



W.P(MD)No.6322 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.02.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.6322 of 2020

and

**W.M.P(MD)Nos.5554, 7887 of 2020 &
6865 of 2023**

K.S.P.N.Rathinavel

... Petitioner

Vs.

1.The Joint Sub Registrar No.II,
2nd Floor, Combined Office of
Registration Department,
Polepet, Tuticorin.

2.Vairavel

3.Natarajan Subramanian
(R.3 is impleaded vide order
of this Court dated 24.03.2023)

... 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
the records relating to the proceedings in RC.No.130/e.sa.pa.II/2020
dated 21.05.2020 on the file of the first respondent herein and to quash



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the same and to direct the first respondent to return the Rectification Deed dated 30.04.2020 presented by the petitioner before the first respondent as pending Document No.11/2020, on his file to the petitioner after the complete registration of the document and due endorsements thereon and certificate of registration within a time frame as may be fixed by this Court.

For Petitioner : Ms.Sharada Vivek

For Respondents : Mr.K.S.Selvaganesan
Additional Government Pleader for R.1

Mrs.N.Krishnaveni
Senior Counsel
for Mr.R.Aravindan for R.2

Mr.B.Kumar
Senior Counsel
for Mr.S.Muthu Venkataraman for R.3

ORDER

Heard the learned counsel appearing for the writ petitioner, the learned Additional Government Pleader appearing for the first respondent, the learned Senior Counsel appearing for the second respondent and the learned Senior Counsel appearing for the third respondent.



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WEB COPY 2.K.S.P.Natarajan Trust was founded in the year 1956 (Document No.2566 of 1956 on the file of Sub Registrar, Tuticorin). The authors of the trust were K.S.Shanmugavel Nadar and his sons K.S.Ganapathi and K.S.Mariyappan and daughter-in-law / Mrs.N.Rajalakshmi Ammal. Copy of the trust deed dated 14.11.1956 has been enclosed in the typed set of papers filed by the third respondent. It is seen therefrom that it is a public charitable trust.

3.It is not in dispute that Thiru.K.S.P.N.Rathinavel son of Mrs.Rajalakshmi Ammal is the present Managing Trustee of the trust. He along with his wife Poonkodi Rathinavel (co-opted trustee) and their daughters presented the deed of rectification dated 30.04.2020 amending the terms of the trust deed. The document was presented for registration on 21.05.2020.

4.Without registering the deed of rectification, the first respondent issued the impugned notice dated 21.05.2020 calling upon the petitioner to appear for enquiry since the second respondent herein, namely, N.Vairavel had filed a protest petition. Challenging the authority of the



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registering authority to hold such an enquiry, the present writ petition came to be filed.

5.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition.

She relied on the following decisions of the Madras High Court:

- i) M.Singaravelu Vs The District Registrar, Karur Registration Department, Karur & Others (W.P.(MD)No.10 of 2014)
- ii) K.Guruchandran Vs. The Inspector General of Registration & Others reported in 2016 4 L.W. 953

The contention of the learned counsel appearing for the writ petitioner is that the registering authority lacks the jurisdiction to hold any enquiry in the matter. She drew my attention to Section 34 of the Registration Act, 1908 and Rule 55 of the Registration Rules. She contended in the light of the aforesaid precedents that the authority or title of the petitioner to present the document in question cannot be challenged. If at all the private respondents have any grievance, their only remedy is to go before the jurisdictional civil Court. She called upon this Court to set aside the impugned notice and allow the writ petition as prayed for.



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6.The respondents have filed counter affidavits and the learned Additional Government Pleader as well as the learned Senior Counsel appearing for the second respondent and the learned Senior Counsel appearing for the third respondent took me through their contents and called upon this Court to dismiss the writ petition. Their contention is basically two fold. Firstly, the petitioner cannot approach this Court at the notice stage. Secondly, the Registrar is not only entitled to but he is duty bound to conduct an enquiry into the objections raised by the private respondents. According to them, the impugned notice would very well fall within the scope of the power conferred under Rule 55 of the Registration Rules. The learned Senior Counsel placed reliance on the following decisions:

- i) 1995 AIR SCW 4710 (The Executive Engineer, Bihar State Housing Board Vs Ramesh Kumar Singh)
- ii) 2004 AIR SCW 416 (Special Director & Another Vs Mohamed Ghulam Ghouse)
- iii) (2023) 6 SCC 144 (Ajay Shankar Srivastava Vs Bar Council of India)



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iv) AIR 2022 MADRAS 323 (Sasikala Vs Revenue Divisional Officer Cum Sub-Collector, Devakottai, Sivagangai & Another)

v) AIR 1964 MADRAS 483 (Thiagesar Dharma Vanikam Vs Commissioner of Income Tax, Madras)

7.I carefully considered the rival contentions and went through the materials on record. The relevant provisions are Section 34 of the Registration Act, 1908 and Rule 55 of the Registration Rules. They read as follows:

“34. Enquiry before registration by registering officer.

—(1) Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorised as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26:

Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper



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registration fee, in addition to the fine, if any, payable under section 25, the document may be registered.

(2) Appearances under sub-section (1) may be simultaneous or at different times.

(3) The registering officer shall thereupon—

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and

(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

(4) Any application for a direction under the proviso to sub-section (1) may be lodged with a SubRegistrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders.

Rule 55. It forms no part of a registering officer's duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the



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document; but he is bound to consider objections raised on any of the grounds stated below:-

- (a) that the parties appearing or about to appear before him are not the persons they profess to be;
- (b) that the document is forged;
- (c) that the person appearing as a representative, assign or agent, has not right to appear in that capacity;
- (d) that the executing party is not really dead, as alleged by the party applying for registration; or
- (e) that the executing party is a minor or an idiot or a lunatic. ”

Rule 55 is very much a part of the statute book. Rule 55(a) mandates that the Registering Officer is bound to consider objections raised on the ground that the parties appearing or about to appear before him are not the persons they profess to be. Let me if this provision is attracted in this case.

8.The rectification deed dated 30.04.2020 had been signed by the following persons:

- 1. Mr.N.Ratnavel
- 2. Mrs.R.PoonkudiRatnavel
- 3. Mrs.ShivanaHariharan



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4. Ms.MadhanaDeepa

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5. Mrs.Sudharshana PradeepSankar

They have signed it by claiming to be in the capacity of the trustees of K.S.P. Natarajan Trust. In other words, they “profess” to be the trustees of K.S.P. Natarajan Trust. It is obvious that the expression “profess” is not a term of art. This Court therefore has to construe it in the context in which it is appearing. The expression “profess” also occurs in Article 25 of the Constitution of India. My attention is drawn by the learned Senior Counsel to the following definition found of Black's Law Dictionary:

“To declare openly and freely”

9.In P Ramanatha Aiyar's Advanced Law Lexicon, the following definition is found:

“to make an open declaration of: to avow: to make pretence of:”

10.In Oxford Advanced Learner's Dictionary, the following interesting definition with illustration is found:



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“To claim that something is true or correct, especially when it is

11.In the context of Rule 55, the expression “profess” must be taken as claim made by the executant to a particular status or capacity. In this case, the executants of the document in question profess that they are trustees of K.S.P. Natarajan Trust. The status of N.Rathinavel is not in doubt. Mrs.Poonkodi Rathinavel is also said to be a co-opted trustee. While the learned counsel appearing for the petitioner would state that Mrs.ShivanaHariharan was co-opted as a trustee on 10.02.2017, the learned Senior Counsel appearing for the private respondents would dispute the said assertion. They draw my attention to the clause 5 found in the original trust deed which reads as follows:

“(5) Sri Shanmugavel Nadar shall be the first Managing Trustee and upon his death the senior most Trustee shall be the Managing Trustee. The Trustees ...Sd. K.S.Shanmugavel Nadar, K.S.Ganapathy, K.S.Mariappan, N.Rajalakshmi (7).. above named shall hold office for life and the same or major male member from the families of the above trustees shall be taken in the place of any of the trustees above named after his or their life time.”



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According to them, only major male member from the family of a trustee can become trustee. According to them, the daughters cannot be trustees. In this case, the daughters of Shri.K.S.P.N.Rathinavel have not been co-opted as trustees till date. Thus, there is a disputed question of fact. The respondents 2 and 3 are not strangers or interlopers. They are grandsons of K.S.Shanmugavel Nadar. Their respective fathers were also founders of the trust. When they question the claim of some of the executants of the rectification deed that they are also trustees of K.S.P. Natarajan Trust, the registering authority is statutorily bound to conduct enquiry and go into the said objection.

12.Rule 55(c) of the Registration Rules mandates that registering authority is bound to consider the objections raised on the ground that the person appearing as a representative has no right to appear in that capacity. The learned counsel appearing for the petitioner would contend that Rule 55(c) is on the same lines as that of Section 34 (b) and (c) and that this expression must be given a very narrow meaning. According to her, it only means that when the person presenting the document or the



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one who has executed the document claims to be the representative or power agent of the principal and if that capacity is questioned, that can be a matter for enquiry. In this case, the executants are not claiming to be the representatives of any principal. Therefore, the learned counsel contends that Rule 55(c) is not attracted.

13.I am not able to agree this contention. My attention has been drawn by the learned Senior Counsel to the decision of the Hon'ble Division Bench of the Madras High Court reported in AIR 1964 MADRAS 483 (Thiagesar Dharma Vanikam, Madras Vs Commissioner of Income Tax, Madras). The Hon'ble Division Bench had held as follows:

“12..... A trust is an institution which has no corporate personality. It is not a legal person. The word ‘trust’ is a convenient and a compendious description of the trustees, the beneficiaries and the subject-matter of the trust. Sometimes the expression ‘trust’ is used to denote the trustees. For example, when the trustees carry on a business, we generally say, that the trust is doing so. When we refer to the fact that the trust is



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owning properties, we only refer to the interest of the beneficiaries in the property, as, in Indian law, there is no line dividing title into legal and equitable. The trustees of a trust in India have no title to the trust properties, the properties only vest in them for administration and management. The instrumentality of the trustees to hold and manage trust properties should not cause any misapprehension of the real position of the trustees vis-a-vis the trust. They occupy a representative position representing the trust, and they are not strangers to the trust. When the trustee acts, it is only the trust that acts, as the trustee, fully represents the trust.”

It is obvious that the petitioner as well as the co-executants of the rectification deed presented the same before the registering authority only in their capacity as trustees. There are five executants. The claim of three of them has been contested by the private respondents. That apart, even the capacity of the trustees (Rathinavel and Poonkodi Rathinavel) to represent the trust for the purpose of executing the rectification deed is questioned by the private respondents. When capacity to represent the trust is disputed, that is certainly a matter for enquiry.



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14.The Hon'ble Full Bench of the Madras High Court in the decision reported in AIR 2022 MADRAS 323 (Sasikala Vs Revenue Divisional Officer Cum Sub-Collector, Devakottai, Sivagangai & Another) had also held that the scope of enquiry by the registering officer under Section 34 of the Act is broad. In C.Rangaraj and another Vs. The Inspector General of Registration (W.P.(MD)No.2653 of 2019 dated 14.10.2019), I had observed as follows:-

“9. One usual comment that we have heard for long is that if one can pay the requisite stamp duty, any property including LIC building (the great landmark of Chennai) and the High Court can be made the subject matter of sale and that the registering authority cannot refuse to register the document on the ground that the executant has no title over the same. Enquiry into title of the executant is forbidden for the registering authority. To borrow the expression of Hon'ble Mr.Justice V.Ramasubramanian, this was the consistent position laid down by the courts and that a different tune was sung only in S.Rangarajan vs. the District Registrar, Trichirappalli (2009) 3 MLJ 172.



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15.The State Government does not register the documents gratis. Registration fees is fixed as per section 78 of the Registration Act, 1908.This is collected apart from stamp duty. Therefore, as observed by Hon'ble Mr.Justice K.Chandru, the registering authority cannot act like a post office and register any document that is dumped before him. Section 7 of the Transfer of Property Act, lays down that there must be entitlement to transferable property. If there is manifest lack of title and the same is apparent, the registering authority cannot register the document. While it is no part of his duty to enquire into title, law does not require him to remain blind to the obvious. Of course, he cannot undertake a full fledged exploration of the factual matrix. But then, he can be a peeping Tom.

16.The great jurist Aharon Barak says that law is an integral whole. To quote Shelly, nothing in this world is single and all things by law divine in one another's being mingle. Registration Act is not a standalone legislation. Its interpretation must be in sync with Section 7 of the Transfer of Property Act. An administrative authority while discharging his functions, cannot be mechanical. He must be mindful of the substantive rights secured by the other statutes. If the registering authority were to indiscriminately register the documents executed by those manifestly lacking



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title, that would seriously undermine legitimate rights. State is obliged to render this minimum service for the revenue received. In any event, the registering authority will not have the final say. It is the civil court that will have the last laugh.

17.The Hon'ble Division Bench of the Madras High Court in the decision reported in AIR 2010 Madras 135 (Pandurangan vs. the Sub Registrar, Reddiyarpalayam, Pondycherry) held that the registering authority is required to act in a judicious manner so as to prevent any fraud from being committed by any party while registering any document. The object of the Act is to secure the interest of the parties to the document.”

15.A public charitable trust had been established through a registered document. The trust must be managed and administered only as per the terms of the trust deed. The trust deed can be amended only in the manner laid down in the original deed. Any amendment can have serious consequences and implication. An amendment deed cannot be mechanically registered. When objection is lodged that the amendment deed ought not to be registered, the registering authority is obliged to look into the same if the objection is based on the grounds set out in Rule



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55 of the Registration Rules. In this case, the registering authority intends to do only that and nothing more. He is merely discharging his statutory obligation by proposing to hold an enquiry.

16. More than anything else what is under challenge is a mere notice. The Hon'ble Supreme Court in a decision reported in **(2006) 12 SCC 28 (Union of India & Another vs Kunisetty Satyanarayana)** had held that notice by itself does not infringe the rights of the noticee. Only when the rights are infringed, one will be justified in invoking the jurisdiction under Article 226 of the Constitution of India. If the authority issuing notice lacks jurisdiction or the proceedings are vitiated by *mala fides* or by the vice of predetermination, the noticee can certainly come before the writ Court. Such is not the case here. Therefore, I hold that the petitioner has not made a case for interference.

17. The parties shall appear before the first respondent on **22.03.2024 at 03.00 p.m.** Since the learned counsel appearing for the petitioner has not argued on the merits of the controversy but confined her contention to questioning the authority of the first respondent to issue



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the impugned notice, I consciously refrain from rendering any finding on facts. The first respondent shall hold a proper enquiry as contemplated by the statute. While the petitioner will be entitled to put forth his defence, the respondents 2 and 3 and the other interested persons if any are at liberty to place their entire case before the registering authority. The contentions of both the parties are left open.

18.This writ petition stands dismissed with the aforesaid observation. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

12.02.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
MGA

Note: Issue order copy on 15.02.2024.



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The Joint Sub Registrar No.II,
2nd Floor, Combined Office of
Registration Department,
Polepet, Tuticorin.



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G.R.SWAMINATHAN, J.

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