

MADRAS HIGH COURT

Bench: Justice B. Pugalendhi

Date of Decision: 20.10.2023

WP(MD)Nos.7814, 10399, 11490 of 2016 & 4936 of 2017
and
WMP(MD)Nos.8107, 8797 of 2016, 3972, 3973 of 2017

WP(MD)No.7814 of 2016:

NVS.Anandan

.. Petitioner

Versus

The Tahsildar, Srirangam Taluk, Tiruchirappalli. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus directing the respondent herein to consider the petitioner's representation dated 28.03.2016.

WP(MD)No.10399 of 2016:

M/s.Shar Theme Park (P) Ltd., Rep. by its Managing Director, NVS.Anandan
.. Petitioner

Versus

1.The Joint Registrar – III,
Registration Department, Trichy.

2.K.Rajendran

3.The Kambarasampettai Panchayat, Rep. by its President, Anthanallur
Taluk, Tiruchirappalli District. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Declaration declaring that the unilateral deed of cancellation dated 08.11.2012 under Document No.3431 of 2012 in cancelling the deed of gift dated 14.06.2012 under D.No.1866 of 2012 in voluntarily assigning the properties in question in favour of the third respondent herein

and the consequential entry of encumbrance on the file of the first respondent herein as null and void, non-est in the eye of law and not binding on the petitioner company.

WP(MD)No.11490 of 2016:

M/s.Shar Theme Park (P) Ltd., Rep. by its Managing Director, NVS.Anandan
.. Petitioner

Versus

1.The District Registrar (Administration),
Registration Department, Tiruchirappalli.

2.The Joint Registrar – III,
Registration Department, Tiruchirappalli. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus directing the first respondent to consider and pass orders on the petitioner's representation dated 09.05.2016 in the light of Circular No.67, Inspector General of Registration, dated 03.11.2011.

WP(MD)No.4936 of 2017:

K.Rajendran .. Petitioner

Versus

1.The Block Development Officer,
East Panchayat
Union, Anthanallur,
Trichy District.

2.The Inspector General,
Registration Department,
No.100, Santhome High Road,
Chennai – 600 028.

3.The District Registrar (Admin),
Registration Department,
Court Buildings,
Trichy – 620 001.

4.The III Joint Registrar,

The III Joint Registrar Office,
Town Hall, Tiruchirappalli – 620 001.

5.The Kambarasampettai Panchayat,
Rep. by its Special Officer,
Anthanallur
Union, Srirangam
Taluk, Trichy
District.

6.M/s.Shar Theme Park (P) Ltd.,
Rep. by its Managing Director
N.V.S.Anandan

7.N.V.S.Anndan

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorari to call for the records on the file of the first respondent dated 17.02.2017 in Na.Ka.No.Aa3/3074/2015 and quash the same as illegal.

Sections, Acts, Rules, and Articles:

Article 226 of the Constitution of India

Section 126 Transfer of Property Act,

Sections 22B, 77A, 77B, 81A and 81B Registration (Tamil Nadu Second Amendment) Act, 2021

Circular No.67 issued by the Inspector General of Registration

Subject: Property Dispute - Validity of unilateral cancellation of a gift deed and applicability of legal provisions.

Headnotes:

Property Dispute - Unilateral cancellation of a gift deed - Validity of unilateral cancellation - Requirement of donor's right to revoke the gift deed with the consent of the donee - Applicability of Section 126 of Transfer of Property Act - Gift deed cancelled by power agent without consent of donee - Unilateral cancellation declared null and void. [Para 7-8]

Registration Act - Circular No.67 issued by Inspector General of Registration - Withdrawal of Circular - Amendment to Registration Act providing for cancellation of registered documents - Reference to Larger Bench regarding applicability of Section 77A of the Act to pre-amendment documents - Disposal of the case with liberty to pursue remedy in civil court - No order as to costs. [Para 9-12]

Referred Cases:

- Sasikala v. Revenue Divisional Officer reported in AIR 2022 Madras 323

- Satya Pal Anand v. State of M.P., [(2016) 10 SCC 767]
- S.M. Hajabakruthen v. The Inspector General of Registration [W.P. (MD)Nos.14546 of 2022, etc., batch dated 27.03.2023]

COMMON ORDER

M/s.Shar Theme Park is a private company registered under the Companies Act and they filed these writ petitions through its Managing Director N.V.S.Anandhan, for the following reliefs:-

(I) WP(MD) No.10399 of 2016 – to cancel the deed of cancellation dated 08.11.2012 (Doc.No.3431/2012), cancelling the gift deed dated 14.06.2012 (Doc.No.1866/2012).

(II) WP(MD) No.11490 of 2016 – to take action as per the Circular No.67 issued by the Inspector General of Registration, dated 03.11.2011.

(III) WP(MD) No.7814 of 2016 – to consider his representation dated 28.03.2016 and not to grant any patta based on the sale deed executed by the Power Agent K. Rajendran.

2. All these writ petitions are pertaining to the lands in S.Nos.1/2A, 1/3A, 1/5, 2/2, 258/1, 258/10, 1/6, 1/1, 1/9, 1/10, 258/2, 1/7, 1/8 to an extent of 16.64 Acres at Kambarasampettai Village in Trichy District. These lands belong to the petitioner Company. The Company, in order to promote these lands, has entered into a Joint Venture Agreement with one K.Rajendran on 07.12.2011. In view of the same, the company has also executed a Power of Attorney dated 08.12.2011 in favour of K.Rajendran. Pursuant to that agreement, the said K.Rajendran also developed these lands and approached the Village Panchayat, obtained permission and also prepared the layout. For the purpose of laying roads and open space reservations in the layout, lands were gifted to the Kambarasampettai Panchayat, through a registered Gift Deed dated 14.06.2012, as Doc.No. 866/2012. Having executed the deed, the said Power Agent K.Rajendran has

cancelled the Gift Deed dated 14.06.2012, by a Deed of Cancellation on 08.11.2012 and also sold the company's properties to third parties including the portion gifted to the Panchayat to various persons. On knowing about this fraud played by the power agent K.Rajendran, the Company cancelled the power of attorney and made a representation to the authorities concerned to cancel the unilateral cancellation deed executed by the power agent with regard to the gift deed dated 14.06.2012 and also for cancelling the subsequent deeds created by K. Rajendran.

3. Pending these writ petitions, the power agent K.Rajendran has also filed a writ petition in WP(MD)No.4936 of 2017 as against the orders passed by the Block Development Officer, dated 17.02.2017, in Na.Ka.Aa. 3/3074/2015, in and by which, the Block Development Officer has made a request to the District Registrar, Trichy and Inspector General of Registration not to register any sale deeds presented by the K. Rajendran and to revoke the cancellation of Gift Deed dated 14.06.2012 in Doc.No. 3431 of 2021.

4. Since all these writ petitions are pertaining to the same issue and the lands, all of them are taken up together and are disposed of by way of this common order.

5. When these writ petitions are taken up for hearing, the learned Counsel for the petitioner Company withdrew WP(MD)No.7814 of 2016 that their representation has already been considered and the District Revenue Officer, Trichy by his order dated 07.08.2021 has cancelled the earlier patta and transferred the patta to the name of the President of Kambarasampettai Panchayat. Therefore, the writ petition in WP(MD) No. 7814 of 2016 is dismissed as withdrawn.

6. The Power Agent K.Rajendran filed the writ petition in WP(MD) No.4936 of 2017 against the orders of the Block Development Officer dated 17.02.2017, requesting the District Registrar, Trichy and Inspector General of Registration not to register any sale deeds presented by K.Rajendran and to revoke the cancellation of Gift Deed dated 14.06.2012 in Doc.No.3431 of 2021. The petitioner K.Rajendran sought for withdrawing this writ petition, by way of his submissions dated 28.02.2023, since both himself and his purchasers accept the gifting of land to the Panchayat in view of the proceedings of the District Revenue Officer, Trichy dated 07.08.2021. Hence this writ petition in WP(MD)No. 4936 of 2017 is also dismissed as withdrawn.

7. The writ petition in WP(MD)No.10399 of 2016 is filed by the Company to declare the unilateral cancellation deed dated 08.11.2012 in Doc.No.3431/2012, cancelling the deed of gift dated 14.06.2012 executed based on the resolution of the Kamarasampettai Panchayat dated 06.06.2012, as null and void. By this gift deed, the power agent has gifted 2,07,000 sq.ft of land for the purpose of open space reservations, parks and roads in favour of the Panchayat. The power agent unilaterally cancelled the deed of gift dated 14.06.2012 without the knowledge of the Panchayat. This unilateral deed of cancellation is liable to be declared as null and void in view of the ratio laid down by the Full Bench of this Court in **Sasikala v. Revenue Divisional Officer** reported in **AIR 2022 Madras 323**, wherein, the Full Bench has held as follows:-

“56. Section 126 of the Transfer of Property Act recognizes the power of revocation where the donor reserves a right to suspend or revoke the gift on happening of any specified event. However, the illustrations clarify that the revocation should be with the assent of the donee and it shall not be at the will of donor as a gift revocable at the mere Will of the donor is void. The Sub-registrar cannot decide whether there was consent for revocation outside the document. If the donor by himself reserves a right to revoke the gift at his Will without the assent by donee, the gift itself is void. Since we are dealing with unilateral cancellation, the power of registration of cancellation or revocation of gift deed cannot be left to the discretion or wisdom of registering authority on facts which are not available or discernible from the deed of gift. When the power of revocation is reserved under the document, it is permissible to the registering officer to accept the document revoking the gift for registration only in cases where the following conditions are satisfied;

(a) There must be an agreement between the donor and donee that on the happening of a specified event which does not depend on the Will of the donor the gift shall be suspended or revoked by the donor.

(b) Such agreement shall be mutual and expressive and seen from the document of gift.

(c) Cases which do not fall under Section 126 of Transfer of Property Act, unless the cancellation of Gift or Settlement is mutual, the registering authority shall not rely upon the self serving statements or recitals in the cancellation deed. For example questioning whether the gift deed was accepted or acted upon cannot be decided by the registering authority for the purpose of cancelling the registration of gift or settlement deed.”

8. In view of the above decision, the Donor must specifically reserve the right to suspend or revoke the Gift Deed with the consent of Donee to attract Section 126 of Transfer of Property Act. There is no such reservation of right to suspend or revoke the Gift Deed by K.Rajendran, with the consent of the Panchayat. Hence, this writ petition in WP(MD)No. 10399 of 2016 is allowed and the deed of cancellation vide Doc.No. 3431 of 2012 dated 08.11.2012 is declared as null and void.

9. The other remaining writ petition in WP(MD)No.11490 of 2016 is for action under Circular No.67, issued by the Inspector General of Registration dated 03.11.2011.

10. The Inspector General of Registration vide his proceedings in letter No.41530/u1/2017 dated 20.10.2017 withdrew Circular No.67 and the District Registrars were also informed to return the petitions received under Circular No.67, subsequent to the decision of Hon'ble Supreme Court in **Satya Pal Anand v. State of M.P., [(2016) 10 SCC 767]**. In the said decision,

the Hon'ble Supreme Court has held that the power to cancel the registration is a substantive matter and in the absence of any express provision on that behalf, it is not open to assume that the Registering Officer would be competent to cancel the registration of the documents in question.

11. Thereafter, for cancellation of registered documents, the State of Tamil Nadu brought an amendment to the Registration Act vide the Registration (Tamil Nadu Second Amendment) Act, 2021. By this amendment, Sections 22B, 77A, 77B, 81A and 81B were inserted in the Registration Act. Section 77A provides the power to the Registrar to cancel the registered documents, if found to be fraudulent. However, this Court in ***S.M. Hajabakruthen v. The Inspector General of Registration [W.P. (MD)Nos.14546 of 2022, etc., batch dated 27.03.2023]*** has referred the issue regarding the applicability of Section 77A of the Act to the documents that were registered prior to its enactment, for consideration by a Larger Bench of this Court.

12. It is reported that the petitioner has already filed a civil suit in O.S.No.258/2018 before the II Additional District Court, Trichy, for similar reliefs. Therefore, this writ petition in WP(MD)No.11490 of 2016 is disposed of with liberty to the petitioner to work out his remedy before the civil Court in the pending suit. The trial Court shall also dispose the suit in O.S.No.258 of 2018 as expeditiously as possible. The writ petitioner is also at liberty to invoke Section 77A upon the outcome of the reference made.

In fine,

- The writ petitions in WP(MD)Nos.7814 of 2016 & 4936 of 2017 are dismissed as withdrawn;

- The writ petition in WP(MD)No.10399 of 2016 is allowed; and
- The writ petition in WP(MD)No.11490 of 2016 is disposed of;
- There shall be no order as to costs.
- All the connected miscellaneous petitions are closed.

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