



W.P.(MD)No.10732 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 09.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)No.10732 of 2022
and W.M.P.(MD)Nos.17750, 7751 and 12479 of 2022

1.K.Navamani Paulraj
2.Seronmani

... Petitioners

Vs.

1.The District Registrar,
(Administration and Auditing),
Department of Registration,
District Registrar Office,
Tenkasi District, Tenkasi.

2.The Assistant Inspector General of Registration,
Department of Registration,
Tirunelveli Region, Tirunelveli,
Tirunelveli District.

3.R.Durairaj Pandian

.... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, call for the impugned order passed by the 1st Respondent dated 12.01.2021 made in No. 6189/A2/2020 and subsequently as confirmed by the 2nd Respondent by means of



W.P.(MD)No.10732 of 2022

an order dated 12.11.2021 made in Na.Ka.No.548/tha.pi/2021 and subsequently set aside the same as meritless and consequently give a direction to the Respondents to remove the finding as made by the Respondents with regard to Document No.3589/2018 dated 20.08.2018 and obtained Encumbrance Certificate on 30.03.2022 on the file of the Sub Registrar, Surandai, Tenkasi District as fraudulent document forthwith.

For Petitioners : Mr.K.Prabakaran
For Respondents : Mr.M.Siddarthan,
Addl. Govt. Pleader for R1 & R2
Mr.M.Laxmi Mahendram for R3

ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus, call for the impugned order passed by the 1st Respondent dated 12.01.2021 made in No.6189/A2/2020 and subsequently as confirmed by the 2nd Respondent by means of an order dated 12.11.2021 made in Na.Ka.No.548/tha.pi/2021 and set aside the same as meritless and for a consequential direction to the Respondents to remove the finding as made by the Respondents with regard to Document No.3589/2018 dated 20.08.2018 and obtained Encumbrance Certificate on 30.03.2022 on the file of the Sub Registrar, Surandai, Tenkasi District, as fraudulent document, forthwith.



W.P.(MD)No.10732 of 2022

2. Heard the learned counsel for the petitioner, the learned Additional Government Pleader appearing for the respondents 1 and 2 and the learned counsel appearing for the third respondent and perused the materials available on record.

3. It is the case of the writ petitioners that the original patta of the subject property stands in the name of Seronmani Ammal, Palanisami, Lakshmanan and Navamani Paulraj. Thereafter, one of the patta holders of the said property viz., Seronmani viz., the second petitioner had executed a settlement deed bearing Document No.3589 of 2018, dated 20.08.2018 in favour of first petitioner in respect of the western side of the subject property. When the property was being enjoyed by the petitioners, the third respondent has given a complaint alleging that 2 acres 87 cents of the subject property had perpetrated impersonation by the 2nd petitioner in favour of the 1st petitioner. Based on the said complaint, an enquiry has been conducted and finally an order was alleged to have been passed by the first respondent declaring the transaction between the petitioners by means of settlement deed is not genuine vide document No.3589 of 2018, dated 12.01.2021. As against the order of the first respondent, the petitioners have filed an appeal before the 2nd respondent and the 2nd respondent has also confirmed the order of



W.P.(MD)No.10732 of 2022

the first respondent, vide order dated 12.11.2021 and an entry has also been made in this regard in Document No.3589/2018. Challenging the same, the petitioners have filed this Writ Petition.

4. A perusal of the impugned order, it is seen that based on the complaint given by the third respondent, the first respondent has passed an order, declaring that the transaction between the petitioners by means of settlement deed is not genuine vide Document No.3589 of 2018. This Court is of the view that merely based on the allegation of one side, as a matter of right, the document cannot be annulled and the enquiry cannot be initiated. The title dispute has to be decided only before the necessary Court and 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



W.P.(MD)No.10732 of 2022

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:

"... 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



WEB COPY

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 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 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



W.P.(MD)No.10732 of 2022

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, the impugned order of the first respondent dated 12.01.2021 and the consequential order passed by the second respondent dated 12.11.2021 are set aside. The respondents 1 and 2 are directed to remove the entry made in the document No.3589 of 2018.

6. Accordingly, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

09.08.2024

NCC : Yes/No
Index : Yes/No
vsm



W.P.(MD)No.10732 of 2022

WEB COPY

To

1. The District Registrar,
(Administration and Auditing),
Department of Registration,
District Registrar Office,
Tenkasi District, Tenkasi.

2. The Assistant Inspector General of Registration,
Department of Registration,
Tirunelveli Region, Tirunelveli,
Tirunelveli District.



WEB COPY



W.P.(MD)No.10732 of 2022

N.SATHISH KUMAR, J.

vsm

W.P.(MD)No.10732 of 2022

09.08.2024