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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P.No.8299 of 2021
and W.M.P.Nos.8839 & 8840 of 2021

1. P.V.Sadhunraj
2. V.Kosala .. Petitioners

Vs.

1. The Commissioner,
Hindu Religious and Charitable Endowment,
Chennai.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowment,
Salem.
3. The District Registrar,
Salem, Salem District.
4. The Sub Registrar,
Mecheri, Salem District. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus calling for the records in refusal entry No.01/2021 on the file of the Sub Registrar, Mecheri 4th respondent herein dated 02.02.2021 and quash the same and further direct the 4th respondent to register the sale deed dated 24.07.2020.

For Petitioners : Mr.S.C.Vishwanath

For Respondents : Mr.Yogesh Kannadasan,
Government Advocate

O R D E R

(The case has been heard through video conference)

The writ petition has been filed challenging the order passed by the fourth respondent Sub Registrar refusing to register the sale deed presented by the petitioners for registration on the ground that the respondents 1 and 2 HR & CE department have raised objections for registration on the ground that the land belongs to HR & CE department.



2. According to the learned counsel appearing for the petitioners, the petitioners are the absolute owners of the land in Survey No.160/2C and patta was also granted in their favour and they are in possession and enjoyment of the property and the HR & CE department has no right whatsoever over the property, but they have wrongly given objections as if the land belongs to them and the Sub Registrar without issuing any notice and without conducting any enquiry has mechanically refused to register the document.

3. Further, according to the learned counsel for the petitioners, if at all any objections are raised by the HR & CE department, the Sub Registrar is supposed to conduct an enquiry after giving an opportunity to the petitioners and the objector HR & CE department and thereafter after perusing the documents he is supposed to pass orders. In support of his said contention, the learned counsel relied upon a Division Bench judgment of this Court in Sudha Ravi Kumar v. The Special Commissioner & Commissioner, H.R & C.E. Department reported in 2017 (3) CTC 135.

4. Per contra, Mr.Yogesh Kannadasan, learned Government Advocate appearing for the respondents would submit that the land belongs to HR & CE department and the Temple records also clearly shows the same. In such circumstances, the HR & CE department raised objections under Section 22A of the Registration Act. Considering the same, the Sub Registrar has rightly refused to register the document.

5. I have considered the rival submissions and also perused the records carefully.

6. Perusal of the records, it could be seen that there is a dispute between the petitioners and the HR & CE department regarding the title of the property and the HR & Ce department has also submitted its objections under Section 22A of the Registration Act and considering the same the Sub Registrar refused to register the document. If at all any objections are raised by a religious institution, the Registrar is expected to conduct enquiry and issue notice to the parties and after considering the materials available on record and after affording opportunity of hearing to the contesting parties, the Registrar has to pass order. But, in the instant case, the Sub Registrar, without issuing any notice whatsoever and without conducting any enquiry mechanically refused to register the document. In this respect, it is useful to refer to paragraphs 25 and 26 of the Division Bench judgment of this Court in Sudha Ravi Kumar v. The Special Commissioner & Commissioner, H.R & C.E. Department reported in 2017 (3) CTC 135 and the same is extracted hereunder:

"25. But this observation of ours shall not be construed that it is our conclusion that ryotwari patta issued to the ryot concerned is the final adjudication relating



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to the title for the property. We wish to clarify that the final adjudication regarding the title to the property can be had only before a Civil Court. We only say that at the time of registration of the deed, if any objection is made by the religious institution under Section 22-A of the Act, the registering authority shall issue notice afford opportunity to the parties, apply his mind and only from the materials available before him, if he is satisfied that the land belongs to the religious institution or given or endowed to the religious institution, then, he shall refuse to register such deed.

26. 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



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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...'

7. Considering the above circumstances, the impugned order has been passed without conducting any enquiry and hence the impugned order is liable to be set aside and accordingly set aside and the matter is remitted back to the fourth respondent and he is directed to issue notice to the petitioners as well as the HR & CE department and after considering the objections and documents, if any, pass suitable orders on merits and in accordance with law. The above exercise should be conducted within a period of eight weeks from the date of receipt of a copy of this order. The writ petition is allowed on the above terms. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

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To

1. The Commissioner,
Hindu Religious and Charitable Endowment,
Chennai.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowment,
Salem.
3. The District Registrar,
Salem, Salem District.
4. The Sub Registrar,
Mecheri, Salem District.

+lcc to Government Pleader SR.No.31713

W.P.No.8299 of 2021 and
W.M.P.Nos.8839 & 8840 of 2021

PCH(CO)
GMY(02/08/2021)