

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 16.07.2018****CORAM:****THE HONOURABLE MR.JUSTICE M.S.RAMESH****W.P. (MD) No.10976 of 2015****and****M.P (MD) Nos.1 to 3 of 2015**

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Ari Raman,
Represented by his Power Agent
Senthil Kumar,

... Petitioner

Vs.

1. The Inspector General of Registration,
No.100, Santhome High Road,
Chennai.
2. The District Registrar
Ramanathapuram District,
Ramanathapuram.
3. The Sub Registrar
Velipattinam Sub Registrar Office
Ramanathapuram.
4. The Inspector of Temples
HR & CE Department,
Ramanathapuram
Rep by Trustee Arulmigu Agnibahadrasamy Temple,
Kannagi Street,
Ramanathapuram,
Ramanathapuram District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the 2nd respondent in No.Na.Ka.642/Aa1/214 dated 27.03.2015 and order of the 3rd respondent made in proceedings No.4/2014 dated 02.07.2014 and quash the same and consequentially direct the 3rd respondent to register the rectification document executed by the petitioner in favour of Mr. J.Ganesan on 02.07.2014 in accordance with law and pass such other orders.

For Petitioner : Mr.C.Jeganathan
For Respondents : Mr.M.Murugan, - for R1 to R3
Government Advocate
Mr.J.Gunaseelan Muthiah, - for R4
Additional Government Pleader

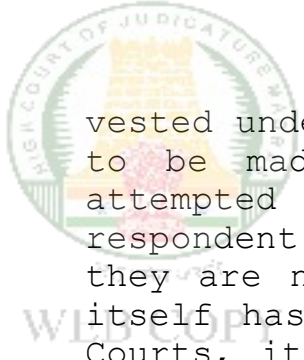
**ORDER**

The petition has been filed to quash the impugned order of the 2nd respondent, dated 27.03.2015 made in Na.Ka.No.642/Aa1/214, and the impugned order in proceedings No.4/2014 dated 02.07.2014 passed by the 3rd respondent, and consequently, to direct the 3rd respondent to register the petitioner's rectification document dated 02.07.2014.

2. The petitioner, who is the owner of the lands in Survey No.73 GRS 5/11, Old Ward No.21, New No.15, F Block 10 Vivekananda Street, admeasuring 0.01.87 hectares (212.12 sq.ft.) situated in Ramanathapuram Town and Taluk, Ramanathapuram District, had executed a sale deed infavour of one Ganesan through registered document dated 18.12.2013. Subsequently, when he had presented a rectification deed to rectify the plot number in the schedule of property from 18 to 10, the same came to be returned along with the impugned order stating that the property in question is endowed property, which was in possession of the temple and since the temple was vested with the HR & CE Department, the 2nd respondent sought for no objection from the 4th respondent. Challenging the same the present writ petition has been filed.

3. It is seen that the petitioner herein had earlier filed a suit in O.S.No.238 of 1980 seeking for a declaration of title and recovery of possession over the subject lands. The suit came to be decreed as prayed for. The 3rd defendant in the suit is Arulmighu Agniveerabhadra Swamy Temple, Ramanathapuram. As against the decree, the temple along with another defendant had filed an appeal in A.S.No.42 of 2005, which came to be dismissed. As against the same, the second appeal in S.A.No.663 of 2009 came to be filed before this Court and by a judgment dated 20.10.2009, the second appeal was also dismissed. In the judgment of this Court in the second appeal, there was a specific finding that the said temple had failed to prove the title and that there were no documents to establish that the temple is owner of the property. Ultimately the finding was to the effect that the plaintiff had valid title over the subject property.

4. In the impugned order, the 2nd respondent herein had given a detailed order going into the title to the subject properties. I am unable to comprehend, as to how the 2nd respondent would be justified in giving his own finding when the title over the property to the petitioner herein was already established by Courts of law. The only defence taken by the 2nd respondent herein is that the HR & CE Department was not a party to the civil proceedings and therefore, the judgment was not binding on them. This submission is totally erroneous. It is a temple who claims right over the property and since the temple is



vested under the HR & CE Department, such a statement is attempted to be made before this Court. When the temple has already attempted to establish its title and failed, it is not for this respondent to put forth such a plea before this Court stating that they are not a party in the civil proceedings. When the temple itself has miserably failed to prove its title before the Civil Courts, it is not for the official respondents to take a defence that the judgment is not binding on them, on the ground that they were not parties to the civil litigation. As such the impugned order attempting to trace title over the subject lands to that of the temple is totally illegal.

5. That apart, this Court in various judgments had dealt with the scope of the registering authority in denying registration on the ground that a person, presenting the documents, does not have valid title over the property. Rules 55 and 162 of the Tamil Nadu Registration Rules, specifies the powers vested with the registering authority to deny registration of a document. Apart from the illustration specified therein, the registering authority may not have any power to deny registration of a document other than the instances stated in the said rules. In a recent order dated 07.06.2018, passed in W.P.(MD) No.8425 of 2018, I had an occasion to deal with the scope of registering authority in registration and its denial. The relevant portion of the said order reads below :

"2.The main point raised by the petitioner is that through the impugned order, the Tahsildar cannot direct the authority concerned to stop the registration and as long as the documents are properly valued and presented, the Registrar cannot refuse registration of the same.

3.In a catena of judgments, this Court has categorically held that the Sub-Registrar is not empowered to insist for the production of the original title deeds of the parties at the time of registration and that they are bound to consider the objections only on the grounds, which are set forth in Rule 55 and Rule 162 of the Tamil Nadu Registration Rules. One such judgment in the case of **T.Sundar Vs. Sub Registrar, Office of the Sub Registrar, Palayamkottai, Tirunelveli and another** reported in **2010(1)MLJ 1286** reads as follows:-

"10.Thus, in view of the law laid down by this Court in the above referred decision, which has referred to various decisions of this Court in the earlier case, the principle which can be culled out is that the action of the respondents in refusing to release the document on



the ground that the sale deed was executed by the person was not the real owner is not legally sustainable. It has been further held that it is not for the registering authority to verify as to whether the vendor in the sale deed has a right to convey the property mentioned therein. Hence, the said judgment squarely applies to the facts and circumstances of the case, and on this ground alone, the petitioners are entitled to succeed.

11.Next, it was pointed out by the learned counsel for the petitioners that a communication has been sent by the second respondent to the first respondent not to entertain any sale deed in respect of the said survey numbers. The Hon'ble Division Bench of this Court had decided the scope of such direction in the nature of prohibition and whether the same could be issued by either the Government or any other body to the said registration of assurance directing him not to entertain any document. In *Thiyagavalli Panchayathai Serntha Nochikkadu Grama Vivasayigal Pathukappu Matrum Makkal Pothunala Sangam's case*, the Hon'ble Division Bench of this Court held that there is no provision under the statute where the State Government or the respondents therein can validly issue any directions refusing to register any document for which registration is permissible under the provisions of the Act.

12.Therefore, in view of the law laid down by the Hon'ble Division Bench of this Court, the direction issued by the second respondent to the first respondent is also to be held as unsustainable. In fact, the learned counsel for the petitioners would submit that the release of the document is always subject to the right which has already accrued in favour of the Tamil Nadu Housing Board by resisting to release the document by the Board is not justifiable.

13.In view of the law laid down by the Hon'ble Division Bench of this Court as stated supra, all the writ petitions are allowed as prayed for. The first respondent is directed to return the sale deeds to the petitioners. It is made clear that merely because the sale deeds have been released, the same does not mean that the petitioners have title over the said properties and that apart the release of such sale deeds would in any manner affect or impeach the title of the Tamil Nadu Housing Board, or its allottees. No costs. Consequently, connected miscellaneous petitions are closed."

4.In the light of the aforesaid judgment, the Hon'ble Division Bench of this Court had an occasion to deal with this aspect in a judgment in the case of



V.K.Amalraj Vs. Inspector General (Registrations), The Appellate Authority, Government of Tamil Nadu, 120, Santhome High Road, Chennai and 4 others reported in **2011 (1)CWC 283**, in which the following observation was made:-

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"10.It is the main grievance of the petitioner that registering authorities are indiscriminately registering the documents without making proper enquiry with regard to the rights and ownership of the seller. Therefore, Mandamus has to be issued to the respondents to stop all unlawful registration through out the State of Tamil Nadu by considering his representation, dated 09.10.2009. According to the respondents 1 to 3, the Registering Officer is expected to enquire into the document brought before him and he can make enquiry only within the frame of provisions of the Registration Act and the Rules framed thereunder, particularly with reference to Rule 55 relating to enquiry before the registration speaks about what is not the duty of the Registering Officer. Rule 55 is extracted hereunder:

"55.It forms no part of a registering officer's duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document; but he is bound to consider objections raised on any of the grounds stated below:-

- (a)that the parties appearing or about to appear before him are not the persons they profess to be;
- (b)that the document is forged;
- (c)that the person appearing as a representative, assign or agent, has no right to appear in that capacity;
- (d)that the executing party is not really dead, as alleged by the party applying for registration; or
- (e)that the executing party is a minor or an idiot or a lunatic".

11.A close reading of the said Rule would show the registering authority is bound to consider the objection only on the ground which is stated in the said Rule. Rule 55 does not provide enquiry by the Registering Officer with regard to the right and ownership of the seller. Thus, the authorities concerned are bound to act only in accordance with the Act and Rules framed thereunder. The authorities cannot be directed to act contrary to the provisions of the statute. We also find that the writ petition is filed only to settle the family dispute



between the petitioner and the respondents 4 and 5. Hence, we do not find any merit in the writ petition."

5. In the instant case, by the impugned order dated 08.03.2018, the third respondent refused to register the petitioner's settlement deed dated 05.03.2018, on the ground that as per the impugned order dated 27.08.2013 passed by the second respondent/Thasildhar Ottapidaram, there is no No Objection Certificate to sell properties mentioned in the sale deed.

6. In view of the well settled provisions of law that the registering authority is not empowered to insist upon the parties to prove the title or to verify the title over the property, which is subject matter of the deed of conveyance and that the consideration could be only within the scope of Rules 55 and 162 of the Tamil Nadu Registration Rules, the respondent may not be justified going into the title of the property."

6. The above order is self explanatory. The present impugned order not only goes into the tile of the petitioner over the subject property, but also against the finding of the Civil Court which establishes that the temple does not have title over the property. Even otherwise, the registering authority does not possess power to seek for a no objection certificate from the temple for the purpose of entertaining the petitioner's rectification deed.

7. In the light of the above said observations, I do not find any justification on the part of the 2nd respondent in denying the registration.

8. In the result, the impugned order in Na.Ka.No.642/Aa1/214, dated 27.03.2015 passed by the 2nd respondent is quashed. Consequently, the 3rd respondent herein is directed to take the rectification deed on file. The petitioner is at liberty to represent the rectification deed dated 02.07.2014, before the third respondent herein and on receipt of the same, the 3rd respondent shall register the same, if it is otherwise in order. Such exercise shall be completed within a period of two weeks from the date of receipt of a copy of this order.

9. With the above directions, this writ petition is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

<https://hcservices.ecourts.gov.in/hcservices/>

Sub Assistant Registrar



To:

1. The Inspector General of Registration,
No.100, Santhome High Road,
Chennai.
2. The District Registrar
Ramanathapuram District,
Ramanathapuram.
3. The Sub Registrar
Velipattinam Sub Registrar Office
Ramanathapuram.
4. The Inspector of Temples
HR & CE Department,
Ramanathapuram
Rep by Trustee Arulmigu Agnibahadrasamy Temple,
Kannagi Street,
Ramanathapuram,
Ramanathapuram District.

+1cc to M/s.Veera Associates, Sr.No.73326
+1cc to Spl.Government Pleader Sr.No. 73681

RM

VB/PN/SAR4/20.07.2018/7P/7C

W.P. (MD) No.10976 of 2015
16.07.2018