

(2012) 06 MAD CK 0071

In the Madras High Court

Case No : Writ Petition No. 25252 of 2007 and M.P. No, 1 of 2007

A. Nazaar

APPELLANT

Vs

Inspector General of Registration, Chennai and Others

RESPONDENT

Date of Decision : 18-06-2012

Acts Referred:

General Clauses Act, 1897 — Section 21
Penal Code, 1860 (IPC) — Section 167, 34, 406, 420, 44
Registration Act, 1908 — Section 33, 34(3), 35, 39, 49

Citation : (2012) 5 MLJ 487

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : G. Vivekanand, for the Appellant; R. Vijayakumar, Additional Government Pleader, for the Respondent

Judgement

M. Venugopal, J.—The petitioner has filed the present writ of mandamus, praying for issuance of a direction by this Court in directing the

respondents 1 and 2 to conduct an enquiry on the petitioner's complaint dated 12.7.2008 and to take action against the fourth respondent.

According to the petitioner, originally the property in Survey Nos. 138/4, 138/3, 138/2, 138/5, 139/4, 161/1, 138/6 measuring in all 13 acres 31

cents and in Survey Nos. 152/1 and 152/2 measuring an extent of 5 Acres and 60 cents situated at Thiruvalkudi Village, Karaikudi Taluk,

Sivagangai District, were purchased by him and his Uncle K. Abdul Wahab jointly from one Ambigapathy, as per two sale deeds dated 3.5.1990

(registered as Document Nos. 375 and 376 of 1990 on the file of the District Registrar's Office, Karaikudi).

2. It is the case of the petitioner that after purchasing all the properties, the possession and enjoyment of the property right from the date of

purchase was in his hands and his Uncle, K. Abdul Wahab. They entered into an agreement to sell the property with one Ayyappan during April,

2007 and when the proposed purchaser applied for Encumbrance Certificate during May 2007, they came to know that some sale transactions

took place encumbering their properties.

3. The petitioner and his Uncle filed a complaint before the concerned Police Officials and it was agreed that they would work out the

remedies/rights before the Civil Forum. A Civil Suit, O.S. No. 20 of 2007 on the file of the District Munsif, Karaikudi, was filed by one Saravanan

and the purchaser, Ayyappan, who negotiated with the petitioner to purchase the property, agreed to contest the suit at his own cost.

4. The main grievance of the petitioner is that the sixth respondent, viz., his alleged Power Agent, got a sale deed executed in favour of the fifth

respondent dated 1.6.2007 and his Uncle, who was a joint owner, was not shown as vendor and this showed that the entire transactions were

fraudulent one. Also that, the petitioner has changed his signature even as early as 2005. Later, on enquiry, the petitioner came to know that the

sale deed dated 1.6.2007 was registered without a registered Power of Attorney. As per the Registration Act, 1908 only if the Third

Respondent/Joint Sub Registrar, Karaikudi, passed an order in regard to the commission of fraud, then only, he can proceed further under the

provisions of Registration Act.

5. On 12.7.2007, a representation was addressed by the petitioner to the District Registrar, Registration Department of Karaikudi District, to

cancel the fraudulent Document No. 1408 of 2007. In the said complaint, he had stated that the sixth respondent/ R. Vadivelsamy, son of M.

Ramalingam, had fraudulently created a Power of Attorney on 17.1.1995 as if the petitioner had signed in the document and got attestation from

the Notary Public. He further stated that in the absence of his photograph or signature, he posed a query, how the Sub Registrar could register a

power document and consequently, prayed for taking immediate action.

6. The petitioner had presented a Cancellation Document on 10.7.2007, wherein he has sought for cancellation of sale deed dated 1.6.2007 and

the said Cancellation Deed was not registered by the Registration Authority and as on date, the same is kept pending for registration in Document

No. P120 of 2007.

7. According to the Learned counsel for the petitioner, the authority concerned had conducted an enquiry and they furnished a reply dated

7.12.2007 among other things mentioning that the sample signature of Nazaar (petitioner) was not furnished and that the Nazaar's present

signature now differs from that of his signature found in the Joint Power of Attorney. Since the sample/admitted signature of the petitioner, till date,

was not furnished by him, no comparison could be made and even then, if the complaint is found true, action can be taken after sending the same

to the Police Department. Further, as per High Court's order, a First Information Report was registered by the Kundrakudi Police and therefore,

the petitioner was advised to seek redressal of his grievance by approaching the Kundrakudi Police.

8. It appears that Kundrakudi Police had registered the First Information Report in Crime No. 138 of 2007 on 14.11.2007 based on the

complaint lodged by the petitioner against the sixth respondent/R. Vadivelsamy, the fifth respondent/S.P. Vellaichamy and one Kalaiappan,

Advocate in Karaikudi. The said complaint in Crime No. 138 of 2007 was registered under Sections 34,465,468 and 469 of Indian Penal Code

and the same is pending investigation as on date.

9. It also comes to be known that the fifth respondent/S.P. Vellaichamy had lodged a First Information Report in Crime No. 143 of 2007 on

8.12.2007 on the file of Inspector of Police, Kundrakudi Police Station under Sections 406 and 420 of Indian Penal Code against the petitioner.

The said First Information Report is pending on the file of the Learned Judicial Magistrate, Karaikudi. Both the complaints lodged by the petitioner

and Vellaichamy/R-5 are pending before the Learned Judicial Magistrate, Karaikudi.

10. The petitioner addressed a representation, dated 17.12.2007, to the District Registrar, Karaikudi, Sivaganga District, recommending for taking

of further action against Vellaichamy/R-5, Vadivelsamy/R-6, Notary Public Kalaiappan (advocate), Gowtham, Siranjeevi and Srinivasan (Stamp

Vendor), for committing fraud and also to register the Cancellation Deed, PI 20/2007.

11. Moreover, the petitioner also addressed another letter dated 22.12.2007 to

the Deputy Inspector General of Registration, Madurai, praying for taking necessary action against those, who were involved in the creation of forged Sale Deed, dated 1.6.2007 by enclosing necessary documents as mentioned therein in detail, for which, a reply was sent by the District Registrar, Karaikudi, inter alia mentioning that as per the Inspector General's order No. 35359/E1/2007, dated 5.10.2007, for cancellation of a particular document, both the parties should make their presence before the Sub Registrar and only after a person, who got the document, had agreed for cancellation, the Registering Officers would register the cancellation document for that purpose or if an order was obtained from the competent Court, then the cancellation document would be released from the said category and then only registered as the said document.

12. The Inspector General of Registration, Chennai-600 028, in a communication letter in Proceedings Ka. No. 63261/E3/07, dated 3.1.2008, addressed to the petitioner had mentioned, among other things, that as per High Court's order, a case was registered before the Kundrakudi Police Station and the Department had no power to take action against those involved in the fraud/forgery.

13. The gist of the contention of the petitioner is that as on date, an enquiry before the Second Respondent/District Registrar, Karaikudi, is pending in regard to the representation/complaint made by the petitioner, dated 12.7.2007. The Inspector General of Registration (Chennai), in his Office Circular No. 67, dated 3.11.2011 (C. No. 52338/ C1 /2011) has issued guidelines in regard to the procedure pertaining to the complaint involving the fraudulent registration through impersonation or production of false documents and evidence and if the said guidelines/circular's ingredients are adhered to by the Second Respondent/District Registrar, Karaikudi, then the petitioner would be satisfied.

14. The Learned Additional Government Pleader produced the file relating to this case. This Court perused the entire records.

15. The Circular No. 67, dated 3.11.2011 (C. No. 52338/C1/2011) issued by the Inspector General of Registration, Chennai-600 028, reads

hereunder: -

The large number of petitions being received in this department reveal that

number of fraudulent registrations are increasing day by day. However, normal response of the department to such petitions is to direct the aggrieved parties to approach Civil Court. But, this reply to the petitioner is like committing double jeopardy against him. Hence, such a reply by the department cannot be treated as appropriate in the light of the statutory powers conferred upon the registering officers u/s 83, of Registration Act, 1908 to file criminal case against the persons who are involved in fraudulent registration through impersonation or other means. Hence, filing of FIR is one of the statutory duties of the registering officer when such complaint is received. However, no such complaints are being entertained by the Sub-Registrars and no enquiries are being conducted by them and consequently no action is being taken on such complaints by the registering officers.

Similarly, Section 82 of Registration Act provides for the grounds for action u/s 83 of the Registration Act and the quantum of punishment for the offences. The whole purpose of inserting Sections 82 and 83 in the Registration Act, 1908 by the law makers was to punish the persons involved in registration of documents through impersonation or by giving false admissions or statements or by presenting false copies or translations of any document/map/plan etc. However, mere punitive action will not suffice and serve the objective of the registration act which aims at arresting fraud.

Therefore, a curative remedy is necessary not only to provide relief to the aggrieved party but also to arrest further fraud and cheating of innocent future purchasers. Only such a course of action can serve the principles of natural justice. A Bench of the Andhra Pradesh High Court (A/R2007) has observed in Yanala Malleswari v. Ananthalu Sayamma case that Court did not see any prohibition for the registering authority to cancel sale deed earlier registered, which is likely to cause prejudice to the rightful owners as well as entire public at large.

In the same judgment, the Hon''ble High Court has observed that ""It is thus law of the land that even administrative authorities have inherent powers to recall or revoke their own order if such order was obtained by playing fraud on such public authority"". The judgment also refers to the observation of the Hon''ble Supreme Court in the case of Indian Bank v. Satyam Fibres India Pvt. Ltd., which is as follows:-

Inherent powers (to recall or revoke their own orders by the administrative authorities if the same was obtained by playing fraud on such public

authority) spring not from legislation but from the nature and conservation of the authorities, to enable them to maintain their dignity, secure

obedience to process and ensure transparency.

In a nut shell, they have observed the following:-

It is therefore axiomatic that in India, the quasi judicial and administrative authorities have inherent powers to recall their orders or proceedings at a

later point of time if it is shown that such order was obtained by playing fraud and misrepresentation. The question of applicability of law of

limitation to exercise such inherent power by the administrative authorities does not arise because fraud unravels every thing rendering a fraudulent

order void and non-existent. This principle in a different manner is also adumbrated in Section 21 of General Clauses Act, 1897 (Central Act No.

X of 1897). Under the said provision, an authority, who has power to issue, inter alia orders has also power to rescind such order.

Finally, they have opined as follows:-

In the considered opinion of this Court if a person sells away the property belonging to other, it would certainly be fraud on the statute. It would be

adding insult to injury, if such person is asked to go to Civil Court and get the subsequent sale deed cancelled or seek a declaration.

In this regard, attention is further drawn to Sections 34(3) and 35 read with Rule 55 of the Registration Act, wherein duty has been cast on the

Sub-Registrars to consider objection raised on the grounds that the parties appearing before them are not the persons they profess to be or that

the document is forged or that the representative/agent/assignee has no right to appear in that capacity or that the existing party is not really dead as

alleged.

In the light of the above discussion, following mandatory procedure is prescribed to deal with the complaints relating to fraudulent registrations

through impersonation or production of false documents and evidences.

(a) All such complaints of fraudulent registration received by the department have to be forwarded to the respective District Registrar (Admin) who

shall register the same in a register of complaints relating to fraudulent registration in the following format;

Sl No. Date Name and address of Document No. and SR Name and address of the the applicant Office Name executants, claimants and witnesses

(b) After entering the complaint, he shall issue notices to the executants of the document and witnesses to appear for enquiry along with the complainant and he should also take witness of the registering officer and if needed, call for the records from the revenue department and also

summon the respective Village Administrative Officer (VAO) to appear before him with the village accounts.

(c) Once the enquiry is completed following summary procedure and it is proved that the registration has taken place through impersonation and

through production of false documents and statements/ admissions, he shall pass orders to this effect, recording his findings and issue direction to

the concerned registering officers to file FIR against the concerned persons and also to make a note in the Index-II of the document which was

fraudulently registered to the effect that the registration is annulled as per the proceedings of the District Registrar (proceeding No. to be noted)

and it shall have some effect as prescribed u/s 49 of the Registration Act.

(d) After receiving the order of the District Registrar, the registering office shall immediately file FIR and make entries as stated above in Index-II

without any loss of time. The registering officer shall maintain a separate register in this regard in his office to register all such orders of the District

Registrar in following format.

Sl. No. Date of Proceeding Doc No. of the Date of filing Date of Signature of receipt of No. Document to FIR making note in the registering order o/DR be annulled Index-II officer

(e) The District Registrar should complete the enquiry maximum in two months in each case and if the parties are not appearing for more than 2

summons, ex-parte order should be passed based upon the documents, evidences and witnesses available. While issuing summons, mode of

RPAD should be adopted.

However, these instructions will not apply to the cases where the complainant has admitted execution by himself due to whatever reasons. It is

further emphasized that the procedure prescribed above is only to deal with

fraudulent registrations done and it should in no way be construed to mean that the registering authority shall go into the issue of deciding title in case of rival claims on certain basis.

Any failure in registering complaints relating to fraudulent registration through impersonation or production of false documents/statement etc. and

initiation of enquiry followed by filing of FIR and making of annulment entries in Index-II shall be viewed seriously and necessary disciplinary action

will be initiated against the concerned District Registrar (Admin) and the registering officer.

This order comes into immediate effect.

Any party aggrieved by the order of the District Registrar may prefer an appeal with Inspector General of Registration.

16. At this juncture, this Court pertinently points out that Section 81 of the Registration Act, 1908 speaks of "Penalty for incorrectly endorsing,

copying, translating (registering or filing) documents with intent to injure" and the same enjoins as follows:-

Every registering officer appointed under this Act and every person employed in his office for the purposes of this Act, who, being charged with

the endorsing, copying, translating, (registering or filing a true copy, of any document) presented or deposited under its provisions, endorses,

copies translates (registers or files a copy of, such document), in a manner which he knows or believes to be incorrect, intending thereby to cause

or knowing it to be likely that he may thereby cause, injury, as defined in the Indian Penal Code (45 of 1860), to any person, shall be punishable

with imprisonment for a term which may extend to seven years, or with fine, or with both.

17. Also, Section 167 of the Indian Penal Code deals with "Public servant framing an incorrect document with intent to injure¹ and the same is as

follows:-

Whoever, being a public servant, and being, as (such servant, charged with the preparation or translation of any or electronic record, frames,

prepares or translates that document electronic record) in a manner which he knows or believes to be incorrect, intending thereby to cause or

knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which

may extend to three years, or with fine, or with both.

18. Section 82 of the Registration Act, 1908 under the caption, "Penalty for making false statements, delivering false copies of translations, false personation, and abetment", runs hereunder:-

Whoever- (a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or enquiry under this Act; or

(b) intentionally delivers to a registering officer, in any proceeding (under this Act or the Rules made there under)a false copy or translation of a document, or a false copy of a map or plan; or

(c) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act; or

(d) abets anything made punishable by this Act; shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

19. The term, "injury" is defined as per Section 44 of the Indian Penal Code thus:-

The word ""injury"" denotes any harm whatever illegally caused to any person in body, mind, reputation or property.

20. Section 82 of the Registration Act has been enacted mainly with a view to punish acts, which are not offences coming under the Indian Penal

Code. Indeed, a fraudulent or dishonest intent is not an essential factor for the offence or falsely presenting a party under the Section before the

Registering Officer as per decision King-Emperor v. Tun Aung Gyaw, 3 LBR 222; Emperor v, Kousalya 5 Bom. L.R. 138".

21. This Court aptly points out the decision in Emperor v. Kousalya (supra) wherein it is held that "where a person at the instance of another goes

to the Registrar and demands the return of a document which had been presented for registration representing that he is that other person, he

commits the offence of false personation within Section 82(c) of the Registration Act.

22. It is to be pointed out that Section 82 of the Registration Act, 1908 has been enacted with an aim to punish acts which are not offences under

the Indian Penal code. As a matter of fact, a fraudulent or dishonest intent is not an essential factor as regards the offence of falsely personating a

person under the Section before the Registering Officer. The enquiry as per Clause (a) of Section 82 of the Registration Act must be a one

specified under the Act. The enquiry is prescribed or made mention of in Sections 39 and 35 of the Registration Act. Indeed, the words in Section

82(c) are "who ever falsely personates another".

23. It is very vital to prove that the assumed name was used as a means of falsely representing another person. Putting of thumb impression by an

accused as that of a different person, in Column 1, Form 8 of the Register maintained by the Registration Department in order to facilitate

registration of a document amounts to an offence u/s 82(c) of the Registration Act, 1908 as per the decision in Basgit Singh Vs. Emperor,

24. Section 83 of the Registration Act, 1908 deals with a prosecution for any offence under the Act "coming to the knowledge of a Registering

Officer in his official capacity". The language of the Section is a permissive one and not a mandatory one, as per decision in Dharmadeo Rai Vs.

Ramnagina Rai, . Also, a Registrar is competent to institute a prosecution of any offence under the Registration Act, 1908, as per decision in

Queen v. Ramdhary Singh 10 W.R.(Cr)5.

25. Therefore, an enquiry has to be conducted by the second respondent in accordance with the relevant provisions of the Indian Registration Act,

1908 and also keeping in mind, the various circulars issued by the Inspector General of Registration, Chennai and also more particularly to take

into account consideration of the circular No. 67, dated 3.11.2011 issued by the First Respondent/Inspector General of Registration and other

circulars, if any.

26. A deeper scrutiny of the Circular No. 67, dated 3.11.2011 issued by the first respondent also indicates in candid term that the Second

Respondent/District Registrar should complete the enquiry maximum in two months, in which case, if the parties are not appearing for more than

two summons, ex parte order should be passed based upon the documents, evidences and witnesses available. While issuing summon, mode of

RPAD should be adopted.

27. It cannot be gainsaid that if a particular person or a witness fails to attend an

enquiry before the concerned Registrar, then the concerned

Registrar/Authority is supposed to follow the relevant provisions of the Registration Act, 1908 coupled with Rules 166, 167 and 171 of the Tamil

Nadu Registration Rules, 1983. Rule 166 of Tamil Nadu Registration Rules, 1983 deals with a contingency arising u/s 72 of the Act or an

application as per Section 73 of the Act.

28. Also, Rule 167(1) of the Tamil Nadu Registration Rules, 1983 enjoins the filing of an appeal as per Section 72, which shall be presented either

by the appellant or by a certified pleader duly authorised on his behalf by a vakalat attested in the manner prescribed in the Civil Rules of Practice

applicable to Mofussil Civil Courts or by an agent holding a power of attorney authenticated as laid down in Section 33 of the Act ere.

29. More pertinently, Rule 171(i) of the Tamil Nadu Registration Rules, 1983 envisages the procedure to be followed hereunder:

An applicant in this Rule shall mean an appellant u/s 72 or party at whose instance an enquiry u/s 74 is commenced and shall include subject to

provisions of Rule 167, also an agent or a vakil.

30. As per Rule 171(v) of the Tamil Nadu Registration Rules, 1983, if on the date of hearing neither party appears or the applicant does not

appear and the respondent appears and contests the registration of the document or the respondent does not appear and it is found that notice has

not been served upon him in consequence of the failure of the applicant to pay the requisite fee for such service, the Registrar shall make an order

refusing to direct registration of the document etc.

31. At the risk of repetition, even if the parties are not appearing for more than two summons, an ex parte order can be passed based upon the

document, evidence, witness available, as per Circular No. 67, dated 3.11.2011 issued by the First Respondent/Inspector General of Registration.

32. Rule 175 of the Tamil Nadu Registration Rules, 1983 envisages hereunder:-

Where a refusal order is based on the ground that the Executant is purposely keeping out of the way in order to evade registration or has gone to a

distant place and is not likely to return to admit execution and the non-appearance is treated as tantamount to denial of execution, the application

may be accepted by a Registrar u/s 73, and the fact of execution enquired into as if execution had been specifically denied.

33. Therefore, it is patently clear from the relevant provisions of the Indian Registration Act coupled with the Rules extracted as mentioned supra

that the concerned Registrar has to act in terms of the relevant provisions of the Act as well as periodical circulars issued by the concerned higher

authorities of Registration Department from time to time. Obviously, the circulars are meant to be followed in true letter and spirit. Circulars cannot

be, as a matter of fact, supplanted, circumvented, evaded or avoided by any authority on some pretext or other. Insofar as the tenor of the

Circulars/Internal Proceedings issued by the higher authorities of the Registration Department is concerned, they are to be obeyed in true letter and

spirit.

34. In the instant case on hand, the enquiry based on the complaint of the petitioner dated 12.7.2007 is not yet over and it has not so far reached

the finality. In view of the relevant provisions of the Registration Act, 1908 coupled with the Tamil Nadu Registration Rules, 1983 extracted in this

part of the order, this Court, on the basis of Equity, Fair play and Good conscience and even as a matter of prudence, directs the Second

Respondent/District Registrar, Karaikudi, to conduct an enquiry afresh on the basis of the complaint lodged by the petitioner, dated 12.7.2007 and

the second respondent is directed to follow the procedure in regard to the conduct of enquiry by adhering to the relevant provisions of the

Registration Act, 1908 and the Tamil Nadu Registration Rules, 1983 and the periodical Circulars issued by the higher authorities concerned,

especially to take note of Circular No. 67, dated 3.11.2011 issued by the first respondent and to dispose of the said complaint/representation of

the petitioner, dated 12.7.2007 in a complete and comprehensive way within a period of eight weeks from the date of receipt of a copy of this

order and to report compliance to this Court without fail. With the aforesaid directions, the writ petition is disposed of. Connected M.P. is closed.

No costs.