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W.P.(MD)No.2815 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)No.2815 of 2023

and

W.M.P.(MD)No.2614 of 2023

K.A.Packeer Mohamed

... Petitioner

versus

1. The District Registrar (Administration),
Kumbakonam,
Thanjavur District.

2. The Sub Registrar,
Papanasam Registration Office,
Thanjavur District.

3. Iqbal

.... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Prohibition prohibiting the 1st respondent from proceeding with the enquiry, initiated vide his proceedings in Na.Ka.No. 203/A/2023 dated 18.01.2023.

For Petitioner	: Mr.M.Mahaboob Athiff
For R1 and R2	: Mr.P.Subbaraj, Special Government Order
For R3	: Mr.V.Thirumal



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ORDER

This Writ Petition has been filed challenging the notice issued by the first respondent summoning the petitioner to appear for enquiry.

2. Heard the submissions made on either side and perused the materials available on record.

3. The petitioner's contention is that he has purchased the subject property from the legal heirs of late P.A.Raj Mohamed, vide a sale deed in Document No.597 of 2011 dated 28.04.2011 and he sold the said property to one N.Kavitha, vide a sale deed in Document No.443/2022 dated 02.03.2022 and mutation has also been made in name of the said Kavitha. While so, the 3rd respondent, who is a stranger to the said property, has preferred a complaint to the first respondent to cancel the registration of the said documents alleging that the above said documents are forged documents. Based on that complaint, the first respondent has issued the impugned notice. Challenging the same, the present writ petition has been filed.

4. Considering the facts and circumstances of the case, this Court is of the view that the Registering Authority has no power to go into all these



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transactions. 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.”



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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 YanalaMalleswari 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 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.



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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.

(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



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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.”

5. Whether the Document No.597/11 dated 28.04.2011 and the Document No.443/2022 dated 02.03.2022 are forged documents or not, is a matter of evidence to be decided only by the competent Civil Court.

6. In view of the above, the enquiry notice issued by the first respondent cannot be sustained. Accordingly, this writ petition is allowed and the enquiry notice issued by the first respondent in Na.Ka.No.203/A/2023 dated 18.01.2023 is set aside. The parties shall work out their remedy before the competent Civil Court. No costs. Consequently, connected miscellaneous petition is closed.

29.08.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No.
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To

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Kumbakonam,
Thanjavur District.
2. The Sub Registrar,
Papanasam Registration Office,
Thanjavur District.



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N.SATHISH KUMAR, J.

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