



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 06.02.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

WEB COPY

W.P. (MD) No.6355 of 2014
and
M.P (MD) Nos.1 and 2 of 2014

Chelladurai

... Petitioner

Vs.

1.The Sub Registrar,
Illuppur,
Illuppur Taluk,
Pudukkottai District.

2.Sri Ramanuja Koodam,
Rep.by its Trustee Viz G.Krishnamoorthy
Naidu Street,
Illuppur,
Illuppur Post,
Pudukkottai District.

3.The Assistant Commissioner (HR & CE),
Hindu Religious Charitable Endowment Board Officer,
Near Municipality,
Pudukkottai. ... Respondents
(R3 impleaded vide order dated 1/3/16 is MP.(MD).1/15)

Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 1st respondent in his proceedings in No.121/09 dated 13.5.2013 and quash the same as illegal and consequently to direct the 1st respondent to register and release the sale deed dated 14.6.2010 pending on his file vide pending document No.7 of 2010 within the period that may be stipulated by this Court.

For Petitioner : Mr.M.Ajmal Khan
Senior Counsel for
M/s Ajmal Associates

For Respondents : Mr.T.S.Mohammed Mohideen
Addl. Govt Pleader (for R1)
Mr.K.Anand (for R2)
Mr.A.Muthukaruppan
Addl. Govt Pleader (for R3)

**ORDER**

The petitioner is aggrieved against the order passed by the first respondent, dated 13.05.2013, wherein and whereby the petitioner was informed that the sale deed in Document No.7/10 presented by the petitioner for registration, cannot be registered in the absence of 'No Objection Certificate' issued by the H.R and C.E., Department. Consequently, the petitioner also prayed for release of the said sale deed dated 14.06.2010.

2.The case of the petitioner in short is as follows:-

The subject matter property belongs to the second respondent private trust from whom, the petitioner purchased the same for valid consideration by way of a sale deed, dated 14.06.2010. The second respondent sold the said property to the petitioner for the purpose of improving certain religious activities. He presented the sale deed for registration before the first respondent and paid necessary registration and other fees. The petitioner also paid necessary stamp duty. However, the first respondent did not register the document and kept the same pending as Document No.7/10. When the petitioner made query under the Right to Information Act as to why it was not registered, he was informed that the property belongs to the H.R. & C.E., Department and thus, registration of the sale deed was denied as per Section 22(A) of the Tamil Nadu Registration (Amendment Act), 2009. The petitioner filed writ petition in W.P(MD)No.9997 of 2010, seeking to quash the information furnished under the Right to Information Act. However, the said writ petition was dismissed as withdrawn with liberty to file a fresh writ petition on the very same cause of action. Accordingly, the petitioner filed W.P(MD)No.15576 of 2012, seeking for a Mandamus to register and release the sale deed, dated 14.06.2010. In the said writ petition, an order came to be passed on 09.04.2013 directing the first respondent herein to consider the document presented by the petitioner in accordance with the provisions of the Act and in case, the Registrar forms an opinion that the document cannot be registered, he has to pass a speaking order so as to enable the petitioner to take up the matter in accordance with the provisions of the Act. Consequent upon such order, the present impugned proceedings came to be issued.

3.The first respondent filed a counter affidavit, wherein it is contended that as per the letter issued by the Assistant Commissioner, H.R and C.E., Department, Pudukkottai, dated 09.02.2010, the second respondent trust comes under the H.R and C.E., Department and thus, as per Section 22(A) of the Tamil Nadu Registration (Amendment Act) 2009, there is a bar for registering the document.



4.The third respondent filed a separate counter affidavit, wherein it is stated as follows:-

The property under the subject matter sale belongs to the H.R and C.E., Department and there is a bar to register the property under Section 22(A) of the Tamil Nadu Registration (Amendment Act) 2 of 2009 by the private individual. The Adangal Register shows that the property belongs to the Bajanai Madam in view of a Will executed by one Sudharsana Ramanuja Dasar. As per the recital of the said Will, the object of the second respondent mutt is to supply tamarind to Madhurakavi Nandhavanam, which is a "Kattalai" attached to Sri Ranganathaswamy Temple in Srirangam. Hence, it is a service to the religious institution and thus, it is a specific endowment. The above-said fact was brought to the notice of the H.R and C.E., Department only now and the Department is taking necessary action to bring the institution under the administration of the Department.

5.The second respondent filed a counter affidavit, wherein it is stated that the subject matter property was maintained by the second respondent trust and there is no temple or idle in the trust and it is not used as place of public religious worship and no public collections were made and no Hundial is kept in the Koodam. It is further stated that it is a private trust which has every right to sell the property and the H.R and C.E., Department has no right to interfere in the private trust, which is not coming under the purview of the H.R and C.E., Act.

6.Mr.M.Ajmalkhan, learned Senior Counsel appearing for the petitioner challenged the impugned order mainly on two grounds. Firstly, it is his contention, that the respondents 1 and 3 are not justified in relying upon Section 22(A) of the Tamil Nadu Registration (Amendment Act) 2 of 2009, since the very amendment, though introduced in the year 2009 and published in the Government Gazette on 05.02.2009, has been given effect to only from 20.10.2016 by issuing G.O.Ms.No.122, dated 20.10.2016. Therefore, he contended that when the above-said provision of law, namely, Section 22(A) has not been issued with any retrospective effect expressly stated in the Act itself, the respondents 1 and 3 are not justified in relying upon such provision for denying the registration. The second contention of the learned Senior Counsel is that even assuming without admitting the application of the Section 22(A) of the said Act to the present case, in view of the admitted position that so far the institution has not been taken over by or brought under the control of the H.R. and C.E., Department, the question of application of such provision of law does not arise at all.

7.The learned Senior Counsel in support of his



contention relied on the Division Bench decision of this Court reported in **2011(1) CWC 283** (V.K.Amalraj vs. Inspector of Registration) and the decision of the learned Single Judge of this Court reported in **2010(2) CWC 159** (T.Sundar vs. The Sub Registrar).

8.Per contra, Mr.T.S.Mohammed Mohideen, learned Additional Government Pleader appearing for the first respondent submitted that even at the time of presenting the document, the original provision, namely, 22(A) was in existence, as it stood then, which prohibited registration of any documents opposed to public policy. He further contended that Act No.2 of 2009 inserting the amended provision of 22(A) by the Tamil Nadu Government was published in the Tamil Nadu Government Gazette on 05.02.2009 itself that is much earlier to the presentation of the document and therefore, the registering authority was justified in refusing registration by relying upon Section 22(A) of the Amended Act.

9.Mr.A.Muthukaruppan, learned Additional Government Pleader appearing for the third respondent reiterated the contention raised in the counter affidavit of the third respondent and however, submitted that the second respondent institution has not taken over by the H.R. and C.E., Department so far and steps are being taken to bring it under its control.

10.Mr.R.Anand, learned counsel appearing for the second respondent supported the case of the petitioner and submitted that the second respondent trust has not been brought under the control of the H.R. and C.E., Department so far and therefore, the Department has no right to interfere with the sale of the property belonging to the private trust.

11.Heard the learned Senior Counsel appearing for the petitioner and the learned Additional Government Pleaders appearing for the respondents 1 and 3 and the learned counsel appearing for the third respondent and perused the materials placed before this Court.

12.The petitioner purchased the property from the second respondent trust through a sale deed. He presented the same before the first respondent for registration and the first respondent kept the same as a pending document and refused to register on the reason that the property belongs to H.R. & C.E., Department and therefore, without obtaining 'No Objection Certificate' from such department, the sale deed cannot be registered.

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13.Upon considering the above-stated facts and circumstances and the submission made by the learned Counsels appearing on either side, which I do not propose



to repeat once again in order to avoid multiplicity, two issues arise for consideration in this case, which are as follows:-

(a) Whether the H.R and C.E., Department is having control over the second respondent private trust?

(b) If the H.R. and C.E., Department is having control over the second respondent private trust, wherein Section 22(A) of the Tamil Nadu Registration (Amendment Act) as amended by Act No.2 of 2009 by the Tamil Nadu Government, has any application to the present facts and circumstances of the case?

14.While considering the first issue, though it is claimed in the impugned order as well as in the counter affidavit filed by the respondents 1 and 3, as if the property under the sale belongs to H.R and C.E., Department, it is a clear and categorical admission of the third respondent in the counter affidavit at paragraph No.8 that the second respondent institution has not been brought under the administration of the H.R and C.E., Department so far and on the other hand, only steps are being taken to bring it under its control. In other words, as per the above contention of H.R and C.E., Department, the fact remains that as on date, the second respondent trust, admittedly, a private trust, has not been brought under the control or administration of the H.R and C.E., Department.

15.When such being the factual admitted position, there cannot be any difficulty for this Court to answer the first issue by holding that the second respondent trust, which has not been brought under the control/administration of the H.R and C.E., Department even till this date, is entitled to deal with the property in the absence of any other legal impediment and therefore, the Department cannot interfere with the second respondent trust's right to alienate the property to the petitioner. In other words, when the H.R and C.E., Department is not having any right over the subject matter property, the question of obtaining 'No Objection Certificate' from such department does not arise at all. With these findings let me consider and decide the second issue.

16.When the H.R and C.E., Department itself is not having its control or administration over the second respondent trust as observed supra, in my considered view, application of Section 22(A) of the amended Act No.2 of 2009 does not arise and therefore, there is no necessity to go into the second issue at all in this case and to render any finding. Accordingly, the case laws referred to by the learned Senior Counsel also do not require consideration,



since the issue involved in the above case laws does not arise in this case at all.

17. Considering all these facts and circumstances, I am of the view that the impugned order passed by the first respondent cannot be sustained. Accordingly, this writ petition is allowed and the impugned order is set aside. Consequently, the first respondent is directed to register the sale deed dated 14.06.2010 which is kept as pending Document No.7 of 2010 and release the same to the petitioner, if there is no other legal impediment for registering and releasing such document. Such exercise shall be done by the first respondent within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar[Records]

/True copy/

Sub Assistant Registrar

To

1. The Sub Registrar,
Illuppur,
Illuppur Taluk,
Pudukkottai District.

2. Sri Ramanuja Koodam,
Rep. by its Trustee Viz G. Krishnamoorthy
Naidu Street,
Illuppur,
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Pudukkottai District.

3. The Assistant Commissioner (HR & CE),
Hindu Religious Charitable Endowment Board Officer,
Near Municipality,
Pudukottai.

+lcc to Special Government Pleader in SR.6618

+lcc to M/S. Ajmal Associates, Advocates, SR.7077

W.P. (MD) No.6355 of 2014

06.02.2017