



W.P(MD).No.21156 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 02.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

**W.P(MD).No.21156 of 2023
and
W.M.P(MD).No.17552 of 2023**

Subramanian

... Petitioner

Vs.,

1.The District Registrar
(Administration) (Madurai North)
O/o.The District Registrar,
Rajakambeeram, Madurai.

2.The Sub Registrar,
Tamaraipatti Sub Registration Office,
Madurai District.

3.The Sub Registrar,
Othakadai Sub Registration Office,
Madurai District.

4.Nagarethinam
5.S.I.Vignesh
6.Manjula
7.Jagathambal
8.Kumar
9.Nagalakshmi
10.Manikandan

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the first respondent in No. 3736/A2/2022 dated 21.12.2022 and quash the same as illegal and arbitrary.

For Petitioner : Mr.P.Ganapathi Subramanian
For Respondents : Mr.C.Satheesh (for R1 to R3)
Government Advocate (Crl.side)
Mr.A.Prasanna Rajadurai (for R4)
No appearance (for R6)

ORDER

Challenging the impugned order cancelling the document executed in favour of the petitioner, the writ petition has been filed.

2. A short fact leading to this writ petition is that the property to an extent of 1 acre 67 cents in Survey No.130/6A2 & 6A3 (Corresponding Old S.No. 261/6) owned by one Sundari Shanmugampillai, who sold the said property to one Periyasamy, on 15.07.1992. Out of total extent of subject property, the petitioner's father has purchased 66 cents, on 12.06.1995 and the eighth respondent purchased 33 cents. However, according to the petitioner, the fourth respondent in collusion with Sundari Shanmugampillai, filed a suit in O.S.No.657/1992 before the III Additional Subordinate Court, Madurai, for enforcement of alleged agreement dated 02.03.1990. Since the said Sundari Shanmugampillai did not appear before



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the Court, *ex-parte* decree came to be passed on 05.06.1993. Thereafter, the fourth respondent filed a execution petition in E.P.No.874 of 2012 and the same was ordered in favour of him. Based on the same, the impugned order has been passed cancelling the sale deed executed in favour of the petitioner. Challenging the same, the writ petition has been filed.

3. Heard both sides and perused the materials available on record.

4. Considering the facts and circumstances of the case, this Court is of the view that the Registering Authority has no power to cancel the document already registered. 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



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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 case of Satya Pal Anand v. State of M.P., reported in (2016) 10 SCC 767



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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



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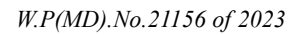
no power to cancel the document. Section 68(2) of the Registration Act, 1908 relied upon by the Registration Department to substantiate the circular in this regard, when carefully seen. Section 68(2) of the Registration Act, 1908 reads as follows:

“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 cannot be



5. Whether the petitioner is the *bona fide* purchaser or not, is a matter of evidence to be decided only by the competent Civil Court.

6. It is stated by the learned counsel for the fourth respondent that the suit in O.S.No.31 of 2010 has been filed by the writ petitioner's father before the Subordinate Court, Melur. However, the same was dismissed for default, which has not been restored so far. If the suit is already filed and not restored, it is for the writ petitioner to workout his remedy in the manner known to law.

7. In such view of the matter, the impugned order passed by the first respondent in No.3736/A2/2022 dated 21.12.2022 is set aside and accordingly, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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NCC : Yes/No
Index : Yes/No
Rmk



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N.SATHISH KUMAR, J.

Rmk

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