

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 29.10.2018****CORAM:****THE HONOURABLE MR.JUSTICE V.PARTHIBAN****W.P. (MD) No.15967 of 2018****WEB COPY**

D.Kalaiyarasan

... Petitioner

vs.

1. The Inspector General of Registration
Santhome High Road, Chennai.4

2. The Sub Registrar
Velayuthampalayam
Karur District

3. The Assistant Commissioner
Hindu Religious and
Charitable Endowment Department
Puzhalimalai
Velayuthampalayam
Karur 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 relating to the first respondent in his proceedings No.1482/C1/2018 dated 10.5.18 and to quash the same and consequently set aside the order passed by the second respondent vide N.K.No.158/2017 dated 23.5.18 in violation of the orders made in W.P.(MD)Nos.16892 and 17414/17 dated 27.11.17.

For Petitioner : Mr.S.Vijayakumar

For Respondents : Mr.M.Murugan

Government Advocate (Civil Side) for R1 & R2

Mr.P.Aathimoola Pandian for R3

O R D E R

The case of the petitioner is as follows:

(i) A property, measuring an extent of 2.27 Acres, comprised in Survey Nos.462/1, 462/2 and 462/3, situated at Punjai Pugalur Village, Velayuthampalayam, Manmangalam Taluk, was originally belonged to N.Rajamanickam and N.Periasamy, who having purchased the same under two separate sale deeds, dated 16.10.1969 and registered as document Nos.2276 and 2277 of 1969, in the Office of the Sub-Registrar at Keelkarur. Subsequently, the said property was purchased by the petitioner, under a sale deed, dated 14.04.2004 and registered as document No.289 of 2004, in the Office of the Sub-Registrar at



Velayuthampalayam. According to the petitioner, after purchase of the property, he has been in possession and enjoyment of the same with absolute power of alienation. The revenue records have also been mutated and Patta was also issued in favour of the petitioner in respect of the above said property.

(ii) According to the petitioner, the property was not yielding any income and therefore, he had decided to convert the property, being agricultural lands, into housing plots and formed a Layout known as "Arasan Nagar". A layout plan was prepared and requisite documents have been submitted to the Local Authority, namely, Director of Town Planning, Chennai. No objection certificate was also obtained from the Revenue Authorities, on 27.01.2011. Subsequently, the Deputy Director of Town Planning, Trichy Zone, accorded permission vide proceedings, dated 13.10.2015, for the Layout in respect of the lands comprised in Survey Nos.462/1A Part and 462/3A Part, measuring an extent of 2.13 Acres. In terms of the proceedings of the Deputy Director of Town Planning, Trichy Zone, dated 13.10.2015, the petitioner was required to execute a gift deed in favour of the Local Authority, namely, Executive Officer, Punjaipugalur Town Panchayat, Velayuthampalayam, Karur District. Therefore, on 12.08.2014, a gift deed was presented by the petitioner before the second respondent for registration and the same was registered as document No.962 of 2014. In view of execution of the gift deed, the petitioner had complied with the conditions stipulated in the proceedings, dated 13.10.2015. The Town Panchayat of Punjaipugalur has also passed a resolution, on 24.07.2013, resolving to recognize the Layout formed by the petitioner.

(iii) While so, on 16.06.2017, the petitioner executed a sale deed in favour of one Thirumurthy and presented the same before the second respondent for registration. The second respondent accepted the presentation of the document and assigned P.No.5/17, without registering the document. On an enquiry, it was found that the petitioner was required to produce no objection certificate from the third respondent, who appears to have claimed right over the land, which is a subject matter of registration, vide proceedings of the second respondent dated 18.06.2015. On perusal of the said proceedings, it was found by the petitioner that the third respondent has simply directed the second respondent not to register any document in respect of



several survey numbers, without any supportive documents of title to the same.

(iv) According to the petitioner, the second respondent has no authority to insist on production of no objection certificate, when particularly, the third respondent has not produced any material to show that the Temple, on which behalf the third respondent / H.R. & C.E. Department raised objection for registration of documents in regard to the subject property, has any title or the subject property comes under the purview of H.R. & C.E. Department. According to the petitioner, there was no revenue entry also to the effect that the subject property belongs to any Temple, which comes under the control of the third respondent. In these circumstances, the petitioner has been approaching the second respondent periodically. However, the document presented by him was ultimately not registered.

(v) Aggrieved by the inaction on the part of the second respondent, the petitioner was constrained to approach this Court by filing writ petitions in W.P. (MD) Nos.16892 and 17414 of 2017 seeking direction to the second respondent to register and return the document bearing P.No.5 of 2017, dated 16.06.2017 without insisting upon any no objection certificate and also a similar direction was sought in respect of the gift deed, dated 31.08.2017, presented by the petitioner before the second respondent. On 27.11.2017, this Court disposed of the writ petitions by directing the first respondent to pass orders in the light of the Judgment of the Honourable Division Bench, dated 05.04.2017, in W.P.Nos.30589 of 2013 etc. batch. The learned Judge of this Court has disposed of the writ petitions, in W.P.(MD) Nos.16892 and 17414 of 2017, as under:

"Considering the facts and circumstances, this Court, without going into the merits of the case, directs the first respondent to consider the claim of the petitioner on merits and in accordance with law, in the light of the judgment cited supra, and keeping in mind the land revenue document dated 20.10.2016, after affording due opportunity of personal hearing to the petitioner and any of the interested parties, within a period of eight weeks from the date of receipt of a copy of this order."

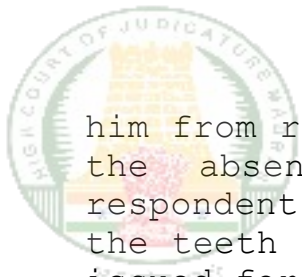


(vi) Pursuant to the orders of this Court, the first respondent was served notice and was requested to comply with the directions of this Court. However, despite the Court directions, there was no action on the part of the first respondent and the claim of the petitioner was not considered at all. Therefore, the petitioner was constrained to file contempt petitions in Cont.P.(MD) Nos.479 and 480 of 2018 and only after notice was ordered in the contempt petitions, the petitioner was directed to approach the first respondent vide letter, dated 06.04.2018. Thereafter, the petitioner appeared before the first respondent for enquiry on 18.04.2018 and submitted all the documents in support of his claim.

(vii) While matter stood thus, the first respondent, despite enquiry being conducted as above, did not choose to pass any orders, but vide proceedings, dated 10.05.2018, delegated the power to dispose of the representation to the second respondent. According to the petitioner, the said action by the first respondent as conveyed by the proceedings, dated 10.05.2018, is amounting to disobedience of the directions issued by this Court in W.P.(MD) Nos.16892 and 17414 of 2017, dated 27.11.2017. However, notwithstanding the fact that the directions issued by the learned Judge of this Court, as aforementioned, have not been complied with, the petitioner appeared before the second respondent for enquiry. The second respondent, after holding an enquiry in furtherance of the directions issued by the first respondent, has finally passed an order, on 23.05.2018, directing the petitioner to take back the documents, which had been kept pending for quite sometime. According to the petitioner, the action of the second respondent directing the petitioner to take back the documents is contrary to the legal position and therefore, the petitioner is before this Court challenging the orders of the both first respondent, dated 10.05.2018 and second respondent, dated 23.05.2018.

2. Mr.S.Vijayakumar, learned counsel appearing for the petitioner, would strenuously contend that the impugned action of the second respondent cannot be countenanced either in law or on facts for the following reasons.

3. The learned counsel for the petitioner would submit that the first respondent has not submitted any document or any prohibitory orders to the second respondent in order to prevent



him from registering any document submitted by the petitioner. In the absence of any documents being submitted, the second respondent cannot refuse to register the document, particularly in the teeth of the fact that the petitioner was having a valid Patta issued for the subject property.

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4. The learned counsel for the petitioner would straightaway draw the attention of this Court to the decision of this Court passed as early as on 14.12.2007 in W.P.(MD) No.9405 of 2007, wherein this Court, under similar circumstances, discountenanced the objection raised by H.R. & C.E.Department on the premise that the Department had not been able to obtain any interim orders, namely, prohibitory orders prohibiting the Registering Authority from registering the document. The learned counsel would submit that the order passed by the learned Judge is in respect of a similar claim put up by H.R. & C.E.Department in respect of another property in the same Village. The Ruling of the learned Judge, as found in Paragraph Nos.11 to 16 of the order, dated 14.12.2007 in W.P.(MD) No.9405 of 2007, is extracted hereunder:

11. It is to be noted that the temple concerned was a party in the earlier writ proceedings in W.P.No.6915 of 2006. Therefore, the stand of the fourth respondent that the direction found in W.P.No.6915 of 2006 does not bind him appears to be totally untenable. The third respondent sitting over such a direction given earlier in W.P.No.6915 of 2006 has directed the fourth respondent to approach the Court to obtain necessary orders to restrain him from registering the document. This Court in W.P.No.6915 of 2006 has directed the third respondent to register the documents presented by the petitioner, taking into consideration that the temple could not convince the trial Court to obtain an order of injunction as sought for by the temple. Now the pendency of the suit before the Subordinate Court has been taken as a defence by the fourth respondent. The third respondent has ventured to outsmart the orders passed by this Court directing him to register the document produced by the petitioner. It is not as if the injunction application filed by the temple was disposed of in absentia of the temple. It is found that the said application was dismissed on merit. Therefore, as on date, there is no order from the competent Court forbearing the third respondent from registering the documents presented by the petitioner.

12. Of course, Section 34 of the HR & CE Act declares that any sale of any immovable property



belonging to any religious Institution is null and void, unless it is sanctioned by the Commissioner of Hindu Religious and Charitable Endowments with the previous approval of the Government. The third respondent being the Sub Registrar has no authority to verify whether a particular transaction is null and void. The party who claims that the transaction is statutorily declared as null and void, has to establish the same before the Court and obtain necessary orders to restrain the Sub Registrar from registering the documents of sale.

13. In this case, the Temple has miserably failed to obtain any such orders from the competent Court to forbear the Sub Registrar from registering the documents.

14. In spite of the above facts and circumstances, the third respondent has simply lain over the documents after instructing the fourth respondent to approach the Court and obtain necessary order. The Sub Registrar is bound to entertain a document for registration within the four corners of the law enunciated under the Act. There is no provision under the Act, debarring the Sub Registrar from going ahead with the process of registration of a document if a document is found to be null and void.

15. The third respondent has simply flouted the directions flowed from this Court in W.P.No.6915 of 2006. The fourth respondent has also could not obtain any prohibiting orders from the competent Court to restrain the third respondent from registering the documents presented by the petitioner. The provision under Section 34 of the HR & CE Act, does not automatically debar the Sub Registrar from registering the documents presented for registration. The impugned order has been passed by the third respondent arbitrarily, without any sanction of law. Therefore, the said impugned order is liable to be quashed.

16. In the result, quashing the impugned proceedings No.397 of 2007 dated 22.10.2007 passed by the third respondent, the third respondent is directed to register the document P.No.20070078 in receipt No.313 dated 22.10.2007 presented by the petitioner in respect of the lands comprised in Survey Nos.361 and 362, Punjai Pugalur Village, Karur. The writ petition stands



allowed. There is no order as to cost. Connected MPs are closed.

5. The learned counsel for the petitioner would also contend that the learned Judge of this Court, who passed the order dated 27.11.2017 in W.P.(MD) Nos.16892 and 17414 of 2017, has clearly held that the Registering Authority should consider the claim of the petitioner with reference to the Judgment of the Honourable Division Bench, dated 05.04.2017, rendered in W.P.Nos.30589 of 2013 etc. batch and also with reference to the land revenue document, dated 20.10.2016. According to the learned counsel for the petitioner, the impugned orders passed by the respondents 1 and 2 are contrary to the Judgment of the Honourable Division Bench of this Court as held above and also not taken into consideration the land revenue document, dated 20.10.2016. The learned counsel for the petitioner would submit that the land revenue document, dated 20.10.2016, is a document, which provides the details of the survey numbers of the property belonging to Sri Balasubramaniasamy Temple, which is claiming ownership of the subject property and on its behalf only, the third respondent has raised objection in regard to registration of the document.

6. According to the learned counsel for the petitioner, in the land revenue document, dated 20.10.2016, the survey numbers of property belonging to the petitioner were not reflected at all. Moreover, he would submit that the Honourable Division Bench of this Court has clearly held that incase any Temple claims ownership on any land or property, it is upto the Temple to approach the Civil Court and establish its rights. The learned counsel appearing for the petitioner, in this regard, would draw the attention of this Court to certain portions of the observations made by the Honourable Division Bench in its Judgment dated 05.04.2017, rendered in W.P.Nos.30589 of 2013 etc. batch.

7. While advertng to various issues concerning Section 22-A of the Registration Act, 1908 (hereinafter, referred to as "the Act") the Honourable Division Bench has held as follows in Paragraph Nos.22 and 23:

"22. The learned Additional Advocate General would further submit that in respect of inam lands, which were granted to archaka or service holder or other employee for the performance of any service or charity or connected with a religious institution, even if ryotwari patta has been granted under the Abolition Act, the land shall be concluded to be a religious endowment and therefore, in respect of the said lands, registration shall be refused by the Registrar under Section 22-A of the Act.



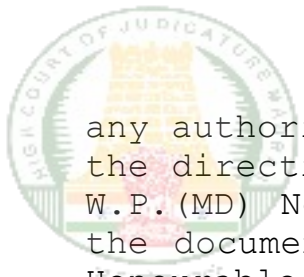
23. This contention is seriously objected to by the learned counsel for the petitioners. First of all we should state that we are not going into this issue because the constitutionality of Section 22-A of the Registration Act is not under challenge. Secondly, whether the property which is covered in 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."



8. The learned counsel appearing for the petitioner would submit that the observations made by the Honourable Division Bench are very clear that once a Patta is issued, it is not open to the Registering Authority to refuse to register the document in respect of the Patta land and in case any Temple made any claim that the property belongs to the Temple, it is upto the Temple to approach the Civil Court and establish the title and ownership. The learned counsel for the petitioner would further submit that the Temple has already approached the Civil Court seeking permanent injunction by filing a suit in O.S.No.303 of 2005, which is pending on the file of the learned District Munsif, Karur. However, the Temple, which is a plaintiff therein, has failed to obtain any interim orders restraining the Registering Authority from registering any documents for all these years. In fact, the learned counsel for the petitioner would submit that exactly in such circumstances, the learned Judge of this Court has discountenanced such objection of the Temple in the order first cited, dated 14.12.2007 in W.P.(MD) No.9405 of 2007. The very fact that the Temple was not able to obtain any interim orders would show that the Temple had not made out any *prima facie* case for grant of any interim orders by the Civil Court.

9. Moreover, the learned counsel for the petitioner would also submit that the Temple, as an afterthought, has filed another suit in O.S.No.20 of 2018, on the file of the learned District Judge, Karur, only during March, 2018, after this Court has passed an order, dated 27.11.2017 in W.P.(MD) Nos.16892 and 17414 of 2017, directing the Registering Authority to register the document. Even in the said suit also, the Temple has not obtained any interim orders prohibiting registration of the document presented by the petitioner.

10. The learned counsel appearing for the petitioner would further add that both the first respondent and the second respondent have not applied their minds properly and they simply extracted the observations made by the Honourable Division Bench in the Judgment dated 05.04.2017, in W.P.Nos.30589 of 2013 etc. batch. In fact, the first respondent was only directed to dispose of the representation, but he has delegated the power to the second respondent. Even on merits, the petitioner has a clear case for grant of relief as the learned counsel for the petitioner would draw the attention of this Court to the observations made by the second respondent in the impugned order, dated 23.05.2018. The second respondent has admitted that the petitioner was having a Patta for the subject land and the Temple in question did not obtain any interim orders from any Court. But nevertheless, finally contended that the document could not be registered in view of the objection made by the third respondent and directed the petitioner to take back the papers. Such a refusal, according to the learned counsel for the petitioner, is not authorized by



any authority or law. The second respondent is bound to implement the directions issued by this Court vide order dated 27.11.2017 in W.P.(MD) Nos.16892 and 17414 of 2017 and ought to have registered the document with reference to the clear observations made by the Honourable Division Bench in Paragraph Nos.22 and 23 of the Judgment as extracted above and with reference to the land revenue document, dated 20.10.2016, in which the survey numbers of the property belonging to the petitioner did not figure at all.

11. On behalf of the respondents 1 and 2, Mr.M.Murugan, learned Government Advocate (Civil Side) entered appearance and filed a counter affidavit. In the counter affidavit, it is stated that a circular, dated 21.06.2017, has been issued by the first respondent to all the Field Officers to follow the Registration Act, 1908, more particularly, Section 22-A of the Act. According to the counter affidavit, the lands, comprised in Survey Nos.462/1, 462/2 and 462/3, stood in the name of Sri Balasubramaniasamy Temple as per the records produced by the third respondent at the time of hearing and therefore, the respondents 1 and 2 were not inclined to register the document presented by the petitioner for registration. The learned Government Advocate (Civil Side) would draw the attention of this Court to Section 22-A of the Act, which reads as under:

"(ii) By means of the said amendment, Section 22-A was introduced after Section 22 in the Parent Act. The newly introduced Section 22-A 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 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;

(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 established in the Tamil Nadu State Bhoodan Yagna Board established under section 3 of the Tamil Nadu Bhoodan Yagna Act, 1958; or



13. The learned Government Advocate (Civil Side) would further submit that even in the Judgment of the Honourable Division Bench, which was very heavily relied on by the learned counsel for the petitioner, it is concluded in the final portion as follows:

"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,



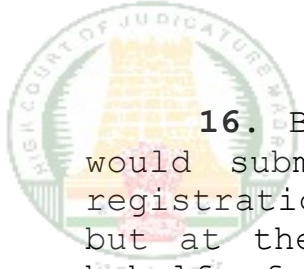
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the document shall be returned to the parties concerned leaving it open for the religious institution to approach either the High Court under Article 226 of the Constitution of India or the Civil Court for appropriate relief as indicated above. At 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."

14. The learned Government Advocate (Civil Side) would rely on the directions as contained in Sub-Para (ii) of Paragraph No.25, wherein it is stated that it is open to the petitioner to approach the Appellate Authority as per the statute and not to approach this Court directly under Article 226 of the Constitution of India. He would, therefore, submit that the writ petition is per se not maintainable and liable to be rejected on this ground alone. He would further submit that as per Sub-Para (iv), it is also open to the petitioner to approach the Civil Court, in case any document is refused acting on the objections made by the religious institution under Section 22-A of the Act. But, instead of adopting such procedure, the petitioner is before this Court by invoking its writ jurisdiction and therefore, the learned Government Advocate (Civil Side) would request this Court to dismiss the writ petition as being not maintainable and to direct the petitioner to approach either the Appellate Authority or the Civil Court, as the case may be. According to the learned Government Advocate (Civil Side), Section 22-A of the Act is very clear and the Authority concerned has only acted in terms of the said Section and also in terms of the Circular issued thereunder. Therefore, the impugned action does not call for any interference from this Court.

15. Mr.P.Aathimoola Pandian, learned counsel appearing for the third respondent, would contend that there are two suits pending on the issue and therefore, the subject property, which is covered under the suits cannot be a subject matter of registration in view of Section 22-A of the Act. He would strongly object to the grant of any relief to the petitioner, since Patta was issued to the petitioner wrongly without proper verification of the original revenue records, as per which, the subject property originally stood in the name of the Temple concerned. According to the learned counsel, the petitioner is trying to perfect his title by approaching the second respondent for registering certain documents, as according to the third respondent, the property, which is a subject matter of registration, did not belong to the petitioner at all.



16. By way of reply, the learned counsel for the petitioner would submit that although Section 22-A of the Act prohibits registration of properties belonging to the religious institution, but at the same time, merely because of an objection raised on behalf of the Temple, the Registering Authority cannot refuse to register the document. The learned counsel would further submit that unless some materials are produced to the satisfaction of the Registering Authority concerned or some judicial orders are produced prohibiting the Registering Authority from registering the document, it is not open to the Registering Authority to refuse to register the document, particularly, when the document presented is in respect of the property supported by the Patta issued for the same. In this case, admittedly, Patta has been issued and therefore, the petitioner is entitled to seek registration of the document. In fact, the learned counsel for the petitioner would submit that Sub-Para (iii) of Para-25 of the Judgment passed by the Honourable Division Bench, which is extracted hereunder once again for understanding the contention putforth on behalf of the petitioner, would apply to the present case.

(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.

17. The learned counsel for the petitioner would further submit that it is for the first time that the petitioner filed a suit for declaration of title only in the year, 2018 and even in the said suit also, no interim orders were passed prohibiting the registration of document. In any event, the Temple concerned can always raise objection before the competent Civil Court and questioning the document, if the same is registered.

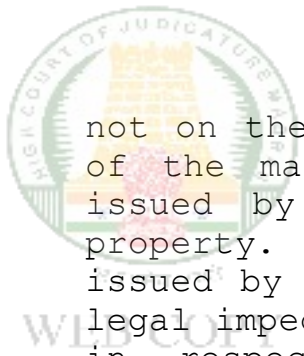
18. This Court has given its anxious consideration to the rival submissions of the learned counsel on either side and perused the materials and pleadings placed on record.

19. The point for consideration before this Court is whether the second respondent can refuse to register the document presented by the petitioner with reference to the above facts narrated. As rightly contended by the learned counsel for the petitioner, in the absence of any judicial orders or any materials in respect of the claim, the third respondent cannot generally issue any direction to the Registering Authority not to register



the document stating that the subject property belongs to a religious institution. Such a general direction does not have any authority of law. Section 22-A of the Act, thus, prohibits registration of documents in respect of the property belonging to the religious institution. However, such a Section cannot be applied, unless some material is shown that the subject property belongs to any religious institution and the Registering Authority must be satisfied *prima facie* about the claim of H.R. & C.E. Department. In this case, admittedly, no document has been produced by the Temple, except stating that there was a suit pending from 2005 and the said suit is only for bare injunction. As rightly contended by the learned counsel for the petitioner, after an order was passed by this Court on 27.11.2017 in W.P.(MD) Nos.16892 and 17414 of 2017 directing the Registering Authority concerned to register the document on the basis of the observations made by the Honourable Division Bench in its Judgment as cited supra and also with reference to the land revenue document, dated 20.10.2016, the Temple has instituted a suit for declaration of title in 2018. Even in the said suit, admittedly, no interim order has been obtained by the Temple restraining the Registering Authority from registering the document in respect of the property belonging to the Temple.

20. In fact, the learned Judge of this Court as early as on 14.12.2007 in W.P.(MD) No.9405 of 2007 has passed a detailed order in respect of the similar claim in the same village by the Temple concerned and discountenanced such a claim by the Temple, which was conveyed to H.R. & C.E. Department and held that in the absence of any judicial orders, namely, prohibitory order, there cannot be any direction to the Registering Authority not to register the document and such a direction was held to be invalid. Even in the Judgment of the Honourable Division Bench, which was relied upon on behalf of the both petitioner as well as respondents 1 and 2, the observations made in Paragraph No.23 is very clear and it clinches the case in favour of the petitioner herein. Admittedly, the petitioner is having a Patta for the subject property and such a fact has also been acknowledged by the second respondent in the impugned proceedings, dated 23.05.2018. In such a scenario, this Court is unable to appreciate as to how and on what basis, the second respondent can refuse to register the document presented by the petitioner. In fact, the second respondent has also acknowledged the fact that the third respondent has not obtained any interim orders and when such a finding of fact is writ large on the impugned order, this Court is unable to understand what actually preventing the Authority concerned from registering the document, except probably one Department is obliging the other Department of the Government. As rightly contended by the learned counsel for the petitioner, it is the part of the Temple concerned to approach the Civil Court in order to establish its title to various properties, which are found in the revenue register, and the onus is certainly



not on the petitioner to approach the Civil Court, when the fact of the matter is that the petitioner is having a valid Patta issued by the competent Authority in respect of the subject property. This Court is of the considered view that once Patta is issued by the competent Authority to the petitioner, there is no legal impediment for registration of the document presented by him in respect of the Patta property, unless there was any overwhelming material, which could be relied upon for the purpose of application of Section 22-A of the Act.

21. Section 22-A of the Act cannot be invoked so casually for refusing to register the document unless the Authority concerned comes to a categorical conclusion in regard to the existence of clinching materials in respect of the claim of religious institution. In the absence of any clinching materials or any materials whatsoever, the refusal of registration of document under Section 22-A of the Act *per se* appears to be arbitrary, illegal and cannot be countenanced either in law or on facts.

22. As regards the objection raised by the learned counsel for the petitioner that the order passed by the second respondent is in contravention of the directions issued by this Court, dated 27.11.2017, wherein the learned Judge has only directed the first respondent to consider and pass orders and whereas the first respondent has delegated the power to the second respondent is concerned, this Court is of the view that such a contention need not be gone into presently for two reasons. Firstly, the first respondent is not competent to take any decision in regard to the subject matter of litigation and secondly, in any event, the order passed by the second respondent is found to be unsustainable by this Court.

23. For all the above said reasons, this Court is of the view that the petitioner has made out a case for grant of relief sought and hence, the writ petition is allowed and the impugned order of the first respondent, vide proceedings No.1482/C1/2018, dated 10.05.2018 and the impugned order of the second respondent, vide proceedings in N.K.No.158/2017, dated 23.05.2018, are hereby set aside. There shall be a direction to the second respondent to register the document presented by the petitioner in respect of the subject property in case the document is otherwise in order, without insisting on no objection certificate from the third respondent. No costs.

Sd/-

Assistant Registrar(W)



To:

1. The Inspector General of Registration,
Santhome High Road, Chennai-4.

2. The Sub Registrar,
Velayuthampalayam,
Karur District.

3. The Assistant Commissioner,
Hindu Religious and Charitable Endowment
Department, Puzhalimalai,
Velayuthampalayam, Karur District.

+1cc to Mr.P.Aathimoola Pandian, Advocate Sr.No.92636

+1cc to Mr.S.Vijayakumar, Advocate Sr.No.92618

KRK

VB/PM/SAR2/29.11.2018/17P/6C

W.P. (MD) No.15967 of 2018
29.10.2018