



W.P.(MD)No.24242 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 04.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)No.24242 of 2022
and W.M.P.(MD)No.18352 of 2022

1.K.R.Krishnamoorthy
2.C.Baskaran
3.B.Shanmuga Raja

... Petitioners

Vs.

1.The Inspector General of Registration,
Door No.100,
Santhome High Road,
Foreshore Estate,
Pattinapakkam,
Chennai – 600 028.

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

3.The Joint Sub Registrar No.I,
Madurai South.

4.T.G.Kanchanamala

.... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the



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records relating to the impugned enquiry notice dated 22.07.2022 in Na.Ka.No. 5677/Aa2/2022 and quash the same and consequentially forbearing the second respondent from conducting any enquiry for cancellation of the registered sale deed dated 02.06.2016 bearing Document No.3638 of 2016 on the file of the third respondent.

For Petitioners	: Mr.J.Barathan
For Respondents	: Mr.M.Siddharthan, Addl. Govt. Pleader for R1 to R3 Mr.R.A.Mohanraj for R4

ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned enquiry notice dated 22.07.2022 in Na.Ka.No.5677/Aa2/2022 issued by the second respondent and quash the same and consequentially forbearing the second respondent from conducting any enquiry for cancellation of the registered sale deed dated 02.06.2016, bearing Document No.3638 of 2016 on the file of the third respondent.



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2. It is the case of the Writ Petitioners that the subject property originally belonged to the wife of the first petitioner and she has executed a Will dated 22.01.1988, in favour of her husband viz., the first petitioner. She passed away on 15.04.2002. Thus, the petitioner became absolute owner of the property. Thereafter, the first petitioner sold the subject property to the petitioners 2 and 3 and the wife of the second petitioner through registered sale deed dated 02.06.2016 and they are in peaceful possession and enjoyment of the same. While so, the fourth respondent has given a complaint stating that the wife of the petitioner has executed a settlement deed 24.03.1988 in favour of her mother, which has been registered before the Sub Registrar, Parasala in the State of Kerala and therefore, she prayed for cancellation of the sale deed dated 02.06.2016. Based on the said complaint, the 2nd respondent has issued the impugned enquiry notice dated 22.07.2022, directing the petitioners to appear for enquiry. Challenging the same, the petitioners have filed this Writ Petition.

3. The 2nd respondent has filed a counter affidavit, in which it is stated that as per Section 68(2), the 2nd respondent has right to entertain any complaint and having power to conduct an enquiry regarding fraudulent registration as per the circular issued by the first respondent dated 09.04.2018. Further, it is stated



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that the impugned enquiry notice only warranted the explanation from the parties with regard to the complaint given by the 4th respondent and sufficient opportunity also given to the concerned parties. However, without giving reply, the petitioners have filed this Writ Petition. Hence, opposed the Writ Petition.

4. Heard the learned counsel for the petitioner, the learned Additional Government Pleader appearing for the respondents 1 to 3 and the learned counsel appearing for the fourth respondent and perused the materials available on record.

5. Considering the facts and circumstances of the case, this Court is of the view that the dispute is only with regard to the rival parties claiming title over the property. Further, the registering authorities have no power to go into all the 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



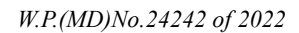
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of Sections 22-A and 22-B not beyond it. Now Section 77-A of the Registration Act, 1908 also is struck down by the Hon'ble Division Bench of this Court in W.P.No.10291 of 2022 batch as unconditional. Such being the position, this Court is of the definite 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 03.11.2021 to deal with the fraudulent registrations through impersonation. The said circular is mainly



“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.”

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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



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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.”

6. In view of the above settled position of law, the notice impugned, directing the petitioners to appear for enquiry, is not sustainable in law and the same is liable to be quashed.

7. Accordingly, this Writ Petition is allowed and the impugned proceedings dated 22.07.2022 issued by the second respondent stands quashed. No costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes/No
vsm



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Santhome High Road,
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Chennai – 600 028.
- 2.The District Registrar (Administration),
Madurai South.
- 3.The Joint Sub Registrar No.I,
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