

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2018

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.No.37635 of 2003

and

W.P.M.P.No.45699 of 2003

1.K.A.M.Mohamed Gani Sahib
2.S.Mani
3.S.K.Basha
4.Ramesh Kumar
5.Sreeram
6.Vasantha
7.S.Ameer Basha
8.T.Masthan
9.S.Paramasiva Nadar
10.N.Jaishankar
11.B.Babu
12.K.Sekar
13.P.Anandan
14.S.A.Noormohamed
15.S.Ravi Mathivanan
16.Syed Innayathullah
17.G.Shankaraiya
18.M.Munirathinam
19.D.Kumar
20.P.Viswanathan
21.P.Thiyagarajan
22.Burrukani Bee

... Petitioners

Vs.

1.The District Registrar
District Registrar Office
(Registration Department
Kancheepuram, Kancheepuram District.

2.The Joint Commissioner
HR & CE Department
Vellore.

[R2-Suo motu impleaded
on 29.06.2018]

... Respondents

Prayer : 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 proceedings of

the respondent bearing Na.Ka.No.5095/A1/2003 dated 08.09.2003 and quash the same as illegal and arbitrary and direct the respondent to return the documents duly registered on 24.02.2003 to the petitioners relating to different parts of the properties relating to different parts of the properties in Survey Nos.107/1 and 107/4A1 bearing Patta No.554, inclusive of vacant sites and shops in Thalavaipattadai Village, Pallipattu Town, Thiruvellore District.

For Petitioner : Mr.P.Haribabu for H.Nazirudeen

For Respondents: Mr.T.M.Pappiah, Special Govt. Pleader
[For R1]
Mr.M.Maharaja, Special Govt. Pleader
[For R2]

O R D E R

The petitioner had purchased properties of vacant sites and shops in Survey Nos.107/1 and 107/4A1 bearing Patta No.554, in Thalavaipattadai Village, Pallipattu Town, Thiruvellore District, from one Varadhanarayana, Son of P.V.Ramakrishna Chetty, who executed sale deeds in their favour on 03.04.2003 on receipt of sale consideration. When the said documents were presented for registration before the District Registrar, Kancheepuram-the first respondent herein, he had required the petitioners to obtain "No Objection Certificate" from the HR&CE Department of the Government of Tamil Nadu. As the HR & CE department had informed the respondent that it was not willing to such No objection certificate, which was communicated to the petitioner by the impugned letter dated 08.09.2003. Aggrieved thereby, the petitioner has challenged the same in this writ petition and sought for consequential direction to register the documents submitted and return the documents to the respective petitioners.

2.After filing of this writ petition, there has been an amendment introduced to the Registration Act, 1908 by which Section 22-A has been inserted which reads as follows:-

"Section 22-A:Refusal to register certain documents:- Notwithstanding anything contained in this Act, the Registering Officer shall refuse to register any of the following documents, namely:

(1)instrument relating to the transfer of immovable properties in way of sale, gift, mortgage, exchange or lease,

(i)belonging to the State Government of the Local Authority or Chennai Metropolitan Development Authority established under Section 9-A of the Tamil Nadu Town and Country Plannin Act, 1971;

(ii) belonging to, or given or endowed for the purpose of, any Religious Institution to which the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 is applicable;

(iii) donated for Bhoodan Yagna and vested in the Tamil Nadu State Bhoodan Yagna Board established under Section 3 of the Tamil Nadu Bhoodan Yagna Act, 1958; or

(iv) of Wakfs which are under the superintendence of the Tamil Nadu Wakf Board established under the Wakf Act, 1995 unless a sanction in this regard issued by the Competent Authority as provided under the relevant Act or in the absence of any such authority, an Authority so authorised by the State Government for this purpose, is produced before the Registering Officer;

(2) instrument relating to the transfer of ownership of lands converted as house sites without the permission for development of such land from planning Authority concerned:

Provided that the house sites without such permission may be registered if it is shown that the same house site has been previously registered as house site."

The said amendment Act has been notified and has come into effect from 20.10.2016. In such circumstances, though the petitioners have presented the documents for registration before the Amendment Act came into force, since the documents have not yet been registered, it would follow that the said provisions of the aforesaid amendment Act would now apply.

3. Referring to sub-clause (ii) of clause (1) of the aforesaid Section 22-A of the Registration Act, 1908, a Division Bench of this court in M/s. Sudha Ravi Kumar Vs. The Special Commissioner & Commissioner, HR & CE Department, Chennai, [2017 (3) CTC 135] has elaborately dealt with the manner in which the registering authority has to handle documents presented for registration, where the property is belonging to, or given or endowed for the purpose of, any Religious Institution to which the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 is applicable and in conclusion has issued the following directions:-

(i) The registering Authority before whom the document has been presented shall cause service of Notice on the parties to the Deeds and also to the Objector/Religious Institution, hold Summary Enquiry, hear the parties and then either register or refuse to register the document by passing an Order having regard to the relevant facts as indicated above.

(ii) If the registering Authority, refuses to register any document by accepting the objections raised under Section 22-A of the Registration Act, aggrieved may file a Statutory Appeal under the Act.

(iii) If the objections raised under Section 22-A of the Act by the Religious Institution are rejected and the document is registered, the remedy for the Religious Institution is to either approach this court by way of a Writ Petition seeking cancellation of the registration or for any other relief or to approach the Civil Court for declaration of the title and for other consequential reliefs.

(iv) If the registering Authority refuses to register the document acting on the objection by the Religious Institution under Section 22-A of the Registration Act, the parties to the deed will be at liberty to straightaway approach the Civil Court for declaration of title and other relief without availing the opportunity for filing a Statutory Appeal.

(v) We further direct that if the Deed has already been registered without there being any objection by the Religious Institution under Section 22-A of the Act, the document shall be returned to the parties concerned leaving it open for the Religious Institution to approach either the High Court under Article 226 of the Constitution of India or the Civil Court for appropriate relief as indicated above. At any rate, the registering Authority shall not withhold the Deed, which has already been registered.

4. Having due regard to the aforesaid direction of the Division Bench of this Court, Learned counsel appearing for both sides agree that the impugned order be set aside and the matter be remitted back to the first Respondent for fresh determination in accordance with that decision.

5.The Joint Commissioner, HR & CE Department, Vellore, who is a necessary party for effective and complete adjudication of the disputes involved in this writ petition is suo motu impleaded as second respondent in this writ petition.

6.The writ petition is disposed of on the aforesaid terms. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

may

To

- 1.The District Registrar,
District Registrar Office,
(Registration Department,
Kancheepuram, Kancheepuram District.
- 2.The Joint Commissioner,
HR & CE Department,
Vellore.

+lcc to Mr.H.Nazirudeen, Advocate Sr.42137
+lcc to the Government Pleader Sr.42341

सत्यमेव जयते

W.P.No.37635 of 2003

srg 26/07/2018

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