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W.P. No.36349 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

W.P.No.36349 of 2023 and

W.M.P. No.36332 of 2023

Sabura Nachiyal

... Petitioner

Vs.

1. The Sub Registrar

T.R.Pattinam, Karikal, Puducherry

2. Syed Mohamed Maricar

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for records relating to the order passed by the 1st respondent in No.101/SRO-NVY/TRP/2023/64, dated 16/11/2023, quash the same and consequently direct the 1st respondent to complete the registration of the sale deed dated 03.08.2023, within a time frame to be fixed by this Court.

For Petitioner	:	Mrs.Chitra Sampath, Senior Advocate for Mr.R.Sunil Kumar
For R1	:	Mrs.V.Usha Addl. Government Pleader (Pondicherry)
For R2	:	No Appearance



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ORDER

The Writ Petition is filed seeking to issue a Writ of Certiorarified Mandamus calling for records relating to the order passed by the 1st respondent in No.101/SRO-NVY/TRP/2023/64, dated 16/11/2023, quash the same and consequently direct the 1st respondent to complete the registration of the sale deed dated 03.08.2023, within a time frame to be fixed by this Court.

2. The case of the petitioner is that by way of release deed dated 09.11.2022, the 2nd respondent got an immovable property from his relatives. Thereafter, the 2nd respondent negotiated with the petitioner and agreed to sell the property for a sum of Rs.21 lakhs and also received the entire consideration and executed a sale deed on 03.08.2023. In addition to that, the petitioner paid a sum of Rs.1,05,000 towards stamp duty and transfer duty and a sum of Rs.10,697/- towards Registration and other



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charges and presented the sale deed for registration jointly with the 2nd respondent before the 1st respondent. The 1st respondent enquired and verified about the identity of the persons and execution of sale deed, payment of consideration. Photographs of the petitioner, 2nd respondent and two witnesses were taken before the 1st respondent and thumb impression of the above named persons were obtained. Print of the of the above were taken and signatures were obtained from all the persons. In continuation, thumb impression of the petitioner and the 2nd respondent were obtained in the Register relating to the office attendance maintained in the office of the 1st respondent. The petitioner was waiting in the registration office after completing their part of work for the 1st respondent to assign document number. Despite the 1st respondent finishing the major portion of registration, no document number was assigned by completing the registration. On enquiry, the 1st respondent said that he has got some doubt about the shares of persons settled the property in favour of the 2nd



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respondent and he will get it clarified with the legal experts and instructed

the petitioner to come after two days. Ever after 15 days, the 1st respondent

did not complete the registration despite repeated requests of the petitioner.

Surprisingly on 18.08.2023, the 1st respondent handed over a letter dated

18.08.2023, purportedly given by the 2nd respondent stating that the sale

consideration was not paid by the petitioner and hence, he wanted to cancel

the sale deed and also the release deed. This is nothing but after thought and

unscrupulous action of the respondents to extract money illegally from the

petitioner. Aggrieved by the in- action of the 1st respondent, a writ petition

seeking mandamus was filed before this Court in W.P.No.31743 of 2023. On

06.11.2023, this Court was pleased to order notice to the respondents both

through Court and post for hearing on 01.12.2023. The private notice sent

through registered post to the 1st respondent was received on 14.11.2023.

Two days after receiving notice in the Writ Petition, the 1st respondent

passed the impugned or on 16.11.2023 refusing to register the sale deed on



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the ground that the 2nd respondent who is the vendor, submitted a representation on 18.08.2023 to cancel the registration. The 2nd respondent failed to appear before this Court even after receiving notice in the Writ Petition. On 12.12.2023, this Court closed the writ petition as infructuous after recording that the 1st respondent passed orders on 16.11.2023 refusing to register the sale deed. Since the said writ petition was closed, the petitioner has challenged the order passed by the 1st respondent dated 16.11.2023 which was passed pending W.P. No.31743/2023.

3. The learned counsel for the petitioner submitted that as per Section 35 of the Registration Act, the 1st respondent has no option except to register the document when the execution is admitted before him. He further submitted that the 1st respondent says that he refused to register the sale deed under Section 71 of the Registration Act. Section 71 will apply only if he refused to Admit any document for registration. The petitioner has no



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appellate remedy, as the Sub-Registrar had not refused on the ground of not

admitting the document. If there is denial of execution, only then the

petitioner can file application under Sections 72 to 74 of the Registration

Act. Now, taking advantage of the order of the 1st respondent refusing to

register the sale deed, the 2nd respondent attempting to do further mischief

by making arrangements to cancel the release deed dated 09.11.2022.

Therefore, the impugned order passed by the 1st respondent is erroneous and

the same is liable to be set aside. Once a document is presented for

registration and if the entire procedure for admission is completed, then in

such circumstances, the Registrar is bound to register the document and

return the same to the presentee. In this case, the petitioner presented the

document before the 1st respondent on 03.08.2023 and the formalities were

completed on the same day. Thereafter, the 1st respondent has no authority

to cancel the same. Thereofre, the impugned order is libable to be set aside.



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4. In support of his submissions, the learned counsel for the petitioner placed reliance on a decision of a Division Bench of this Court in the case of V.K.Amalraj Vs. Inspector General (Registration), Chennai and others in W.P (MD) No.10543 of 2009 dated 02.02.2011. He also relied on another decision in the case of M/s.K.D.P.Properties Pvt. Ltd. Vs. The Sub Registrar, Madurai and another in W.P.(MD) No.2635 of 2012 dated 13.03.2013.

5. The 1st respondent has filed counter in which it is stated that the sale deed was kept pending for verification by assigning pending number P.12/2023 of Neravi Sub-Registrar by the then Sub-Registrar. In the meantime, the executant namely 2nd respondent, submitted a representation on 18.08.2023 to cancel the sale deed executed by him, which was kept pending for verification. The 1st respondent had not received any fresh representation in this regard. Since it was kept pending without registration



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and in exercise of the powers conferred under Section 71 of the Registration

Act, the sale deed executed by the 2nd respondent and presented by the petitioner, was refused to be registered on the aforesaid grounds by order of refusal.

6. Heard and perused the records.

7. Admittedly, the petitioner is the purchaser of the property in question. The 2nd respondent is the vendor. The 2nd respondent, executed the sale deed in favour of the petitioner on 03.08.2023 and the same was presented before the 1st respondent for registration. The 1st respondent enquired and verified about the identity of the persons, execution of sale deed, payment of consideration, photographs of the petitioner and the 2nd respondent and also the witnesses to the sale deed and obtained thumb impressions of the above said persons. Thereafter, print of the of the above were taken and signatures were obtained from all the persons and all the



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formalities were completed. However, the document was refused to be registered and subsequently, the impugned order came to be passed under Section 71 of the Registration Act.

8. When once a document is executed and presented and both the purchaser and vendor were present and all the formalities are completed, it is for the Registrar to register the document. The Registrar has no concern about the validity or otherwise of the document which was under the realm of the Civil Court. A duty is cast upon the Sub Registrar that when a document sought to be registered is complete in all aspects and presented for registration, it is his bounden duty to accept and register the same, if the document is otherwise in order by complying with the provisions of Section 71 of the Registration Act and if he could not register the document, he has to pass order of refusal recording his reasons in Book No.2 therein. Mere refusal to accept the document for registration is dereliction of duty and disobedience of mandatory provisions of law. The Registrar is not expected



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to verify the title or irregularity in the document as such. The examination to

be done by him is incidental, to ascertain that there is no violation of provisions of the Act. In the case of Park View Enterprises, it has been observed that the function of the Registering Officer is purely administrative and not quasi-judicial. He cannot decide as to whether a document presented for registration is executed by person having title, as mentioned in the instrument. Investigation into title cannot be gone into in writ proceedings. If at all there is anything regarding dispute of title or mere dispute, the party can very well approach the Civil Court impleading the Registrar also as a party and challenge the document.

9. In this case, once the 1st respondent admitted that he received the document and all the formalities were completed on 03.08.2023, he has no authority to keep the document with him till 16.11.2023, that too, he passed the order after filing of the earlier writ petition and notice was served on him.

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10. Under these circumstance the refusal order passed by the

1st respondent is quashed and the writ petiiton is allowed. The 1st respondent is directed to register the document, if the document presented by the petitioner is otherwise in order. It is for the 2nd respondent to work out the remedy in the manner known to law before the Civil Court. No costs.

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Index : Yes / No

Neutral Citation Case : Yes/No

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To

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The Sub Registrar
T.R.Pattinam, Karikal
Puducherry



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P.VELMURUGAN. J

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