



W.P.(MD)No.3227 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)No.3227 of 2023

S.Pushpam

... Petitioner

Vs.

1.The Sub Registrar,
Sub Registrar Office,
Mudukulathur,
Ramanathapuram District.

2.Dhanapal

.... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned refusal check slip in Refusal Number:RFL/Mudukulathur/4/2023 dated 10.02.2023 and quash the same as illegal, consequently directing the respondent to register the settlement deed dated 10.02.2023 presented by the petitioner.

For Petitioner

: Mr.C.Thamotharakannan

For Respondents

: Mr.M.Siddharthan,
Addl. Govt. Pleader for R1
Mr.A.Vadivel for R2



W.P.(MD)No.3227 of 2023

ORDER

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This Writ Petition has been filed for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned refusal check slip in Refusal Number:RFL/Mudukulathur/4/2023 dated 10.02.2023 and quash the same as illegal, consequently directing the first respondent to register the settlement deed dated 10.02.2023 presented by the petitioner.

2. It is the grievance of the Writ Petitioner is that when she presented the settlement deed dated 10.02.2023 executed in favour of her daughter for registration, the Registering Authority has refused to register the same on the ground that the second respondent has submitted an objection petition stating that he is having right over the property, since it is their ancestral property and also on the ground that the said property comes under unapproved house site as per Section 22-A of the Registration Act, 1908. Challenging the same, the petitioner has filed this Writ Petition.

3. The learned counsel appearing for the petitioner submitted that the petitioner has executed a sale deed on 16.09.2015 in respect of 55 cents of the



W.P.(MD)No.3227 of 2023

subject property to the 2nd respondent, who in turn executed a settlement deed in favour of his wife. Thereafter, on 20.05.2010 they were executed an unregistered sale deed in favour of the petitioner's son in law. However, now the 2nd respondent has submitted an objection with an intention to harass the petitioner. Therefore, the impugned refusal slip issued by the 1st respondent has to be set aside.

4. The first respondent has filed a counter affidavit, in which it is stated that the subject property are unapproved house sites and there is a bar for registration of unapproved sites as per Section 22A and 22B of the Registration Act, 1908 and therefore, the first respondent has correctly issued the impugned refusal check slip.

5. It is the only contention of the second respondent that the subject property is an ancestral property and hence, he opposed this Writ Petition.

6. Heard the submissions made by the learned counsel appearing for the petitioner, the Additional Government Pleader appearing for the first respondent and the learned counsel appearing for the second respondent and perused the materials available on record.



W.P.(MD)No.3227 of 2023

7. It is relevant to note that for the very same subject property, the second respondent has got a sale deed on 16.09.2015 vide document No.972 of 2015. When the second respondent himself got registered some extent of land in the subject property that too from the very same ancestral property, now he has raised an objection for registration of some extent of the land in favour of his sister in the very same subject property, which indicates that the protest petition is nothing but clear abuse of process of law. Be that as it may. Merely on the basis of a protest petition, the document cannot be refused to be registered. What is sought to be decided in this Writ Petition is that whether the subject property come under unapproved house site as per Section 22-A of the Registration Act, 1908 or not.

8. It is relevant to note that the proviso to Section 22-A(2) of the Registration Act, 1908 makes it clear that the house sites without such permission may be registered if it is shown that the same house site has been previously registered as house site. In the case on hand, the petitioner has executed a sale deed in respect of 55 cents of the subject property to the second respondent and the same has been registered vide document No.972/2015 and therefore, now there is no bar for registering the settlement deed dated 10.02.2023 presented by the petitioner. This aspect has been elaborately dealt by this Court in



D.Rajamanickam Vs. The Sub Registrar, Salem (West) in W.P.No.426 of 2022,

wherein this Court has held as follows :

“17. The clarification issued above would indicate that the bar contained under Section 22-A is only with regard to unapproved lay out which was formed without the permission for development from planning authority concerned and new roads or streets have been laid after the amendment and not in respect of the Unapproved Layout prior to the amendment came into being. Such view of the matter as the layout was formed in 2020 and several plots had already been sold, registration of settlement deed executed by the petitioner for the remaining extent of land retained and held by the petitioner in favour of his son cannot be refused. As already held such land can be used for any purposes other than housing development. Even any one of the adjacent land owners may wish to purchase such land for the purpose of using it as vacant land or for any other purpose other than housing development. Therefore, transfer of such land cannot be said to be totally prohibited, if transfer of such land is totally prohibited, it would certainly violate the constitutional right guaranteed under Article 300-A of the Constitution of India. The very object of introducing Section 22-A by way of Tamil Nadu Act is only to restrict conversion of agricultural land or any other land as unapproved house sites without the permission for development of such land from planning authority concerned. Therefore, bar contained under Section 22-A cannot be applied in a mechanical fashion and registration cannot be refused and restraining the owner of such land from using the land for any other purposes other than housing development.”



W.P.(MD)No.3227 of 2023

In the light of the above settled provision of law, the impugned refusal slip cannot be sustained in the eye of law. Further, merely on the basis of the protest petition, document cannot be refused to be registered.

9. Accordingly, this Writ Petition is allowed and the impugned refusal slip issued by the first respondent dated 10.02.2023 stands quashed and the first respondent is directed to register the settlement deed dated 10.02.2023, presented by the petitioner, within a period of fifteen days from the date of receipt of a copy of this Order. There shall be no order as to costs.

28.08.2024

NCC : Yes/No
Index : Yes/No
vsm



W.P.(MD)No.3227 of 2023

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To
The Sub Registrar,
Sub Registrar Office,
Mudukulathur,
Ramanathapuram District.



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W.P.(MD)No.3227 of 2023

N.SATHISH KUMAR, J.

vsm

W.P.(MD)No.3227 of 2023

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