



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 25.04.2024
Pronounced on : 26.06.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P(MD).Nos.9900, 5211 & 4188 of 2024

and

W.M.P(MD)Nos.8976, 8978, 4998, 4031 and 4033 of 2024

S.Kumaresan

... Petitioner
in all WPs

Vs.

1. The Inspector General of Registration,
O/o. the Inspector General of Registration,
Chennai - 28.

2. The Deputy Inspector General of Registration,
O/o. the Deputy Inspector General of Registration,
Tirunelveli - 627 002.

... Respondents 1 &2
in all WPs

3. The District Registrar (Admin),
Tirunelveli,
Tirunelveli District.

... Respondent No.3
in WP(MD)9900/2024

3. The District Registrar,
Cheranmahaevi Registration District,



Tirunelveli District.

... Respondent No.3
in WP(MD)Nos.5211 & 4188/2024

Prayer in WP(MD)No.9900/2024:

Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned order in No. 639/A1/2024 dated 26.03.2024 on the file of the Respondent No.2 and the Consequential Impugned order in Na.Ka.No.1948/A1/2024 dated 01.04.2024 on the file of the Respondent No.3 and quash the same as illegal.

Prayer in WP(MD)No.5211/2024:

Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records pertaining to the impugned order in Varaivu Kutrakuripanai No.639/A1/2024 dated 28.02.2024 on the file of the respondent No.2 and quash the same as illegal.

Prayer in WP(MD)No.4188/2024:

Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records pertaining to the Impugned order in Proc.No. 4768/B2/2024 dated 06.02.2024 on the file



of the Respondent No.1 and the consequential impugned order in
Proc.No.819/A1/2024 dated 06.02.2024 on the file of the Respondent
No.2 and quash the same as illegal.

In all WPs:

For Petitioner : Mr.T.Lajapathi Roy
Senior Counsel
for Mr.T.Aswin Raja Simman

For Respondents : Mr.Veerakathiravan
Additional Advocate General
assisted by
Mr.D.Farzhana Ghousia
Special Government Pleader

COMMON ORDER

W.P(MD)No.9900 of 2024:

W.P(MD)No.9900 of 2024 has been filed challenging the
impugned order of the second respondent in No.639/A1/2024 dated
26.03.2024 and the Consequential impugned order of the third
respondent in Na.Ka.No.1948/A1/2024 dated 01.04.2024.



W.P(MD)No.5211 of 2024:

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W.P(MD)No.5211 of 2024 has been filed challenging the impugned order of the second respondent in Varaivu Kutrakuripanai No. 639/A1/2024 dated 28.02.2024.

W.P(MD)No.4188 of 2024:

W.P(MD)No.4188 of 2024 has been filed challenging the impugned order of the first respondent in Proc.No.4768/B2/2024 dated 06.02.2024 and the consequential impugned order of the second respondent in Proc.No.819/A1/2024 dated 06.02.2024.

2. Heard Mr.T.Lajapathi Roy, learned Senior Counsel, for the petitioner and Mr.Veerakathiravan, the learned Additional Advocate General for the respondents.

3. The petitioner who is working as Sub Registrar was placed under suspension and was given with a charge memo and consequent thereof an enquiry officer was appointed for conducting an enquiry on



the allegations made against the petitioner and he was called upon to appear before the enquiry officer. The petitioner had chosen to challenge all the four proceedings by way of these three writ petitions.

4. What caused the petitioner to land in trouble is a Lok Adalat award passed on 20.08.2016 and which has been registered by the petitioner in his capacity as the Sub Registrar. But the subject matter of the Lok Adalat award found to be public property and a suit has been filed by the parties in collusion and consequently they settled before the Lok Adalat and got an award. When it came to be known to the respondent authorities that the subject matter of Lok Adalat award is a huge piece of land measuring nearly 185 acres. The petitioner was kept under suspension on 06.02.2024. Thereafter, the petitioner was given with a charge memo dated 28.02.2024 on the allegations that the petitioner, without even making an enquiry and verifying the status of the property from the A-Register, had registered the same. The petitioner was negligent and he registered the award without raising any suspicion by checking the details. However, Mr.T.Lajapathi Roy, learned Senior



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counsel appearing for the petitioner submitted that every error of law, while bonafidely discharging quasi judicial function, cannot be the basis for initiation of disciplinary proceedings. It is further submitted that the charge memo has been issued to the petitioner on 28.02.2024 on the alleged registration that has been made in the year 2016, ie., on 02.12.2016 as Doc.No.2572/2016. The award has been passed before the Lok Adalat organised by the District Legal Services Authority, Tirunelveli. The suit was originally filed before the Additional Sub Court, Tirunelveli in O.S.No.102/2016.

5. Mr.Veerakathiravan, learned Additional Advocate General appearing for the respondents assisted by Mr.D.Farzhana Ghousia, learned Special Government Pleader submitted that the Sub Registrar is duty bound to hold an enquiry during the presentation of a decree in order to ascertain whether it has reached finality and he is also required to get the minimum documents/affidavit from the concerned party, as per the letter of the Inspector General of Registration dated 06.02.2017.



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6. Admittedly the impugned registration has been made prior to the said date on which the above communication has been issued to the Sub Registrars. In fact, in the reference made in the above letter dated 06.02.2017, the judgment of this Court rendered in W.P.No.5955 of 2014 is shown.

7. However, Mr.T.Lajapathi Roy, learned Senior Counsel appearing for the petitioner submitted that the petitioner had chosen to register the award as per the guidelines dated 24.05.2012 which was holding the field prior to the letter of instructions dated 06.02.2017. On perusal of the guidelines dated 24.05.2012, it is shown that "..... எனவே லோக் அதாலத் ஆல் பிறப்பிக்கப்படும் அவார்குகளை சிவில் நீதிமன்ற கட்டளையாக கருதப்பட வேண்டும் என்றும் அவைகளை பதிவு அலுவலரிடம் தாக்கல் செய்கையில் உரிய பதிவுக்கட்டணம் வசூலித்து பதிவு செய்ய வேண்டும் என்றும் அனைத்து பதிவு அலுவலர்களும் கேட்டுக்கொள்ளப்படுகிறார்கள்.



8. So the above guidelines have been issued to all the Sub Registrars by the Inspector General of Registration stating that the award passed in the Lok Adalat should be treated as a decree and it should not be treated as an arbitration award. Since the Lok Adalat award is to be treated as a decree, the petitioner prompted to register the same without having any second thought.

9. However, Mr.Veerakathiravan, learned Additional Advocate General appearing for the respondents submitted that the petitioner is expected to make an enquiry as to its genuineness and that was the crux of the guidelines dated 06.02.2017. Obviously the guidelines dated 06.02.2017, is consequent to the registration done by the petitioner on 02.12.2016. The communication dated 06.02.2017 would read as under:

" (1) To hold an enquiry during presentation of decree to ensure that the decree had reached finality.

(2) Require to produce minimum documents/affidavit from the concerned party எனத் தெரிவிக்கப்பட்டதற்கிணங்க செயல்படும் பொருட்டு மேற்படி நீதிமன்ற ஆணையின் நகல் இத்துடன் இணைத்து அனுப்பி வைக்கப்படுகிறது.



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10. Even in the above guidelines, it has been just stated that the Sub Registrars are expected to conduct an enquiry as to the finalities of the decree. In the instant case, since the award happened to be the Lok Adalat award, on which no appeal would lie, the petitioner would have genuinely believed its finality and he had not chosen to make any further enquiry. In fact, the above guidelines have been issued consequent to the observation of the learned Single Judge of this Court made in W.P.No. 5955 of 2014 in its order dated 27.07.2016. The relevant part of the said judgment is extracted hereunder:

"7.It was argued by the learned counsel for the petitioner that the Civil Court decree is merely a declaration of status and it is a permanent record of Court. This contention has no merit in view of the specific provision under Section 23 of the Registration Act. Further, there is no logic in the argument if the same is tested with reference to various other documents. Secondly, this Court is conscious of the serious implications by the registration of decree or order of Civil Court which is either appealable or has not attained finality. It is also possible for any one to get a decree from Civil Court either by adopting fraud or collusion. Hence, it is always necessary and important that the person who seeks to register a decree of Civil Court may be asked to prove that the decree has become final and that it is not



collusive. In the instant case, it is brought to the notice of this Court that neither the petitioner nor the defendant in the suit has got patta in respect of the suit properties. But nevertheless registration of such decree will lead to further complication as the same will be shown as an encumbrance in respect of the properties which are the subject matter of the suit. The registration of a decree, as in the present case, will cause serious inconvenience / injury to the real owner 6 who is really a third party to the suit, when he wants to deal with the property. Taking advantage of the registration of a collusive and fraudulent decree, the person who has obtained the decree, may also persuade the revenue officials for mutation of revenue records and grant of patta in his favour by resorting to proviso to Section 14 of the Tamil Nadu Patta Passbook Act. In order to protect the interest of true owners, it is necessary for the registering authority to hold an enquiry in the case of presentation of a decree or order of Civil Court to ensure that the decree or order has reached finality and that the decree is not obtained by fraud or collusion. Though the registering authority has no jurisdiction to conduct an enquiry as to the real character of the decree, it is possible for him to require, production of minimum documents and affidavit from the concerned party so as to enable the registering authority to proceed further for the cancellation, when it is brought to his notice that the statements on oath made by the party concerned in the affidavit and presented before the registration officer, at the time of presentation of the decree or order of Court is false.



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11. In this context, it is also relevant to refer an another order of this Court passed in W.P.No.36564 of 2023 dated 05.01.2024. In the said writ petition, the petitioner had sought a direction to direct the concerned Sub Registrars to register the *exparte* decree obtained by him. The Sub Registrar refused to register the same on account of the Circular issued by the Inspector General of Registration wherein it is stated that the *exparte* decree cannot be registered. However, the learned Single Judge has made an observation that the Registrar is not a competent authority to test the validity of the *exparte* decree presented before him and so long as it is not challenged before the appropriate forum, it is very well executable and hence, the Sub Registrar cannot refuse to register the same. Even the Circular of the Inspector General of Registration dated 29.09.2023, which terminated registering the *exparte* decree, was also set aside.

12. The present petitioner did not have the occasion to enquire about the validity of the award as his limited authority is to verify the genuineness of the award and to register if it accompanies with the



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required stamp duty. Even in the subsequent guidelines dated 06.02.2017, the party concerned is required to produce the minimum documents/affidavit. As stated already, the above guidelines would also clarify that the Registering authority shall hold an enquiry to ensure that the decree has reached its finality. So at no point of time, the petitioner is expected to make an enquiry as that of a judicial authority, but know about the validity of the binding nature of the award.

13. The learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Supreme Court held in ***Zunjarrao Bhikaji Nagarkar v. Union of India and others***, reported in 1999 (7) SCC409, wherein it is held that mere mistake of law in the absence of any extraneous consideration cannot constitute a misconduct and it is further held that if every error of law were to constitute a charge of misconduct that would impinge upon the independent functioning of the quasi judicial officer. The relevant portion of the above order is extracted hereunder:

"43. If, every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning



of quasi judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge- sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi judicial authority. The entire system of administrative adjudication whereunder quasi judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings."

14. In fact, as per the amended provision of the Section 77A of the Registration Act, the Registrars are given with the power to *suo motu* hold an enquiry on a complaint received from any person about the registration of a document and pass an order to cancel the registration of a document if it is proved during his enquiry that the registration of document was made contrary to the provisions of Sections 22A and 22B



of the Registration Act. For the sake of convenience, Sections 22A and Section 22 B of the Registration Act is extracted hereunder:

"22-A. Documents registration of which is opposed to public policy. -

(1) The State Government may, by notification in the Tamil Nadu Government Gazette, declare that the registration of any document or class of documents is opposed to public policy.

(2) Notwithstanding anything contained in this Act, the registering officer shall refuse to register any document to which a notification issued under sub-section (1) is applicable.

22-B. Refusal to register forged documents and other documents prohibited by law.— Notwithstanding anything contained in this Act, the registering officer shall refuse to register the following documents, namely:— (1) forged document; (2) document relating to transaction, which is prohibited by any Central Act or State Act for the time being in force;

(3) document relating to transfer of immovable property by way of sale, gift, lease or otherwise, which is attached permanently or provisionally by a competent authority under any Central Act or State Act for the time being in force or any Court or Tribunal;

(4) any other document as the State Government may,



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by notification, specify.”

15. But as per the above provision of the Registration Act, a Thasildar can exercise and render a finding whether the document is fraudulently executed or registered. After a detailed discussion about the powers that can be exercised by the Registrar and now the situation created in view of the contradictory view taken by the two Single Judges which was the core issue discussed by the coordinate bench of this Court in W.P.(MD)Nos.14546 and 21199 of 2022 etc., batch and the following points for reference has been made in its order dated 27.03.2023:

"20. In view of the reasonings of the Full Bench and in view of the conflicting views of the two learned Single Judges the following issues are referred for due consideration by a Larger Bench of this Court.

- i) whether the recitals in a document presented for registration, can be examined to determine that such document was fraudulently executed or registered?;*
- ii) whether a document in which the recitals alone are questioned can be considered only as voidable which would normally necessitate the filing of the suit to set aside the particular document or whether even those documents can be cancelled by the Sub Registrar under*



Section 77A of the Registration Act;

iii) whether exercise of power under Section 77A must be restricted to registration of documents in contravention to Section 22-A or 22-B of Registration Act, 1908 alone?

iv) whether the exercise of such power under Section 77A of the Registration Act can be prospective in nature or retrospective in nature?"

16. But even the above provision is in respect of cancelling the registration already made by holding an enquiry before registering a decree of a Court or registering the Lok Adalat award, which should be construed as a decree.

17. It is further submitted that the property involved in the Lok Adalat award is not a private property and there was a collusion between the parties. However, the petitioner cannot be blamed for not holding any enquiry before registering the Lok Adalat award because the respondents' own guidelines would only mandate the registration of the Lok Adalat award by considering it as a decree. The petitioner appears to have acted only in accordance with the guidelines issued to him. Unfortunately the



property involved in the Lok Adalat award is a public property, to which even the parties cannot have any title. But this fact could not have been within the knowledge of the petitioner.

18. Further for the occurrence that had occurred in the year 2017, charge memo have been issued in the year 2024, ie., after an inordinate delay. Further, the petitioner did not appear to have committed any misconduct. In this regard, it is appropriate to extract the relevant portion of the judgment reported in **2005(6)SCC636 [P.V.Mahadevan v. MD.T.N.Housing Board]:**

"7.The very same ground has been specifically raised in this appeal before this Court wherein it is stated that the delay of more than 10 years in initiating the disciplinary proceedings by issuance of charge memo would render the departmental proceedings vitiated and that in the absence of any explanation for the inordinate delay in initiating such proceedings of issuance of charge memo would justify the prayer for quashing the proceedings as made in the writ petition."



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19. Neither in the charge memo nor in the order of suspension or in any other proceedings, it is observed that the petitioner had acted in a '*malafide*' manner. The petitioner registered the documents without holding an enquiry for which he was specifically instructed by virtue of the communication of the first respondent dated 24.05.2012 to consider the decree as award and register the same. In such circumstances, I find no irregularity or illegality in the registration of the Lok Adalat award by the petitioner by following the guidelines of the respondents and hence the impugned orders are liable to be set aside.

21. In the result, these writ petitions are **allowed**. The impugned orders are set aside. No Costs. Consequently, connected miscellaneous petitions are closed.

26.06.2024

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

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To

1. The Inspector General of Registration,
O/o. the Inspector General of Registration,
Chennai - 28.

2. The Deputy Inspector General of Registration,
O/o. the Deputy Inspector General of Registration,
Tirunelveli - 627 002.

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