



W.P.(MD) No.10770 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD) No.10770 2019

and

W.M.P.(MD)Nos.8216 and 10688 of 2019

D.Michale Raj

...Petitioner

-VS-

1.The District Registrar,
Tenkasi, Tirunelveli District.

2.The Sub Registrar,
Veerasigamani,
Sankarankovi Taluk,
Tirunelveli District.

3.P.Britto

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari calling for the records relating to the impugned order dated 28.03.2019 in reference No. 5087/Aa2/2018 passed by the first respondent and quash the same.

For Petitioner
For R1 & R2

: Mr.J.Barathan
: Mr.P.Subbaraj
Special Government Pleader

1/10



W.P.(MD) No.10770 of 2019

For R3

: Mr.D.Selvanayagan

ORDER

WEB COPY

This writ petition has been filed challenging the order dated 28.03.2019 in reference No.5087/Aa2/2018 passed by the first respondent cancelling the document registered in favour of the petitioner in the year 2017 in Document Nos.522/2007, 2250/2017 and 665/2018.

2.It is the case of the writ petitioner that the his father and brother had executed settlement deeds in his favour vide Document Nos. 522/2007 and 2250/2017 in respect of their family property. Thereafter, the petitioner executed a memorandum of deposit of title deed in favour of the Tamil Nadu Mercantile Bank vide document No.665 of 2018. While that being so, the third respondent made a complaint alleging that the father of the petitioner had encroached upon his western side of the property and creating fake documents in that regard, settled the same in favour of his sons. Based on that complaint, after conducting enquiry, the first respondent by an order dated 28.03.2019 had cancelled the said documents.

3.The allegation made against the father of the petitioner is that while registering the settlement deed in favour of his sons, the father of

2/10



W.P.(MD) No.10770 of 2019

the petitioner had wrongly mentioned the boundaries, thereby, the properties of the third respondent has also been included in the said settlement deed.

4.The learned counsel for the third respondent filed a counter affidavit stating that without any valid right over the properties in question, the boundaries have been wrongly given with a view to encroach upon the properties of the third respondent. Hence, after verifying the parent documents, the settlement executed by the father of the petitioner in favour of the petitioner and his brother, were cancelled.

5.At the outset, merely on the basis that wrong boundaries have been given by the father of the petitioner while executing the settlement deeds, the document cannot be cancelled. It is not the duty of the Registering Authorities to go into the title of the property. There can be differences in the boundaries also. The boundaries set out in the subsequent document and the earlier documents are made based on the actual enjoyment of the properties by the parties. Whether that has been made purposely to encroach upon the land of the others or not, is the



W.P.(MD) No.10770 of 2019

matter of evidence. These facts cannot be looked into by the Registering Authorities. 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:

“... 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 03.11.20211 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 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 made in the Act empowering the Registrar to cancel the document, such powers



W.P.(MD) No.10770 of 2019

cannot be conferred by the Inspector General of Registration by taking aid of 68(2) of the Registration Act, 1908.”

6.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 take action based on the complaint of the third respondent. All these facts cannot be looked into by this Court and the same has to be agitated before the civil Court.

7. With the above observations, this Writ Petition is allowed and the order passed dated 28.03.2019 made in Reference No.5087/Aa2/2018 by the first respondent is hereby set aside. It is for the third respondent to work out his remedy before the civil Court. There shall be no order as to costs. Consequently, connected miscellaneous petitions are also closed.

12.08.2024

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

8/10



W.P.(MD) No.10770 of 2019

To:

- 1.The District Registrar,
Tenkasi, Tirunelveli District.
- 2.The Sub Registrar,
Veerasigamani,
Sankarankovi Taluk,
Tirunelveli District.



WEB COPY



W.P.(MD) No.10770 of 2019

N.SATHISH KUMAR, J.

ta

W.P.(MD) No.10770 of 2019

12.08.2024

10/10