the Code of Civil Procedure, Specific Relief Act and Civil Rules of Practice at no circumstances be diluted, by indirectly conferring the powers of the Civil Court to the District Registrar to invalidate the documents. Thus, the scope under the Registration Act to cancel the documents on the ground of fraud or impersonation is undoubtedly limited. While conducting a summary enquiry, if the District Registrar finds that there is a *prima facie* proof to establish fraud or impersonation, then alone the document is to be cancelled. Therefore, in respect of any iota of doubt on the *prima facie* case, the District Registrar is not empowered to adjudicate the issues on merits and is bound to relegate the parties to the Civil Court of law for adjudication. Comprehensive procedures contemplated under the Code of Civil Procedure, Civil Rule of Practice and the Specific Relief Act provides liberty to all the parties to establish and defend their case by producing documents and adducing evidence. Such a right of adjudication cannot be taken away by allowing the Registrar to declare the registered documents as null and void.



27. The very insertion of Tamil Nadu Act 41 of 2022 dated 16.08.2022, amplifies that registration of a fraudulent document and certain document prohibited under law are to be refused. Refusal of registration would arise only in respect of documents presented after amendment. Therefore, in respect of documents already registered, the District Registrar cannot have power to cancel the document, wherein the allegations of fraud or impersonation have been raised. Thus, the provisions cannot have retrospective effect, so as to confer the power on the District Registrar to adjudicate the documents, whichever is registered prior to the amendment. All those cases have to be relegated to the Competent Civil Court of Law for adjudication.

28. Rule 55 of the Registration Rules reads as under:

"55. It forms no part of a registering officer's duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document; but he is bound to consider objections raised on any of the grounds stated below:-



(a) that the parties appearing or about to appear before him are not the persons they profess to be;

(b) that the document is forged;

(c) that the person appearing as a representative, assign or agent, has no right to appear in that capacity;

(d) that the executing party is not really dead, as alleged by the party applying for registration; or

(e) that the executing party is a minor or an idiot or a lunatic.

29. Amendment made in Section 22-B of the Registration Act goes along with Rule 55 of the Registration Rules. The Registering Authority, on receipt of any document for registration, if finds forgery or impersonation then, is empowered to refuse registration. The circumstances as narrated under Rule 55 of the Registration Rules also to be read along with the amended provision under Section 22-B of the Registration Act. Holistic reading of the above provisions would indicate that the Registering Authority is empowered to refuse registration if the document presented are found to be forged or impersonated.



30. With reference to the facts established in the present writ appeal, admittedly, the subject document cancelled by the Competent Authority, was registered on 21.12.2004 and 28.09.2007. During the relevant point of time, neither the District Registrar nor the Inspector General of Registration vested with powers to cancel the Sale Deed executed otherwise by following the procedures as contemplated under the Act and the Rules. The remedy for an aggrieved person is to approach the Competent Civil Court of Law, seeking cancellation of Sale Deeds or to declare the same as null and void.

31. As far as the order under challenge before us is concerned, the Writ Court considered the existence of civil dispute between the parties and relegated them to approach the Civil Court of Law.

32. The issue is not about title, but relates to powers of the Registering Officer, District Registrar and the Appellate Authority under the Act. The scope of cancellation of registered Sale Deed is an issue, which is to be necessarily dealt with in the writ proceedings, which has not been



undertaken by the Writ Court. Thus, we are inclined to consider the present writ appeal. Consequently, the order dated 01.11.2023 passed in WP No.20423 of 2023 is set aside.

33. Accordingly, the present writ appeal stands allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

(S.M.SUBRAMANIAM,J.) (K.RAJASEKAR,J.)

20-03-2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
Svn



To

WEB COPY

- 1.The Inspector General of Registration and Stamps,
No.100, Santhome High Road,
Chennai-600 028,
Tamil Nadu,
India.
- 2.The Deputy Registrar,
Sankara Naidu Street,
Thiruppathiripuliyur,
Cuddalore,
Tamil Nadu-607 002.
- 3.The District Registrar,
Office of the District Registrar Complex,
63/40, Perumal Koil Street,
Gingee Road,
Tindivanam-604 001.



WEB COPY

WA No.3391 of 2



S.M.SUBRAMANIAM, J.
AND
K.RAJASEKAR, J.

Svn

WA 3391 of 2023