



W.P.(MD)No.2913 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 02.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)No.2913 of 2022
and W.M.P.(MD)No.6666 of 2024

The Chairman,
Vins Educational & Health Trust,
314/E2, K.P.Road,
Nagercoil – 629 003,
Kanyakumari District.

... Petitioner

Vs.

- 1.The Inspector General of Registration,
100, Santhome High Road,
Raja Annamalai Puram,
Chennai – 600 028.
- 2.The Deputy Inspector General of Registration,
St. Marks Street, Near Sankar Colony,
Behind Johns Higher Secondary School,
Palayamkottai, Tirunelveli District – 627 002.
- 3.The District Registrar (Administration),
Office of District Registrar,
Southside of SLB School,
Nagercoil – 620 001,
Kanyakumari District.



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4.The Sub-Registrar,
Eraniel, No.18-2,
Thingal Nagar, Thatchan Parambu,
Neyoor Post – 629 802,
Kanyakumari District.

5.J.Justin

6.Srikumari

7.T.Vijayan

8.T.Venugopalan

9.R.Chellappan Pillai

10.Saraswathi Amma

11.C.Krishnan Kutty

12.Usha Kumari

13.Krishnamma

.... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to the impugned order passed by the 3rd respondent District Registrar in Na.Ref.No. 6694/Aa1/Aa3/2020 dated.. 12.2021 and quash the same as illegal and void.

For Petitioner : Mr.Isaac Mohanlal,
Senior Counsel for
M/s.Issac Chambers

For Respondents : Mr.M.Siddharthan,
Addl. Govt. Pleader for R1 to R4
Mr.K.Sudalaiyandi for R5
R7, R8, R11 & R12 – No Appearance



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ORDER

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This Writ Petition has been filed for issuance of a Writ of Certiorari calling for the records relating to the impugned order passed by the 3rd respondent District Registrar in Na.Ref.No.6694/Aa1/Aa3/2020 dated.. 12.2021 and quash the same as illegal and void.

2. It is the case of the petitioner that the petitioner is the Founder Trustee/Chairman of a Public Charitable Trust registered in the office of the Sub Registrar, Eraniel, Kanyakumari District. The petitioner has purchased the subject property in the year 2002 and put up constructions over the same, after obtaining necessary approval from the competent authority. While so, the 5th respondent has given a complaint before the third respondent alleging that he is the owner of the property and seeking to cancel the document of the petitioner as forged one. On the basis of the said complaint, an enquiry has been conducted and the third respondent, without considering the documents produced by the petitioner at the time of enquiry, has passed the impugned order declaring that the document of the petitioner is a fraudulent document. Challenging the same, the petitioner has filed this Writ Petition.



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3. The learned Senior Counsel appearing for the petitioner would submit that the petitioner has purchased the subject property in the year 2002 and 2003 and constructed buildings thereon after obtaining necessary approval from the competent authority. The students hostel was constructed on the western portion of R.S.No.825/1 in the year 2003. Whereas, the 5th respondent has purchased the said property in the year 2009, knowing very well that the building is very much available. While so, the 5th respondent has given a complaint before the Deputy Superintendent of Police, District Crime Branch, Nagercoil alleging that the petitioner has encroached upon his land and prayed to evict the petitioner from the subject property. After conducting detailed enquiry and perusal of the documents, the Deputy Superintendent of Police has closed the complaint, vide his report dated 14.01.2012. Thereafter, the 5th respondent has filed a petition in CrI.O.P. (MD)No.5693 of 2012, seeking direction to the authorities to take action based on his complaint. This Court, by order dated 19.06.2012, rejected his plea and directed the parties to approach the civil Court. Thereafter, the petitioner has preferred a petition to the Revenue Divisional Officer, Padmanabhapuram for cancelling the sub-division made by the 5th respondent in the subject property. Since the RDO, declined the same, the petitioner has preferred an appeal to the District Revenue Officer. During the pendency of the appeal, the 5th respondent



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has filed a suit in O.S.No.31 of 2013 on the file of District Court, Kanyakumari District at Nagercoil and the same is pending. Thereafter, the 5th respondent has filed a criminal complaint before the learned Judicial Magistrate, (Special Court for Land Grabbing), Tirunelveli and the same has also been closed as mistake of fact.

4. The learned Senior Counsel appearing for the petitioner further submitted that despite all the above, the 5th respondent has given an another complaint to the third respondent seeking to cancel the document of the petitioner as forged one. Though a civil suit is pending in respect of the very same property, the District Registrar, through the impugned order, without considering the reply submitted by the petitioner, simply declared the petitioner's document as a fraudulent document. Therefore, the impugned order is liable to be set aside.

5. Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the respondents 1 to 4 and the learned counsel appearing for the 5th respondent and perused the materials available on record.



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6. On a perusal of the impugned order, it is seen that though this Court by order dated 19.06.2012 in CrI.O.P.(MD)No.5693 of 2012, directed the parties to approach the civil Court, the District Registrar has gone into the title issue and declared the petitioner's document as forged one. Admittedly, a civil suit is pending in O.S.No.31 of 2013 before the District Court, Kanyakumari District. When already there is a title dispute exists in respect of the subject property, the District Registrar, assuming his power as an appellate authority, going into the title issue cannot be permitted. In **Satya Pal Anand vs. State of Madhya Pradesh and others** reported in (2016) 10 SCC 767, the Hon'ble Supreme Court has held that power conferred on the Registrar by virtue of Section 68 cannot be invoked to cancel the registration of the document already registered. Sections 22-A and 22-B were inserted by Tamil Nadu Act 28 of 2022 and Act 41 of 2022 respectively to prevent registration of certain category of the documents. Thereafter, Section 77-A has been brought by Act 41 of 2022 to cancel the document registered in contravention of Sections 22-A and 22-B not beyond it. Now Section 77-A of the Registration Act, 1908 also is struck down by the Hon'ble Division Bench of this Court in W.P.No.10291 of 2022 batch as unconditional. Such being the position, this Court is of the definite view that the title cannot be decided by the Registering Authorities. These facts have been discussed by this Court in **W.P.No.29706 of**



2022 [G.Rajasulochana Vs. Inspector General of Registration and others] and

the Order in the writ petition is as follows:

“... 3. It is relevant to note that the object of the law of registration is to provide public notice of the transaction embodied therein. The execution of documents and its validity, the right created or extinguished is governed by the substantive law namely the Transfer of Property Act, 1882. The provisions contained in the Registration Act, 1908 relates to the factum of registration alone. The Hon'ble Supreme Court in the case of State of Rajasthan v. Basant Nahata, (2005) 12 SCC 77 has held as follows:

“The Act only strikes at the documents and not at the transactions. The whole aim of the Act is to govern documents and not the transactions embodied therein. Thereby only the notice of the public is drawn.”

4. The practice has been developed in the recent past in Tamil Nadu to entertain the applications given by the so-called affected parties to cancel all the documents under the pretext of either forgery or fraudulent transactions. The Inspector General of Registration, Government of Tamil Nadu has brought out Circular No.67 dated 03.11.2021 to deal with the fraudulent registrations through impersonation. The said circular is mainly based on the judgment of the Full Bench of the Andhra Pradesh High Court in the case of YanalaMalleshwari v. AnanthulaSayamma, reported in AIR 2007 AP 57. However, the three bench of Hon'ble Apex Court in the case of Satya Pal Anand v. State of M.P., reported in (2016) 10 SCC 767 has held that the power of the Registrar, under the Registration Act, is purely administrative and not quasi-judicial. The same is extracted hereunder:

“34. The role of the Sub-Registrar (Registration) stands discharged, once



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the document is registered (see Raja Mohammad Amir Ahmad Khan [State of U.P. v. Raja Mohammad Amir Ahmad Khan, AIR 1961 SC 787]). Section 17 of the 1908 Act deals with documents which require compulsory registration. Extinguishment deed is one such document referred to in Section 17(1)(b). Section 18 of the same Act deals with documents, registration whereof is optional. Section 20 of the Act deals with documents containing interlineations, blanks, erasures or alterations. Section 21 provides for description of property and maps or plans and Section 22 deals with the description of houses and land by reference to government maps and surveys. There is no express provision in the 1908 Act which empowers the Registrar to recall such registration. The fact whether the document was properly presented for registration cannot be reopened by the Registrar after its registration. The power to cancel the registration is a substantive matter. In absence of any express provision in that behalf, it is not open to assume that the Sub-Registrar (Registration) would be competent to cancel the registration of the documents in question. Similarly, the power of the Inspector General is limited to do superintendence of Registration Offices and make rules in that behalf. Even the Inspector General has no power to cancel the registration of any document which has already been registered.”

5. In fact, the Hon'ble Apex Court has held that and in the absence of any express power to cancel the registered document, the Registrar has no power to cancel the document. Section 68(2) of the Registration Act, 1908 relied upon by the Registration Department to substantiate the circular in this regard, when carefully seen. Section 68(2) of the Registration Act, 1908 reads as follows:

“68. Power of Registration to superintend and control Sub Registrars.



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(1) every Sub Registrar perform the duties of his office under the superintendence and control of the Registrar in whose district the office of such Sub Registrar is situate.

(2) 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.”

6. The above provision makes it clear that the said section confers power upon the Registrar to supervise and control all the acts of the Sub-Registrar. Sub-Section 2 empowers the Registrar to issue any order consistent with the Act, which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him. Similarly, the Registrar shall also have power in respect of the rectification of any error regarding the book or the office in which any document has been registered. The above power empowering the Registrar to issue any order is a power of superintendence and supervision and not a power vested to cancel the registration of the document. Therefore, relying upon Section 68(2) of the Registration Act, 1908 and issuing such circular cannot be valid in the eye of law. Unless a specific power and express provision is made in the Act empowering the Registrar to cancel the document, such powers cannot be conferred by the Inspector General of Registration by taking aid of 68(2) of the Registration Act, 1908.”

7. In view of the above settled position of law, this Court is of the view that all these facts cannot be looked into by authorities and the same has to be



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agitated before the civil Court. Therefore, the impugned order is liable to be set aside.

8. Accordingly, the impugned order of the third respondent dated... 12.2021 stands quashed and the Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes/No

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N.SATHISH KUMAR, J.

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