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MADRAS HIGH COURT STRIKES DOWN SECTION 77-A OF THE REGISTRATION ACT, 1908 AS APPLICABLE TO TAMIL NADU

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Introduction

- A Division Bench of the Madras High Court (Court) in a reference arising out of a batch of writ petitions examined the constitutional validity of Section 77-A of the Registration Act, 1908 as applicable to Tamil Nadu (Act), which was introduced by the Registration [Tamil Nadu Second Amendment Act] 2021 (Amendment).
- Section 77-A of the Act empowered the Registrar to cancel the registration of documents after issuing notice to the parties, if the documents were registered contrary to the provisions of either Section 22-A or 22-B of the Act. Section 22-A of the Act prohibited the registration of instruments without prior sanction from certain State and/ or statutory authorities. Section 22-B empowered the Registrar to refuse to register documents which were either forged or related to a transaction which is prohibited under any Central or State legislation.
- After the enactment of Section 77-A, several litigants filed writ petitions before the Court challenging show-cause notices received by them from the Registrar, seeking an explanation as to why the documents registered by them ought not to be cancelled. Conversely, many litigants who had filed petitions before the Registrar seeking cancellation of registered instruments, also filed writ petitions before the Court seeking directions under Section 77-A for consideration of their representations to the Registrar to give effect to the cancellations sought.
- The reference arose on account of conflicting decisions by Single Judges of the Court, dealing with the issue of whether the provision would have prospective or retrospective applicability, and whether the same could be invoked in respect of documents registered prior to the date of its enactment.

ISSUES:

Amongst the 8 issues framed by the Court the most relevant ones were:

1. Whether judicial power can be delegated to Executive Authorities?
2. Whether Section 22-A confers unbridled power to Registrars to cancel registered documents?
3. Whether Section 77-A is liable to be struck down for delegating judicial power to decide complicated issues of fact and law to the executive?
4. Whether Section 77-A is contrary to the scheme of the Act?
5. Whether Section 77-A can be read down to save it from constitutional invalidity?

ANALYSIS:

- The Court held that quasi-judicial power can be entrusted to an executive authority with certain limitations. Reliance was placed upon *Jayanthilal Amratlal Shodhan v F.N.Rana*, Commissioner, Baroda Division, Baroda and others, AIR 1964 SC 648, wherein, the Supreme Court observed that the Constitution recognised the entrustment of legislative and judicial functions to the Executive. Further reliance was placed upon *Veena Singh v District Registrar*, (2022) 7 SCC 1 to hold that even prior to Section 77-A, the Registrar's quasi-judicial powers to conduct enquiries under Section 74 of the Act have been recognized by the Supreme Court. As such, the Court did not find fault with the premise that Registrar had been vested with quasi – judicial powers.
- The Court thereafter reviewed the ambit of Section 22-A and held that as Section 22-A empowered Registrars to adjudicate mixed questions of law and fact, an unequivocally judicial power, and that it would be ultra vires the Constitution inasmuch as it allowed executive functionaries to decide substantive rights of parties without any limitations. The Court was of the view that this would be contrary to the principles of independence of the Judiciary as enshrined in the Constitution. The Court held that the Act was merely procedural and not substantive and thus could not vest such power in a purely executive authority.
- The Court further held that Section 77-A was unconstitutional since Section 77A delegated judicial power to decide substantial rights of parties involving complicated issues on facts and law to the executive. The Court was of the view that while there may be certain bona fide cases wherein the Registrar could save a party from having to approach the courts for relief, the risk that was posed by vesting such a power in the hands of the executive would not outweigh the benefits. The Court was of the view that if Section 77-A was left on the statute book it would have serious legal implications for parties and affect their rights in respect of the transactions entered into under registered instruments.
- The Court held that the Amendment introducing Section 77-A was beyond the scope, object and purpose of the Act, inasmuch as the Act is only a procedural law to regulate the documents for registration and the formalities to be observed while registering documents and is not a substantive law which empowers the sub-registrar, or the Registrar to hold an enquiry as to the rights of an executant to a document or invalidate the transactions thereunder.
- The Court was also of the view that there was no manner in which Section 77-A could have been read down so as to save it from being declared as unconstitutional.

Conclusion

The Court followed well established principles that the Act only governs documents, and not transactions embodied therein. The Court reiterated that essential judicial functions which involve adjudicating complicated questions of fact and law, and which affect the substantive rights of parties are best left to the judiciary to be decided under law, and not to executive authorities guided by their own internal circulars who may not have requisite legal training or competence to decide such issues.

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