

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.NO.2189 OF 2014
and M.P.NO.1 OF 2014

1. K.M.Balusamy
2. P.Senthil Kumar

.. Petitioners

Vs

1. The Tamil Nadu Wakf Board
Rep. by its Secretary,
Jhaffar Siran Street,
Mannadi, Chennai - 600 001.
2. Jammia Mosque
rep. by its Muttawalli
Hosur, Krishnagiri District.
3. The Inspector of Wakfs,
Office of the Superintendent of Wakfs,
4-A, Tippu Sultan Complex, 1st Agraharam,
Salem - 636 001.
4. The Inspector of Wakfs,
Sengalthope Darga Complex,
Syed Basha Nagar, Krishnagiri.
5. The District Registrar,
Krishnagiri.
6. The Sub Registrar,
Kelamangalam,
Denginikotta Taluk,
Krishnagiri District.

.. Respondents

* * *

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the entire records relating to the proceedings in GS.92/95/W.I./Slm/K.Ki/Regn./11, dated 03.08.2011 from the file of the third respondent, the consequential proceedings in G.S.No.NIL/Dharmapuri/2012/Va.Aa K.Giri, dated 14.11.2012 from the file of the fourth respondent and the further consequential proceedings in Mea.Ku.No.217/2013, dated nil from the file of the

sixth respondent, quash the same and further direct the 6th respondent to receive and register the sale deed dated 25.09.2013 executed by the first petitioner in favour of the second petitioner in respect of an extent of 1800 sq.ft. of house site in the lay out "Abirami Garden" in S.No.182/2C1, 183/1A and 189/1 of Mathigiri Village, House Taluk, Krishnagiri District, within the Registration District of Krishnagiri and Sub Registration District of Kelamangalam, Krishnagiri District on representation, without insisting for any no objection certificate from the Wakf Board, return the same after registration.

* * *

For Petitioners : Mr.D.Shivakumaran

For Respondents : Mr.V.Lakshminarayanan,
Standing Counsel for R1

Mr.S.Sadasharam for R2

Mr.R.Vijayakumar,
Additional Govt. Pleader for RR5&6
No Appearance for RR 3 and 4

O R D E R

Heard Mr.D.Shivakumaran, learned counsel appearing for the petitioners, Mr.V.Lakshminarayanan, learned Standing Counsel for the first respondent, Mr.S.Sadasharam, learned counsel for the second respondent and Mr.R.Vijayakumar, learned Additional Government Pleader for the fifth and sixth respondents.

2. The order impugned in this writ petition is the proceedings of the Wakf Inspector dated 03.08.2011 and consequential communications dated 14.11.2012 of the fourth respondent and the sixth respondent.

3. This Court has not ventured into the factual allegations in this writ petition nor expressed any opinion on the stand taken by the Wakf Board or the second respondent Mosque. The only ground, on which, this Court constrained to interfere with the impugned order is on the ground that the impugned order has been passed invoking Section 22-A of the Registration Act, 2008 and G.O.Ms.No.150, Commercial Taxes Department, dated 22.09.2000.

4. It is not in dispute that Section 22-A of the Registration Act has been held to be ultra virus by the Hon'ble Apex Court in State of Rajasthan V. Basant Nahata reported in (2005) 12 SCC 77. So far as the validity of G.O.Ms.No.150, Commercial Taxes, dated 22.09.2000 is concerned, the Hon'ble Division Bench of this Court in the case of Captain Dr.R.Bellie V. The Sub-Registrar, Registration Office, Sulur, Coimbatore District and others, reported

in 2007 (3) CTC 513, held that no statutory rule or other provision has made by the Legislature of the State of Tamil Nadu defining public policy and therefore, G.O.Ms.No.150 was held to be without statutory force. Pursuant to which, the Government also passed another Government Order with regard to resending the earlier Government Order in G.O.Ms.No.150. Therefore, the reliance placed on Section 22-A of the Registration Act and G.O.Ms.No.150 for passing the impugned order is incorrect and it cannot be done any longer in the light of the legal position, as stated above. On this technical ground alone, the impugned order is quashed. However, liberty is granted to the respondents 1 to 4 to pass appropriate orders in accordance with law. It is made clear that since this Court has quashed the order on this technical ground, it does not mean that automatically the petitioner is entitled for seeking the registration of the document, since this court granted liberty to the respondents 1 to 4 to pass appropriate orders in accordance with law.

5. This writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

gg

s/d-
Assistant Registrar(V)

True Copy

Sub-Assistant Registrar

To

1. The Secretary
Tamil Nadu Wakf Board
Jhaffar Siran Street,
Mannadi, Chennai - 600 001.
2. The Muttawalli
Jammia Mosque
Hosur, Krishnagiri District.
3. The Inspector of Wakfs,
Office of the Superintendent of Wakfs,
4-A, Tippu Sultan Complex, 1st Agraharam,
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5. The District Registrar,
Krishnagiri.

6. The Sub Registrar,
Kelamangalam,
Denginikotta Taluk,
Krishnagiri District.

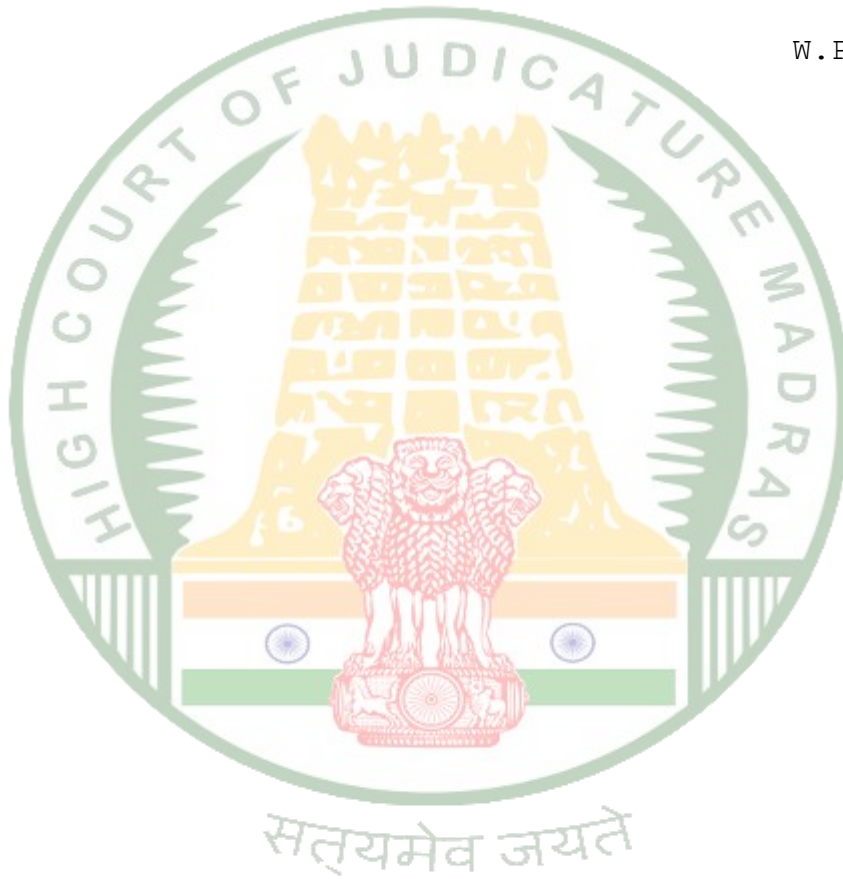
+ 1 cc to Mr.S.Sadasharam, Advocate, SR 18136

+ 1 cc to Govt.Pleader Sr 18405

+ 1 cc to Mr.D.Shivakumaran, Advocate SR 18705

msm(co)
prk23/4

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