



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

WEB COPY

W.P. (MD) No.2247 of 2018

and

W.M.P (MD) No.2458 of 2018

A.Ganesan

... Petitioner

vs.

1. The Sub Registrar
Vadasery Sub Registrar Office
Nagercoil.

2. The Thasildhar
Agasteeswaram Taluk
Nagercoil.

... Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the documents pertaining to memo vide No.255/2017 dated 22.12.2017 and quash the same illegal and may direct the first respondent to register the settlement deed of the petitioner in favour of his wife and daughter with respective Re.Sy.No.C4/38 and C4/41 of Vadasery Village.

For Petitioner : Mr.K.P.Narayana Kumar

For Respondents :

No.1 Mr. M.Murugan

Government Advocate

No.2 Mr.J.Gunaseelan Muthiah

Additional Government Pleader.

O R D E R

The only ground on which the impugned check slip has been issued is that the petitioner intends to gift the subject land to his daughter through a gift deed for which no mandatory approval under Section 22(A)(ii) of the Registration Act, was placed. The reasonings of the first respondent for refusal of the registration of the petitioner's gift deed are not correct.

2. Section 22 (A)(ii) of the Registration Act reads as follows:



registering officer shall refuse to register any of the following documents, namely

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

(i) belonging to the State Government or the local authority or Chennai Metropolitan Development Authority established under section 9-A of the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972)

(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 (Tamil Nadu Act 22 of 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, 19589 (Tamil Nadu Act XV of 1958); or

(iv) of Wakfs which are under the superintendent of the Tamil Nadu Wakf Board established under the Wakf Act, 1995 (Central Act 43 of 1995)

Unless a sanction in this regard is 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 permissions may be registered if it is shown that the same house site has been previously registered as house site

Explanation-1- For the purpose of this Section 'local authority' means-

(i) any Municipal Corporation constituted under any law for the time being in force; or

(ii) A Municipal council constituted under the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920); or

(iii) A Panchayat Union Council or a Village Panchayat constituted under the Tamil Nadu Panchayats Act, 1994 (Tamil Nadu 21 of 1994); or

(iv) any other Municipal Corporation, that may be constituted under any law for the time being in force



Explanation-II - For the purpose of this section 'planning authority' means the authority constituted under section 11 of and includes the Chennai Metropolitan Development Authority established under section 9-A of the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972)".

3. On a plain reading of Section 22 (A)(ii) of the Registration Act, it is seen that there is a total bar for the first respondent to refuse registration on the ground that the subject land does not have approval of lay out. The proviso to Section 22 (A)(ii) of the Registration Act states that conveyance in respect of house sites without any approval from the planning authorities may be registered if the same house site has been previously registered as a house site.

4. In the impugned check slip the first respondent himself has stated that the subject land which the petitioner intends to convey through a gift deed has been shown as a house site. In view of the provision under section 22(A)(ii) of the Registration Act, there is no bar for the respondent to refuse the registration, by the a impugned check slip No.255/2017, dt.22.12.2017 on the file of the first respondent is set aside.

5. The impugned check slip also refers to rule 15(b) of the Tamil Nadu Regularization of Unapproved Layouts and Plots Rules, 2017, wherein it provides that unapproved plots cannot be registered. When Section 22(A)(ii) of the amended registration act provides for registration of unapproved house sites also, the respondent is not justified in relying upon the rules for refusing registration.

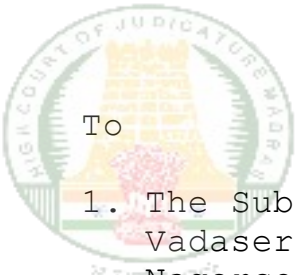
6. The petitioner is granted liberty to present the gift deed dated 19.12.2017 before the first respondent herein for registration and on receipt of the same, the first respondent shall register the gift deed, if it is otherwise in order within a period of one week from the date of receipt of a copy of this order.

7. With the above directions, the writ petition is allowed. No Costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

/True Copy/



To

1. The Sub Registrar
Vadasery Sub Registrar Office
Nagercoil.

2. The Thasildhar
Agasteeswaram Taluk
Nagercoil.

+1cc to Mr.K.P.Narayana Kumar, Advocate SR.No.73807

+1cc to SPECIAL GOVERNMENT PLEADER, SR.No.73830

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MK/MMS/SAR 4/01.08.2018/4P/5C

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