



W.P(MD)No.4349 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.03.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.4349 of 2024

and

W.M.P.(MD)No.4176 of 2024

S.Santhi

... Petitioner

Vs.

1.The Sub Registrar,
Office of Sub Registrar,
Sengottai,
Tenkasi District.

2.M.Sappani

3.Sugukumar

4.V.Rajkumar

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for records relating to the impugned refusal check slip in Refusal Number. RFL / Senkottai / 8/2024 and quash the same as illegal and consequently direct the 1st respondent to register and release the sale deed dated 19.02.2024 within the period that may be stipulated by this Court.



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For Petitioner : Mr.Sricharan Rengarajan,
Senior Counsel,
for Mr.T.Palanisamy.

For Respondents : Mr.S.Shanmugavel,
Additional Government Pleader for R1

: Mr.B.Saravanan,
Senior Counsel,
for Mr.D.Kirubakaran for R3

: No appearance for R2

ORDER

After entering into a sale agreement with the third respondent on 27.11.2023, the petitioner developed second thoughts. The third respondent has also filed O.S.No.47 of 2024 on the file of the Principal District Judge, Tenkasi, seeking the relief of specific performance. In the meanwhile, the petitioner executed sale deed in favour of the fourth respondent on 19.02.2024. It was presented for registration. Registration was refused for two reasons; (I) non-submission of the parent document and (II) receipt of objection from the third respondent stating that the original document is with him. Challenging the refusal check slip dated 19.02.2024, the present writ petition came to be filed.

2. The learned senior counsel appearing for the petitioner submitted that the stand of the first respondent is based on the first proviso to Rule 55-A of the



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Registration Rules, 1983; since this has been struck down in ***W.P.No.2758 of 2023 (Federal Bank Limited Vs. The Sub Registrar, Pollachi)*** dated **08.02.2023**, the impugned refusal check slip is liable to be set aside. He called upon this Court to grant relief as prayed for.

3. The learned Additional Government Pleader appearing for the first respondent submitted that interference is not warranted. The learned senior counsel appearing for the third respondent submitted that this Court should refer the matter to a Larger Bench since ***W.P.No.2758 of 2023*** was wrongly decided. According to him, the learned Judge erroneously assumed that Rule 55-A is a piece of subordinate legislation. He pointed out that Rule 55-A is a statutory rule enacted by the State Government under the rule making power conferred by Section 89-A of the Registration Act, 1908. Relying on the recent decision of the Hon'ble Supreme Court reported in ***2023 LiveLaw (SC)745 (Union of India Vs. Manjurani Routray)***, he contended that in the absence of a formal challenge to Rule 55-A, its validity could not have been gone into.

4. The first question that calls for consideration is whether I should disagree with the order in ***W.P.No.2758 of 2023***. It is true that the writ petitioner therein, namely, Federal Bank Ltd., did not challenge the validity of



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the first proviso to Rule 55-A(i). In the said case the refusal check slip issued by the registering authority alone was questioned. But it is beyond dispute that it was based on the aforesaid proviso. The Hon'ble Supreme Court in ***Bharathidasan University V. AICTE (2001) 8 SCC 676*** had held that courts are bound to ignore a provision having the force of law if it is otherwise ultra vires. The mere fact that there was no specific relief sought for to strike down or declare them ultra vires is irrelevant. From this I deduce that if a constitutional Court is empowered to ignore a legal provision, it is equally entitled to declare it as ultra vires. This is because the power to ignore stems from the ultra vires nature of the provision.

5. The learned senior counsel appearing for the third respondent submitted that Rule 55-A of the Registration Rules is a statutory rule framed under Section 89-A of the Act and that therefore, the underlying assumption in the order dated **08.02.2023** in ***W.P.No.2758 of 2023*** that it is a subordinate legislation issued by the Inspector General of Registration under Section 69 of the Act is incorrect. This contention is without merit. Section 69 of the Act empowers the Inspector General to make rules consistent with the Act. On the other hand, Section 89-A is a much narrower power conferred on the State Government to make rules for all purposes connected with the filing of true



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copies of documents in the appropriate books under the Act. Section 69(2) of the Act envisages submission of the rules made by the Inspector General of Registration to the Government for approval. After they are approved and published in the official gazette, they would have effect as if enacted in this Act. The Hon'ble Judge rightly noted that the rule in question was made under Section 69 of the Act. As rightly pointed out by the learned senior counsel for the petitioner, not only the order in Federal Bank has not been stayed or set aside, it has been approved by the Hon'ble Division Bench in ***W.A.(MD)No.856 of 2023 dated 27.06.2023 (M.Ariyanatchi Vs. The Inspector General of Registration)***.

6. At this stage, the learned Additional Government Pleader appearing for the first respondent pointed out that another Hon'ble Division Bench in ***W.A. (MD)No.346 of 2016 dated 04.01.2024 (The Inspector General of Registration Vs. Prabu)*** had allowed the writ appeal by placing reliance on Rule 55A of the Registration Rules. It is to be noted that in W.A.(MD)No.346 of 2016, there is no reference to the ***Federal bank*** or the order dated 27.06.2023 in W.A.(MD)No.856 of 2023. I therefore reject the request made by the learned senior counsel for the third respondent to refer the matter to a Larger Bench.



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7. The third respondent had filed a suit for specific performance before the jurisdictional civil Court. The relationship between the parties had come under strain in January 2024 itself. The suit was filed in the last week of February 2024. I have been consistently holding that the registering authority ought not to decline or refuse registration of a document merely because objection has been received from a third party or that a civil suit is pending. Only if the objector had obtained restraint order from the jurisdictional civil Court, registration can be refused. So long as restraint order has not been obtained, the registering authority is obliged to carry out his statutory functions. In this case, the third respondent has not obtained any injunction order against the petitioner.

8. A learned Judge of this Court had held that if the presentant is unable to produce the original document since the custodian is declining to part with the same, still registration cannot be refused on that ground-vide order dated **18.11.2021 in W.P(MD).No.19950 of 2021 (Selvam V. The Joint Sub Registrar No.1)** . As rightly pointed out by the learned senior counsel appearing for the petitioner, the purpose of verifying the original document is to assure oneself that the presentant is the title holder of the property in question. In this case, the objector himself has confirmed that the title document is with him.



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This confirms the petitioner's title. Both the grounds set out in the impugned refusal check slip are not sustainable.

9. The officials of the State are obliged to act in consonance with the law laid down by the High Court. The first proviso to Rule 55-A(i) of the Registration Rules has been struck down. The order passed by His Lordship N.Sathish Kumar in *Federal Bank Ltd., V. The Sub-Registrar, Pollachi* has been approved by the Hon'ble Division Bench in W.A.(MD)No.856 of 2023. The first respondent acted contumaciously in refusing registration. I set aside the impugned refusal check slip. The petitioner and the fourth respondent are at liberty to re-present the document for registration. If the document is re-presented, it shall be received, registered and released subject to fulfillment of other usual formalities. Of-course, if any restraint order is received in the meanwhile from the jurisdictional civil Court, the first respondent has to abide by the same.

10. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

20.03.2024

Index : Yes / No
Internet : Yes/ No
RMI/PMU

NOTE:Issue Order Copy on 22.03.2024



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To

The Sub Registrar,
Office of Sub Registrar,
Sengottai,
Tenkasi District.



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G.R.SWAMINATHAN, J.

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