



W.P.(MD) No.23855 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD) No.23855 of 2019

1.M.Subramani

2.Selvaraj

...

Petitioners

Vs

1 The Inspector General of Registration,
No.100, Santhome Road,
Raja Annamalaipuram,
Chennai.

2 The Deputy Inspector General of Registration,
Madurai.

3 The District Registrar (Admin),
Palani,
Dindigul District.

...

Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus, to call for the records pertaining to the impugned order issued by the 2nd respondent in proceedings No.2011/Aa3/2018, dated 14.08.2019, quash the same and



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consequently direct the respondents to permit the petitioners to practice as Document Writer in Registration Department, Dindigul District.

For Petitioners : Mr.R.Seenivasan

For Respondents : Mr.N.Ramesh Arumugam,
Govt. Advocate.

ORDER

The present writ petition challenges the order passed by the second respondent in No.2011/Aa3/2018, dated 14.08.2019, in suspending the document writer's licence issued by the Registration Department, pending an F.I.R., that had been registered by Kallimandayam Police in Dindigul District.

2. The facts leading to the writ petition are as follows :

2.1. The first petitioner – M.Subramani purchased the property situated in Survey No.476/2 of Kallimandayam Village, Oddanchatram Taluk, Dindigul District, along with one Paripooranam. They had handed over the original title deeds of the said property to two persons, namely, Manivasagam and Periyanaayaki. The purpose of handing over the documents to them, was to stand as guarantors, for the loan availed by the aforesaid persons with Corporation Bank, Thanjavur Branch. As required by the bank, loan



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applications were signed and the title deeds of the mortgage were also registered with the Sub-Registrar, at Kallimandayam.

2.2. Subsequently, Paripooranam lodged a complaint with the Sub-Registrar on 08.02.2018, alleging that she had never executed a mortgage deed for the property. In addition to the complaint given to the Sub-Registrar, the said Paripooranam also lodged a police complaint with the Inspector of Police, Kallimandayam Police Station. The said complaint was taken on file as F.I.R.No.32 of 2018. The petitioner challenged the lodging of the F.I.R., invoking Section 482 of the Code of Criminal Procedure, 1973, before this Court in CrI.O.P.(MD) No.15004 of 2018. This Criminal Original Petition came to be dismissed by this Court on 01.10.2019.

2.3. In the meantime, the second respondent passed the impugned order, suspending the licence granted to writ petitioners, pending disposal of the criminal proceedings. Challenging the same, the present Writ Petition is filed.

3. Mr.R.Seenivasan urged that the Deputy Inspector General of Registration at Madurai/second respondent has no jurisdiction to pass the impugned order, since the power is available only with the Inspector General of Registration. He pleads that there is a violation of principles of natural justice, as no enquiry has been conducted by the second respondent, prior to



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passing the impugned order. On these grounds, he seeks to quash the impugned proceedings.

4. Per contra, Mr.N.Ramesh Arumugam, learned Government Advocate, appearing for the respondents, pleads that the Registration Department was intimated by Paripooranam that without her knowledge, a memorandum of deposit of title deeds had been registered in the office of the Sub-Registrar, Kallimandayam, in favour of Corporation Bank, by one Subramani, i.e., the first writ petitioner. The Sub-Registrar was intimated that Paripooranam was not aware of the presentation of the document and, therefore, the entries, that were made by the Sub-Registrar on 17.05.2017 and 18.05.2017, were acts of fraud and manipulation of official records.

5. Mr.Arumugam states that the Sub-Registrar conducted an enquiry and came to know that with the help of one Somasundaram, an office staff in the Sub-Registrar's office, that a mortgage had been created. It was thereafter that the Inspector of Police at Kallimandayam Police Station registered an F.I.R. As a criminal complaint had been lodged, and since the petitioners' act amounts to misconduct and abuse of their privilege as Document Writers, the impugned order came to be passed.

6. Mr.Arumugam further states that the enquiry in the complaint that has been lodged by Paripooranam is yet to commence and it will be



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completed within a period of three months from the date this Court passes an order in the writ petition.

7. He states that in terms of Clause (d) of the conditions of the licence issued as per the Tamil Nadu Document Writers Licence Rules, 1982, a Document Writer should not abet or participate in any illegal transactions or dealings with the staff attached to the Registration Offices. As petitioners had allegedly colluded with Somasundaram, they violated this condition of the licence rules and, therefore, the second respondent decided to suspend the licence of the petitioners, pending disposal of F.I.R.No.32 of 2018. Mr.Arumugam adds that the F.I.R. resulted in a positive final report filed by the police. It has been taken up on file as C.C.No.412 of 2023 on the file of Judicial Magistrate, Oddanchatram.

8. In so far as the plea of jurisdiction is concerned, Mr.Ramesh Arumugam draws my attention to the amendment suffered by Rule 16 of Tamil Nadu Document Writers Licence Rules, 1982, in short, "the Rules", and refers to G.O.Ms.No.49, Commercial Taxes and Registration Department, dated 15.04.2010, published in Tamil Nadu Gazette, Part-III, S1 (a), dated 05.05.2010. He points out that the term "Licensing Authority" under Rule 2 (g) had been amended by the said G.O., and it includes not only Inspector General of Registration, but also the Deputy Inspector Generals of Registration



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of the respective zones. Reading Rule 2 (g) along with Rule 16 (3) of the Rules, Mr.Ramesh Arumugam urges that the second respondent has the jurisdiction to pass orders of suspension.

9. I have carefully considered the submissions of both sides and also gone through the records.

10. This Writ Petition was entertained by this Court on 12.11.2019. Although Rule Nisi had not been issued, a counter had been presented by the third respondent on the merits of the case on behalf of himself and the first respondent. Hence, issue Rule. Rule returnable forthwith.

11. As against the order of suspension under Rule 16, an appeal is maintainable under Rule 17 to the first respondent. However, I am not inclined to push the petitioners to avail the alternative remedy since this petition had been entertained and is pending for the past seven years. It would be unfair to push a party to avail the alternative remedy in the aforesaid circumstances. The second reason I am not inclined to push the petitioners to avail themselves of an alternative remedy is because there is a specific plea of violation of principles of natural justice, and issue of jurisdiction is involved.

12. It is a settled proposition of law that for mere fact that an alternative remedy exists, this Court will not reject a petition at all points of



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A direction to a party to avail of an alternative remedy is a rule of convenience and not a matter affecting the jurisdiction of this Court. Hence, I am inclined to go into the merits of this petition.

13. The facts culled from the affidavit and counter show that the first petitioner - Subramani and one Paripooranam were co-owners of the property. The said Paripooranam complained to the Sub-Registrar, Kallimandayam, stating that her co-owner had mortgaged the property with a Nationalised Bank without her consent. The second petitioner had acted as a Document Writer for registration of the document.

14. Two aspects flow immediately out of this allegation. They are :

(1) Subramani had not drafted the document and it was drafted by Selvaraj, and

(2) Selvaraj had drafted the document at the request of Subramani and got the same registered.

15. It is not the case of the petitioners or the respondents that Subramani had drafted the document. He, as a co-owner, had executed a mortgage in favour of a Bank. Mortgaging of a property by one co-owner in favour of another in exercise of his powers as a owner of the property will not attract the provisions of the Rules. This is because, the co-owner exercises the power of mortgage, by virtue of the Transfer of Property Act, 1882, and not of



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any provision relating to the Rules. A difference has to be made here between a power of a person, who has a Document Writer Licence, and also a co-owner of a property in executing mortgage and his role as a Document Writer in writing a document for another. No law prohibits a Document Writer from owning a property.

16. A Document Writer has been defined under Rule 2 (d) of the Rules. The definition commences with the words "means and includes", which implies, it is restricted in its interpretation and not intended to include a Document Writer, who is a co-owner of a property, and who, in exercise of such position, executes a mortgage in favour of a third party. If the first petitioner Subramani had executed a mortgage in exercise of his power as a co-owner, the appropriate remedy for the other co-owner, who did not agree to the mortgage, was not to lodge a complaint as against the profession that had been carried on by the co-owner, but to ensure that the mortgage created by the co-owner was not binding on her. This aspect had not been considered by the respondents, prior to suspending the licence of the first petitioner. Hence, to suspend the licence, for an act done in a different capacity, cannot be sustained.



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17. With respect to jurisdiction of the second respondent to suspend the licence, I have to agree with Mr.Seenivasan. A reading of Rule 16 of the Rules is necessary here. Rule 16 reads as follows :

"16. Suspension and cancellation of the licence.- (1) The District Registrar shall have the power to suspend the district licence or sub-district licence or the document writer in his district for a period not exceeding six months at a time for misconduct or unsatisfactory work.

(2) The Inspector-General of Registration shall have power to suspend for any length of time the State licence, district licence or sub-district licence of a document writer for misconduct or unsatisfactory work.

(3) The Licensing Authority shall have the powers to revoke or cancel the licence of a document writer issued by him for misconduct or unsatisfactory work or for any disqualification prescribed in Rule 5, or for breach of any of the conditions of the licences after giving him an opportunity to show cause against the action proposed to be taken against him. The Inspector-General of Registration shall also have the power to revoke or cancel any licence of a document writer."

Rule 16 has three limbs, the first limb being the power of the District Registrar to suspend Document Writer's licence given for a district or a sub-district, for a period not exceeding six months. This shows that a District Registrar can



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suspend a licence for a maximum period of six months and only those licences, which relate to their relevant district or sub-district. These two limitations are not found under Rule 16 (2). Under Rule 16 (2), the first respondent – Inspector General of Registration can suspend any licence of a Document Writer, whether it is for the entire State of Tamil Nadu, or for a particular district, or for a sub-district, on grounds of misconduct or unsatisfactory work, for any length of time. Rule 16 (2) makes it very clear that this power is vested only with the Inspector General of Registration.

18. It does not require any understanding of complicated principles of law to find out the reason why this power is solely vested with the Inspector General of Registration. When Inspector General of Registration is the highest authority in the Registration Department and State licences are issued under the Rules, there should be a provision which enables the highest authority in the Department to exercise such a power of supervision over licensees, including the power of suspension. This is the reason why the Rules have empowered that authority to suspend any licence for any length of time.

19. Though the Rules suffered an amendment in the year 2010 in G.O.Ms.No.49, the term "licensing authority" alone was amended to include "Deputy Inspector General of Registration" and "District Registrar" in a district



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or sub-district. This amendment did not touch Rule 16 (2). Therefore, upon reading Section 2 (g) along with Rule 16, one cannot come to a conclusion, as pleaded by Mr.Ramesh Arumugam, that the term "Inspector General of Registration" under Rule 16 (2) should be substituted as "Licensing Authority".

20. I reach this very conclusion, looking into the issue from another angle. The term "Licensing Authority" is found in Rule 16 (3). Under this Rule, Licensing Authority has power to revoke or cancel the licence for :

- (i) misconduct, or
- (ii) unsatisfactory work; or
- (iii) for any other disqualification prescribed in Rule 5; or
- (iv) for breach of any conditions of licence.

21. It is pertinent to point out that the latter portion of Rule 16 (3), namely, for any disqualification prescribed in Rule 5; or any breach of conditions of licence, is absent under Rule 16 (2). The power under Rule 16 (3) can also be exercised by the Licensing Authority, be it Inspector General of Registration, or Deputy Inspector General of Registration, or District Registrar, only after issuing show cause notice and after giving an opportunity to the alleged delinquent, before passing an order.



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22. In the light of the successive manner in which the power is to be exercised by the Inspector General of Registration and by the Licensing Authority, one can arrive at a conclusion that it is only the Inspector General of Registration, who has the power to suspend any licence in the State for any length of time and the said power cannot be exercised by any other person, subordinate to that authority.

23. This takes me to the next aspect of this case. Reading of the impugned order shows that it has not given a finding that there is a misconduct or unsatisfactory work or violation of conditions of licence or any disqualification prescribed under Rule 5. The impugned order states that an F.I.R. had been registered against the writ petitioners and, therefore, their licence was suspended. Reference is necessary to Rule 5 here.

"5. Disqualification for issue of a licence.- A licence shall not be granted to a person -

(a) to (c) xxxx

(d) if he has been convicted by a Criminal Court for offence involving moral turpitude.

(provided that a convict may be granted a licence if a period of five years has elapsed since his release)".



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It speaks about conviction in a criminal proceeding against a Document Writer. Mere lodging of an F.I.R. by police as against a Document Writer is not a disqualification for issuance of licence. Under Rule 5 (d), a person should have been convicted by a court and that too, for an offence relating to moral turpitude, in order to be disqualified to hold licence. For the mere fact that an F.I.R. has been registered by police, a person cannot be held to be disqualified.

24. What is a misconduct or an unsatisfactory work requires an enquiry. It is seen from the impugned order that no such enquiry had been conducted by the second respondent, prior to passing the impugned order. He merely relied upon a report that had been filed by the third respondent, District Registrar, on 19.03.2018, to suspend the licence. The District Registrar, in this case, had not exercised the power under Rule 16 (3). The first respondent-Inspector General of Registration had also not exercised the power under Rule 16 (2). It was the second respondent, who had exercised the said power. When the second respondent seeks to invoke the power under Section 16 (3), he was duty bound to issue a show cause notice, receive reply and, thereafter, proceed to pass an order under Rule 16 (3).

25. It is here I have to consider the submission of Mr.Ramesh Arumugam that the second respondent will conduct an enquiry within three months from the date of disposal of this writ petition.



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26. Administrative law contemplates two categories of hearing, one, which is the general rule, called pre-decisional hearing, and the other, an exception to this rule, namely, post-decisional hearing. A Reading of Rule 16 (3) makes it clear that the rule making authority has chosen pre-decisional hearing as the route to be followed by the Licensing Authority, prior to passing an order under the said Rule. Post-decisional hearing must be specifically conferred by the Rule. That not being the position, in the facts of this case, the submission made by Mr.Ramesh Arumugam, that the second respondent will adopt post-decisional hearing, does not hold water. I have to reiterate that if the law requires an authority to follow one particular mode, the authority has to follow that particular mode and no other mode. When the Rule contemplates pre-decisional hearing, and when the authority has not applied the said Rule, the order cries out for its interference.

27. One further aspect to be seen in this case is, the plea of Mr.Ramesh Arumugam that a licence can be suspended for any length of time without reference to its validity. Such a plea totally flummoxes me. In terms of Rule 12, licence can be issued for a maximum period of five years, which would end with 31st December of the fifth year. Suspension means that a person is not entitled to exercise the benefits of the licence within the period the licence is valid. Hence, the question of suspending the expired licence does



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not arise. Therefore, the impugned order, which has held that the licence will continue to remain suspended till the disposal of the criminal case beyond the period of five years, as fixed under Rule 12, reeks of non-application of mind.

28. Above all, there is a crucial aspect in this case, which constrains me to interfere with the impugned order. The impugned order shows that the power of suspension has been exercised as an interim measure pending disposal of the criminal case. The relationship between the Licensing Authority or the Inspector General of Registration, and the Document Writer, is not one of employer and employee. The former gives a licence and the latter exercises the benefits and privileges granted under that licence. In terms of Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the Government has been specifically conferred with the power of placing an employee under suspension pending an enquiry, to be initiated against him or her. The power of interim suspension must be specifically conferred on an authority and it cannot be an implied power. The suspension, contemplated under Rule 16, is a suspension, which is being fastened on the licensee, as a punishment. This is clear from Rule 16 (3), which uses the words "revoke or cancel the licence". Under Rule 16 (1) and 16 (2), there is a power to suspend the licence, which term is not present in Rule 16 (3). As the power to suspend a licence as an interim measure is not available under any of the provisions of



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the Rules, this Court is constrained to hold that it is not an implied or ancillary power to be exercised by any of the authorities. The power, unless and until specifically conferred, cannot be exercised, especially when it has drastic civil consequences on the person, who suffers from that order.

29. In any event, the order being unreasoned, it has to be interfered with. Reasons, as it is oft stated, is the heart-beat of an order. A laconic or unreasoned order has to be held as arbitrary and hit by Article 14 of the Constitution of India.

30. In the light of the above discussion, the Writ Petition succeeds and the impugned order is quashed.

31. Writ Petition is allowed accordingly. No costs. Consequently, the connected W.M.P.(MD) Nos.20476,20477 and 20478 of 2019 are closed.

12.03.2025

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

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To:

- 1 The Inspector General of Registration,
No.100, Santhome Road,
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V.LAKSHMINARAYANAN, J.

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