

W.P. No.14153 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2025

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.14153 of 2025

and

W.M.P.No.15900 of 2025

S.Balamurugan

... Petitioner

Vs.

1. The Inspector General of Registration,
Santhome, Chennai.

2. The District Registrar (Administrative),
Salem West,
Salem District.

3. The Sub-Registrar,
Edapadi Sub-Registrar Officer,
Salem District.

4. T.Annamalai

5. M.Dhanabarathi

6. A.Gajendren

7. Sivaji Ganesan

8. Devarajan

9. Murugesan

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus seeking to all for the records pertaining to the order of the 2nd respondent dated 26.05.2023 vide his proceedings in Na.Ka.1605/E5/2023 and to quash the same as erroneous and unsustainable in the eye of law and consequentially direct the respondent No.3 herein to restore the validity of the settlement deed dated 19.02.2016 vide Document No.649/2016.

For Petitioner(s)	: Mr.M.Guruprasad
For R1 to R3	: Mr.U.Baranidharan Special Government Pleader
For R4	: Mr.N.Manokaran
For R5 to R9	: No appearance

ORDER

By consent of learned counsel on both sides, this writ petition is taken up for final disposal at the admission stage itself. In view of the order that this Court proposes to pass and also the limited relief that is sought to be granted, notice to the 5th to 9th respondents is dispensed with.

2. The present writ petition is filed challenging the impugned proceedings dated 26.05.2023, on the ground that the same is made invoking Section 77A of the Registration Act.

3. It is submitted by the learned counsel for the petitioner that the order



invoking Section 77A of Registration Act has been held unconstitutional by this

WEB COPY Court in the case of Kathirvel Vs. Inspector General of Registration, reported in

2024 1 SCC 769. The relevant portion is extracted hereunder:

“178. Section 68[2] of Registration Act was interpreted to confer power on the District Registrar to cancel the document for irregularities in registration. As this Court has already held that Section 77-A of the Act is unconstitutional as it is contrary to the object of the Act, any circular or order or direction enabling the District Registrar or Registering Officer to cancel registration or invalidating any transaction is unconstitutional and hence, the impugned circular dated 08.11.2017 is declared as unconstitutional. The writ petition stands allowed.”

3.1. Learned counsel for the petitioner also placed reliance upon the judgment of the Supreme Court in the case of CBI v. R.R. Kishore, reported in (2023) 15 SCC 339, wherein it was held as under:

“70. In Surjakumar Okram case [State of Manipur v. Surjakumar Okram, (2022) 19 SCC 723] , recently a three-Judge Bench of this Court, was dealing with an appeal against the judgment [Surjakumar Okram v. State of Manipur, 2020 SCC OnLine Mani 227] of the Manipur High Court which had declared the Manipur Parliamentary Secretary (Appointment, Salary and Allowances and Miscellaneous Provisions) Act, 2012 (Manipur Act 10 of 2012) as also the Repealing Act, 2018, as unconstitutional. L. Nageswara Rao, J. speaking for the Bench, observed that where a statute is adjudged to be unconstitutional, it is as if it had never been and any law held to be unconstitutional for whatever reason, whether due to lack of legislative competence or in violation of fundamental rights, would be void ab initio. SCC paras 27 to 29 of the said judgment [State of Manipur v. Surjakumar Okram, (2022) 19 SCC 723] are reproduced hereunder:

“27. Where a statute is adjudged to be unconstitutional, it is as if it had never been. Rights cannot be built up under it; contracts which depend upon it for their consideration are void; it constitutes a protection to no one who has acted under it and no one can be punished for having refused obedience to it before the decision was made [Cooley on Constitutional Limitations, Vol. I, p. 382.] . Field, J. in Norton v. Shelby



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County, State of Tennessee [Norton v. Shelby County, State of Tennessee, 1886 SCC OnLine US SC 194 : 30 L Ed 178 : 118 US 425 (1886)] , observed that : (Norton case [Norton v. Shelby County, State of Tennessee, 1886 SCC OnLine US SC 194 : 30 L Ed 178 : 118 US 425 (1886)] , SCC OnLine US SC para 13)

‘13. ... An unconstitutional act is not a law; it confers no rights, it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.’

28. An unconstitutional law, be it either due to lack of legislative competence or in violation of fundamental rights guaranteed under Part III of the Constitution of India, is void ab initio. In *Behram Khurshid Pesikaka v. State of Bombay* [Behram Khurshid Pesikaka v. State of Bombay, (1954) 1 SCC 240 : (1955) 1 SCR 613] , it was held by a Constitution Bench of this Court that the law-making power of the State is restricted by a written fundamental law and any law enacted and opposed to the fundamental law is in excess of the legislative authority and is thus, a nullity. A declaration of unconstitutionality brought about by lack of legislative power as well as a declaration of unconstitutionality brought about by reason of abridgment of fundamental rights goes to the root of the power itself, making the law void in its inception.

29. This Court in *Deep Chand v. State of U.P.* [Deep Chand v. State of U.P., 1959 SCC OnLine SC 12 : 1959 Supp (2) SCR 8 : AIR 1959 SC 648] summarised the following propositions : (SCC OnLine SC para 25)

‘25. ... (i) whether the Constitution affirmatively confers power on the legislature to make laws subject-wise or negatively prohibits it from infringing any fundamental right, they represent only two aspects of want of legislative power;

(ii) the Constitution in express terms makes the power of a legislature to make laws in regard to the entries in the Lists of the Seventh Schedule subject to the other provisions of the Constitution and thereby circumscribes or reduces the said power by the limitations laid down in Part III of the Constitution;

(iii) it follows from the premises that a law made in derogation or in excess of that power would be ab initio void ...”

4. The learned Special Government Pleader appearing for respondents 1 to 3 would submit that in view of the decision of this Court in *Kathirvel Vs.*



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Inspector General of Registration the impugned order cannot survive.

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5. The learned counsel for the 4th respondent seeks liberty to redress his grievance in the manner known to law. Respondents 5 to 9 have not entered appearance although service is completed.

6. In view thereof, the impugned order is set aside. It is open to the parties to seek redressal in the manner known to law. All rights and contentions of either parties are left open. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

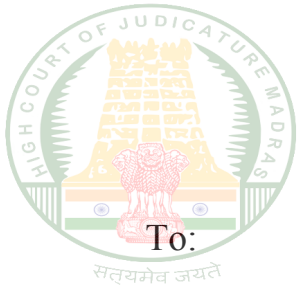
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Speaking (or) Non Speaking Order

Index : Yes/ No

Neutral Citation: Yes/No

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MOHAMMED SHAFFIQ, J.

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