

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2019

CORAM :

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.32729 of 2017

V.Nanda Kumar
S/o.M.R.Velu,
Door No.36/411, Alagesan Road,
Sai Baba Colony,
Coimbatore 641 011 ... Petitioner

Vs.

1.The Inspector General of Registration,
100, Santhome High Road,
Chennai 600 028.

2.The Joint II Sub Registrar,
(District Registrar Cader),
Sub Registrar Office,
No.2, Raja Street,
Coimbatore 641 001.

3.The Tamil Nadu Wakf Board,
Rep. by its Secretary,
Tamil Nadu Wakf Board,
Chennai 600 001. ... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the 2nd respondent from insisting upon the petitioner to obtain No Objection Certificate from the 3rd respondent while registering any documents relating to lands comprised in S.F.No.145/2 (Now sub-divided as 145/2H1) of Kuniamuthur Village, Coimbatore Taluk and District and direct the 2nd respondent to register the documents to be presented for registration if it is otherwise in order, within the time.

For Petitioner : Mr.R.Bharathkumar
For Respondents: Mr.T.M.Pappiah, (for R1 & R2)
Special Government Pleader

Ms.R.Sripriya (for R3)
for Mr.V.Raghavachari

ORDER

The writ petitioner seeks the issuance of Writ of Mandamus, forbearing the 2nd respondent from insisting upon a No Objection Certificate to be obtained from the 3rd respondent/Tamil Nadu Wakf Board for registering of documents relating to lands comprised in S.F.No.145/2 (Now sub-divided as 145/2H1) of Kuniamuthur Village, Coimbatore Taluk and District and direct the 2nd respondent to register the documents, if they are otherwise in order.

2.Mr.R.Bharathkumar, learned counsel appearing for the petitioner states that initially under a deed of settlement dated 05.10.1987, the mother of the petitioner had settled 50 cents of lands comprised in survey No.145/2 in his favour. The settlement deed is registered as document No.744 of 1987 in the office of the Joint II, Sub Registrar, Coimbatore. Likewise, under a deed of settlement dated 25.11.1987 registered as document No.3412 of 1987 in the office of the same Sub Registrar as aforesaid, his father had also settled 50 cents in the same survey number on the petitioner. The petitioner has thus been in possession of the said land as an absolute owner since 1987. In 2017, when the petitioner entered into a lease deed with a third party, for leasing out the said one acre of land comprised in survey No.145/2 and sought to register the same before the Joint II, Sub Registrar, he was required to produce a No Objection Certificate from the 3rd respondent, on the ground that the said land belonged to the Tamil Nadu Wakf Board.

3.Mr.T.M.Pappiah, learned Special Government Pleader appears for the Inspector General of Registration and the Joint II Sub Registrar arrayed as respondents 1 and 2 before me and Ms.R.Sripriya, learned counsel appears for the Wakf Board, arrayed as R3.

4.The very issue as before me now has been adjudicated upon and decided by the other Benches of this Court in W.P.No.5098 of 2012 (order dated 23.03.2012) and W.P.Nos.31927 to 31933 of 2012 (order dated 11.02.2015). Admittedly even in those matters, the grievances of the petitioners therein were for registration of the lands comprised in survey No.145/2, among other survey number, without insisting upon a No Objection Certificate to be obtained from the Tamil Nadu Wakf board. After setting out the entire history of the litigation in this matter, the Bench in W.P.No.5098 of 2012, concludes at paragraph No.8 to 10 as follows:

"8.The specific case of the petitioner is that the property which the petitioner owns does not belong to the Wakf as held categorically by the Civil Courts and confirmed by this Court also. Therefore, when the document namely, the Memorandum evidencing a mortgage

of the title deeds presented by the petitioner for registration before the 2nd respondent, the same is not being entertained on the ground that the property is not the petitioner's property and that they have been directed to obtain no objection certificate from the 3rd respondent. According to her, the authorities confer a non-existent title upon the 3rd respondent, ignoring the clear verdict of the Civil Courts, confirmed by this Court that the subject property does not belong to Wakf. Failure to consider the same vitiates the impugned order and hence she prays for setting aside the same.

9. After perusing the above judgments and decree of the Civil Court in Coimbatore in O.S.No.1007 of 1960 and judgments and decree made in S.A.No.2041 of 1972 of this Court, I am convinced that the property owned by the petitioner does not belong to the respondent Wakf board and therefore, the Wakf Board has no say in the matter. Consequently, calling upon the petitioner to produce the no objection certificate from the 3rd respondent Wakf Board is wrong and the demand made is totally contrary to the verdict of this Court. Moreover, the Courts have held that when a document is presented for registration, registering authority shall not demand a No objection certificate from Wakf authority or a temple. Besides that, in this particular case, there is a judgment and decree obtained by the petitioner's purchasers in more than one Court confirming the position that the property was not that of Wakf. Therefore, when such is the clear finding rendered by the Courts, one has to come to irresistible conclusion that, the property belongs to the petitioner and not of Wakf Board. As such, the impugned demand made by the 2nd respondent is bad and liable to be interfered by this Court.

10. Hence, this writ petition is allowed and the letter bearing No.1430/2011 dated 27.11.2011 is set aside. The 2nd respondent is hereby directed to register the document in respect of the properties falling in S.F.No.145/2 Kuniyamuthur Village, without insisting upon the no objection certificate from the 3rd respondent and the exercise of registration shall be completed by the 2nd respondent on or before 31.03.2012 without fail."

The aforesaid order has been followed in the subsequent order passed in WP.No.Nos.31927 to 31933 of 2012, by order dated 11.02.2015.

5.The learned counsel appearing for the Tamil Nadu Wakf Board seeks to distinguish the present case on the ground that in the aforesaid orders the land in question is survey No.145/2, whereas in the present case, the prayer relates to sub divided portion (i.e.,) survey No.145/2H1. This, according to her is a material distinction that has to be taken into account. However, admittedly, the sub-divided portion, at S.No.145/2H1 is only a smaller extent of the larger portion, comprising survey No.145/2. In such circumstances, the distinction made has no merit and is rejected.

6.The Writ Petition stands allowed, directing the 2nd respondent to register the document in respect of property comprised in survey No.145/2H1, Kuniamuthur Village, Coimbatore Taluk and District, without insisting upon No Objection Certificate from the Tamil Nadu Wakf Board. The exercise of registration shall be completed within four weeks from the date of receipt of a copy of this order, if the document is otherwise in order. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

sai
To

1.The Inspector General of Registration,
100, Santhome High Road,
Chennai 600 028.

2.The Joint II Sub Registrar,
(District Registrar Cader),
Sub Registrar Office,
No.2, Raja Street,
Coimbatore 641 001.

3.The Tamil Nadu Wakf Board,
Rep. by its Secretary,
Tamil Nadu Wakf Board,
Chennai 600 001.

+1cc to Mr.R.Bharathkumar, Advocate SR.No.22927

W.P. No.32729 of 2017

SPD(CO)
GMY(15/03/2019)