



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.24494 of 2023andW.M.P.No.23918 of 2023

Basha Zathi

...Petitioner

Vs.

1.The District Registrar,
District Registrar Office,
Thirupathur 635601.

2.The Sub Registrar,
Office of the Sub Registrar,
Thirupathur 635601.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to an order dated 06.07.2023 passed by the 1st respondent in proceedings under Na.Ka.No.816/B2/2023, quash the same, consequently direct the first respondent to conduct enquiry as per Section 77-A of the amended Act 2022 of the Registration Act, and to pass orders on merits based on the representation dated 19.09.2022 with regard to the property to an extent of land measuring 6.28 acres situated at Thirupathur Village,



Thirupathur Taluk, Thirupathur District (formerly Vellore District) in Survey Nos.423/2, 445, 446, 448 and 449/1 belongs to the petitioner.

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For Petitioner : Mr.C.D.Sugumar
For Respondents : Mr.T.Arun Kumar,
Additional Government Pleader.

ORDER

The writ on hand has been instituted questioning the validity of the order dated 06.07.2023 passed by the first respondent and to direct the respondents to conduct enquiry as per Section 77-A of the Registration (Amended Act of 2022) Act and pass orders on merits.

2. The petitioner had submitted an application on 19.09.2022 to cancel the documents registered during the years 2007 to 2013. The District Registrar returned the document on the ground that in proceedings Na.Ka.No.5440/E2/2021 dated 25.04.2022, the District Registrar, Vellore has passed an order relegating the petitioner to approach the Civil Court of law and only after obtaining a decree from the Civil Court, actions are to be taken.



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3. Primarily, the application submitted by the petitioner reveals that the documents registered during the years 2007 to 2013 are sought to be cancelled. Section 77-A was inserted with effect from 10.08.2022 and there is no express provision for retrospective application of the Amended Act. In the absence of any provision for retrospective application, the documents registered prior to the amendment cannot be cancelled by invoking Section 77-A of the Act.

4. In the event of conferring powers on the District Registrar to cancel the documents with retrospective effect, the same would result in an anomalous situation, wherein lakhs and lakhs of documents will be placed before the Registrar for its cancellation. The issues in this regard are considered by this Court in W.P.No.19239 of 2023, dated 25.07.2023, as under:-

"4. Without going into the allegations of fraud or impersonation, this Court has to consider the repercussions in the event of conducting summary proceedings for the purpose of cancelling the documents registered long back. The amendment was made under the Tamil Nadu Act 41 of 2022 with effect from 16.08.2022 and accordingly, Section 77A was inserted.



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The provision is ambiguous with reference to its retrospective application. The consequence of retrospective application is to be considered by the Courts. If unguided powers are provided to the District Registrars to cancel the documents, irrespective of the time of registration, the same would result in an anomalous situation where the documents registered several decades back also may be the subject matter for cancellation under Section 77A of the Act.

5. The legislative intention of the amendment and insertion of Section 77A in the Act would not confer powers for its retrospective application, so as to cancel the documents registered several decades back. All those documents which were registered long years back were governed under the provisions of the Act and those documents were either subjected to civil proceedings before the Civil Court of law or criminal proceedings or otherwise.

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9. Therefore, necessarily, the Court has to form an opinion that in respect of the documents falling under Section 22B of the Act, if sought to be cancelled, then the Registrar is empowered to cancel the documents under Section 77A of the Act. In respect of other



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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 either by approaching the Civil Court of law or otherwise. When all those documents registered prior to the amendment of the year 2022 are subjected to Section 77A 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 22A and Section 22B was not in force. Thus, Section 77A cannot have retrospective effect. In other words, Section 77A must be read in conjunction with Section 22A and Section 22B of the Act. Insertion of all these three Sections are to be understood holistically to avoid any inordinance.

10. 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



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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 77A of the Act.

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14. In the present Writ Petition, disputed issues exist between the parties. Even the second respondent herein was a party respondent in yet another Writ Petition filed by one Mr.T.Arockia Dass in W.P.No.754 of 2023, wherein this Court passed an order on 10.01.2023. Therefore, the dispute between the parties cannot be resolved by way of summary proceedings under Section 77A of the Act. Normally, amendments under the Statutes are intended for prospective effect, unless retrospective effect has been expressly made under the amendment. Presumptive retrospective implementation of the amendments in the Statutes would cause larger repercussion and would result in disastrous consequences. Lakhs and lakhs of documents registered prior to the amendments will be placed for adjudication before the Registrar to cancel those documents on personal or on varieties of reasons. Therefore, in the absence of any specific provision to implement the amendment retrospectively, the power



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conferred through amendment is to be exercised with prospective effect with reference to the documents registered subsequent to the amendment and insertion of Sections 22A, 22B and 77A of the Act. Thus, the petitioner as well as the complainant in the present case have to redress their respective grievances before the competent Civil Court of law."

5. In view of the principles considered above, the petitioner has to approach the competent Civil Court of law for the purpose of declaring the document as null and void or otherwise.

6. With these observations, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

21.08.2023

Index: Yes
Speaking orderr
Neutral Citation: Yes
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S.M.SUBRAMANIAM, J.

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