

Velumoopan, and ors. Vs. the Inspector General of Registration, and ors.

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Court : Chennai

Decided On : Mar-30-2011

Judge : Mr.Justice P.Jyothimani, J.

Acts : [Registration Act, 1908](#) - Section 55(5) ;

Appeal No. : W.P.No.5077 of 2011.

Appellant : Velumoopan, and ors.

Respondent : The Inspector General of Registration, and ors.

Advocate for Def. : Mr.K.Balasubramanian, Adv.

Advocate for Pet/Ap. : Mr.P.Arivudainambi, Adv.

Judgement :

1. The writ petitioners 1 to 6 are represented by Dr.K.Chockalingam. The petitioners have inherited vast area of lands in North Valliyur Village, Radhapuram Taluk, within the Sub-Registration District of Nanguneri, Valliyur Sub-Registration, Tirunelveli Registration and Revenue District from their grandfather, Chinna Palavesa Moopan.

2. The petitioners have executed Power of Attorney on 25.9.2009 registered as document No.2810/4/2009, dated 25.9.2009 on the file of the District Registrar, North Chennai. As per the Power of Attorney, the Power Agent is entitled to deal with the property, including the handling of various cases, and the principals are all

permanent residents of Valliyur Village. Since the power has been registered in the office of the second respondent, he has an obligation to forward the memorandum of power of attorney to the third respondent.

3. The petitioners have made a representation through their Power Agent on 1.10.2010 to the second respondent requesting to comply with the statutory requirement of forwarding the memorandum of power of attorney to the third respondent. The second respondent, after considering the said representation dated 1.10.2010, requested the petitioners to submit a self-stamped cover and the same was handed over to the second respondent on 4.10.2010 itself. However, the second respondent has rejected the claim of the petitioners vide letter dated 18.10.2010 stating that the request of the petitioners is not feasible of compliance and also stating that the power of attorney document was registered prior to 1.11.2009.

4. It was in those circumstances, being aggrieved by the order of the second respondent dated 18.10.2010, the petitioners have moved this Court by filing W.P.No.25355 of 2010 and this Court, by order dated 19.11.2010, while setting aside the impugned order of the second respondent has directed the second respondent to forward the power of attorney registered as document No.2810/4/2009, dated 24.1.2009 to the third respondent within a period of two weeks.

5. Since the said order of this Court was not complied with, the petitioners have sent notice through their Power Agent on 14.2.2011 and in spite of the same, the respondents have refused to comply with the direction given by this Court.

6. As per the circular issued by the first respondent dated 29.10.2009, the third respondent, viz., the Sub Registrar, Valliyur, has an obligation to index the details of the schedule of properties in respect of the power of attorney in Index IV and also issue encumbrance certificate from Index IV. Based on the circular dated 29.10.2009 and the further clarification issued in the circular dated 18.12.2009, the power agent of the petitioners has made a representation on 14.2.2011 to comply with the directives of the first respondent and also sent a telegram on 23.2.2011. Since no action was taken based on the said representation, the petitioners filed

this writ petition for a direction against the third respondent to strictly adhere to the circulars issued by the first respondent dated 29.10.2009 and 18.12.2009, while issuing encumbrance certificate from Index IV in respect S.Nos.1875 to 2124 of North Valliyur Village, Radhapuram Taluk, indexing the details of the subject matter of the power of attorney dated 25.9.2009 in Index IV.

7. In the counter affidavit filed by the respondents, it is stated that as per Section 55(5) of the [Registration Act, 1908](#), the power of attorney being a miscellaneous document is to be registered in Book No.4 and details of the same shall be indexed only in Index IV and not in Index II. However, in the counter affidavit, the respondents have clearly admitted that in paragraph (3) of the circular issued by the first respondent dated 29.10.2009, the first respondent has directed to prepare a software in respect of Index IV which contains various particulars including the description of property. The relevant portion of the counter is as follows:

"6. It is submitted that the Para 3 of the circular issued by 1st respondent in No.42938/C1/2009, dated 29.10.2009 is reproduced as follows:-

3. Index IV... When a power is registered the details of the properties shall also be indexed in Index IV, when the requisite software is ready, the form of Index IV will be revised as under:

1. Name of the Executant
2. Name of the Claimant
3. Description of Property
4. Date of Execution Date of Presentation Date of Registration
5. Volume No.
6. Page No. Document No.
7. Year

While issuing Encumbrance Certificate of for immovable property the parties may also be advised to get an Encumbrance Certificate from Index IV for the same property. This may expose whether the principal has given power for the same property to more than one person to act his agent.

Till such time the software is developed, for entering property details in to Index for Book IV the following procedure shall be adopted

It is submitted that the details of persons mentioned in the power of attorney are entered in the Index IV of the Sub Registrar Office, Valliyur and details of properties could not be entered, as the "software" is not ready.

It is submitted that it has been very clearly stated that till the software is ready to follow the "alternate" as mentioned in Para (3) of the circular.

Therefore, it is submitted that the 3rd respondent has correctly complied with the instructions issued in the circular of the 1st respondent."

8. However, it is stated that while in respect of Book No.1 the software system has been completely developed and the encumbrance certificate in respect of Book No.1 would contain the particulars relating to the properties and other details, in respect of Index IV since the software system is yet to be developed, the department is unable to furnish encumbrance certificate with all particulars relating to the properties and as soon as the software system is developed, it would provide particulars relating to properties also from Index IV.

9. On the face of the earlier direction given by this Court dated 19.11.2010, there is a legal obligation on the part of the third respondent to provide the encumbrance certificate in respect of the power of attorney document No.2810/4/2009, dated 25.9.2009 with all particulars, including the description of the property. The circular issued by the first respondent dated 29.10.2009 in paragraph (3) which relates to Index IV, enumerated above, makes it abundantly clear that when the power of attorney is registered, being a miscellaneous document to be categorised in Book No.4 in Index IV, the particulars about the description of immovable property must also be stated in the encumbrance certificate. In fact, in the circular issued by the

first respondent, the first respondent has given a solution that till the software system in respect of the Book No.4 is developed, a procedure has to be followed, which in fact contemplates that the information regarding the particulars of the property has to be furnished manually by providing the survey numbers, sub division numbers, etc.

10. Therefore, in the light of the categoric direction given by the first respondent, which is certainly binding on respondents 2 and 3, it is not open to respondents 2 and 3 to say that till the software system in respect of Book No.4 and Index IV is developed, the encumbrance certificate relating to miscellaneous documents, including the power of attorney, shall not contain the description of the property.

11. It is also admitted that the software system has been completely developed in respect of Book No.1, which relates to documents like sale deeds, etc., which contains description of property, etc. Therefore, till the software system is developed, it is incumbent on the part of respondents 2 and 3 to furnish particulars while issuing encumbrance certificates in respect of Book No.4, Index IV, by inscribing the description of the property manually. That is relevant because the very object of the circular is to see that the innocent purchasers are protected. In fact, the purchasers have got a duty to investigate about the rights of the vendor and have every right to know as to the nature of the power of attorney and the property in respect of which the power has been conferred and other minute details so as to see that they are protected. Therefore, it is not an excuse for the respondents to say that till software system is developed the particulars relating to description of property regarding Index IV documents will not be furnished and that is also not the idea of the circular issued by the first respondent. In such view of the matter, the writ petition stands disposed of with the following directions:

(i) in respect of the particulars sought by the petitioners by way of encumbrance certificate regarding the power of attorney document, the third respondent shall furnish the same manually to the petitioners along with the description of property, as it is seen in paragraph (3) of the circular of the first respondent dated 29.10.2009 within eight weeks from the date of receipt of a copy of this order;

(ii) it is made clear that the respondents shall develop the software system in respect of Index IV by inscribing the description of property and other particulars, as contemplated under the circular, at the earliest point of time in order to see that the circular is implemented in letter and spirit;

(iii) as it is found in the information received under the Right to Information Act, in respect of Book No.1 all transactions in respect of power of attorney prior to 1.11.2009 shall be proceeded in accordance with law.No costs. Consequently, M.P.No.1 of 2011 is closed.

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