



W.P.(MD)No.8537 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 03.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)No.8537 of 2023

Madasamy

... Petitioner

Vs

1. The District Register,
O/o the District Register,
Palayamkottai, Tirunelveli.

2. The Sub Register,
O/o the Sub Register, Kovilpatti,
Thoothukudi.

3. M.Mariappan

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus directing the 1st respondent to pass appropriate order on his representation/appeal, dated 28.11.2022 submitted in regard to cancel the registration made by the 3rd respondent in Doc.Nos.59/2014, dated 19.05.2014, 26/2017, dated 31.03.2017 and 88/2022, dated 07.10.2022 on file of the 2nd respondent within the time limit that may be stipulated by this Court.

For Petitioner : Mr.G.Thalaimutharasu

For Respondents : Mr.M.Siddharthan (R1,R2)
Additional Government Pleader
Mr.R.Gowrishankar(R3)



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ORDER

This Writ Petition has been filed seeking a direction to the 1st respondent to pass appropriate order on his representation/appeal, dated 28.11.2022 submitted in regard to cancel the registration made by the 3rd respondent in Doc.Nos.59/2014, dated 19.05.2014, 26/2017, dated 31.03.2017 and 88/2022, dated 07.10.2022 on file of the 2nd respondent.

2.Heard Mr.G.Thalaimutharasu, learned counsel appearing for the petitioner, Mr.M.Siddharthan, learned Additional Government Pleader appearing for R1 & R2 and Mr.R.Gowrishankar, learned counsel appearing for R3. There is no appearance for the petitioner. Perused the materials available on record.

3.It is seen from the records that the Devendrakula Velalar Peravai's President has established a bronze statue of Maveeran Sundalinga Deventhiranar. However, the National Highways Department sanctioned compensation to the Devendrakula Velalar Peravai and requested them to relocate the said statue. In these circumstances, the 3rd respondent has created forged documents, as if, he and his family members are the owners of the said statue and misappropriated the said compensation amount. He has also registered the said document in the office of



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the 2nd respondent in Doc.Nos.59/2014, dated 19.05.2014, 26/2017, dated 31.03.2017 and 88/2022, dated 07.10.2022. In this regard, he has preferred an appeal before the first respondent to cancel the aforesaid documents and the same is pending without any progress.

4.The issue in hand is no more *res-integra*. This Court has already held that the Registrar Office has no power to go into the issue to decide the title by way of circular order issued under Section 68(2) of the Registration Act. 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. Therefore, except forgery of any instrument, now the document cannot be gone into by the Registering authorities. 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.”

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 Yanala Malleshwari v. Ananthula Sayamma, 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



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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.

(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



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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.

5. In view of the above settled position of law, unless the power is specifically vested with the registering authority to cancel any document and to go into the matter, there cannot be any direction to cancel the document. All these facts cannot be looked into by this Court and the same has to be agitated before the Civil Court.



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6. With the above observation, this writ petition stands dismissed.

No costs.

03.09.2024

NCC : Yes/No
Index : Yes/No
PNM

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O/o the Sub Register, Kovilpatti,
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N.SATHISH KUMAR, J.

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ORDER IN

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