

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.Nos.10566 of 2013 and 7772 of 2014

W.P.No.10566 of 2013

1. Ibrahim
2. K.M.Sahabudeen .. Petitioners

Versus

1. The District Registrar,
Registration Department,
Coimbatore.
2. The Commissioner,
Hindu Religious Charitable and Endowment Department,
Chennai - 600 034.
3. The Assistant Commissioner,
Hindu Religious Charitable and Endowment Department,
Coimbatore.
4. The Executive Officer,
Arulmigu Sangameswarar Thirukovil,
Fort, Coimbatore.

5. A.Balaji
6. J.Premchand ** .. Respondents

** R5 and R6 impleaded as per order dated
22.11.2013 in M.P.No.2/13 in W.P.No.10566/13

W.P.No.7772 of 2014

1. R.Ranjini
2. N.Ravi .. Petitioners

Vs.

1. The District Registrar,
Registration Department,
Coimbatore.
 2. The Commissioner,
Hindu Religious Charitable and Endowment Department,
Chennai - 600 034.
 3. The Assistant Commissioner,
Hindu Religious Charitable and Endowment Department,
Coimbatore.
 4. The Executive Officer,
Arulmigu Sangameswarar Thirukovil,
Fort, Coimbatore - 641 001.
 5. Lakshmi Malvey
 6. N.Vasanthi
 7. N.Sasikala *** .. Respondents
- *** R5 to R7 impleaded as per order dated
26.08.2014 in M.P.No.3/14 in W.P.No.7772/14

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PRAYER in W.P.No.10566 of 2013 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari to call for the records of the third respondent dated 30.04.2012 under his proceedings Na.Ka.No.809/2012-1/A7 and quash the same insofar as the petitioner's properties in S.F.Nos.155B, 157B, 164B, 165B and 165/2 and G.S.Nos.241/2, 241/3, 242/1, 155, 167/1, 167/3 and 171 in Anupparpalayam Village of Coimbatore District.

PRAYER in W.P.No.7772 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari to call for the records of the respondent dated 30.04.2012 under his proceedings Na.Ka.No.809/2012-1/A-7 and quash the same insofar as the property situated in Door No.80, Big Bazaar Street, Coimbatore, Coimbatore District.

* * *

For Petitioners in :	Mr.M.S.Krishnan, Senior Counsel
W.P.No.10566/13	for M/s.Sarvabhauman Associates
For Petitioners in :	Mr.S.Venkatachalapathy,
W.P.No.7772/14	Senior Counsel for M/s.G.Prabhakar
For Respondents :	Mr.S.Kandasamy
	Special Govt. Pleader (HR & CE)
	for RR 1 to 4 in both W.Ps.

Mr.D.S.Phillip for RR 5 and 6 in
W.P.No.10566/13 and
RR 5 to 7 in W.P.No.7772/14

C O M M O N O R D E R

Heard Mr.S.Venkatachalapathy, learned Senior Counsel appearing for the petitioners in W.P.No.7772/2014, Mr.S.Krishnan, learned Senior Counsel appearing for the petitioners in W.P.No.10566/2013, Mr.S.Kandasamy, learned Special Government Pleader appearing for the respondents 1 to 4 in both the petitions and Mr.D.S.Phillip, learned counsel for the private respondents.

2. The prayers sought for in both these writ petitions are identical and the petitioners seek for issuance of writ of certiorari to quash the order passed by the third respondent dated 30.04.2012, by which a direction has been issued to the registration department / first respondent not to entertain any document for registration in respect of the properties in question.

3. First and foremost, it is to be pointed out that the proceedings has been issued invoking the power under Section 22-A of the Registration Act. The said provision has been set aside as ultra vires. Therefore, the respondents 1 to 4 cannot rely upon Section 22-A of the Registration Act. Even the subsequently introduced provision under Section 22-A of the Act with certain other amendments has not been notified as on date. Therefore, to that extent, the impugned order is liable to be quashed.

4. With regard to the other averments, it is submitted that the property does not belong to a religious endowment. In this regard, reliance has been made to the order dated 16.09.1930, wherein, the petition to frame a scheme was dismissed stating that there is no evidence to trace the fund which have been specifically set apart for the purpose of creating an endowment. Be it as it may, the documents in question in both the writ petitions have already been registered and released and therefore, nothing survives in these writ petitions.

5. In the light of the above fact that already the documents have been registered and released and Section 22-A of the Registration Act has also been struck down, the only one factor to be noted is that between the petitioner and the private respondents there were inter se disputes and certain suits were also pending including W.P.No.8123 and 7215 of 2011 and those writ petitions were disposed of by this Court by a common order dated 29.06.2011 and the operative portion of the common order in those writ petitions are as follows :

"11. (i) the writ petition in W.P.No.8123 of 2011 stands allowed with a direction to the second respondent/Registering Authority to register the document and return the same to the petitioner therein within two weeks from the date of receipt of a copy of this order ;
(ii) the writ petition in W.P.No.7215 of 2011 stands disposed of and the interim order granted shall stand vacated ; and
(iii) it is made clear that the Civil Court shall decide the dispute between the parties independently, without being influenced by the observations made by this Court."

6. From the above direction, it is clear that the registration and return of the documents would have no effect on the civil proceedings, which are pending and the civil court was directed to decide the issues between the parties. It is seen that the respondents 5 to 7 in W.P.No.7772 of 2014 have filed O.S.No.368 of 2014 on the file of the III Additional District Court, Coimbatore, for partition, permanent injunction and for other consequential reliefs.

7. In the light of the fact that the documents in question, which are subject matter of these writ petitions have already registered , O.S.No.368 of 2014 has been filed subsequently, it is for the plaintiffs to prove their title over the property and raise all contentions before the Civil Court and needless to state that the civil court shall decide the matter on merits and in accordance with law by taking into consideration, the oral and documentary evidence placed before it.

8. The learned Special Government Pleader appearing for the official respondents submitted that as per the recitals of the document dated 16.07.1883, there was no right for any purchasers to seek title over the property and the petitioners should not alienate the properties and the collusive transactions would have no bearing on the charity and status of the property.

9. The learned Special Government Pleader referred to the Dharma Sasanam dated 16.07.1883 which was extracted in the counter-affidavit. Further, he placed reliance on the decision of the Supreme Court in A.S.Gopalakrishnan Vs. Cochin Devaswom Board and others reported in 2007 (7) SCC 402, and submitted that the Government and the Members or the Trustees of Board and Devotees should be vigilant to prevent any encroachment of the temple properties and it is also the duty of the Courts to protect and safeguard of the properties of religious and charitable institutions from wrongful claim of misappropriation.

10. There can be no quarrel to the legal proposition. But in the instant cases, as disputes were raised by the petitioners by placing reliance on the order dated 16.09.1930 and contending that there is no endowment at all and the private respondents would partially support the plea of the petitioners in this respect contending that all the properties do not form part of any endowment, this Court is of the view that these issues cannot be adjudicated in these writ petitions, since this Court is fully convinced that the impugned order is without jurisdiction in the light of the fact that the same has been passed invoking the power under Section 22-A of the Registration Act, which has been set aside and nothing survives in these writ petitions and the impugned order is liable to be quashed on this ground.

11. It is also submitted that a Fit Person has been appointed to the Temple and he has also taken charge of the temple and in this regard, the learned Special Government Pleader referred to the order of appointment dated 21.04.2014 and the report of the Fit Person dated 28.04.2014. If the Fit Person has taken over the charge of the temple, it is also open to the Fit Person to exercise the powers conferred under the Act in the manner known to law.

12. With the above observations, these writ petitions are allowed and the impugned orders are quashed leaving it open to the petitioner to agitate their claims before the civil court in the manner known to law. Equally it is open to the HR & CE Department to work out their right in the manner known to law. As observed above, the civil court shall decide the issues between the parties in accordance with law without being influenced by the observations made in this order. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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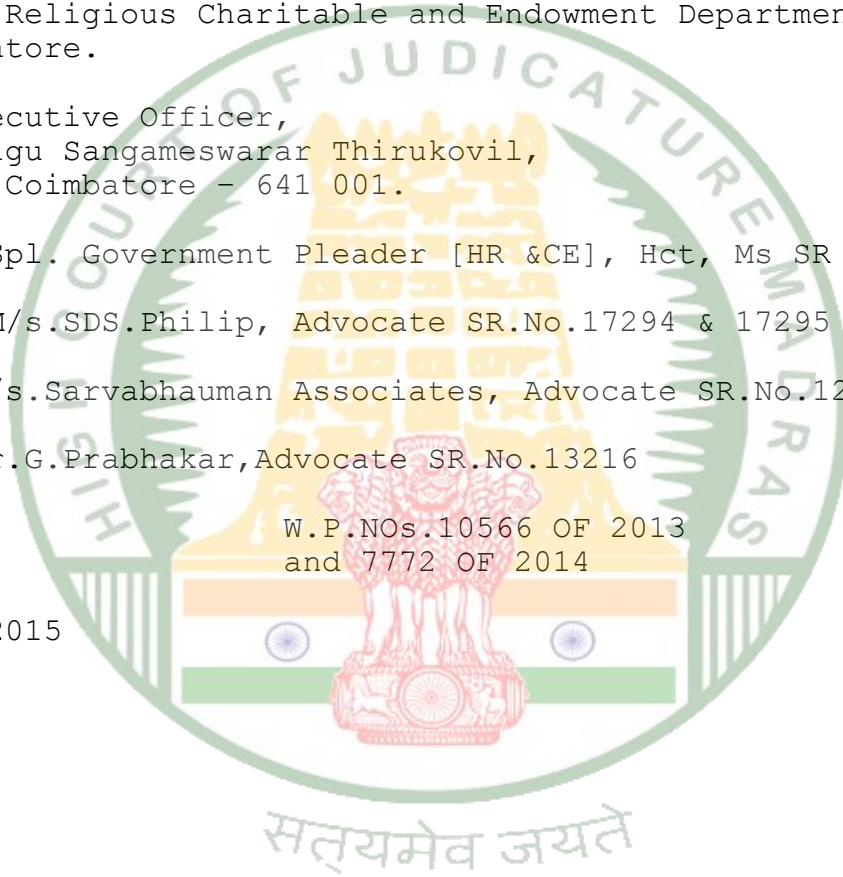
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To

1. The District Registrar,
Registration Department,
Coimbatore.
 2. The Commissioner,
Hindu Religious Charitable and Endowment Department,
Chennai - 600 034.
 3. The Assistant Commissioner,
Hindu Religious Charitable and Endowment Department,
Coimbatore.
 4. The Executive Officer,
Arulmigu Sangameswarar Thirukovil,
Fort, Coimbatore - 641 001.
- +2CCs to Spl. Government Pleader [HR &CE], Hct, Ms SR 12918, 12917
- +2ccs to M/s.SDS.Philip, Advocate SR.No.17294 & 17295
- +1cc to M/s.Sarvabhauman Associates, Advocate SR.No.12664
- +1cc to Mr.G.Prabhakar, Advocate SR.No.13216

W.P.NOs.10566 OF 2013
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