IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2024

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.36266 of 2023

Dhanalakshmi ... Petitioner

versus

1.The State of Tamil Nadu,
Rep.by its Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat, Chennai -9.

2.The Inspector General of Registration,
No.100, Santhome High Road,
Mullima Nagar, Mandavalipakkam,
Raja Annamalai Puram,
Chennai – 600 028.

3.The Additional District Registrar,
South Registration District,
Now at Industrial Estate,
Guindy, Chennai – 600 032.

4.Selva Kumar
5.Lakshmi ..... Respondents

Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus, directing the first respondent to conduct an enquiry and dispose of the petitioner's appeal dated 14.12.2022 filed against the order dated 10.11.2022 in File No.2283/U1/2021 on the file of the second respondent within a time frame stipulated by this Court.

For Petitioner	:	Mr.P.M.Sachin for M/s.P.B.Ramanujam Associates
For Respondents	:	Mr.U.Bharanidharan Additional Government Pleader for R1 to R3 R4 and R5 – Not ready in notice

O R D E R

This writ petition has been filed seeking for a mandamus, directing the first respondent to conduct an enquiry and dispose of the petitioner's appeal dated 14.12.2022, which was filed against the order dated 10.11.2022 in File No.2283/U1/2021 on the file of the second respondent, within a time frame stipulated by this Court.

2. The learned counsel for the petitioner submitted that the petitioner has preferred an appeal dated 14.12.2022 before the first respondent under Section 77-B of 'the Registration (Tamil Nadu Second Amendment) Act, 2021' [hereinafter referred to as 'the Act'] against the order dated 10.11.2022 passed by the Additional Inspector General of Registration. However, the first respondent remanded back the appeal to the second respondent stating that the proceedings dated 10.11.2022 were not in accordance with Section 77-A of the Act. While so, the petitioner made repeated representations and requests before the second respondent for disposal of his petition filed by her for cancellation of certain documents in respect of the property owned by her, however, the second respondent has not taken any action till date and hence, the petitioner is constrained to file the present writ petition.

3.The learned Additional Government Pleader appearing for the respondents 1 to 3 by referring to counter affidavit, contended that in the instant case, earlier, the District Registrar had passed orders regarding the petitioner's grievance, later he was appointed as Deputy Inspector General of registration, Chennai. Since the enquiry officer himself cannot be the appellate authority to pass orders on the appeal filed by the petitioner dated 18.03.2019, the Inspector General of Registration, by order dated 24.01.2022, instructed the Additional Inspector General of Registration (S&R) to conduct enquiry and pass orders. Accordingly, the Additional Inspector General of Registration (S&R) passed order on 10.11.2022 under Section 68(2) of the Registration Act, 1908. Aggrieved over the same, the petitioner preferred an appeal before the first respondent under Section 77-B of the Act but the first respondent remanded the matter to the second respondent, as the proceedings were not in accordance with Section 77-A of Act. He further contended that as per provisions laid down under the Tamil Nadu Act 41/2022, the appeal provisions under Section 77-B (2) of the Act will lie with the first respondent/Secretary, Commercial Taxes and Registration Department only challenging the orders passed by the Inspector

General of Registration, under Section 77-A (2) of the Act. In the case on hand, the Additional Inspector General of Registration passed order under Section 68(2) of the Registration Act, 1908, however, the petitioner misconstrued that it was passed under Section 77-A of the Act and filed appeal under Section 77-B of the Act.

4. Heard both sides.

5. With regard to the amendment of Section 77-A of the Act, there are divergent decisions of two separate Benches of this Court as to whether the amendment of Section 77-A of the Act, has to be given retrospective effect or prospective effect and the said decisions have been referred to a Larger Bench to decide the matter. Hence, the proceedings under Section 77-A of the Act, are stayed by this Court. Pursuant to the same, the Inspector General of Registration also issued a Circular dated 29.09.2023 to the Registrars and

the Sub-Registrars of the Registration Department that enquiry under Section 77-A of the Act, shall not be entertained.

6. Thus, the petitioner has got an efficacious alternative remedy, he can either approach the Civil Court or wait till the outcome of the decision of the Larger Bench of this Court. Hence, this Court is not inclined to give any direction in this Writ Petition by invoking Article 226 of the Constitution of India.

7. Accordingly, this writ petition is disposed, granting liberty to the petitioner to work out her remedy before the competent forum in the manner known to law. There shall be no order as to costs.

07.02.2024

Index: Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No
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To

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P.VELMURUGAN, J.

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