

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2021

CORAM

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

W.P. No. 13457 of 2016

and

W.M.P.No.11812 of 2016

A.Syed Mohamed Ibrahim

... Petitioner

-vs-

1.The Inspector General of Registration,
No.120, Santhome High Road,
Santhome, Chennai - 600 028.

2.The District Registrar,
Karaikudi.

3.The Sub Registrar,
Thondi,
Ramnad District.

4.Tamil Evangelical Luthern Church
Represented by Rev.J.Jayapaulraj
P.B.No.86, Tranquebar House,
Tiruchirappalli.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the first respondent to dispose of the representation of the petitioner dated 30.03.2016 by taking appropriate action to process the registration of Sale Deed bearing Document No.P201600001 dated 22.01.2016 pending before the 3rd respondent and to direct the 3rd respondent to release the said Sale Deed to the petitioner forthwith.

For Petitioner : Mr.A.Sheik Peer

For R1 to R3 : Mr.P.P.Purushothaman

Government Advocate

O R D E R

This writ petition is filed for issuing a Mandamus, directing the first respondent to dispose of the representation of the petitioner dated 30.03.2016 by taking appropriate action to process the registration of sale deed bearing Document

No.P201600001 dated 22.01.2016 pending before the third respondent and to direct the third respondent to release the said sale deed to the petitioner forthwith.

The brief facts necessary for disposal of this writ petition are as follows:-

2. The petitioner is an individual, who purchased a property belonging to the fourth respondent by a sale deed dated 22.01.2016. The property which is sought to be conveyed is a piece and parcel of land and building measuring to an extent of 650 sq.mtr., comprised in G.R. Survey No.72/16 situated at 1/12, Agraharam Street, Ward No.1, Thondi, Thiruvadanai Taluk, Ramnad District. The petitioner stated in the affidavit filed in the writ petition that the said property belongs to the fourth respondent, which is an independent church. As per the sale deed dated 22.01.2016, the property was conveyed by the fourth respondent represented by one Rev.J.Jayapaulraj who is stated to have been authorised to execute sale deed as per the proceedings dated 30.11.2015 as vouched from the communication received from the Secretary, Church Council, T.E.L.C., Trichy. When this document was presented for registration, the Sub Registrar/third respondent herein returned the document without assigning any reasons. However, the third respondent stated that the petitioner can file appeal as against that order of the Sub Registrar, within a period of 30 days. It is to be noted that no separate order giving reasons is referred to in the order dated 07.03.2016.

3. After the order was passed by the third respondent on 07.03.2016, the petitioner submitted a representation dated 30.03.2016 before the first respondent for a direction from the first respondent to direct the third respondent to complete the registration of sale deed and to release the document after registration.

4. Under the Registration Act, 1908, (hereinafter referred to as the 'Act' for short), the Sub Registrar has limited jurisdiction to deal with such issues. Under Section 22-A of the Act, the Registrar can refuse to register certain documents which are the property belonging to the State Government or the local authority or the property given or endowed for the purpose of any religious institution or the property donated for Bhoodan Yagna or the properties which are under the control of the Tamil Nadu Wakf Board.

5. Except the power under Section 22-A of the Act, the registrar can also refuse to registrar the document in cases which falls under Section 71 of the Act. Even though the Sub-Registrar has power to refuse to register the document for the

reasons to be recorded, Section 71 of the Act does not indicate the reasons for which the power under Section 71 can be exercised. The scope of enquiry by the Sub-Registrar before registering the documents is specifically dealt with under Rule 55 of the Registration Rules. Therefore, the power under Section 71 of the Act has to be understood with reference to the specific provisions particularly Rule 55 of the Registration Rules.

6. Despite notice to the fourth respondent, there is no representation for the fourth respondent. However, it is seen that the fourth respondent is represented by Rev.J.Jayapaulraj who is the person stated to have been authorized to execute sale deed on behalf of the fourth respondent and complete the transaction.

7. Learned Government Advocate appearing for the first to third respondents, relied upon the counter affidavit filed by 3rd respondent in which it is stated that the property belongs to the fourth respondent, which is a religious institution, and that the sale deed was executed by one Rev.J.Jayapaulraj. It is further stated that the same person by name Rev.J.Jayapaulraj, who executed the document on behalf of the fourth respondent, by his letter dated 25.01.2016 had requested the respondent to cancel the same for want of authorisation. It is also stated that the sale transaction was sanctioned by Rt. Rev. H.A. Martin on 27.01.2016 as Bishop, who had retired on 01.04.2014 long before the sanction letter.

8. Even though several contentions have been raised by the third respondent, the third respondent admits that the sale deed was returned without assigning any reasons. When objections are raised particularly with reference to basis of Rule 55 of the Registration Rules or Section 22-A of the Act, the third respondent is expected to hold an enquiry and then pass order.

9. This Court in *Sudha Ravi Kumar -vs- The Special Commissioner and others* reported in 2017 (3) CTC 135 in similar circumstances has 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.
- (vi) Consequently the connected miscellaneous petitions are closed. No costs."

10. In view of the above categorical pronouncement and conclusion of this Court, this Court is of the view that the order returning the sale deed or refusing to admit the document for registration without assigning reason is illegal and arbitrary.

11. Accordingly, the writ petition is disposed of with the following directions:-

- (i) The petitioner shall produce the document for registration, if he has already received the same from the third respondent pursuant to his order dated 07.03.2016.

- (ii) The Sub Registrar shall issue notice to the petitioner before passing an order refusing to register the documents.
- (iii) Apart from issuing notice to petitioner, the third respondent is directed to issue notice to the fourth respondent or any one who is the authorised representative to the fourth respondent and hold an enquiry whether the fourth respondent has duly authorized any person to execute the sale deed.
- (iv) It is open to the third respondent to hold an enquiry and pass appropriate orders in exercise of his power which he enjoys under Rule 55 of the Registration Rules or Section 22-A of the Act.
- (v) Speaking order shall be passed by complying with the principles of natural justice, by not only putting the fourth respondent under notice but also by giving sufficient opportunity to the petitioner within a period of three weeks from the date of receipt of a copy of this order. No Costs. Consequently, the connected miscellaneous petition is closed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

dm
To

1.The Inspector General of Registration,
No.120, Santhome High Road,
Santhome, Chennai - 600 028.

2.The District Registrar,
Karaikudi.

3.The Sub Registrar,
Thondi,
Ramnad District.

+1 CC to The Government Pleader sr 9934.

W.P. No.13457 of 2016

GPL (CO)
SP(15/03/2021)