BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.A.(MD)No.609 of 2014 in W.P(MD)No.3344 of 2013

M.Subramanian ... Appellant/Petitioner

Vs.

1. The Sub Registrar,
   Viralimalai Registration Office,
   Illuppur Taluk, Pudukkottai District.

2. The Executive Officer,
   Pudukkottai Temple Circle,
   Pudukkottai. ... Respondents/Respondents

PRAYER: Appeal filed under Clause 15 of the Letters Patent, against the order passed in W.P(MD)No.3344 of 2013, dated 02.04.2014.

Prayer in WP(MD)No.3344/ 2013 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to to order passed in Na.Ka.NO. 366/2009/J dated 19.04.2011 to the 2nd respondent and quash the same and subsequently direct the 1st respondent to register the petitioner sale deed dated 29.12.2011 and release the same and pass such further or other orders.

For Appellant : Mr.K.Baalasundaram
For Respondents : Mr.M.Murugan,
Government Advocate for R.1
Mr.G.Mathavan for R.2

JUDGMENT

(Judgment of the Court was delivered by M.SATHYANARAYANAN,J.)

The writ petitioner is the appellant and aggrieved by the communication sent by the second respondent, dated 19.04.2011, to the first respondent, not to register the documents pertaining to Vadugapatti S.Nos.130/2, 131/1 and 131/2 belonging to Arulmighu Subramaniaswamy Temple, Viralimalai, had filed W.P(MD)No.3344 of 2013. The said writ petition was entertained and notices were ordered.

2. A Single Bench of this Court, vide impugned order dated

02.04.2014, has found that there is no dispute in accepting the principle that if the condition is complied with and the entire amount is paid, as per the patta proceedings, the petitioner has to be considered as the absolute owner. But, in the instant case, the temple had denied the receipt of the said amount and so far no order has been issued to release the properties from the temple service and no order has been passed in respect of issuance of ryotwari patta to the individuals and therefore, granted liberty to the appellant/writ petitioner to approach the Commissioner, Hindu Religious and Charitable Endowments Department, Pudukkottai District, for issuance of 'No Objection Certificate' and the said official was directed to consider the representation submitted in that regard and pass appropriate orders as to the issuance of 'No Objection Certificate' in favour of the appellant/writ petitioner within a period of six weeks from the date of receipt of a copy of the order. The appellant/writ petitioner, aggrieved by the mode of disposal vide impugned order dated 02.04.2014, has filed this writ appeal.

3. Facts leading to the filing of this appeal, as culled out from the affidavit filed in support of the writ petition, are as follows:

3.1. The appellant/writ petitioner would state that he is doing religious service, more particularly, 'Nadaswara Service' in Arulmighu Subramaniaswamy Temple, Viralimalai and for that purpose, was allotted with certain items of landed properties as 'service inams' comprised in S.Nos.130/2, 131/1, 131/2, 189/4 and 190/4, Illupur Taluk, Pudukkottai District, admeasuring to an extent of 12.56 acres and claimed that he is in possession and enjoyment of the said lands and also was doing the said service during the time of inam abolition and also paid the consideration amount as required under the provisions of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963.

3.2. The appellant/writ petitioner would further aver that the District Collector, Pudukkottai, has also granted patta in Patta No.105, vide proceedings dated 12.07.1976 in Na.AA.B2/335/75 and the said order has reached finality and as such, he is the absolute owner of the landed properties and also enjoying the same without any disturbance from anybody. The appellant/writ petitioner has also stated that due to financial constraint, he is forced to sell some portion of the landed properties and sold about 40 cents of land to one Sournam Ammal on 23.01.1986 and would further stated that due to his old age, he is not in a position to maintain himself and had to sell 2-1/2 acres out of 8 acres of the landed properties in favour of one Rajendran, to meet out his medical expenses and accordingly, executed a sale deed dated 29.12.2011 in his favour after receipt of the sale consideration of Rs.2,00,000/- (Rupees Two Lakhs only). The purchaser, namely, Rajendran, presented the said sale deed for registration to the first respondent, however, it was not registered and therefore, the appellant/writ petitioner filed W.P(MD)No.1409 of 2012 and it was disposed of on 23.02.2012 with a direction directing the first respondent to dispose of the application for registration within a period of eight weeks. The appellant/writ petitioner armed with the said order had approached the first respondent, however, he was issued with the impugned notice issued by the second respondent to the first respondent dated 19.04.2011 and challenging the legality of the said notice, has filed the writ petition.

3.3. The first respondent has filed the counter affidavit stating among other things that in terms of G.O.No.1023, Commercial Taxes and Religious Endowments Department, dated 05.11.1985, instructions have been issued to obtain 'No Objection Certificate' from the Hindu Religious and Charitable Endowments Department before registering the sale deeds relating to temple lands and when such a sale deed dated 29.12.2011 was presented for registration, it was kept as pending document by the first respondent and as such, it cannot be faulted with.

3.4. The second respondent has filed the counter affidavit stating that the landed properties in question belonged to the said temple and the consideration said to have been paid, has not been received either by the temple or the Hindu Religious and Charitable Endowments Department till date and as per the provisions of the Hindu Religious and Charitable Endowments Act, 1959, the Commissioner of Hindu Religious and Charitable Endowments Department alone is having the power to issue 'No Objection Certificate', but the appellant/writ petitioner did not choose to approach the said official for issuance of 'No Objection Certificate' and the second respondent has no such power to issue such 'No Objection Certificate' relating to the immovable properties and prayed for the dismissal of the writ petition.

3.5. The learned Judge after taking into consideration the rival submissions and the materials placed on record, has granted liberty to the appellant/writ petitioner to approach the Commissioner, Hindu Religious and Charitable Endowments Department, Pudukkottai, in the form of a representation for getting 'No Objection Certificate' to register the sale deed and also stipulated a time frame to enable the said official to do the said exercise.

4. Mr.K.Baalasundaram, learned Counsel for the appellant/writ petitioner made the following submissions:

4.1. Admittedly, the landed properties were service inams and the Special Tahsildar for Rent (Minor Inams), Lalgudi, vide proceedings dated 11.09.1971, has granted ryotwari patta in favour of M.Subramanian, (the appellant/writ petitioner) under Section 8(2)(ii) of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 [in short 'Minor Inams Abolition Act, 1963'] and granted option under Section 21(3) of the said Act to the service holder, namely, the appellant/writ petitioner to pay the amount specified under Section 21(4) of the Act and discharge the lands belonging to him from condition of service.

4.2. The quantification of the amount was also done and the said official vide order in F.H.A.No.15/71, dated 04.10.1971, fixed a sum of Rs.16,796/- (Rupees Sixteen Thousand Seven Hundred and Ninety Six Only) payable to the Government. The appellant/writ petitioner aggrieved by the quantum, filed an appeal before the

Assistant Collector, Pudukkottai, who vide proceedings in RC.A.2.335/75, dated 12.07.1976, has reduced the amount to a sum of Rs.12,067.80 (Rupees Twelve Thousand and Sixty Seven and Paise Eighty only) and the said amount has been paid in installments to the Revenue Inspector, Viralimalai.

4.3. It is the further submission of the learned Counsel for the appellant/writ petitioner that the Tahsildar, Illuppur, has also issued a certificate in Moo.Mu.5337/2011, dated 17.05.2011, statingtht the appellant/writ petitioner has remitted the entire amount and he has also been issued with patta and that he is in possession of the same and the Village 'A' Register would also indicate that patta has been transferred in favour of the land in question and accordingly, effected alienation in favour of third parties and while he wanted to sell a portion of the property, the impugned order came to be passed.

4.4. It is the submission of the learned Counsel for the appellant/writ petitioner that since the property sought to be conveyed in favour of the said Rajendran, is his absolute property, it is not for the temple authorities or the second respondent to raise objection as to the registration of the document and such a kind of option is wholly untenable in law.

4.5. The learned Counsel for the appellant/writ petitioner, in the course of his arguments, has also invited the attention of this Court to the provisions of the said Act and Rules framed thereunder and would submit that once the amount has been remitted to the Government, the lands in question are free of all encumbrances and admittedly, pattas have been issued and a part of the land has also been conveyed and therefore, objection as to the land not belonging to the appellant/writ petitioner cannot be sustained in any event.

4.6. The learned Counsel for the appellant/writ petitioner has also invited the attention of this Court to the decision of this Court in ***Sudha Ravi Kumar v. The Special Commissioner & Commissioner, H.R & C.E. Department*** reported in ***2017 (3) CTC 135***.

5. Per contra, the learned Government Advocate appearing for the first respondent would submit that in the light of the objection received from the second respondent coupled with G.O.No.1023, Commercial Taxes and Religious Endowments Department, dated 05.11.1985, the document cannot be registered unless and until the appellant/writ petitioner obtains 'No Objection Certificate'.

6. The learned Counsel for the second respondent has invited the attention of this Court to the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Rules, 1965, more particularly, Rule 16 and would submit that as per the option exercised, the amount has to be remitted within six months from the date on which the appellant/writ petitioner was granted ryotwari patta and admittedly, the amount was not remitted within the stipulated time and the payment of remittance was completed only in 1981 and remittances were also not known to the Treasury, but only with the local revenue officials and since the appellant/writ petitioner has failed to

comply with the provisions of the Act and the Rules framed thereunder in letter and spirit, he cannot be declared as owner of the lands in question.

7. It is the further submission of the learned Counsel for the second respondent that before issuance of patta, the temple authorities were kept in dark and as such, issuance of patta will not bind them. He would further submit that patta cannot be declared as a document of title.

8. The learned Counsel for the second respondent has also drawn the attention of this Court to G.O(Ms)No.90 Commercial Taxes and Religious Endowments Department, dated 03.02.1987, wherein certain guidelines have been given as to the collection of the amount from the persons who have been issued with ryotwari pattas in respect of service inams and the objection raised for registration is tenable and prayed for the dismissal of this writ appeal.

9. This Court has carefully considered the rival submissions and perused the materials available on record.

10. The following facts are not in dispute:

(a) The Special Tahsildar for Rent (Minor Inams), Lalgudi, passed the order dated 11.09.1971, wherein the appellant/writ petitioner exercised his option to pay the amount specified under Section 21(4) of the Minor Inams Abolition Act, 1963.

(b) The quantification of the amount was done by the said official at Rs.16,796/- (Rupees Sixteen Thousand Seven Hundred and Ninety Six only) vide order in F.H.A.No.15/71, dated 04.10.1971.

(c) The said quantification of amount was reduced by the appellate authority, vide proceedings in RC.A.2.335/75, dated 12.07.1976, from Rs.16,796/- (Rupees Sixteen Thousand Seven Hundred and Ninety Six only) to a sum of Rs.12,067.80 (Rupees Twelve Thousand and Sixty Seven and Paise Eighty only).

(d) The payment was made by the appellant/writ petitioner in installments from the year 1981 till 1995 and the patta was granted by the regular Tahsildar.

11. This Court has invited the attention of the learned Counsel for the appellant/writ petitioner to the above said provisions and put a pertinent question that though the Special Tahsildar passed the order dated 11.06.1971, the appellant/writ petitioner, who is also expected to pay the amount quantified which got reduced vide his own appeal, has committed delay in remitting the amount and it is the submission of the learned Counsel for the appellant/writ petitioner that since no time limit has been prescribed in the Rules framed thereunder, the Limitation Act, 1963, does not have any application.

12. In the considered opinion of this Court, the said submission lacks merit and substance for the reason that in terms of Article 137 of the Limitation Act, 1963, wherein no period of

limitation is provided elsewhere in that division, a period of three years is prescribed when the right to apply accrues.

13. Even assuming that the said provision has no application to the case on hand, the appellant/writ petitioner who is only a service holder, having availed the benevolent provisions of the Minor Inam Abolition Act, 1963, is expected to make the payment within a reasonable time and he took nearly 14 years to make the payment of Rs.12,067.80 (Rupees Twelve Thousand and Sixty Seven and Paise Eighty only).

14. It is also to be noted at this juncture that the lands which service inams, are admeasuring to an extent of 12.56 acres and became valuable property also.

15. No doubt, the Certificate of the Tahsildar, dated 17.05.2011, would disclose that the appellant/writ petitioner has remitted the entire amount and he has been issued with individual patta and is in possession of the same.

16. At this juncture, it is to be pointed out that it is the submission of the learned Counsel for the second respondent that before issuance of a regular patta, the temple authorities have not been put on notice and no importance or relevance may be given for the certificate given by the said Tahsildar for the reason that the response of the temple has not been elucidated.

17. The attention of this Court has also been invited to G.O (Ms)No.90 Commercial Taxes and Religious Endowments Department, dated 03.02.1987, which prescribed certain guidelines for recovery of amount to be paid by way of consideration by the service inam holders.

18. It is also to be noted at this juncture that even in the said Government Order, no outer time limit has been prescribed for collection of the amount and the contents of the said Government Order would disclose that the amounts due and payable by the service inam holders, who availed the benevolent provisions of the Minor Inam Abolition Act, 1963, have not been paid and as a consequence, the concerned temple, who is legally entitled to the said amount are put to lot of inconvenience and hardship.

19. In the considered opinion of this Court, the appellant/writ petitioner did not remit the amount in the Treasury, but merely remitted the amount to the Revenue Inspector as well as Village Administrative Officer and it is not also made known whether the said amounts, in turn, have been remitted to the Treasury or not in the concerned account. Therefore, the mode of payment of amount also appears to be not proper.

20. In ***Sudha Ravi Kumar v. The Special Commissioner & Commissioner, H.R & C.E. Department*** reported in ***2017 (3) CTC 135,***

Section 22-A of the Registration Act, 1908, which was introduced by way of the Registration (Tamil Nadu Amendment) Act, 2008, came up for consideration. The arguments were advanced with regard to the act of the concerned Sub-Registrar to refuse to register the documents on account of the objections raised by the temple authorities, which include the lands covered under the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948; the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963 and the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 and it is relevant to extract hereunder paragraphs 23 and 24:

> "23. This contention is seriously objected to by the learned counsel for the petitioners. First of all we should state that we are not going into this issue because the constitutionality of Section 22-A of the Registration Act is not under challenge. Secondly, whether the property which is covered in the deed presented for registration is a religious endowment or not in terms of the TN HR & CE Act also cannot be gone into by us as the said dispute could be resolved only by a Civil Court on evidence. Even the registering authority is not competent to go into the said disputed question as he is not exercising any judicial or quasi judicial function. Similarly, simply because the some lands were shown as the properties belonging to the religious institution in the register maintained by the temple, it cannot be construed that the said land belongs to the said religious institution. It needs to be noted that the register of properties under Section 29 was prepared not after notice to the interested persons. It was done unilaterally by the religious institution. Similarly, the maintenance of the register by updating the same is also not done after notice to the parties who are interested in the property which is included in the register after the preparation of the original register. Thus, the preparation as well as the maintenance of the register is by the unilateral act of the religious institution and therefore likelihood of the private lands belonging to any individual being included in the register by error cannot be ruled out. All these issues are to be resolved by the Civil Court. Therefore, in our considered view, once patta has been issued under either the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948, Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963 and the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 it is for the temple to establish its title before the Civil Court. The registrar is bound to act on the basis of the ryotwari patta issued by the authority concerned and he shall not refuse to register the said deeds. As we have already pointed out the remedy for the religious institution is to approach the civil court for

appropriate remedy.

24. But this observation of ours shall not be construed that it is our conclusion that ryotwari patta issued to the ryot concerned is the final adjudication relating to the title for the property. We wish to clarify that the final adjudication regarding the title to the property can be had only before a Civil Court. We only say that at the time of registration of the deed, if any objection is made by the religious institution under Section 22-A of the Act, the registering authority shall issue notice afford opportunity to the parties, apply his mind and only from the materials available before him, if he is satisfied that the land belongs to the religious institution or given or endowed to the religious institution, then, he shall refuse to register such deed."

In the said decision, the writ petitions came to be allowed with the following directions:

"25. In view of the above discussions, all the writ petitions are allowed and the impugned orders are set aside with 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, the 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 objections raised by a 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.

(vi) Consequently the connected miscellaneous petitions are closed. No costs."

21. This Court in the light of the facts narrated and the reasons assigned, is of the considered view that in the light of the above cited decision, the impugned communication dated 19.04.2011 issued to the first respondent by the second respondent warrants interference and it is to be remitted to the said authority for consideration and fresh adjudication in the light of the paragraph 25 of the above cited decision.

22. In the result, this writ appeal is partly allowed and the impugned order dated 02.04.2014 passed in W.P(MD)No.3344 of 2013 as well as the communication sent to the first respondent by the second respondent, dated 19.04.2011, are set aside and the matter is once again remitted to the first respondent, who shall take into consideration the directions contained in paragraph 25 of the decision in ***Sudha Ravi Kumar v. The Special Commissioner & Commissioner, H.R & C.E. Department*** reported in ***2017 (3) CTC 135*** and pass orders in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this judgment and communicate the decision taken to the appellant/writ petitioner and the second respondent as well as to the Executive Officer of Arulmighu Subramaniaswamy Temple, Viralimalai, Pudukkottai District. No costs.

Sd/-
Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Sub Registrar,
   Viralimalai Registration Office,
   Illuppur Taluk, Pudukkottai District.
2. The Executive Officer,
   Pudukkottai Temple Circle, Pudukkottai.
3. The Executive Officer,
   Arulmighu Subramaniaswamy Temple,
   Viralimalai, Pudukkottai District.

+ 1 CC TO Mr.G.MATHAVAN, ADVOCATE IN SR No. 47389
+ 1 CC TO Mr.K.BAALASUNDHARAM, ADVOCATE IN SR No. 47472
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 47715

RSB

TE/SKN-RSK/SAR-2 : 22/02/2018 : 9P/7C W.A.(MD)No.609 of 2014
08.02.2018