



W.P.(MD)No.31195 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.01.2025**

CORAM:

THE HONOURABLE **MR.JUSTICE G.K.ILANTHIRAIYAN**

W.P.(MD)No.31195 of 2024

and

W.M.P(MD)Nos.26174 & 26175 of 2024

Esakki Muthuraja

... Petitioner

/Vs./

1.The District Registrar (Administration) (Incharge),
Tirunelveli,
Tirunelveli District.

2.The Sub-Registrar,
Sub-Registrar Office,
Panagudi,
Tirunelveli District.

3.Veeraperumal

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the first respondent by his proceedings dated 21.06.2023 in Na.Ka.No.3989/E5/2023 and quash the same.



W.P.(MD)No.31195 of 2024

For Petitioner : Mr.V.Sasi Kumar
For R1 & R2 : Mr.M.Sarangan
Additional Government Pleader
For R3 : No appearance

ORDER

This writ petition has been filed challenging the order passed by the first respondent, dated 21.06.2023, thereby cancelled the document which was under challenge under Section 77-A of the Registration Act.

2.Heard the learned counsel appearing on either side and perused the materials placed before this Court. Though notice served on the third respondent and his name also printed in the cause list, no appeared either in person or through pleader.

3. The property comprised in Survey No.12/1 Perungudi Village Part-II, Radhapuram Taluk, Tirunelveli District to an extent of 2 acres 15 cents originally belonged to one Muthiah Thevar, Subramanian



W.P.(MD)No.31195 of 2024

Thevar @ Ganaprakasa Thevar and Sankarapandia Thevar and they had derive title over the subject property by the registered sale deed dated 27.05.1936 vide document No.736/1936 out of 4 acres 30 cents. The remaining lands also belong to them by way of ancestral property. Sankarapandia Thevar had executed the sale deed in respect of 1/3rd share in favour of Muthaiah Thevar by the registered sale deed dated 16.12.1940 vide document No.2650/1940. After his demise his legal heirs derive title over the property to an extent of 2 acres 86.5 cents. Thereafter, the petitioner's mother executed the settlement deed in favour of the petitioner to an extent of 2 acres 59.78 cents by the settlement deed dated 23.08.2018 vide document No.2042/2018. Thereafter, the petitioner was also issued patta in patta No.8354. While being so, the third respondent submitted a representation to cancel the settlement deed executed in favour of the petitioner under Section 77-A of the Registration Act. On receipt of the same, the first respondent conducted an enquiry and ordered to cancel the settlement deed executed in favour of the petitioner. Now, the issue of power vested with the first respondent under Section 77-A of the Registration Act has been dealt with by the Hon'ble Division Bench of this Court.



W.P.(MD)No.31195 of 2024

WEB COPY

4. In such circumstances, the Honourable Division Bench of this Court in *M.Kathirvel vs. The Inspector General of Registration*, reported in **2024 (4) CTC 769**, has held the very Section 77A of the Registration Act, 1908 as unconstitutional and ultra vires and accordingly, the Division Bench of this Court struck down the Section 77A of the Registration Act, 1908. The relevant portion of the said decision is extracted hereunder:

“173. WP.(MD).Nos.8653, 5413, 6457, 6443, 6556, 4983, 5396, 15120, 5492, 5449, 5613, 8999, 5782, 5419, 6333, 6215, 13994, 8421, 6709, 9163, 6686, 11273, 14567, 11121, 8768, 7444, 12885, 5497, 8832/2023 and 14546, 21199/2022 ; 11890, 15105, 15553, 15477, 15020, 8558, 9975, 14353, 10852, 13147, 2734, 10718, 13000, 8095, 10352, 8175, 15129, 15172, 9936, 8653, 7262, 7836, 10818, 12694, 14055, 10729, 9554, 7385, 9919, 13995, 9550, 13330, 11891, 6850, 5399, 8814, 8550, 8765, 6686, 10993 8600, 7920, 9563, 10705, 29682, 10378, 9523, 14402, 9024, 7852, 7052, 9556, 7088, 9120, 14069, 8836, 7958, 7444, 8832,15557, 14567, 11121, 11273, 9024, 9163,



WEB COPY



W.P.(MD)No.31195 of 2024

7267, 6709 & 12885 /2023 & WP.No.831/2022 & WP.Nos.7267/2023-

The above writ petitions are filed for issuing directions to respondents to consider the representations of the respective petitioners. The representations of the petitioners in all these cases are to cancel the registration of the documents which are before amendment. Since we have held that Section 77-A is unconstitutional and assuming that it is constitutionally valid, it can only operate prospectively, all the following writ petitions are liable to be dismissed.

174. WP.Nos.10291/2022, 15128, 31128, 15905, 9125, 8445, 2792, 20907, 19264 & 11009/2023, WP.(MD).Nos.9534, 9770, 5418, 9681, 18274, 14865, 13770, 9691, 5108, 13385, 9638, 4840, 10315, 13824, 6288, 15197, 15822, 18883, 18419, 13642 of 2023 & 4073, 19148/2022:-

The above writ petitions are filed to quash the notice or proceedings issued by the District Registrar / Inspector General of Registration, in exercise of his power under Section 77-A of the Registration Act to cancel the registered document. All the documents which are sought to be cancelled or registration of which are sought to be cancelled,



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W.P.(MD)No.31195 of 2024

are executed before amendment. Since this Court has now held that Section 77-A is prospective, all the writ petitions are allowed and the impugned notices or proceedings issued by District Registrar / Inspector General of Registration, in exercise of his power for conducting enquiry under Section 77-A are quashed.

175. WP.(MD).Nos.14674, 7704, 8987/2023 ; 16445,/2022 ; WP.Nos.10604/2020, 17719, 12480, 24805, 24610/2022 and 10858/2023.

The above writ petitions have been filed with a prayer for cancellation of documents or for cancelling registration of documents which are long before the amendment came. In view of the decision this Court had taken that Section 77-A as introduced by the amendment is unconstitutional, all the above writ petitions are dismissed as there is no scope for enquiry now under Section 77-A of the Act.

176. WP.(MD).Nos.8357, 12208, 13666, 9213, 14121, 13172, 13895, 13746, 3419 of 2023, 8679/2023, WP.Nos.15543, 13188, 22561, 31075, 31079/2023 ; WA.No.2963, 2211, 2386/2023, 575/2024 ; WP.Nos.15557, 13567, 8305, 10525,



WEB COPY



W.P.(MD)No.31195 of 2024

22570, 9386, 15825/2023:-

The above writ petitions are filed challenging the orders passed by the District Registrar cancelling the document on the ground that the registration of the document are in contravention of Section 22-A and Section 22-B. In view of the decision taken by this Court by declaring Section 77-A is unconstitutional, all these writ petitions are allowed and the impugned order passed by the respective District Registrars by invoking the power under Section 77 are set aside.

WP.No.26952/2023:-

177.Since this Court holds that Section 22-B is not unconstitutional, the writ petition is partly allowed.

WP.No.4161/2024:-

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



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W.P.(MD)No.31195 of 2024

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.

*179. In view of our conclusions reached above on every point we have taken for determination in these cases, this Court finds that there is no scope for entertaining any application under Section 77-A of the Act. Similarly, the power under Section 22-A and Section 22-B of the Act can be exercised only when the jurisdictional issue as indicated in our judgment can be decided on the admitted facts or on the materials which are not in dispute. Till such time the Government frames guidelines in the manner provided by the Full Bench and Division Bench of Andhra Pradesh High Court, the directions issued by the Division Bench of this Court in *Sudha Ravikumar and Another Vs. The Special Commissioner and Commissioner, HR&CE, Chennai and Others* [2017 SCC Online Mad 19191 : 2017 [4] MLJ 445] is binding on the Registering Authority and the Registering Authority shall meticulously follow the directions. No costs.*



W.P.(MD)No.31195 of 2024

Consequently, connected miscellaneous petitions are closed.”

5. In view of the above, the impugned order dated 21.06.2023, passed by the first respondent cannot be sustained and it is liable to be quashed.

6. Accordingly, this writ petition is allowed and the impugned order dated 021.06.2023, passed by the first respondent, is hereby quashed. However, the third respondent is at liberty to approach the competent Civil Court for appropriate relief in the manner known to law, if he is so advised. No costs. Consequently, connected miscellaneous petitions are closed.

20.01.2025

Index : Yes / No
Internet : Yes/No
NCC : Yes / No
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W.P.(MD)No.31195 of 2024

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TO:-

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WEB COPY



W.P.(MD)No.31195 of 2024

G.K.ILANTHIRAIYAN, J.

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Order made in
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Dated:
20.01.2025