



W.P(MD).No.12184 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.01.2025

CORAM:

THE HONOURABLE MR JUSTICE G.K. ILANTHIRAIYAN

W.P(MD).No.12184 of 2024
and
WMP(MD).No.10810 of 2024

Mekinisa Rose

.. Petitioner

Vs.

1.The District Registrar,
Audit,
Pudukkottai Registration District,
Pudukkottai.

2.S.Vincent Raj

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, to call for the records relating to the impugned order made by the 1st respondent in Na.Ka.No. 147/Thu.Tha/2022, dated 12.09.2022.

For Petitioner	:	M/s.M.Mahaboob Athiff.M Advocate
For R1	:	Mr.S.P.Maharajan Special Government Pleader
For R2	:	-No Appearance-



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ORDER

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Notice is served on respondent No.2 but no one appeared for the respondent No.2, either in person or through counsel.

2. This writ petition has been filed against the order issued by the 1st respondent in Na.Ka.No.147/Thu.Tha/2022 dated 12.09.2022, thereby, cancelling the sale deed executed in favour of the petitioner registered *vide* document No.2355 of 2013, in respect of the property comprised in S.No.162/4, situated at Sammati Viduthi Revenue Village, Pudukkottai Taluk and District, to the extent of 13 cents.

3. The property was purchased by the petitioner's husband. The petitioner's husband had purchased property for valid sale consideration from one Mr.Venkatachalam. The petitioner's husband-vendor also issued patta for the said property in patta No.842. The respondent No.2, filed an application before the respondent No.1 to cancel the sale deed which was executed in favour of the petitioner's husband, under Section 77 (A) of the Registration Act, 1908 (Central Act 16 of 1908), is declared as unconstitutional by the Hon'ble Division Bench of this Court in the case



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of M.Kathirvel and Ors Vs. The Inspector Genral of Registration and Ors. reported in { [2024] (4) CTC 769}. The relevant portion of the order is as follows:-

“164.A few counsels 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]. The appellant in the writ appeal purchased a property by a Sale Deed dated 28.09.2007 from a person 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



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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. 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



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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.

....

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 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.”

4. Therefore, the respondent No.1 has no jurisdiction or power to cancel the document under Section 77 A of the said Act, as the power is declared as unconstitutional. In view of the above, the order passed by the respondent No.1, is liable to be quashed and is hereby quashed. However, respondent No.2 is at liberty to move to the Civil Court for appropriate remedy.



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5. With the above observation and direction, this writ petition stands allowed. No costs. Connected writ miscellaneous petition is closed.

24.01.2025

NCC : Yes/No

Index : Yes/No

Internet : Yes

nst

To

The District Registrar,
Audit,
Pudukkottai Registration District,
Pudukkottai.



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G.K. ILANTHIRAIYAN, J.

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