



W.P(MD)No.31151 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.12.2024

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P(MD)No.31151 of 2023

and

W.M.P(MD)Nos.26705 of 2023 & 6294 of 2024

B.Janaki

... Petitioner

Vs

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

2.The Joint Sub-Registrar No.IV,
Madurai District,
Madurai.

3.S.Alagarsamy

4.P.Periyasamy

5.S.Dhanasekaran

6.M/s.Olympic Gas Private Limited,
Represented by its Director,
Meher Farm,
Kharsha No.29, Jonapur,
Mehraul,
New Delhi – 110 047.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the records on the file of the first respondent in connection with the impugned order of cancellation of deeds issued in Na.Ka.No.4620/Aa2/2022 dated 02.2023 and quash the same as illegal and arbitrary.



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For Petitioner : Mr.G.Thalaimutharasu
for Mr.A.S.Vaigunth

For RR 1 & 2 : Mr.M.Sarangan
Additional Government Pleader

For R – 4 : Mr.C.Ezhil Arasu

For R – 6 : Mr.T.Lajapathi Roy
Senior Counsel
for Mr.A.Balaji

ORDER

This Writ Petition has been filed by the petitioner challenging the order passed by the first respondent in the month of February 2023.

2.The property comprised in Re-survey No.81/2E admeasuring 1.50 acres situated at Paarapathi Village, Tiruparamkundram Taluk, Madurai. Originally, the subject property belonged to one Dinesh Chopra. He had executed power of attorney in favour of the third respondent on 11.01.2002. Being the power of attorney holder, the third respondent sold the property to the fifth respondent dated 14.11.2005 vide registered Document No.8098 of 2005. In turn, the fifth respondent had executed a sale deed in favour of the fourth respondent on 03.01.2007 vide Document No.



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51 of 2007. Again the fourth respondent had executed a registered sale deed in favour of one Ragavan, who is none other than the petitioner's brother, vide Document No.12067 of 2008 dated 21.11.2008. The said Ragavan, had executed a settlement deed in favour of the petitioner on 26.07.2019 vide Document No.8545 of 2019. Thereafter, the petitioner came to understand about the order passed by the first respondent thereby the above documents registered were found to be forged documents and directed the registering authority to record the same in Schedule II of the book of records. Further, no more registrations were ordered by the registering authority. Simultaneously, the complainant namely the sixth respondent herein can deal with the subject property.

3.The learned counsel appearing for the petitioner would submit that the petitioner was not served with any notice and she was not given any opportunity of hearing by the first respondent before passing the order. It is a clear violation of the principles of natural justice. Further, the first respondent has no power to cancel the documents which were duly registered by the registering authority. The provision under Sections 77-A and 77-B of the Registration Act, 1908 are now declared as unconstitutional.



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Therefore, the order passed by the first respondent cannot be sustained and liable to be quashed.

4. On perusal of the counter-affidavit filed by the sixth respondent and on the submissions made by the learned Senior Counsel appearing for the sixth respondent would reveal that the sixth respondent had purchased the subject property from one D. James through the then Director Dinesh Chopra by the registered sale deed dated 28.04.1992 vide Document No.1194 of 1993. In order to develop the property, the sixth respondent applied for an encumbrance certificate for the subject property. On verification of the encumbrance certificate would reveal that the third respondent created a power of attorney registered vide Document No.26 of 2002, dated 11.01.2002, as if the said Dinesh Chopra had executed the same in his favour. On the strength of power of attorney, the third respondent sold the subject property in favour of the fifth respondent. Subsequently, various deeds of conveyance have been executed in respect of the property in favour of the fourth respondent and the petitioner's brother including a settlement deed executed in favour of the petitioner. Therefore, the sixth respondent lodged a police complaint. However, it was not enquired and as



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such, the sixth respondent was constrained to approach this Court in Crl.O.P(MD)No.7167 of 2014. After issuance of direction, the F.I.R has been registered on the file of the District Crime Branch, Madurai, in Crime No.32 of 2014 as against the respondents 3 to 5 and also as against the petitioner's brother. After completion of the investigation, they are facing trial before the criminal Court. However, the petitioner's brother Ragavan died and as such, the charges are abated as against him. Therefore, the sixth respondent lodged a complaint before the first respondent. On receipt of the same, the first respondent issued notice to the petitioner as well as the respondents 3 to 5 herein for enquiry.

5.Though the learned counsel specifically contended that the petitioner was not served with any notice, there is absolutely no discussion about the notice issued to the petitioner and the participation of the petitioner in the enquiry in the impugned order. On perusal of the original files produced by the first respondent before this Court would reveal that the petitioner as well as the respondents 3 to 5 were duly issued notice. Insofar as the petitioner is concerned, notice was sent to the address which is given in the long cause title of the affidavit as Door No.16, New Rice Mill Road,



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Sundararajapuram, Madurai - 11 and the same was returned as no such addressee. Therefore, though the petitioner was very much available in the said address, she managed to return the notice as if no such person was available in that address. Thereafter, the first respondent proceeded with the enquiry and after recording the statement of the sixth respondent and on verification of all records, concluded that the alleged power of attorney executed by Dhinesh Chopra in favour of the third respondent is forged one. The said Dhinesh Chopra did not execute any power of attorney. On the strength of the power of attorney, the third respondent had executed a sale deed in favour of the fifth respondent. In turn, the fifth respondent executed a sale deed in favour of the fourth respondent. Thereafter, the fourth respondent executed the sale deed in favour of the petitioner's brother. Subsequently, the petitioner's brother Ragavan had executed a settlement deed in favour of the petitioner. Thereafter, the petitioner's brother died.

6. Though the learned counsel appearing for the petitioner contended that the first respondent has no power to cancel any documents under the Registration Act, 1908, on perusal of the order passed by the first respondent would reveal that the



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first respondent never cancelled any document. The first respondent declared that the power of attorney and subsequent deeds executed in respect of the subject property is forged one and ordered the registering authority not to register any subsequent deed of conveyance in pursuant to the sale deeds which were executed on the strength of power of attorney dated 11.01.2002. The first respondent further ordered to record the deeds which were registered in pursuant to the power of attorney as fraudulent one in the book of records. Further, the sixth respondent is permitted to deal with the subject property. Therefore, it cannot be said that the first respondent cancelled the documents which were executed during the power of attorney.

7.The Hon'ble Division Bench of this Court in the case of ***M.Kathirvel and others Vs. Inspector General of Registration and others*** reported in **2024 (4) CTC 769** held as follows:

"164.A few counsel appearing for the petitioners, particularly, Mr.Srinath Sridevan, learned Senior counsel referred to the judgment of the Division Bench of this Court dated 20.03.2024 in WA.No.3391 of 2023 [Netvantage Technologies Pvt. Ltd. Rep.by its Authorised Signatory Vs. Inspector General of Registration and Others, 2024 (2) CTC 505 (DB) : 2024 (1) CWC 630 (DB). The appellant in the writ appeal purchased a property by a Sale Deed dated 28.09.2007 from a person



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who claimed title by virtue of an earlier Sale Deed in 2004. The respondents 4 to 7 who claimed title to the property, filed an application before the District Registrar under Section 77A of the Registration Act to cancel the two Sale Deeds in the year 2004 and 2007 on the ground that they are fraudulent. The District Registrar cancelled the Sale Deeds as fraudulent. The order of District Registrar was confirmed by Inspector General of Registration. The writ petition filed by the purchaser under 2007 document, was dismissed on the ground that parties have to approach the Civil Court for resolving the dispute. While allowing the appeal, the Division Bench held that S.77A of Registration Act cannot have retrospective effect and that powers given under Section 77A of Registration Act to District Registrars is limited and cannot be exercised for cancellation of document unless there is proof to establish fraud or impersonation. The Division Bench held as follows:- "15. Therefore, necessarily, the Court has to form an opinion that in respect of the documents falling under Section 22-B of the Act, if sought to be cancelled, then the Registrar is empowered to cancel the documents under Section 77-A of the Act. In respect of other documents registered prior to the amendment, one has to understand that those documents are to be dealt in accordance with the law prevailing at the time of registration by approaching the Civil Court of law. When all those documents registered prior to the amendment of the year 2022 are subjected to Section 77-A of the Act, then this Court is afraid that an anomalous situation would be created by approaching the District Registrar for the purpose of adjudication of disputed issues with reference to those documents registered several years back. The amendment effected from 16.08.2022 has not intended to do so nor the provision expressly provides any such retrospective application. Prior to amendment, Section 22-A and Section 22-B was not in force. Thus, Section 77-A cannot have retrospective effect. In other words, Section 77-A must be read in conjunction with Section 22-A and Section 22-B of the Act. Insertion of all these three Sections are to be understood holistically to avoid any inordinance.



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16. Article 59 of the Limitation Act, 1963 stipulates that, to cancel or set aside any instrument or decree for rescission of a contract, the period of limitation is three years. Therefore, even for setting aside an instrument or a decree or for rescission of a contract the period of three years has been contemplated under the Limitation Act, the documents registered several years back or decades back cannot be the subject matter for cancellation of those documents under Section 77-A of the Act

20. The powers conferred to the District Registrar to cancel the document under the grounds of fraud or impersonation cannot be expanded for adjudicating the title, ownership or disputed issues between the parties. The District Registrars are empowered to conduct summary proceedings and if the allegations i.e. fraud or impersonation are apparent on the face of the record, then alone the documents registered are to be cancelled but not otherwise. Therefore, the District Registrars cannot conduct a trial nature proceedings by adjudicating the title deeds or other documents produced by the respective parties. Only if prima facie case has been established for cancellation on the ground of fraud or impersonation, then alone the District Registrar has to pass orders for cancellation of document.

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23. Cancellation of document has got larger repercussion on the civil rights of the persons. Property right is a constitutional right conferred under Article 300A of the Constitution of India. Such a constitutional right can be interfered only by the authority of law and certainly not through the summary proceedings. Property right if infringed by conducting a summary proceedings from the hands of the District Registrar, the same would result in an



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unconstitutionality and therefore, the scope of the powers under the Registration Act to the District Registrars cannot be expanded for the purpose of adjudication of civil disputes or the civil rights, which is conferred through the conveyances, documents etc.”

8. Further, the fraud or impersonation cannot be interpreted in common parlance. Both are in the context of Sections 32 to 35 of the Registration Act and it provides power to the registering authority to conduct an enquiry and carry out necessary corrections or otherwise. Further, the registering authority has the power to initiate prosecution under Section 83 of the Registration Act. Therefore, the first respondent is empowered to conduct summary proceedings and if the allegations ie., fraud or impersonation on the face of the record, then the first respondent can declare that those documents were forged one. In fact, the first respondent can even cancel those documents on the grounds of fraud or impersonation. Further, this Court in the case of **J.Jayaniithaa Vs. Inspector General of Registration and others** reported in **[2021 (1) CTC 839]**, held that where a transaction has been held to be fraudulent, a party should not be driven to a civil Court to cancel the document and proper entry has to be made in the Encumbrance Certificate reversing the earlier



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entry that was made place at the time when the fraudulent transaction was registered.

9.In fact, there is no need to cancel the document. It is very much suffice if a necessary entry is made in the Encumbrance Certificate reflecting the proceedings of the concerned authority declaring that the transaction is a fraudulent one. Once such an entry is made in the records, it automatically reverses the earlier registration of the fraudulent document. Therefore, there is absolutely no impediment for the first respondent to declare that the documents executed in pursuant to the power of attorney as fraudulent one. Further, on perusal of records revealed that the first respondent duly issued notice to the petitioner and the respondents 3 to 5. However, they managed to return the notice as if no such person was available in the said address. It is also evident from the affidavit filed in support of this Writ Petition that the long cause title says about the address in which notice was issued by the first respondent. The short cause title shows a different address. Therefore, the petitioner voluntarily returned the notice as if no such person is available. Hence, there is no question of violation of the principles of natural justice. In view of the above, this Court



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finds no infirmity or illegality in the order passed by the first respondent in the month of February 2023. Hence, this Writ Petition is devoid of merits and the same is liable to be dismissed.

10. Accordingly, this Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

12.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

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Madurai South,
Madurai District.
- 2.The Joint Sub-Registrar No.IV,
Madurai District,
Madurai.



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G.K.ILANTHIRAIYAN, J.

ps

Order made in
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