

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.06.2019

CORAM:

THE HON'BLE MR. JUSTICE P.D.AUDIKESSAVALU

W.P. No. 2618 of 2019
and
W.M.P. No. 2889 of 2019

1. N. Kantilal C. Doshi

2. K. Kamala Bai

3. K. Bharath Doshi

4. A. Madhubai

5. K. Jitendrakumar

.... Petitioners

-vs-

1. The Commissioner,
Hindu Religious & Charitable Endowments Department,
Nungambakkam,
Chennai - 600 034.

2. The Sub Registrar,
Thirupporur.

3. The Executive Officer,
Nemmili Arulmighu Alavanthar Nayagar Trust,
Thirukalukundram,
Kancheepuram Trust.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India, seeking for a Writ of Mandamus or any other Writ on order direction, or Writ in nature of Writ of Mandamus hectares in old S.No.168/3E/A-1B part and directing the Second Respondent to release the Mortgage Deed under Document No. P.231/2018 dated 02.11.2018 executed by the Petitioner in favour of Kotak Mahindra Bank Ltd. in respect of the property of an extent of 1.37.50 hectares in Old S. No. 168/3E-1A-1B Part New S. No. 168/7, Pattipulam Village, Thiruporor Taluk, Kancheepuram.

For Petitioners: Mr. AR. L. Sundaresan,
Senior Counsel
for M/s. AL. Ganthimathi

For Respondents: Mr. M. Maharaja,
Special Government Pleader (for R1)

Mr. T.M. Pappiah,
Special Government Pleader (for R2)

M/s. C.R. Rukmani (for R3)

O R D E R

The Petitioners claim to be the joint owners of the property to an extent of 1.37.50 hectares in old survey No. 168/3E-1A-1B part new survey No. 168/7 in Pattipulam Village in Thiruporur Taluk of Kancheepuram District. The Petitioners, as partners of the partnership firm, viz., G.T. Properties, had made borrowing from Kotak Mahindra Bank Ltd., and they wanted to extend the aforesaid property as one of the collateral securities for the same.

2. The Third Respondent, viz., Nemmeli Arulmighu Alavandhar Nayakar Trust, which is a 'religious institution' within the meaning of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, claims to own several extent of lands in survey No. 168 in Pattipulam Village and survey No. 226 in Nemmeli Village in Thiruporur Taluk of Kancheepuram District, and by letter dated 30.01.2015 informed the Second Respondent, who is the jurisdictional Registering Authority in that regard in terms of Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, and Section 22-A of the Registration Act, 1908, as amended by the Registration (Tamil Nadu Amendment) Act, 2008, which has come into force with effect from 20.10.2016. The Commissioner, Hindu Religious and Charitable Endowments Department, who is the First Respondent, confirmed the aforesaid claim of the Third Respondent by proceedings Na. Ka. No. 40765/2016/V2-2 dated 22.08.2016.

3. When the Petitioners presented the document creating mortgage in respect of the aforesaid property claimed to be owned by them with the Second Respondent, notice No. P. 231/2018 dated 14.11.2018 was sent by the Second Respondent to the Third Respondent informing that the proposed mortgage was sought to be created by the Petitioners in Survey No. 168 in Pattipulam Village and requiring to clarify whether ownership of the said property is claimed by the Third Respondent.

4. In the aforesaid factual backdrop, the Petitioners have filed this Writ Petition for directing the Second Respondent to release the Mortgage Deed under document No. P. 231/2018 dated 02.11.2018 executed by the Petitioner in favour of Kotak Mahindra Bank Ltd. in respect of the property of an extent of 1.37.50 hectares in old survey No. 168/3E-1A-1B part new survey No. 168/7, Pattipulam Village in Thiruporur Taluk of Kancheepuram District, contending that they are the absolute owners of the property and the Third Respondent cannot have any claim therein.

5. The Third Respondent has filed Counter Affidavit dated 06.03.2019 contending inter alia that the claim of the Petitioners that they are the absolute owners of the property, is not true in view of the fact that the boundaries of the property shown in the documents relied by them includes portions of lands belonging to the Third Respondent and that the Petitioners have encroached lands belonging to the Third Respondent as seen from the measurements taken from the outer side of the compound wall of the property put up by the Petitioners. It is further contended that the Third Respondent finds it very difficult to fight against the Petitioners, who are rich persons, to protect the property as it is expensive to face litigations and remove encroachments and has sought for dismissal of the Writ Petition.

6. Heard Mr. AR. L. Sundaresan, Learned Senior Counsel appearing for the Petitioners, Mr. M. Maharaja, Learned Special Government Pleader appearing on behalf of the First Respondent, Mr. T.M. Pappiah, Learned Special Government Pleader appearing on behalf of the Second Respondent and Mrs. C.R. Rukmani, Learned Counsel for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

7. Section 22-A of the Registration Act, 1908, mandates that notwithstanding anything contained in that Act, the Registering Authority shall refuse to register any instrument relating transfer of immovable properties by way of sale, gift, mortgage, exchange or lease, belonging to, or given or endowed for the purpose of, any religious institutions to which the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, is applicable. The Division Bench of this Court in Sudha Ravi Kumar -vs- Special Commissioner and Commissioner, Hindu Religious and Charitable Endowment Department [(2017) 3 CTC 135] has laid down the manner in which the claims of religious institutions in respect of their properties under Section 22-A of the Registration Act, 1908, have to be dealt by the Registering Authorities. Suffice here to refer to the relevant portions from the said decision, which is extracted below:-

"13. If we apply the law laid down by the Hon'ble Supreme Court in the above judgments, to the facts of the present case, it would be crystal clear that in the instant cases, since refusal to register the documents results in civil consequences as the unregistered document shall not be valid, in our considered view, before refusing to register a document under Section 22-A of the Registration Act, in order to cope with the rule of law, the registering authority should follow the Audi Alteram Partem principle by issuing notice and affording a real opportunity to the parties concerned. We are conscious of the fact that there is no explicit provision in the Act for issuing such notice to the parties by the registering authority and to hold a summary enquiry. But that would not deprive the parties concerned to have sufficient opportunity in tune with the principles of natural justice which is mandatory as held by the Hon'ble Supreme Court in the above decisions as refusing to register a document under Section 22-A of the Act results in civil consequences.

14. As we have already dealt with, holding a limited enquiry under this provision is to prima facie satisfy the conscience of the registering authority that there is substance in the objection made by the religious institution and if on such enquiry, the registering authority is satisfied that the objections of the religious institution have got substance, then the registering authority shall pass an order refusing to register the document and thereby it would be available for the parties concerned to make a statutory appeal under the Act. Similarly, if he registers the document, then it is for the religious institution to establish the title in the manner known to law. On the refusal of the registering authority under Section 22-A of the Act, even without availing the right of appeal, it would be open for the parties concerned to approach the Civil Court to establish their title.

.....

23. 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.

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."

8. It is evident that the impugned notice dated 14.11.2018 has been issued by the Second Respondent to the Third Respondent with a copy to the Petitioner in accordance with the aforesaid procedure prescribed by this Court for determining the claim of a religious institution over the property sought to be mortgaged by the Petitioner in terms of Section 22-A of the Registration Act, 1908. In view of the aforesaid directions issued by the Division Bench of this Court in that authoritative pronouncement, it is incumbent upon the Second Respondent as Registering Authority after service of notice on the parties to the document and also to the Third Respondent to hold enquiry, hear the parties and then take a reasoned decision with regard to registering the property or to refuse the same. It is added by way of clarification here that while performing the aforesaid statutory obligation, the Registering Authority in the incidental and ancillary exercise of such powers, has to duly consider the specific objection of the Third Respondent that the boundaries of the property described in the schedule to the

document presented for registration by the Petitioner includes certain portions of land belonging to it and determine that relevant aspect of the matter on the basis of materials placed on record by the respective parties. If the Registering Authority refuses to register a document by accepting the objections raised by the Third Respondent under Section 22-A of the Registration Act, 1908, and the Petitioners are aggrieved by the same, they would have to either file a statutory appeal under the Registration Act, 1908, or straightaway approach the Civil Court for declaration of title and other relief. On the contrary, if the objections raised by the Third Respondent under Section 22-A of the Registration Act, 1908, are rejected and the document is registered, the remedy for the Third Respondent is to either approach the Civil Court for declaration of the title and for other consequential reliefs or seeking cancellation of the registration in a Writ Petition before this Court.

9. In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vjt

To

1. The Commissioner,
Hindu Religious & Charitable Endowments Department,
Nungambakkam,
Chennai - 600 034.
2. The Sub Registrar,
Thirupporur.
3. The Executive Officer,
Nemmili Arulmighu Alavanthar Nayagar Trust,
Thirukalukundram,
Kancheepuram Trust.

+1cc to M/s.AL.Ganthimathi, Advocate, S.R.No.46030
+2ccs to the Government Pleader, S.R.No.46286 & 47094
+1cc to M/s.C.R.Rukmani, Advocate, S.R.No.46085

W.P. No. 2618 of 2019

GMR(CO)
RRS(19/06/2019)