

IN THE HIGH COURT OF BOMBAY AT GOA**LD-VC-CW-373-2020**

Mr. Satish R. Nagure

... Petitioner

Versus

The Civil Registrar cum
Sub Registrar & Notary
Exofficio & Ors.

... Respondents

Shri S.M. Walwaikar, Advocate for the Petitioner.

Ms Maria Correia, Additional Government Advocate for the Respondents.

Coram:- DAMA SESHADRI NAIDU, J.**Date:- 11 DECEMBER 2020****ORAL ORDER:**

The petitioner wanted to purchase a piece of property: so he wanted to investigate the title. For that purpose, he applied to the first respondent for the certified copies of the registered sale deed that conveyed the property. It was on 09.11.2020. But, in a couple of days, on 11.11.2020, the first respondent refused to provide the certified copy. It was on the premise that "the concerned deed is under investigation of regarding the genuineness of said deed available in the office record".

2. Then, the petitioner applied to the second respondent—the higher authority—reiterating the same request. But that authority, according to the petitioner, has not responded. Under those circumstances, the petitioner has come to this Court.

3. Heard Shri S.M. Walwaikar, the learned counsel for the petitioner; and Ms M. Correia, the learned Additional Government Advocate for the respondents.

4. After hearing both the parties, I suggested to the learned AGA whether the registering authorities would give the certified copy with an

endorsement that the document is being investigated. The learned wanted the matter passed over. After lunch, the learned AGA, on instructions, has submitted that there is no provision in the Registration Act under which the first respondent would provide a certified copy with such an endorsement. According to her, any certified copy enjoys presumption under the Evidence Act as to the contents of the original deed, and anyone can rely on it. Besides, once the genuineness of the sale deed has been in doubt, no such certified copy can be provided even with the endorsement as to the ongoing investigation.

5. To begin with, before the arguments began, I queried with the learned AGA whether the respondents wanted to place on record their defence. But the learned AGA has assured the Court that she could articulate the respondents' objections and that obviates the formality of filing any counter. Indeed, I appreciate the learned AGA's eagerness to assist the Court in its disposing of the matters without delay.

6. Now, let us focus on the merits. The first respondent's endorsement reads thus: "the concerned deed is under investigation of regarding the genuineness of said deed available in the office record".

7. In the first place, this Court is unsure about the nature of investigation the respondents are said to be carrying out. True, the learned AGA A informs me that the genuineness of the sale deed is in doubt. This assertion can be looked at in two ways. If there is any malpractice or fraud played by either party to the Sale Deed, it affects the transferee's title. But that is not the registering authorities' concern. The Indian Stamp Act serves a fiscal purpose; the Registration Act serves a social purpose: putting the unsuspecting general public on notice about the transactions and conveyances, for example, of immovable property. The Registration Act does not cloth the authorities with the right of investigating title before their registering the conveyance.

8. On the other hand, let us assume that there was any misrepresentation by either party or both parties to the sale deed before Registering Authorities. And based on that misrepresentation, those authorities registered the Sale Deed, which otherwise falls foul of the statutory mandate. In that event, the authorities can inquire into any such allegation. But here I find no material supplied by the respondents about the nature of the investigation.

9. Right to the property once was a fundamental right under Articles 19 (1) (f) and 31 of the Constitution of India. Through the 44th Amendment to the Constitution, Parliament deleted Article 19 (1) (f) and a part of Article 31. In fact, Article 31 (1), a fundamental right, was resurrected through the same Amendment as Article 300-A, a constitutional right. Now, through judicial interpretation, the Constitutional Courts have held that property right is a human right as well. Let us not forget 'registration' is a ministerial act, whereas the declaration of or ascertainment of the title is a judicial act.

10. Besides, transferability of the property is an essential facet of right to property. Unless statute permits, no person can be prevented from selling or purchasing a property. Then comes the corollary: the right to sell or the right to purchase a piece of property takes into its fold a prospective purchaser's right to investigate the title, for the common law casts a burden on him—caveat emptor.

11. Let us assume that the petitioner, on verifying the title in the manner he feels fit, and decides to purchase the property. That hardly affects the registering authorities' right to proceed with whatever investigation or inquiry they have undertaken into the "genuineness" of the sale deed.

12. Nor can the Respondents Authorities show me any provision in the Registration Act which gives them the right to deny certified copy to any person merely on the premise that they entertain a suspicion about

the genuineness of the Sale Deed. Every official, every institution, including the courts, have their existential justification so long as they serve the public, We the People that gave unto themselves the Constitution, which liberates the people and which limits everyone and everything else. Serving the people's needs is the rule; refusing to do so is an exception. And that exception must have statutory backing.

13. Under these circumstances, I allow the Writ Petition. As a result, I set aside the first respondent's communication, dt.11.09.2020 (Annexure P2). Consequently, in two weeks after a copy of this judgment is served, the first respondent will provide a certified copy of the Sale Deed with an endorsement describing the nature of the inquiry that has been undertaken by the authorities concerning the same and with a disclaimer, too, if the authorities desire.

With these observations, I dispose of the Writ Petition.

DAMA SESHADRI NAIDU, J.

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