

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 22.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN**W.P(MD)No.23118 of 2018**

Swami Brammananda Saraswathi Educational Trust,
Rep. by Trustee Thiru.S.Balasubramaniam,
No.63, Vazhaikulam Street, Srivilliputhur Village North,
Srivilliputhur Taluk, Virudhunagar District.

... Petitioner

Vs.

1.The District Collector,
Virudhunagar District.

2.The Sub-Registrar,
Office of Sub-Registrar,
Srivilliputhur, Virudhunagar District.

3.K.Muthuvel

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings of the second respondent dated 26.10.2018 refusing to register the deed of cancellation dated 26.10.2018 cancelling the sale deed dated 04.03.2011 in favour of the third respondent, quash the same and consequently, direct the second respondent to register the Deed of Cancellation dated 26.10.2018 submitted by the Petitioner Trust.

For Petitioner : Mr.S.Srinivasa Raghavan

For R1 and R2 : Mr.M.Murugan

Government Advocate

ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus, to quash the impugned proceedings of the second respondent dated 26.10.2018, refusing to register the Deed of Cancellation dated 26.10.2018, cancelling the sale deed 04.03.2011 in favour of the third respondent and further direct the second respondent to register the Deed of Cancellation dated 26.10.2018 submitted by the Petitioner Trust viz., Swami Brammananda Saraswathi Educational Trust.

2.The learned counsel appearing for the petitioner submitted that the Petitioner Trust was formed with the sole object of ~~improving the education~~ to the poor children in the locality and for the upliftment of the poor in their life and to improve the standard of life of the people in the Society and registered vide Document



No.188 of 2005, dated 03.08.2005 and subsequently, it was also amended by a Supplemental Deed dated 16.02.2017, vide Document No.4 of 2017.

3.The learned counsel appearing for the petitioner further submitted that during the year 2011, when there was a financial crunch, the Board of Trustees passed an unanimous conditional Resolution No.2, dated 06.01.2011, to sell the following properties belonging to the Petitioner Trust:-

Sl. No.	Survey No.	Extent	Situated at
1	178	1.03 Acre	Ponnankani Village, Kammalakulam Puravu, Srivilliputhur Taluk
2	177/2	3.19 Acres	-do-
3	177/1	0.35 Cents	-do-

with a pre-condition that the said lands were sold to the third respondent as well as one Subbulakshmi, who are also the Trustees of the Petitioner Trust. Moreover, they are the son and wife of the Managing Trustee of the Petitioner Trust. After the sale, the land should be utilized for construction of CBSE School building and the said building should be let out on rent for 30 years to the Petitioner Trust. Pursuant to the same, a sale deed was executed on 04.03.2011 selling the entire properties in favour of the third respondent for a sale consideration of Rs.2,41,000/- even though the sale consideration was not paid by the third respondent, since the third respondent being one of the Trustees of the Petitioner Trust and son of the Managing Trustee. The third respondent neither paid sale consideration nor took possession of the properties covered under the above sale deed or complied with the pre-conditions stated in the said resolution. Hence, the Board of Trustees passed a resolution dated 16.09.2018, to cancel the above sale deed that the sale of property was of its own Trustee by misusing the Office of Trusteeship, the Trustee will not make sale consideration to the Trust, no amount of sale consideration has been brought to the account of the Trust so far and pre-conditions for sale was not complied with. Hence, the Trustees objected for the conduct of the third respondent and made complaint against him. They sent a representation to the first respondent herein on 04.07.2018 calling upon him to cancel the sale deed executed in favour of the third respondent herein and another. The first respondent in his proceedings in Ba.Ka.No.2620/AA4/2018, dated 21.08.2018, had declined the request for cancellation stating that such a power is not vested with him. But, by invoking Section 34-A of the Registration Act, the petitioner had tendered the cancellation deed dated 26.10.2018 before the second respondent herein referring to the above resolutions and non-payment of sale consideration and other grounds. The second respondent after perusal of the said document, refused to register the Deed of Cancellation, dated 26.10.2018, presented by the Petitioner Trust for registration on the ground that it was not signed by the third respondent and also placing reliance on the proceedings of the Inspector General of



Registration dated 05.02.2007, in No.2397/P2/2007. Since the sale of property being pre-condition by virtue of resolution dated 06.01.2011 and cancellation of sale is for non-payment of sale consideration and non-compliance of pre-condition of earlier Resolution No.2, dated 06.01.2011, the second respondent ought to have registered the document presented with identification.

4.I have heard the learned counsel appearing for the parties and perused the materials on record.

5.It could be seen from the documents that the said sale deed was executed by the Board of Trustees to the third respondent as well as one Subbulakshmi, who are also Trustees of the Petitioner Trust, which itself is not maintainable and pre-condition is not complied with cannot be a ground for cancellation of such deed. If at all there is any dispute regarding the said deed, the Petitioner Trust ought to have approached the competent Civil Court for the same and they cannot invoke Article 226 of the Constitution of India by way of filing this Writ Petition seeking for issuance of a Writ of Certiorarified Mandamus. It is also to be pointed out that the persons, who had entered into the sale deed have not signed cancellation deed and only one person has signed the same. The order of the second respondent is as per law and this Court is not inclined to interfere with the order passed by the second respondent. The petitioner seeks liberty to approach the competent civil forum. It is open to the petitioner to approach the competent civil forum in accordance with law. This Court need not give any permission as such.

6.In the result, this Writ Petition is dismissed. No costs.

SD

ASSISTANT REGISTRAR (WRITS)

TRUE COPY

SUB ASSISTANT REGISTRAR (CS I)

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To

1.The District Collector, Virudhunagar District.

2.The Sub-Registrar, Office of Sub-Registrar,
Srivilliputhur, Virudhunagar District.

1CC TO MR. S. SRINIVASA RAGHAVAN, ADVOCATE SR 96638

1CC TO THE SPL GOVT PLEADER SR 96561

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