



W.P.(MD)N.7727 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.08.2024

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)No.7727 of 2018
and WMP(MD)Nos.7339 & 7340 of 2018

P.Abraham Lingan

... Petitioner

Vs.

1.The District Registrar(Administration),
Madurai (South).

2.Rahamath Beevi

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India,
to issue a Writ of Certiorari, calling for the records relating to the order
dated 29.06.2017 passed by the first respondent in Mu.Mu.Ka.No.
2872/A2/2017 and quash the same as illegal.

For Petitioner : Mr.S.Anand Chandrasekar
for M/s.Sarvabhauman Associates

For R1 : MrM.Siddharthan
Additional Government Pleader

For R2 : No appearance



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ORDER

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This writ petition has been filed challenging the order dated 29.06.2017 passed by the first respondent in Mu.Mu.Ka.No. 2872/A2/2017.

2. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the first respondent and perused the materials available on record.

3. The brief facts of the case is that the Tamil Nadu Housing Board (TNHB) based on the auction held on 13.03.1996, allotted a plot in Plot No.37 in favour of the second respondent on hire purchase and the cost of the plot was fixed at Rs.2,09,250/- and a sum of Rs.67,800/- was paid by the second respondent. Balance amount has to be paid within 36 equal monthly installments. Possession of the plot was handed over to the second respondent on 03.04.1996. Thereafter, the second respondent executed a Power of Attorney deed dated 04.11.1998 empowering the petitioner's wife and his brother's wife to act on her behalf. Consequent to that, the Power of Attorneys of the second respondent sold the eastern half portion of the Plot No.37 in favour of the petitioner and the western



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half portion in favour of the petitioner's brother vide sale deeds dated 29.10.2012 for a valuable consideration of Rs.11,43,750/- each.

Subsequently, the Tamilnadu Housing Board executed a sale deed in favour of the second respondent on 30.05.2014. Thereafter, the second respondent cancelled the earlier general Power of Attorney deed dated 04.11.1998 by executing a cancellation deed dated 22.05.2014. In the meantime, the second respondent executed a general Power of Attorney deed dated on 16.01.2014 empowering her brother to act on her behalf with respect to the above said Plot No.37 and she filed a petition dated 02.05.2017 through her agent before the first respondent seeking cancellation of sale deed executed in favour of the petitioner. The first respondent relying on the Circular No.67 dated 03.11.2011 issued by the Inspector General of Registration proceeded with enquiry and passed the impugned order dated 29.06.2017. Hence, challenging the same, the petitioner has filed this Writ Petition.

4. On the side of the first respondent, no counter has been filed.

Perusal of the materials shows that the Registering authority assumed the role of the Civil Court which is not permissible in the eye of law and the Registering Authority has no power to go into all these transactions. In



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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 the 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 the 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



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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 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,



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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



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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 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



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cancel the document. All these facts cannot be looked into by this Court and the same has to be agitated before the Civil Court. Therefore, the very order passed by the first respondent stands quashed and any entries with regard to cancellation of the petitioner's document is entered in the Encumbrance Certificate to be removed forthwith.

6. Accordingly, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

12.08.2024

NCC : Yes / No
Index : Yes / No
P JL

To
The District Registrar(Administration),
Madurai (South).



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N.SATHISH KUMAR , J.

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