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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2021

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.NO.6639 OF 2021

AND

W.M.P.NO.7196 OF 2021

S.A.Jhan Mohamed

...Petitioner

Vs

1.The Sub Registrar,
Tiruvallikeni,
Chennai.

2.The District Registrar,
Chennai Central.

3.The Inspector General of Registration,
Office of the Inspector General of Registration,
Santhome, Chennai.

4.Tamil Nadu Wakf Board,
Represented by The Chief Executive Officer,
No.1 Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai 1.

...Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the first respondent to register and release the memorandum of deposit of title deed dated 29.01.2021 vide P.P./99585707/2021 to the petitioner.

For Petitioner	:	Mr.N.A.Nissar Ahmed
For R1 to R3	:	Mr.A.Selvendran Special Government Pleader.
For R4	:	Mr.V.Lakshminarayanan

ORDER

This Writ Petition has been filed for the issuance of Writ of Mandamus, directing the first respondent to register and release the memorandum of deposit of title deed dated 29.01.2021 vide P.P./99585707/2021 to the petitioner.



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2. Heard Mr.N.A.Nissar Ahmed, learned counsel appearing for the petitioner, Mr.A.Selvendran, learned Special Government Pleader appearing for the respondents 1 to 3 and Mr.V.Lakshminarayanan, learned counsel appearing for the fourth respondent.

3. The property comprised in Survey No.269 and 270 in R.S.No 184 under Patta C.A.No. 374 of 2009, dated 26.06.2009 as per Patta R.S.No.175/3, 184, Block No 5, Triplicane Village, Mylapore, Chennai, ad-measuring 6354 sq.ft. originally belong to Haji. Abdul Aziz Basha Sahib Bahadur, by virtue of a registered sale deed, dated 22.01.1895 and release deed, dated 22.01.1895 and the rectification deed, dated 12.06.1897. He filed a partition suit in O.S.No.464 of 1956 on the file of the City Civil Court and in the final Decree proceedings, the said property was sold in public auction in favour of Haji. Mohammed Abdul Jameel Basha and Mohammed Nasrulla Basha Therefore, the successor sold out the said property to one M.A.Rasheed and others by the sale deed, dated 18.04.1984 registered vide Document No. 1080 of 1984.

4. They borrowed money from the Indian Bank and the said property came to be auctioned under the Sarfaesi Act, 2002 in which one Jameela Begum was a successful bidder and by the compromise between the mortgagor and mortgagee the Debt Recovery Tribunal issued sale certificate in favour of her, dated 30.11.2007.

5. However, one M.A.Rasheed, attempted to create encumbrance and entered into a Civil Suit in O.S.No.8055 of 2007 on the file of the 12th Assistant Judge City Civil Court for injunction and damages and compromise deed was passed on 11.11.2008. Thereafter, the said Jameela Begum, being the wife of the petitioner, settled the said property in his favour by the Settlement deed, dated 01.02.2008 registered vide Document No.107 of 2008. The petitioner executed a deposit of title deed registered vide Document No.65 of 2014, dated 21.01.2014 thereby created the charge over the property.

6. While being so, the petitioner executed a memorandum of deposit of title deed, dated 29.01.2021 with the Tata Capital Housing Finance Limited and presented for registration before the first respondent on 29.01.2021. However, the first respondent did not register the same for the reason that the fourth respondent submitted protest petition in respect of the subject property along with several other properties alleging that those are wakf properties and as such the registration cannot be made.



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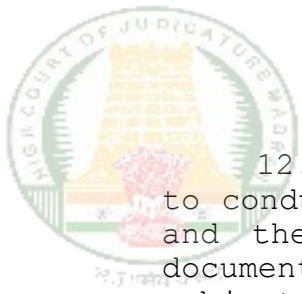
7. The learned counsel for the petitioner would submit that the property is not a wakf property and the first respondent cannot refuse to register the subject property on the allegation made by the fourth respondent as the said property was originally purchased in the year 1824 and finally the petitioner obtained the subject property by way of settlement deed from his wife.

8. His wife purchased the said property in a Court auction and as such the property never belong to wakf. Even assuming that the said property belong to wakf for any religious institution as held by the Hon'ble Division Bench of this Court in Batch of writ petitions in W.P.No.30589 of 2013 and batch, dated 05.04.2017, issued directions to the registering authority to hold the summary enquiry, hearing the parties and neither register nor refuse to register the document by passing an order having regard to the relevant facts.

9. Therefore, he also relied upon the judgment of the Hon'ble Supreme Court of India in C.A.No.166 of 1969, dated 24.10.1978 and the Hon'ble Supreme Court of India held in respect of Section 6 of the wakf Act that the legislature could not have meant that he should be driven to file a suit in Civil Court for declaration of his title simply because the property in his possession is included in the wakf property list. Similarly, the legislature could not have meant to curtail the period of limitation available to him under the Limitation Act and to provide that he must file a suit within a year or the list could be finally conclusive against him. Therefore, the petitioner need not file a suit to declare the property in his favour and to alienate the said property.

10. The fourth respondent filed a counter and stated that as per Section 51(1)A of the wakf Act, any sale gift exchange, mortgage or transfer of wakf property shall be void ab initio, bar on the registration is only reinforced by virtue of Section 22A of the Registration Act. Therefore, the petitioner cannot rely upon the judgment relating to Hindu Religious and Charitable Endowments Act for the property relating to the wakf Act.

11. The first respondent informed on the protest petition submitted by the fourth respondent and also on verification of records found that the subject property belong to wakf board and directed the petitioner to get the No Objection Certificate from fourth respondent to register the document which was presented for registration on 29.01.2021. According to the fourth respondent, though the property belong to the wakf, according to the petitioner, the property alienated from the above said transactions.



12. Considering the above, the first respondent is directed to conduct an enquiry after issuance of notice to the petitioner and the fourth respondent in respect of registration of the documents which was presented for registration in respect of the subject property ad-measuring 6354 sq.ft, comprised in Survey No.269 and 270 in R.S.No 184 under Patta C.A.No. 374 of 2009, dated 26.06.2009 as per Patta R.S.No.175/3, 184, Block No 5, Triplicane Village, Mylapore, Chennai, and after giving them an opportunity of hearing, pass orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order.

13. With the above directions, this writ petition is disposed of. Consequently, connected Miscellaneous petition is closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

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To

- 1.The Sub Registrar,
Tiruvallikeni,
Chennai.
- 2.The District Registrar,
Chennai Central.
- 3.The Inspector General of Registration,
Office of the Inspector General of Registration,
Santhome, Chennai.
- 4.Tamil Nadu Wakf Board,
Represented by The Chief Executive Officer,
No.1 Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai 1.

+1cc to Mr.A.Nissar Ahmed, Advocate SR.No.60132
+1cc to Mr.V.Raghavachari, Advocate SR.No.59881

W.P.No.6639 of 2021
and W.M.P.No.7196 of 2021

PA(CO)
RVM(08/12/2021)