

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2024

WEB COPY

CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Writ Appeal No.3573 of 2023

K.Murugesan

... Appellant

Vs.

1.The District Registrar,
Office of the District Registrar Office,
Namakkal District.

2.The District Superintendent of Police,
Namakkal District,
Namakkal.

3.The Sub Registrar,
Rasipuram Sub Registrar Office,
Namakkal District.

4.N.Mani @ Kanagaraj

5.S.K.Sathishkumar

6.Yuvarani

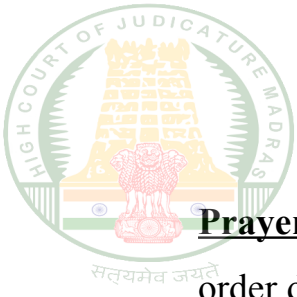
7.P.Anandan

8.N.Kumar

9.S.Subramanian

10.Rathanapriya (SRO-Rasipuram)

... Respondents



W.A.No3573 of 2023

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 11.10.2023 in W.P.No.28358 of 2023.

WEB COPY

For Appellant : Mr.K.Karthikeyan

For R1 to R3 : Mr.Yogesh Kannadasan

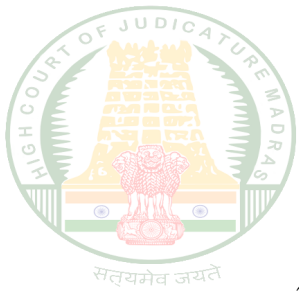
Special Government Pleader

J U D G M E N T

(Judgment of the Court delivered by S.M.SUBRAMANIAM,J.)

The intra Court appeal on hand has been instituted challenging the order dated 11.10.2023 in W.P.No.28358 of 2023. The writ petitioner is the appellant before us, who instituted a writ of mandamus directing the District Registrar, Namakkal to conduct an enquiry based on the representation submitted by the writ petitioner/appellant on 15.05.2023, to cancel the Document No.7916 of 2022, on the file of the Sub-Registrar, Rasipuram, Namakkal District.

2. Since, the writ petition was dismissed on technicalities, the present writ appeal has been filed by the appellant/writ petitioner.



W.A.No3573 of 2023

WEB COPY

3. We have perused a copy of the representation submitted by the writ petitioner to the District Registrar dated 15.05.2023. The appellant states that a fraudulent document was registered *vide* Document No.7916 of 2022 dated 06.12.2022 on the file of the 3rd respondent. Thus, the appellant has filed a complaint under Section 77-A of the Registration Act, to cancel the document registered in a fraudulent manner.

4. Section 77-A was inserted by T.N.Act 41 of 2022 with effect from 16.08.2022. Section 77-A confers power on the District Registrar to cancel the registered document in certain cases. Sub-Section (1) stipulates that the Registrar, either *suo motu* or on a complaint received from any person is of the opinion that the registration of document is made in contravention of Section 22-A or Section 22-B shall issue a notice to the executant and all the parties to the document and parties to subsequent documents, if any, and all other persons who, in the opinion of the Registrar, may be affected by the cancellation of the document, to show cause as to why the registration of the document shall not be cancelled. On consideration of reply, if any received therefore, the Registrar may cancel the registration of



W.A.No3573 of 2023

the document and cause to enter such cancellation in the relevant books and indexes.

WEB COPY

5. An appeal has been contemplated under Section 77-B of the Registration Act and an aggrieved person from and out of the order, if any passed by the District Registrar may prefer an appeal before the Inspector General of Registration.

6. Learned Special Government Pleader appearing on behalf of the respondents would contend that the complaint has not been entertained in view of the circular issued by the Inspector General of Registration *vide* letter dated 29.09.2023, which was issued based on the order passed in W.P.(MD).No.14546 & batch etc., of 2022 dated 27.03.2023 and W.P.No.28728 of 2018 dated 27.06.2023 & W.P.No.18814 of 2023 dated 27.06.2023. The letter dated 29.09.2023 reads as under:

"பொருள் தொடர்பாக தமிழ்நாடு திருத்தச்சட்டம் 41/2022 அமுல்படுத்தப்பட்டு அதனை கையாளும் வழிமுறைகள் தொடர்பாக பார்வை 1ல் காணும் இவ்வலுவலக கடித வழி அனைத்து மாவட்டப்பதிவாளர்களுக்கும் அறிவுரை வழங்கப்பட்டது.

தற்போது பார்வை 3ல் காணும் வழக்கில் சென்னை



உயர்நீதிமன்ற மதுரை கிளை வழங்கிய ஆணையில்
கீழ்க்கண்டவாறு கருத்து தெரிவித்துள்ளது.

i. *whether the recitals in a document presented for registration, can be examined and determine that such document was fraudulently executed or registered;*

ii. *Whether a document in which the recitals alone are questioned can be considered only as voidable which would normally necessitate the filing of the suit to set aside the particular document or whether even those documents can be cancelled by the Sub Registrar under Section 77A of the Registration Act;*

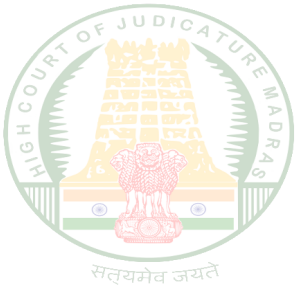
iii. *Whether exercise of power under Section 77A must be restricted to registration of documents in contravention to Section 22-A or 22-B of the Registration Act, 1908 alone?*

iv. *Whether the exercise of such power under Section 77A of the Registration Act can be prospective in nature of retrospective in nature?*

மேற்படி வினாக்களை பரிசீலித்திட Larger Benchக்கு
நீதிமன்றம் பரிந்துரைத்துள்ளது என்றும், மேற்படி Larger
Benchன் முடிவு வரும் வரை சார்பதிவாளர்கள் எவ்வித
நடவடிக்கையும் தொடர வேண்டாம் எனவும் ஆணை
பிறப்பிக்கப்பட்டுள்ளது.

இதே போல் பார்வை (5)-ல் காணும் சென்னை
உயர்நீதிமன்ற மாண்புமிகு நீதிபதி தனது ஆணையில்
கீழ்க்கண்டவாறு கருத்து தெரிவிக்கப்பட்டுள்ளது.

“.....In view of the above order, this Court once again reiterates that the District Registrars across Tamil Nadu shall not take any



WEB COPY



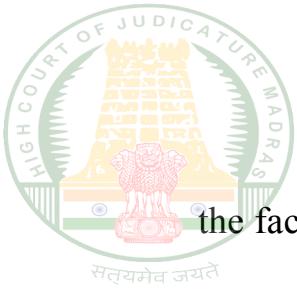
W.A.No3573 of 2023

further action on the application submitted under Section 77A of the Registration Act, till a final decision is rendered by the Larger Bench”, என ஆணை பிறப்பித்துள்ளார்.

மேற்காண் நீதிமன்ற ஆணைகளின் மீது இத்துறை மேற்கொள்ளப்படவேண்டிய நடவடிக்கை தொர்பாக அரசு கூடதல் தலைமை வழக்கறிஞரின் கருத்து கோரப்பட்டதில் பார்வை (6)-ல் காணும் கருத்தில், பதிவுச்சட்டப்பிரிவு 77Aன் கீழ் பெறப்படும் புகார் மனுக்கள் மீது, முாநிலம் முபவதும் உள்ள மாவட்டப்பதிவாளர்கள் எவ்வித நடவடிக்கையும் மேற்கொள்ளக்கூடாது எ கருத்து தெரிவித்தள்ளார்.

எனவே பதிவுச்சட்டப்பிரிவு 77Aன் கீழ் விசாரணை அலுவலர்களாக உள்ள மாவட்டப்பதிவாளர்(நிர்வாகம்) Larger Benchன் முடிவு வரும் வரை எவ்வித விசாரணையும் மேற்கொள்ளக்கூடாது என அறிவுறுத்தப்படுகிறது. இந்த அறிவுரை 16.08.2022க்கு முன்னர் பதிவு ஆவணப்பதிவுகள் மற்றும் பின்னர் பதிவு செய்யப்பட்ட பதிவுகளுக்கும் பொருந்தும் என தெரிவிக்கப்படுகிறது."

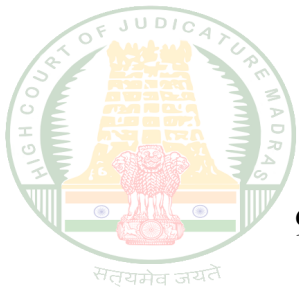
7. Learned Special Government Pleader Mr.Yogesh Kannadasan would contend that all the batch of writ petitions are pending. However, Section-77A and Section 77-B has not been stayed by this Court. So long as the provisions are not stayed and remain in the statute book, the Authorities are empowered to exercise the powers conferred under the provision. Mere framing of issues in the writ petition or any interim order, in connection with



W.A.No3573 of 2023

the facts of the particular case would not be an impediment for entertaining a complaint filed under Section 77-A of the Registration Act. Further, the retrospective/retro-active application of Section 77-A is the larger issue which is raised in the batch of writ petitions, which is now pending before the Hon'ble Division Bench of this Court in W.P.No.10291 of 2022 and etc., Thus, the pendency of batch of writ petitions relating to the issue of retrospective/retro-active application of the amended provision will not be a bar for the District Registrar/Competent Authority to conduct an enquiry and dispose of the complaints filed by aggrieved persons under Section 77-A and also an appeal if any, preferred under Section 77-B of the Registration Act.

8. Pertinently, Section 77-A and Section 77-B were inserted pursuant to the orders of the Hon'ble Division Bench of this Court. While so, the amendment is to be operative necessarily for the purpose of redressing the greivances of the persons to cancel the fraudulent documents, if any registered.



W.A.No3573 of 2023

WEB COPY

9. It is not in dispute that Section – 77-A has not been stayed by the Court and therefore, the Authorities are bound to exercise the powers conferred under Section-77-A and 77-B and entertain complaints to cancel the documents which were registered subsequent to the amendment. It is made clear that the documents registered prior to the amendment cannot be the subject matter of adjudication under Section 77-A, since the issue regarding retrospective/retro-active application of Section 77-A and 77-B is subjudice before the Hon'ble Division Bench of this Court.

10. However, there is no impediment for entertaining the complaints to cancel the documents which were registered subsequent to the date of amendment i.e., 16.08.2022. In this context, Inspector General of Registration is directed to issue revised circular to the Competent Authority to entertain the complaints and dispose of the same by following the procedures as contemplated and by affording opportunity to the parties, as expeditiously as possible.

11. In view of the discussions made above, the order under challenge dated 11.10.2023 in W.P.No.28358 of 2023 is set aside. The 1st



W.A.No3573 of 2023

respondent/District Registrar, Namakkal District is directed to conduct an enquiry by affording opportunity to all the parties and dispose of the complaint as expeditiously as possible. Accordingly, the Writ Appeal stands allowed.

[S.M.S.J.] [K.R.S.J.]
12.02.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
veda

Note: The registry is directed to communicate a copy of this judgment to Inspector General of Registration, No.100, Santhome High Road, Chennai – 28.

To

- 1.The District Registrar,
Office of the District Registrar Office,
Namakkal District.
- 2.The District Superintendent of Police,
Namakkal District,
Namakkal.
- 3.The Sub Registrar,
Rasipuram Sub Registrar Office,
Namakkal District.
- 4.Inspector General of Registration,
No.100, Santhome High Road,
Chennai – 600 028.



WEB COPY



W.A.No3573 of 2023

**S.M.SUBRAMANIAM,J.
AND
K.RAJASEKAR,J.**

veda

Judgment in
W.A.No.3573 of 2023

12.02.2024