



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.09.2020

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.10998 of 2020

and

W.M.P. (MD)Nos.9649 and 9650 of 2020

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Rajah Company,
Partnership Firm,
Rep by its Partner,
A.Abdul Azeez,
No.64, South Car Street,
Tirunelveli,
Tirunelveli District.

... Petitioner

Vs.

1.The Inspector General of Registration,
Santhome, Chennai.

2.The District Registrar,
O/o.the District Registrar Office,
Tirunelveli, Tirunelveli District.

3.The Sub Registrar,
O/o.the Sub Registrar Office,
Pettai, Tirunelveli District.

4.The Tamil Nadu Waqf Board,
Rep. by its District Revenue Officer/
Chief Executive Officer,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai - 1.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 4th respondent in his proceedings in ந.க.எண்.461/15/ஆ1/தி.வேலி dated 06.03.2015 and consequential impugned order passed by the 3rd respondent in his proceedings in RFL/பேர்தலை/17/2020 dated 19.03.2020 and quash the same as illegal and consequently to direct the 3rd respondent to register and release the sale deed executed by the petitioner in respect of property comprised in Town Survey No.2619/2 to an extent of 30 cents situated at Tirunelveli, Municipal Corporation, Ward No.44, Samiya Thaika Street, T.S.No.6, Block No.21, T.S.No.2619/1 now classified as T.S.No.2619/2, Tirunelveli Town, Tirunelveli District.



For Respondents

For M/s.Ajmal Associates.
: Mr.K.Sathiyasingh,
Additional Govt. Pleader for R1 to R3.
Mr.S.A.Ajmal Khan for R4

O R D E R

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Heard the learned senior counsel appearing for the writ petitioner, the learned Additional Government Pleader appearing for the respondents 1 to 3 and the learned standing counsel appearing for fourth respondent.

2.The writ petitioner claims that they are the owners of the petition mentioned property. They want to sell the said property in favour Kaja Enterprises Private Limited represented by Mr.K.Abdul Kabur. The sale deed dated 19.03.2020 was presented for registration before the third respondent. The third respondent by the impugned communication declined to register the said document and returned the same. In the impugned check slip, the third respondent had placed reliance on the objection conveyed by the fourth respondent in their communication dated 06.03.2015. The said communication issued by the fourth respondent board and the consequential check slip issued by the third respondent are put to challenge in this writ petition.

3.The learned senior counsel though initially asserted that the petitioner is very much having absolute and impeachable title over the petition mentioned properties restricted his contention that he may be allowed to go before the second respondent and cavass his case in the light of the direction issued by the Hon'ble Division in the decision reported in **2017 (3) CTC 135 (Sudha Ravi Kumar v. The Special Commissioner & Commissioner, HR & CE Department)**. He also draws my attention to a subsequent decision of this Court reported in **2020 (2) CWC 286 (T.A.Hassain Basha v. Tamil Nadu Wakf Board)**.

4.I make it clear that the communication issued by the Waqf Board need not be interfered with in this proceeding.

5.I am of the view that both decisions relied on by the learned senior counsel are squarely applicable to the case on hand.

6.The Hon'ble Division had held as follows:-

"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."

7.The Hon'ble Single Judge had held as follows:-

"5. It is settled position that the District Registrar cannot decide the title of the property. However, to ascertain whether the property is Wakf property or not he can conduct an enquiry. In such view of the matter, I direct the 2nd respondent to conduct an enquiry to find out whether the property sought to be registered by the 5th respondent is a Wakf property and in the case of the 2nd respondent comes to the conclusion that the property is a Wakf property, in such case, the remedy open to the petitioner is to approach the Wakf



Tribunal. In the case of the District Registrar finding that the property sought to be registered is not a Wakf property, in such case, he may register the document, if it is otherwise in order."

8. Respectfully following the aforesaid orders, I relegate the parties namely., the writ petitioner as well as the fourth respondent to go before the District Registrar. The learned senior counsel pointed out that though the Hon'ble Division Bench had indicated that the enquiry can be conducted by the registering authority, he would submit that as per the statutory scheme set out in the Registration Act, 1908, it is only the District Registrar, who will be competent to hold the enquiry. I sustain this contention of the learned senior counsel. Therefore, the second respondent/District Registrar will conduct the enquiry in the light of the directions already said out above. The further course of action to be chosen by the petitioner as well as the fourth respondent herein will be as laid down by the Hon'ble Division Bench.

9. In view of the above, the impugned return slip issued by the third respondent is quashed. The writ petition is partly allowed. The contentions of both the parties are left open namely., that of the writ petitioner and the fourth respondent. The parties are permitted to place all the supporting materials to justify their contentions and stand before the District Registrar. The District Registrar will conclude the enquiry and pass final orders within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CSII)

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/ /2020

Sub Assistant Registrar(CS)

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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To:

1.The Inspector General of Registration,
Santhome,
Chennai.

2.The District Registrar,
O/o.the District Registrar Office,
Tirunelveli,
Tirunelveli District.

3.The Sub Registrar,
O/o.the Sub Registrar Office,
Pettai,
Tirunelveli District.

+1 CC to M/s.SPL GP (SR-18664[F] dated 01/10/2020)

+1 CC to M/s.S.A. AJMAL KHAN, Advocate (SR-18800[F] dated
01/10/2020)

W.P. (MD) No.10998 of 2020
30.09.2020

SGS (CO)
KB(07.10.2020) 5P 6C