



W.P.(MD)No.3968 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 29.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)No.3968 of 2023
and
W.M.P(MD)No.3843 of 2023

1. V.S.Visahan
2. Suganya

... Petitioners

versus

1. The District Registrar,
Periyakulam,
Theni District.

2. S.Lavanya

.... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records of the impugned Notices in Na.Ka.No.7177/E2/2022 dated 08.03.2023 on the file of the 1st respondent and quash the same as illegal.

For Petitioners	: Mr.A.Jayaramachandran
For R1	: Mr.P.Subbaraj, Special Government Pleader
For R2	: No appearance



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ORDER

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

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

3. The case of the first petitioner is that the subject properties originally belonged to his father. His father died intestate on 20.11.2000 leaving behind his mother, himself and his sister to inherit his properties jointly. Thereafter, his sister, namely, the second respondent herein, has released her right over the properties and executed a release deed dated 09.07.2002 vide Document No.38/2002. After the death of his mother, all the properties had devolved upon him. Thereafter, on 27.07.2021, he executed a settlement deed in favour of his wife, namely, the second petitioner, vide Doc.No.2003/2021. While so, the second respondent, with an intention to defraud him, has unilaterally cancelled the release deed, vide, a Document No.3/2020 dated 14.02.2020 and thereafter, given a complaint before the Registering authorities alleging that the first petitioner, with an intention to grab her share of the



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properties, has fraudulently created a settlement deed in favour of his wife and therefore, she sought for cancellation of the said settlement deed. Based on the said complaint, the impugned notice has been issued.

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 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:



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“... 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 the document is registered (see Raja Mohammad Amir Ahmad



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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.”



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5. Whether the settlement deed executed by the first petitioner is a fraudulent one 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.7177/E2/2022 dated 08.03.2023 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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N.SATHISH KUMAR, J.

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