



W.P.(MD)No.29203 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)No.29203 of 2022
and W.M.P.(MD)Nos.23138 & 23139 of 2022

N.C.Elangovan

... Petitioner

Vs.

- 1.The Inspector General of Registration,
100, Santhome High Road, Chennai.
- 2.The Appellate Authority /
Deputy Inspector General of Registration,
Combined Registration Office,
Rajakambiram, Y.Othakadai,
Madurai - 625 107.
- 3.The District Registrar (Administration),
(In the Cadre of Assistant Inspector
General of Registration), Madurai South,
Madurai.
- 4.The Sub Registrar,
Thirupparankundram, Madurai.
- 5.P.Chinthamani Ammal
- 6.Jeyalakshmi



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7.P.Ramanathan

.... Respondents

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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the 2nd respondent in Na.Ka.No.2204/Aa4/2022, dated 31.10.2022 and quash the same.

For Petitioner	: Mr.M.Saravanan
For Respondents	: Mr.P.Subbaraj, Spl. Govt. Pleader for R1to R4 Mr.R.Ponkarthikeyan for R5 Mr.A.K.Baskarapandian for R7

ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the 2nd respondent in Na.Ka.No.2204/Aa4/2022, dated 31.10.2022 and quash the same.

2. Heard the learned counsel for the petitioner, the learned Special Government Pleader appearing for the respondents 1 to 4, the learned counsel appearing for the 5th respondent and the learned counsel appearing for the 7th respondent and perused the materials available on record.



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3. It is the case of the writ petitioner that the petitioner has purchased the subject property through a sale deed dated 22.12.2010 and thereafter constructed a house and residing in the subject property. While so, based on an application given by the 7th respondent, the 2nd respondent has passed the impugned order dated 31.10.2022, without hearing the petitioner after 10 years from the date of purchase of the petitioner, directing the 4th respondent to make an entry in the relevant books that the petitioner's sale deed was obtained by giving false information and further directing the authorities to initiate criminal proceedings under Section 82 of the Registration Act. Challenging the same, the petitioner has filed this Writ Petition.

4. The 5th respondent has filed a counter affidavit stating that after getting consent from the 7th respondent, she has sold the property to the petitioner. The 7th respondent has also received his share amount from the 5th respondent. It is further stated that the 7th respondent despite being aware about the transaction as early as in the year 2000, kept quiet all these years and initiated the proceedings to harass her. Further, the 2nd respondent without issuing any notice and hearing the parties, passed the impugned and therefore, the impugned order is not sustainable and liable to be set aside.



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5. The 7th respondent has filed a counter affidavit stating that the 7th respondent came to know about the transaction only in the year 2021 and as the above transaction is a fraudulent one, he has filed an application before the third respondent to declare the sale transaction as fraudulent one. However, the said application was rejected. As against the same, he has filed an appeal before the 2nd respondent and the 2nd respondent, after issuing notice to the petitioner, has rightly allowed the appeal and after the order of the 2nd respondent, the 4th respondent made relevant entry in the index and it is reflected in the encumbrance certificate. Hence, opposed this Writ Petition.

6. Considering the facts and circumstances of the case, this Court is of the view that 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 Registration



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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 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



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

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7. In view of the above settled position of law, unless the power is specifically vested with the registering authority to go into the matter, there cannot be any direction to cancel the fraudulent document. All these facts cannot be looked into by authorities and the same has to be agitated before the civil Court. Therefore, the impugned order is liable to be set aside.

8. Accordingly, the impugned order dated 31.10.2022 passed by the 2nd respondent is set aside and the Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

27.08.2024

NCC : Yes/No
Index : Yes/No
vsm



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