(2014) 07 MAD CK 0105

In the Madras High Court

Case No : W.P. (MD) Nos. 5908, 3247, 15361, 8003, 13056, 13057, 13516, 13634, 10807, 13889 and 14022 of 2012, 331, 454, 1946, 1947, 3681, 3682, 9075, 16712, 17057, 3095 of 2013, 2611, 3450, 3692, 10921, 12204 and 12894 of 2012, 1627, 2027, 2028, 2181, 2811, 3578, 3

Ramasamy APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 17-07-2014

Acts Referred:

General Clauses Act, 1897 — Section 21
Succession Act, 1925 — Section 141

Citation : (2014) 4 CTC 627 : (2014) 4 LW 221 : (2014) 6 MLJ 430

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Judgement

T. Raja, J.—In the present Batch of Writ Petitions, one set of individuals question the correctness and legal validity of Circular No. 67 , dated 3.11.2011, in C. No. 52338/C1/2011 and the consequential Annulment Orders passed by the District Registrars concerned on the basis of the said Circular, cancelling the registered documents, while others seek for ordering an enquiry based upon the Circular relating to the alleged fraudulent registrations complained by them with the Registration Department through representations. Since all these matters revolve around Circular No. 67 , dated 3.11.2011, they have been heard together and now, disposed of by this Common Order.

2. Though arguments have been advanced by different learned Counsel for the Petitioners both against and in favour of the Circular in question, at the first instance, it is desirable to deal with the submissions assailing the impugned Circular and, in that perspective, the case and cause projected by Mr. V. Singan, learned Counsel appearing for the Petitioner in W.P. (MD) No. 5908 of 2012 are projected below.

The Petitioner in the above Writ Petition by name Ramasamy, who executed a

Sale Deed on 6.5.2011 in favour of one Malar, W/o. Kandasamy and a resident of Kalappakadu Village, Aranthangi Town and Taluk, Pudukottai District, on the basis of a power document executed in his favour by one Kaliaperumal on 3.5.2011, has suffered annulment of the said registered document dated 6.5.2011 as per Order No. 7048/A1/2011, dated 17.4.2012, passed by the District Registrar, Pudukottai, after recording a finding that the said document has been executed by playing fraud and that all the supporting documents in the nature of power, preceding the document of sale, are also tainted.

In this background, further highlighting certain other core facts, Mr. V. Singan would add that Respondent No. 5/C.N. Mathava Rao of Nanganallur claimed a rival title to the property, covered by the above Sale Deed that was executed in favour of Malar, on the basis of an unregistered Will alleged to have been executed by the previous owner-Pramila in his favour on 22.2.2007. In this regard, a Civil Suit in O.S. No. 118 of 2011 is also pending on the file of the Sub-Court, Pudukottai. The fact remains that the alleged Will based on which R-5 claims title to the property is an unregistered Will and further, the Will was not probated as contemplated under Section 141 of the Indian Succession Act and hence, it cannot be admitted at all in evidence. The said Will being a forged document, on account of the rival claim over the Suit property between the Petitioner and R-5, the former filed Crl. O.P. No. 10227 of 2011 impleading the latter as a party and obtained an Order that the Police should not unnecessarily harass him. In addition thereto, the purchaser of the property - Malar also obtained an Order in Crl. O.P. No. 6961 of 2011 on the file of this Court, directing the Police at Pudukottai to register the Complaint that was lodged by her seeking investigation. Besides, Malar also filed W.P. (MD) No. 7655 of 2011 on the file of this Court and the Police, after investigation, found that there is rivalry and dispute between the parties relating to the property involved in the sale, whereupon, this Court disposed of the Writ Petition after recording the statement of the Police that the enquiry relating to the Complaint given by R-5 was dropped in view of the Civil dispute between the parties. While so, due to pressure, the Police attached to the Land Grabbing Prevention Cell at Pudukottai registered a Complaint in Crime No. 4 of 2012 against the Petitioner and others. Consequently, the Petitioner and two others were arrested and remanded to judicial custody and later, they have been released on bail under the Orders of the District Court, Pudukkottai, and rest of the persons against whom FIR was filed have obtained Anticipatory Bail from this Court by Orders passed in Crl. O.P. (MD) No. 2977 of 2012. The persons against whom FIR has been filed have also preferred Crl. O.P. (MD) No. 4369 of 2012 on the file of this Court and the same is also sub judice. From the above factual background, learned Counsel would point out that when the matter relating to the above said property and the title thereto is under serious investigation, the 3rd Respondent/District Registrar, Pudukottai, has erroneously passed the impugned Annulment Order dated 17.4.2012, nullifying the document of sale, dated 6.5.2011, in favour of purchaser-Malar that too without recording any plausible finding that the said document was executed by playing fraud. When the impugned Circular itself does not have any legal basis to stand, the Order of Annulment passed on the strength of the said Circular warrants absolute interference by this Court.

While sharply attacking the impugned Circular, learned Counsel referred to Section 69 of the Tamil Nadu Registration Act (in short ''Act'') which empowers the Inspector General of Registration (in short ''IGR'') to exercise general superintendence over all the registration offices in the territories under the State Government and pointed out that, as prescribed in Sub-section (2) of the said provision, unless any Rule made by the IGR while exercising powers under Section 69 is submitted to the Government for approval and after approval, the same is published in the Official Gazette so as to have effect on publication in the Gazette as if enacted in the Act, no Rule made by him would have any legal sanctity. According to the learned Counsel, admittedly, no such course as outlined in Section 69(2) was adopted and by simply issuing the impugned Circular No. 67, a new Rule is illegally set in motion. It is argued that even though it is said that only based on certain precedents of the Andhra Pradesh High Court and the Apex Court, the Circular came to be passed, yet, the same cannot stand to legal scrutiny for the reason that the manner in which the power has been exercised by the registration department smacks of the ill-motive and hence, both the impugned Circular as well as the consequential Annulment Orders are wholly unsustainable in law. In other words, the Circular neither derives authority and force from any statute nor it came into existence after proper approval by the State Government.

Further assailing the Circular, learned Counsel would submit that it actually confers omnibus powers upon the registration officials to invariably cancel any document on the basis of their own subjective satisfaction without even any appreciation of the objective particulars involved. In its essence and efficacy, the Circular is in the nature of displacing the authority of the Civil and Criminal Courts in adjudicating upon the disputed questions of title between rival Claimants, thereby, it vests the judicial power in an Executive Authority. In that perspective, it over-runs and over-reaches the power of the Civil Court and annuls all the Civil litigations by the single stroke of a pen. Also, it is not channelized by any legal safeguards for the persons whose interests in property are sought to be affected by the executive order to be passed by the officials of the Registration Department.

By way of an illustration, it is stated that if any one, who enters into a bona fide transaction with reference to a property, is alleged by an unscrupulous Complainant, with ulterior motives, as an Accused attempting to grab the property covered by the registered document, the Registration Authorities, by merely taking shelter under the impugned Circular, without even proper adjudication of the dispute with regard to original ownership and tile over the property in question, can annul the registered document. When such issue can be dealt with only by a judicial forum on the basis of oral and documentary evidence, the Circular is in the nature of vesting the powers of Civil and Criminal courts as well as police with one Single Authority i.e., Registration Department, thereby, the unbridled power can be easily misused for the reason that ''absolutely power corrupts absolutely''. Therefore, neither the impugned Circular nor the impugned Annulment Order is sustainable in law.

Drawing support from a Judgment of the Punjab and Haryana High Court in Vaid Family Charitable Trust and Another Vs. State of Haryana and Others, , he would submit that so long as there was no issue regarding whether there was an admission of execution in the manner required by law and the person that executed the document had actually admitted the same, the Registering Authority had no power to deny registration. Moreover, when a document had actually been executed, the Registering Authority has no power to cancel the registration of the Sale Deed.

By placing reliance upon a decision of this Court in Ramaswamy and Nallamanickenpatti Vs. The Inspector General of Registrations, The District Registrar and The Sub Registrar, , it is highlighted that when a document/Sale Deed has been registered on payment of Stamp duty, there is no power for the Registering Authority to retain the document on the ground that the property does not belong to the vendor who executed the Sale Deed. The said case law, he submitted, clearly holds that even if the property does not belong to the vendor and belongs to someone else, it is for the real owner to file a Suit to set aside the said document. Therefore, when that option is always left open to the parties, it is not the business of the Registering Authorities to verify as to whether a vendor has right to sell a property or not.

Reference was also made to the case law in 1. P. Sivakamisundari and M. Shanmugasundari Vs. The Subordinate Registrar, No. II, Sub Registrar Office, Periyakulam, M. Palanisamy (died), P. Dharani rep. by mother and Natural Guardian, P. Pavithra, Rep. by mother and Natural Guardian and P. Nirmala, wherein, this Court adverted to the circumstances under which a Cancellation Deed can be executed by the parties. It was held that if the cancellation of a Deed is preceded with the consent of the vendor and vendee, the Registration Department is justified in registering the Cancellation Deed and if there is no such consent, the cancellation cannot be accepted. In the present case also, there is no consent given by both the parties to the document. It follows that the annulment of the Sale Deed done by the District Registrar by exercising power on the basis of Circular 67 is unlawful. With force, he submitted that when statutory Rules govern the field, prior executive instructions cease to apply. On that basis, he pleaded for allowing the Writ Petition as prayed for by quashing the impugned Circular as well as the impugned Annulment Order.

In the same line, other learned Counsel including Jessi Jeevapriya, M. Saravanan, S. Deenadhayalan, R. Suriyanarayanan, V. Nagendran and others advanced their respective submissions, opposing the Circular in question.

3. Fiercely opposing the above arguments, learned Additional Advocate General would cull out the points by broadly highlighting the scope and objective of the Circular at the first instance. According to him, now-a-days, the land-related crimes are on unprecedented increase and, in many instances, aged persons, poor widows and persons living abroad or far away from the place where they hold/own the property are the main targets of antisocial elements and organized groups involved in land grabbing. After being cheated, they have to fight a long battle before Civil Courts by incurring huge expenditure for no fault of theirs. In some instances, the affected parties, having lost their valuable property, due to depression and agony they undergo, show reluctance to approach Courts, as a result, they sell out the properties to the land grabbers for pittance or just leaving it, ultimately, there is a mushrooming growth of katta-panchayats and in parallel, the land grabbers have a sway over the matter. It is only in that pathetic background, the Registration Department, in order to help the innocent persons/ bona fide parties, who intend to buy and sell properties, and to curb the menace of land-grabbing, have brought into existence the impugned Circular only with a view to dissuade the land grabbers from invading over the properties of the common people. By virtue of the impugned Circular, the Registrars are instructed to strictly deal with the fraudulent transactions by making proper enquiries and to cancel the registration where the inquiries reveal that the registration was based upon fraudulent means. This will effectively arrest registration of manipulated sale, Gift Deeds, etc. and thereby, the land grabbers are prevented from indulging in fraudulent practices in future. Therefore, the present Circular issued purely in the interest of the public in order to root out fraud and impersonation can never be found fault with. In fact, the Circular does not deal with cancellation of any document, rather, it provides a procedure for enquiry into Complaints of fraud and then prescribes for Criminal prosecution as per Section 83 of the Registration Act along with a direction to the Registering Officer to make necessary endorsement with reference to annulment of the document. Such endorsement is provided on the basis of the settled legal principle that once a fraud is unveiled, the action done by the fraud becomes non-est. In other words, any action done by fraud cannot legally exist. Actually, the Circular prescribes three vital steps before ordering annulment of a document and they are,--

(a) the District Registrar has to conduct an enquiry on Complaints of fraudulent registrations;

(b) if fraud is proved, the Registering Officer is directed to file FIR as per Section 83 of the Act; and

(c) the Registering Officer also has to make an endorsement by way of note of annulment in relevant books as per the settled principle of law that once fraud in unraveled, act of fraud become non-est.

According to the learned Additional Advocate General, when detailed safeguards have been outlined to be adhered to as mentioned above before passing any

Annulment Order, no one including the Petitioner can find fault with the objective of the Circular, which takes care of innocent and bona fide buyers/sellers of properties against the invasion of the land grabbers. Therefore, the primary objective behind passing the Circular is to eliminate the handwork of the antisocial elements in land transactions and such elements should not be allowed to make mockery of the legal provisions by cheating and defrauding the innocent people at will, for, the Government and the Department can never be expected to be seen as mute spectators to such unwanted instances. The impugned Circular is also in fine tune with Section 21 of the General Clauses Act which provides that where, by any Central Act or Regulation, a power to issue Notifications, Orders, Rules or By-laws is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction and conditions, if any, to add to, amend, vary or rescind any Notifications, Orders, Rules or By-laws so issued. There cannot be any doubt that the District Registrar performs the functions of Court as per the powers conferred under various Sections of the Registration Act and Rules connected thereto. Therefore, when a registration is found to be tainted with fraud, the Authority concerned, in terms of the above provision, has legal obligation to recall the same.

Referring to Section 82, it is submitted that under the said provision, the Registration Department is given wide powers to impose penalty for making false statements, delivering false copies of translations, false personation and abetment. Section 83 empowers the Registering Officer to launch prosecution for any offence under the Act. While Sections 82 & 82-A consistently deal with 4 types of offences viz., making false statements, delivering false copies of translations, false personation and abetment, if the authorities of the Registration Department, after being satisfied through a detailed enquiry that fraud has been played behind execution of a particular document, not being able to deny registration of the document, such situation would result in mockery of the Acts and Rules, with the result, persons indulging in land grabbing through fraudulent and unlawful means will be emboldened to continue such acts without any sense of fear. Therefore, only to fill up the existing vacuum, the present Circular has been issued in a similar and identical circumstance as prevailed in the case of Chairman, Rajasthan State Road Transport Corporation and Others Vs. Smt. Santosh and Others, , wherein the Supreme Court placed much reliance upon the decision in Vishaka and others Vs. State of Rajasthan and Others, , to stress the point that, in that case law the Supreme Court itself, after noting the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at workplaces, laid down the guidelines and norms specified therein for due observance at all workplaces and other institutions until a legislation is enacted for the purpose. Again, in Vineet Narain and Others Vs. Union of India (UOI) and Another, , it was observed that, while exercising powers under Articles 32 & 142, issuance of Guidelines and directions has become an integral part of Constitutional jurisprudence since such an exercise of powers was absolutely necessary to fill the voids in areas with legislative vacuum. As observed above, when there is a legislative vacuum, there is nothing wrong in filling up the voids by passing necessary Guidelines that too where the issues involve utmost public importance. Thus, the action of the IGR in passing the Circular is absolutely in line with the above ratio laid down by the Apex Court, hence, no fault can be found with the same. It follows that the operative vigor of the benevolent Circular may not be curtailed at the hands of this Court allowing the land-grabbers and anti-social elements to create unwanted and adverse instances. So submitting, he prayed for dismissal of the Writ Petitions seeking to quash the Circular in question.

Mr. P. Ganapthy Subramanian, learned Counsel for R-5 in W.P. (MD) No. 5908 of 2012 and Mr. K.K. Sethil as well as the learned Counsels appearing for other Writ Petitioners, who have filed Writ Petitions seeking relief based on Circular No. 67 so as to cancel the documents registered fraudulently, endorsed the submissions of the learned Additional Advocate General and pleaded that the other Writ Petitioners, who challenge the validity of the Circular, are not justified in doing so, for, ultimately, the present Circular acts as a shield against the fraudulent transactions and any effort to undo the effect of the same would result in unwanted and uncontrollable adverse implications at the hands of land grabbers and antisocial elements and therefore, it would only go contrary to the public interest and public spirit with which the Circular in question came to be issued. So submitting, they pleaded to uphold the validity of the Circular and for issuance of a suitable direction to alleviate their grievance.

Learned Counsel appearing for the Petitioner in the Contempt Petition would submit that though a positive direction was issued in the main Writ Petition concerned to the Registration Department for early disposal of the Appeal filed by the Petitioner with the Department, so far, the Appeal is kept pending, hence, necessary direction may have to be issued.

4. I have carefully considered the rival submissions advanced on either side and meticulously perused the materials available on record.

5. The statistical data regarding the number of Complaints received by the Registration Department in connection with fraudulent registrations through forged and created Sale Deeds undoubtedly exhibits an alarming situation at the hands of land-grabbers and anti-social elements resorting to white-collar crimes looting away valuable landed properties through different novel modes. It is seen that between 3.11.2011 & 18.10.2012, District Registrars have received 3400 Petitions while 2751 Petitions have been received in the Office of the IGR alone. When every day, the Department keeps on receiving a large number of Complains from the affected and duped land owners with a fond hope of getting speedy remedy to their grievance, yet, the Department was unable to provide any relief to the aggrieved persons. Therefore, only with a view to preserve the dignity of the Public Authority and to upkeep the confidence the public reposed in Public Authorities, the Department seemed to have issued the impugned Circular.

The framework behind various provisions in the Act viz., Section 34(3)(a) providing that the Registering Officer shall enquire whether or not the document was executed by the persons by whom it purports to have been executed; Section 35(2) saying that the Registering Officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by the Act, examine any one present in his office; and also Section 82 giving wide powers to impose penalty for making false statements, delivering false copies of translations, false personation and abetment, would clearly show that the Act and Rules already contain clear check valves to restrict registration of documents through fraudulent means and impersonation. Also Rule 55 of the Registration Rules imposes an obligation on the Registering Officer to consider objections raised on the ground that the document is a forged one. Added to that, Rule 162(a) of the Rules prohibits the Registering Authority from registering documents which are illegal and against public policy/public morality. Therefore, the scheme-work behind the Act and Rules itself would show that the prime objective is to arrest fraudulent registrations so as to safeguard the interests of the persons doing bona fide transactions. As rightly pointed out by the learned Additional Advocate General in the course of his arguments that the Circular in question undoubtedly proceeds only in line with the above provisions and, in no way, it allows the Registration Authorities to deal with any issue based on title. This Court also, after a careful reading of the Circular finds a specific recital therein next to Clause (e) to the effect that the Circular 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. It follows that there is no element present in the Circular to suggest that in any way it over-reaches either the judicial power or that of Police, rather, it proceeds in its exclusive track with a sharpened vigor to specifically deal with fraudulent transactions.

6. Now, it is relevant to exclusively deal with the legality of the Circular in question by, at the first instance, tracing the power of the Registrars as well as the Registering Authorities. Section 68 of the Act reads as under:

"68. Power of Registrar to superintend and control Sub-Registrars.--(1) Every Sub-Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose district the office of such Sub-Registrar is situate.

(2) Every Registrar shall have authority to issue (whether on Complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him or in respect of the rectification of any error regarding the book or the office in which any document has been registered".

A plain reading of the above provision shows that every Registrar is authorized to issue "any order" consistent with the Act which he considers in respect of any act or omission of any Sub-Registrar subordinate to him or in respect of the rectification or any error regarding the book or the office in which any document has been registered. In other words, the provision specifically spells out the power of the Registrar himself to issue any order to the Sub-Registrar in respect of ministerial functions and duties to a particular thing consistent with the object of the Act and further, the object of the Act itself being prevention of fraudulent transactions, such powers of the Registrar cannot be curtailed.

Now, reference can be made to Section 34 which is given as under:

"34. Enquiry before registration by Registering Officer.--(1) Subject to the provisions contained in this Part and in Sections 41, 43, 45, 69, 75, 77, 88 & 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorized as aforesaid, appear before the Registering Officer within the time allowed for presentation under Sections 23, 24, 25 & 26:

Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable under Section 25, the document may be registered.

(2) Appearances under sub-section (1) may be simultaneous or at different times.

(3) The Registering Officer shall thereupon--

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document (or they are claiming under the document); and

(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

(4) Any Application for a direction under the Proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this Section applies to copies of Decrees or Orders."

As could be seen, Section 34, in particular sub-section (3)(a) thereof clearly restricts registration of documents through impersonation. Similarly Section 34-A empowers the Registering Officer to enquire and satisfy himself as to the identity of the persons appearing before him for registration. Also, Section 35(3)(a) while classifying three categories, viz.,--

(a) if any person by whom the document purports to be executed denies its execution; or

(b) if any such person appears to the Registering Officer to be a minor, an idiot or a lunatic, or

(c) if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution, provides that in the event of any of the above instances, the Registering Officer shall refuse to register the document as to the persons so denying, appearing or dead. Thus, the above provisions illustrate that the Registering Officer is vested with wide powers either to register or refuse to register the document in different situations as adverted to in the provisions themselves.

7. Now, the issue needs to be answered is as to whether a Registrar, after registration of a document, can annul the same on any of the above mentioned situations. The answer, in my view, is found in Section 68(2) of the Act which emphatically says that every Registrar shall have authority to issue (whether on Complaint or otherwise) any Order consistent with the Act, which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him or in respect of the rectification of any error regarding the book or the office in which any document has been registered. It means the Registrar himself is entitled to issue any Annulment Order as the one issued in the present case independent of any specific Circular in that regard from the IGR.

8. When the power of the Registrar is traced through Section 68, now, the remaining issue needs to be answered is as to whether the IGR has power to issue the impugned Circular in question. In other words, when Section 68, confers specific powers upon the Registrar to issue any order including Annulment Order consistent with the Act which he considers necessary in respect of any document even without any reference to Circular No. 67 issued by the IGR and thereby, he is entitled to directly issue an Annulment Order, whether such power is available to the IGR, who, in the hierarchy, is superior to the Registrar.

Before delving into such issue, it must be pointed out that one may even raise the eye-brows as to how the impugned Annulment Order can be upheld to be a justifiable measure when the same has not been issued invoking the automatic provision under Section 68, as such order is stemming from the impugned Circular 67 issued by the IGR, who, according to the learned Counsel for the Petitioner, has no power under Section 69, to issue the same.

This segment of argument, though appears to be attractive, does not stand to logic and legal analysis for the following reasons:

Of course, Section 69, relating to the power of the IGR to superintend Registration Offices gives him power to frame Rules consistent with the Act from time to time and at the same time, sub-section (2) of the said provision runs to the effect that any such Rule made by him shall be submitted to the State Government for approval and after they have been approved, they shall be published in the Official Gazette and on publication shall have effect as if enacted in the Act. Therefore, one may even say, when there is a reservoir of power available to the Registrar himself under Section 68, to issue any Order consistent with the Act, the Circular issued by the IGR laying down a new set of Rules without prior approval from the Government would have no legal sanctity. In my view, such fathoming is absolutely wrong for various reasons. But, before proceeding to record such reasons, it must be pointed out here that, for the sake of argument, even if this Court by accepting the above fancy argument sets aside both the Circular as well as the Annulment Order with liberty to the Registrar to re-issue similar orders by exercising the power under Section 68, there may not be any ambiguity that the Registrar, who could have passed the Annulment Order de hors the Circular, will be going to re-issue the very same Annulment Order after rectifying the mistake by properly exercising his power under Section 68. But, such course of dismissal would be an empty formality resulting only in wasteful exercise of power.

9. Now, coming to the validity of the Circular in question, at the first instance, it is apt to refer to a Judgment of the Apex Court in Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd., , wherein, the Apex Court while dealing with the inherent power of not only the Court but also statutory tribunal like the Commissions which are conferred power to record evidence by applying certain provisions of the Code of Civil Procedure including the power to enforce attendance of the witnesses and are also given the power to receive evidence on Affidavits, held that the Authorities, be they Constitutional, Statutory or Administrative (and particularly those, who have to decide a lis) possess the power to recall their Judgments or Orders if they are obtained by fraud as Fraud and Justice never dwell together (Fraus et jus nunquam cohabitant). It was further held that Fraud and deceit defend or excuse no man (Fraus et dolus nemini patrocinari debent). When an Order is obtained from Court by playing fraud, it was held that since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the process of Court, the Courts have been held to have inherent power to set aside an Order obtained by fraud practiced upon that Court. Thus, in the above case law, the Supreme Court highlighted by way of a reminder that every authority including Statutory/ Administrative Authority like the Registration Department vests with powers to recall their orders if they have been obtained by fraud. Remarkably, the Registrar is also an authority exercising his powers by applying the provisions of the Civil Procedure Code and such aspect is apparent from Section 75(4) of the Act which is extracted below:

"75. Order by Registrar to register and procedure thereon--

(1).........

(2).........

(3).........

(4) The Registrar may, for the purpose of any enquiry under Section 74, summon and enforce the attendance of witness, and compel them to give evidence, as if

he were a Civil Court and he may also direct by whom the whole or any part of the costs of any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a Suit under the Code of Civil Procedure, 1908 (5 of 1908)."

Therefore, in the light of the above provision and having regard to the above ruling of the Apex Court, the Registrar himself can very well recall or rescind the Order on being satisfied after due enquiry that a particular document was registered after playing fraud. Simultaneously, it goes without saying that, by the impugned Circular, nothing new was introduced, rather, the Head of the Department viz., IGR fortified only the procedural aspects so that the Authorities under him can properly deal with the menace of fraudulent transactions. In this context, it is also beneficial to quote below Section 21 of the General Clauses Act:

"Where, by any Central Act or Regulation, a power to issue Notifications, Orders, Rules, or By-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions, if any, to add to, amend, vary or rescind any Notifications, Orders, Rules or Bylaws so issued."

10. When the above provision under the General Clauses Act specifying that an Authority having power to issue inter alia orders also has power to rescind such order, is read along with the observation of the Apex Court in Indian Bank''s case (Cited supra), to the effect that in India, Quasi-judicial and Administrative Authorities have inherent power to recall their Orders of proceedings at a later point of time if it is shown that such Order was obtained by playing fraud and misrepresentation, one would definitely find no justification in any of the submissions made against the validity of the impugned Circular. As already pointed out above, a careful reading of the Circular in its entirety would show that no new Rule has been introduced therein, rather, by pointing out the observations of the Apex Court in Indian Bank''s case explicating the inherent powers of the Quasi-judicial and Administrative Authorities in dealing with fraudulent transactions and also the powers available to them under the General Clauses Act, the IGR issued instructions laying down certain procedural aspects so that the Registrars already having enormous powers to deal with such transactions can function with more vigil. It cannot be the case of anyone that the IGR issued the Circular laying down a new Rule therein or that, on the basis of the inherent powers vested in him, he had directed the Registrars to pass Annulment Orders in the given circumstances. No such inference can be drawn from the Circular which is rather explanatory in nature as to how the Registrars can better perform the job in curbing the menace of fraud while exercising their wide powers. As rightly pointed out, in fact and in effect, the axis of the Circular is based only one three aspects--

(a) Obligating upon the Registrar to conduct enquiry on Complaints fraudulent registrations;

(b) To launch Criminal prosecution in terms of Section 83, if fraud is proved; and

(c) To make necessary endorsements by way of note of annulment.

Inasmuch as these duties are already obligated to be performed in the Act itself as repeatedly pointed out from the extracted provisions above, terming the Circular as if it gives birth to a new Rule is absolutely a misdirected claim. The edifice upon which different segments of arguments advanced to assail the validity of the Circular is shattered to dust since this Court does not find a single line or content in the Circular even to suggest that the Authorities are instructed therein to go into the issues of title. On the contrary, the following is mentioned as an emphatic clarification:

"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."

Therefore, the prime negative argument advanced to the effect that the impugned Circular usurped the jurisdiction of the Civil/Criminal Courts as well as the Police Department is nothing but a blurry illusion. In such circumstances, the criticism made to the Circular by citing Section 69(2), does not have any legal flavour. When the IGR, in his capacity as the administrative head of the Department, having regard to the fact that the District Registrars possess enormous powers in terms of Section 68 of the Act but yet, the menace of fraudulent transactions at the hands of antisocial elements and land grabbers is unstoppable, merely issued certain instructions to skillfully adopt the procedure in effectively dealing with such fraudulent transactions, unfortunately, such standing instructions in the form of Circular is unfortunately looked at now as a Rule framed under Section 69(2) of the Act. Therefore, the order of annulment passed by the District Registrar cannot be found fault with on the bald ground that it was based on the impugned Circular. For the sake of argument, even if the Circular is supposed to have been passed under Section 69, in line with what is laid down in Chairman, Rajasthan State Road Transport Corporation and Others Vs. Smt. Santosh and Others, , to the effect that simply filling up an existing vacuum till the legislature chooses to make appropriate laws does not amount to taking over the functions of the legislature and therefore, Courts can also issue necessary directions as an interim measure till proper law is enacted by the Legislature, the present Circular, if at all looked at as a Rule, can be safely concluded as an interim measure to fill up the lacunae in dealing with the menace of the fraudulent transactions till a suitable Rule is brought in or inserted in the statute.

11. To sum up,-- (a) The Circular contains effective procedural Guidelines for the Registration Authorities in curbing the menace of fraudulent transactions at the hands of land-grabbers and anti-social elements;

(b) The Circular does not provide any new Rule, rather, it is in the nature of suitable instructions for scrupulous adherence by the Authorities while exercising the wide powers already available;

(c) when the power to annul a document is already available to the Registrar himself, as could be seen from Section 68 of the Act which empowers the said Officer to pass any order consistent with the Act, it can never be construed that such power is derived "for the first time" from the impugned Circular;

(d) even otherwise, in terms of Section 21 of the General Clauses Act, which provides that an Authority having power to issue inter alia Orders also has power to rescind such Order, the Guidelines laid down for the Authorities in the Department to act with concentrated efforts in exclusively dealing with fraudulent transactions cannot be found fault with as the contents of the Circular are fair and just not only to logical reasoning but also judicial analysis here;

(e) the Circular is also in fine tune with the ruling of the Apex Court in Indian Bank''s case (cited supra), wherein it is made explicit that the Authorities, be they Constitutional, Statutory or Administrative, possess the power to recall their Judgments or orders if they are obtained by fraud as fraud and justice never dwell;

(f) for argument sake, even if the Circular is construed to be a Rule as if passed under Section 69 of the Act, in line with the ratio laid down in Chairman, Rajasthan State Road Transport Corporation and Others Vs. Smt. Santosh and Others, , to the effect that simply filling up an existing vacuum till the legislature chooses to make appropriate laws does not amount to taking over the functions of the legislature and therefore, Courts can also issue necessary directions as an interim measure till proper law is enacted by the Legislature, the present Circular also can be safely concluded as an interim measure to fill up the lacunae in dealing with an extraordinary situation due to the menace of fraudulent transactions till a suitable Rule is brought in or inserted in the statute;

(g) Already, this Court in A. Nazaar Vs. Inspector General of Registration, Chennai and Others, , and in an unreported decision rendered in S.P. Vasantha v. The District Registrar Sivaganga, W.P. (MD) No. 16914 of 2012, dated 21.12.2012, while dealing with the very same Circular held in good faith that the Registering Authorities must act in terms of the Circular and in the latter decision, in fact, a positive direction was issued to the Department to dispose of the Appeal of the Petitioner as per the Circular impugned herein; therefore, this Court does not desire to unsettle the things that have been already settled, and

(h) if, contrary to the scheme of the provisions in the Act, it is held that the Registering Authorities have no power to annul an earlier document, such interpretation would lead to perilous implications harming public interest and public policy by allowing the fraudulent transactions to take place lavishly behind the back of innocent land owners. Therefore, this Court, in a larger public interest, is inclined to uphold the validity of the impugned Circular as there is no negative element subsists therein so as to render it otiose in the course of judicial test.

In the light of the foregoing discussion, this Court does not find any illegality or flaw either in the impugned Circular or the Annulment Orders respectively of the IGR and the District Registrars concerned. Consequently, W.P. (MD) Nos. 5908, 3247, 15361, 8003, 13056, 13057, 13516, 13634, 10807, 13889 & 14022/12 & 331, 454, 1946, 1947, 3681, 3682, 9075, 16712, 17057, 3095/13, wherein the validity of the Circular and the Annulment Order is challenged, fail and they are dismissed as devoid of any merit, and W.P. (MD) Nos. 2611, 3450, 3692, 10921, 12204 & 12894/12, 1627, 2027, 2028, 2181, 2811, 3578, 3651, 4101, 10415, 11280, 14835, 15488, 16606 & 17231/13 seeking inquiry based upon the Circular are ordered by making it clear that such inquiry shall have to be made only in terms of the provisions of the Act as well as the Guidelines issued in the Circular and that there should not be any deviation by delving into the issues relating to title. Connected Miscellaneous Petitions stand closed. Inasmuch as the only grievance of the Petitioner in the Contempt Petition is that her Appeal is not decided by the Registration Department despite the direction issued in the main Writ Petition concerned, the Authorities are hereby directed to dispose of the same in accordance with law, within four weeks from the date of receipt of a copy of this Order. With such direction, the Contempt Petition stands disposed of.