

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2021

CORAM

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

W.P. No. 30595 of 2017

T.Rajasekar

.. Petitioner

Vs.

1.The Sub-Registrar,
Ayyothiyapattinam,
Salem District.

2.The Assistant Commissioner,
Office of Assistant Commissioner of HR &CE,
Hindu Religions and Charitable Endowments Department,
Salem.

3.The Inspector,
Hindu Religions and Charitable Endowments Department,
Salem.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus by directing the first respondent herein to register the sale deed document presented for registration on 06.01.2016 and the same was taken for registration in pending document No.1 of 2016 and release the said document to the petitioner within an appropriate time.

For Petitioners

: Mr. R.Nalliyappan

For Respondent 1 : Mr. P.P.Purushothaman
Government Advocate
2 & 3 : Mr. G.N.Jayantheesan
Government Advocate

O R D E R

This Writ Petition is filed for issuing a writ of mandamus directing the first respondent to register the sale deed presented for registration on 06.01.2016 and to release the document after registering the same.

2. Brief facts that are necessary for the disposal of the writ petition are as follows:

The petitioner purchased a property comprised in S.F. No.108/2 at Karmapuram Village, Salem District, from one Periyasamy by a registered sale deed dated 06.01.2016. It is admitted by the petitioner that earlier the said property was purchased on behalf of the temple known as Arulmigu Annamarswamy Temple represented by its Dharmakartha by name Periyasamy by registered sale deed dated 19.08.2011. It is the case of the petitioner that the temple authorities decided to sell the property to purchase another property. When the petitioner presented the document of sale dated 06.01.2016 for registration, it is stated that the first respondent refused to register the same and insisted the petitioner to get no objection from second respondent. A

representation was also submitted to the Assistant Commissioner, the second respondent in this Writ petition, by the petitioner's vendor and others, requesting him to give a certificate to the effect that the property does not belong to Tamil Nadu Hindu Religious and Charitable Endowments (HRNC) Department. Though the petitioner's vendor and others submitted a representation to the Sub-Registrar in the month of April 2016, the same was not considered and hence the above writ petition is filed by the petitioner.

3. Learned counsel appearing for the petitioner though admit that the property was originally purchased on behalf of the temple through its Dharmakarthas by Thiru. Periyasamy by virtue of a sale deed dated 19.08.2011, it is contended that the property belonged to a private temple and not to any religious institution as defined under the provisions of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

4. Learned counsel appearing for the petitioner and the respondents relied upon the judgment of a Division Bench of this Court in the case of *Sudha Ravi Kumar and another Vs. The Special Commissioner and Commissioner, Hindu Religious and Charitable Endowments Department* reported in [2017 (3) CTC 135]. The Division Bench of this Court considered

the power of Registering Authority to refuse to register certain documents which falls under Section 22 A of the Registration Act. If a claim is made by any religious institution in relation to any immovable property, it is held that the Registering Authority cannot refuse to register the document by a non speaking order. This Court after considering the facts and events issued the following guidelines:

“...

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."

5. In the present case, the petitioner has produced before this Court a sale deed which shows that the property was originally purchased on behalf of the temple known as Arulmigu Annamarswamy Temple. The petitioner's vendor just represented the temple in his capacity as 'Dharmakartha' when the property was purchased. However, the same person, after purchasing the property, in his individual capacity along with others executed a subsequent sale deed in favour of the petitioner as if the executants are the absolute owners of the property.

The recitals of the document dated 19.08.2011 and the sale deed that was executed subsequently suggest different version than what is pleaded in this writ petition.

6. The petitioner has not produced any other title deed other than the document namely the sale deed dated 19.08.2011. The prior document indicates that the ownership of the property vests with the temple. However, the petitioner's contention is that the property belongs to a private temple and not to a religious institution as defined under the Tamil Nadu Hindu Religious and Charitable Endowments Act.

7. Be that as it may, this Court is of the view that the Sub Registrar namely the first respondent in this Writ Petition is competent to decide whether the property is the property of a religious institution or not after issuing notice to all the parties concerned and following the guidelines of this Court in the case of *Sudha Ravi Kumar and another Vs. The Special Commissioner and Commissioner, Hindu Religious and Charitable Endowments Department* reported in [2017 (3) CTC 135].

8. Accordingly, the Writ Petition is disposed with a direction to the first respondent herein to consider the registration of sale deed dated 16.01.2016 in the light of the judgment of the Division Bench reported in 2017 (3) CTC 135 and to register the sale deed and to proceed further as directed in the judgment if it is found that the property does not belong to any religious institution. In case the first respondent is fully convinced with the title and ownership of the religious institution (public temple), it is open to the first respondent to pass appropriate orders after hearing the petitioner and the second respondent. The first respondent shall pass appropriate orders or register the document within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

02.03.2021

Index: Yes/No

Speaking order / Non speaking order

bkn

To

1. The Sub-Registrar,
Ayyothiyapattinam,
Salem District.

S.S.SUNDAR. J.,

bkn

2.The Assistant Commissioner,
Office of Assistant Commissioner of HR &CE,
Hindu Religions and Charitable Endowments Department,
Salem.

3.The Inspector,
Hindu Religions and Charitable Endowments Department,
Salem.



W.P. No. 30595 of 2017

WEB COPY

01.03.2021