

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.21184 of 2009
and MP.Nos.1 and 2 of 2009

Shithi Nabesathul Bathuria
Rep. by her Power Agent
Jannathu Gani Beevi
10, Muthu Manicka Nadar Street,
Chidambaram, Cuddalore District

...Petitioner

vs.

1.The Assistant Commissioner
Hindu Religious and Charitable Endowment
Department, Chidambaram.

2.The Joint Sub Registrar-I
Sub Registrar Office, Chidambaram,
Cuddalore District.

....Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying to Writ of Certiorari calling for
the records of the 1st respondent in its proceedings
Na.Ka.No.3306/2008-1/A4/dated 9.9.2008 and quash the same.

For Petitioner : Mr.R.Sunil Kumar

For Respondents: Mr.R.Venkatesh
Government Advocate for R1
No Appearance for R2

O R D E R

Heard learned counsel for the petitioner and
Mr.R.Venkatesh, learned Government Advocate for R1. No
appearance for R2.

2. Both learned counsel concur on the position that this
matter is covered by orders passed by this Court in WP.Nos.20651
and 9417 of 2009. In W.P.No.20651 of 2009, this Court considered
the prayer calling for the records of the 1st respondent dated

30.04.2009 and recording the facts at paras 2 to 4 has held as follows:

'2. According to the petitioner, the Trust is a private trust and it is a composite trust. It does not come under the purview of H.R. & C.E. Being a private trust, earlier, they want to sell the property and approached the competent Court and obtained permission to sell the property. Pursuant to the same, he has also sold the property. Now, when he approached the concerned Sub-Registrar for registering the property, by virtue of the impugned order passed by the first respondent, the Sub-Registrar declined to register the land. Hence, challenging the order passed by the first respondent, the present writ petition has been filed.

3. The learned counsel appearing for the respondents submitted that it is not a private trust as told by the petitioner. It is a public trust, which comes under the purview of the H.R. & C.E. Department. Earlier on an application filed by the petitioner's predecessor, one Arumugasamy, under Section 67(b) of the Tamil Nadu Hindu Charitable Endowment Act to declare him as a hereditary trustee of the trust, the Deputy Commissioner, H.R. & C.E., Department passed an order dated 20.10.1970 declaring him as a hereditary trustee. After his death, on an application filed by the petitioner under Section 54 (1) of the Act, to record him as a hereditary trustee, the petitioner was recorded as a hereditary trustee and also produced a copy of the order passed by the Deputy Commissioner, H.R. & C.E.. In the above circumstances, the petitioner cannot claim it as a private trust. The alleged permission granted by the Court to the petitioner to sell the property was obtained by the petitioner without impleading the H.R. & C.E. Department, and it is not binding the H.R. & C.E.

4. The learned counsel for the petitioner is not in a position to dispute the above position. The learned Senior Counsel appearing for the petitioner would submit that pursuant to the permission granted by the Principal District Court, Cuddalore, the petitioner sold the property in favour of the third parties and now the entire sale proceeds is in the Court deposit. In the said circumstances, the petitioner may be permitted to approach the

Commissioner, H.R & C.E., seeking permission to approve the sale made by the petitioner.

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6. Considering the above circumstances, as the Trust is a Public Trust, and the petitioner was recorded as its hereditary trustee, the prayer sought by the petitioner cannot be granted. However, considering the fact that the entire sale proceeds of the previous sale has been deposited in the Court deposit, the petitioner is permitted to make application before the Commissioner, H.R. & C.E. Department, under Section 34 of the Act seeking approval for the sale made by the petitioner. If any such application is filed, the Commissioner is directed to consider the same and pass suitable orders on merits. It is also made clear that the petitioner should not make any further alienation without permission of the Commissioner, H.R. & C.E. Department.

4. W.P.No.9417 of 2009 has been disposed in the light of the aforesaid order. Following the rationale of the order in WP.No.20651 of 2009, this writ petition is disposed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Ska/sl

To

1.The Assistant Commissioner
Hindu Religious and Charitable Endowment
Department, Chidambaram.

2.The Joint Sub Registrar-I
Sub Registrar Office, Chidambaram,
Cuddalore District.

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SRA(CO)
CB(15/03/2021)