

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.06.2019

CORAM:

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

W.P. No. 621 of 2019
and
W.M.P. No. 674 of 2019

K. Kathirvelu

... Petitioner

-vs-

1. The District Collector,
Tiruvannamalai District,
Tiruvannamalai.
2. The Commissioner,
Hindu Religious and Charitable Endowment Board,
Chennai - 600 034.
3. The Joint Commissioner,
Hindu Religious and Charitable Endowment Board,
Villupuram.
4. The District Revenue Officer,
Tiruvannamalai District,
Tiruvannamalai.
5. The Tahsildar,
Polur Taluk,
Tiruvannamalai District.
6. The District Registrar,
Tiruvannamalai District,
Tiruvannamalai.
7. The Sub Registrar,
Polur Taluk,
Tiruvannamalai.
8. The Assistant Commissioner,
Hindu Religious and Charitable Endowment Board,
Tiruvannamalai District,
Tiruvannamalai.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records relevant to the proceedings in Na. Ka. No. 6294/2017/E1 dated 02.03.2018 passed by the Eighth Respondent and quash the same as illegal, improper, unreasonable, arbitrary and against the principles of natural justice and thereby forbearing the Respondents from interfering with the title, peaceful possession and enjoyment of the Petitioner's patta property in Patta No. 725 situated at Punjai Survey No. 308/1A, Athuvambadi Village, Polur Taluk, Tiruvannamalai District.

For Petitioner : Mr. B. Gopalakrishnan

For Respondents: Mr. M. Karthikeyan,
Additional Government Pleader
(for R1, R4 and R5)

Mr. M. Maharaja,
Special Government Pleader
(for R2, R3 and R8)

Mr. T.M. Pappiah,
Special Government Pleader
(for R6 & R7)

O R D E R

The Petitioner claims to have inherited an extent of 2.50 acres of land in Survey No. 308/1A in Athuvambadi Village of Polur Taluk in Tiruvannamalai District on the demise of his father, who has purchased the said property. The Assistant Commissioner, Hindu Religious and Charitable Endowments Department, Tiruvannamalai, who is the Eighth Respondent, by letter Na. Ka. No. 6294/2017/E1 dated 02.03.2018 informed the Sub-Registrar, Polur, who is the Seventh Respondent, that the aforesaid property belongs to Arulmighu Renugambal Temple and 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, no registration in respect of the said property can be made without the written consent of the Eighth Respondent. Aggrieved by the claim made by the Eighth Respondent over the aforesaid property, the Petitioner has challenged the said letter Na. Ka. No. 6294/2017/E1 dated 02.03.2018 issued by the Eighth Respondent and has sought for consequential direction forbearing the Respondents from interfering with the title, peaceful possession and enjoyment of the said property in this Writ Petition.

2. Heard Mr. B. Gopalakrishnan, Learned Counsel for the Petitioner, Mr. M. Karthikeyan, Learned Additional Government Pleader appearing on behalf of the First, Fourth and Fifth Respondents, Mr. M. Maharaja, Learned Special Government Pleader appearing on behalf of the Second, Third and Eighth Respondents and Mr. T.M. Pappiah, Learned Special Government Pleader appearing on behalf of the Sixth and Seventh Respondents and perused the materials placed on record, apart from the pleadings of the parties.

3. 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 impugned letter is the information furnished by the Eighth Respondent to the Seventh Respondent to prevent any registration in respect of the said property as contemplated under the aforesaid statutory provision. 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."

4. In the present case, nothing has been shown that the Petitioner intends to register any document in respect of the aforesaid property, but only seeks to challenge the aforesaid letter in which the Eighth Respondent has informed the Seventh Respondent its claim over the said property as per its records. As such, if any document is presented for registration in future by the Petitioner in respect of the said property, the Seventh Respondent as the Registering Authority would have to follow the procedure as directed by this Court in the aforesaid binding decision and determine the matter in accordance with law.

5. It is made clear that it is also open to the Petitioner to institute suit before the jurisdictional Civil Court against the Eighth Respondent for declaration of his title to the property, and the Eighth Respondent is equally entitled to defend the said suit and prove the claim of the Temple to the said property in such suit.

6. In the light of the aforesaid conclusions arrived, nothing requires to be further adjudicated in the Writ Petition and the same is disposed of accordingly. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

vjt

To

1. The District Collector,
Tiruvannamalai District,
Tiruvannamalai.

2. The Commissioner,
Hindu Religious and Charitable Endowment Board,
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Tiruvannamalai.

+1cc to Mr.B.Gopalakrishnan, Advocate, S.R.No.45473
+1cc to the Government Pleader, S.R.No.46285

W.P. No. 621 of 2019

KS (CO)

RRS (19/06/2019)

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