



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON :26.03.2021
PRONOUNCED ON :01.04.2021
CORAM

THE HONOURABLE MR.JUSTICE **V. PARTHIBAN**

W.P(MD) No.4287 of 2020 and

WMP(MD) No.3611 of 2020

WEB COPY

- 1.Mrs.Sree Kala
- 2.Mr.Murugesan
- 3.Mrs.Vanmathi
- 4.Mr.Justin
- 5.Mr.P.Rethinakaran
- 6.Mr.R.Ganesan
- 7.Mrs.Meena

.. Petitioners

Vs

- 1.The Joint Commissioner,
HR & CE Department,
Tirunelveli Town & District.
- 2.The Assistant Commissioner,
HR & CE Department,
Nagercoil,
Kanyakumari District.
- 3.The Inspector,
HR & CE Department,
Nagercoil,
Kanyakumari District.
- 4.The Sub Registrar,
Kottaram - 629 703,
Kanyakumari District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings of the second respondent/Assistant Commissioner of the Hindu Religious and Charitable Endowment department dated 25.01.2020 in Na.Ka.No.5167/2019/A3-2 along with the undated communication issued by the third respondent/Inspector of HR & CE department and the consequential order issued by the fourth respondent/ Sub Registrar, Kottaram dated 13.02.2020 and quash the same and issue consequential direction to the Sub Registrar, Kottaram to register the sale deed dated 13.02.2020, executed by the petitioners in favour of Mr.Mariappan, in respect of the property in New Survey Number 352/2A, Mylaudy Village, Agasteeswaram Taluk, Kanyakumari District.

For Petitioners

: Mr.N.Dilip Kumar

For R1 to R3

: Mr.K.P.Narayana Kumar

Special Government Pleader



For R4

: Mr.K.Sathiyasingh
Additional Government Pleader

ORDER

The case of the petitioners is that they are the owners of the subject property. They have purchased the same under various sale deeds. The parental documents in regard to the subject property have already been registered on the file of the Sub Registrar, Kottaram in document Nos.3594/2004, 3596/2004 and 1989-2003/2005 dated 01.12.2004, 01.12.2004 and 22.06.2005 respectively. The Encumbrance Certificate issued by the Sub-Registrar, Kottaram for the period from 01.01.1987 to 02.09.2019 bears testimony to the fact of the registration of so many transactions, in regard to the subject property.

2.The owners of the subject property promoted a residential layout with an approval of the competent authority, subsequently conveyed individual plots under different sale deeds, which are also registered under various document numbers from 2008 to 2014.

3. In the above circumstances, the petitioners as the owners of the property executed a sale deed dated, 13.02.2020, in favour of one Mr.Mariappan, in respect of Plot No.8C in new Survey Number 352/2A. The extent of the land covered under the sale Deed is 3.18 cents. When the document was presented for registration, the Sub Registrar Kottaram, the fourth respondent herein vide communication dated 13.02.2020, refused to register the sale deed, on the basis of the reference to a communication from HR & CE Department, dated 25.01.2020. The order refusing to register the document dated 13.02.2020, by the fourth respondent, with reference to the communication of the HR & CE Department, dated 25.01.2020 is the subject matter of the challenge in the present Writ Petition.

4.Mr.N.Dilip Kumar, the learned counsel appearing for the writ petitioner would submit that the HR & CE Department, vide its communication dated 25.01.2020, claimed that the property in Suvey No.352/2 belonged to Arulmighu Karpaga Vinayagar Temple and some private individuals have fraudulently alienated the temple lands. It is also claimed by the Department that under Section 34(1) of the Tamil Nadu Religious and Charitable Endowments Act, 1959 prohibits the alienation of the immovable properties without prior permission. The learned counsel in this regard would submit that the communication of the HR & CE Department was issued on the erroneous premise in the Survey No.352/2, Mylaudy Village, Arulmighu Karpaga Vinayagar Temple, since the same is contrary to the orders passed by the Deputy Commissioner of HR & CE Department, wayback in 27.01.1975, in an application of one C.Vallinayagam Pillai in OA.No.81 of 1974, in respect of the same property. In the proceedings, the Deputy Commissioner has categorically held that the suit institution is a private property of the petitioner and finally



concluded that the suit institution is not a religious Institution, as defined under the Provisions of the Hindu Religious and Charitable Endowments Act. This conclusion was based on the materials produced before the authority and in the face of such well considered conclusion, the present communication dated, 25.01.2020 cannot be relied upon for the purpose of refusing to register the document presented by these petitioners herein. The learned counsel would further add as stated above and also as a matter of fact, number of transactions have taken place and those transactions have been registered in the same Sub Registrar office, in regard to the same property. The registrations had been done for a period of several years as averred in the affidavit. Such registrations have also been reflected in the Encumbrance Certificate, relating to the property. Therefore, the present objection by the Registration Department cannot be countenanced either in law or on facts.

5.The learned counsel would further submit that unless the department comes up with a concrete case as to the ownership of the property mere issuance of the communication cannot tie the hands of the Registering authority, who refused registration on that account alone. According to the learned counsel for the petitioner, the law has been well settled on this legal aspect. The learned counsel would refer to the recent decision of this Court rendered in W.P. (MD) No.1464 of 2020, dated 12.02.2020. The learned judge of this Court has held as follows:-

6.Mere claim by the HR & CE Department is not sufficient for the Sub Registrar to refuse the document. Unless the title of temple is acknowledged by a Civil Court or the temple produce sufficient documents to prove its lawful title, the Registrar cannot refuse to register the document presented by individual. Section 22(A) of Registration Act prescribes only when the Registering Authority has reason to believe that the property belongs to any institution, which comes under the purview of HR & CE Act. When the previous document was registered without any objection, it is improper to refuse to register the document on the ground of objection raised by HR & CE Department.

7.The learned counsel for the second respondent has filed a counter affidavit stating that the second respondent has no objection for the petitioner to execute a deed of conveyance or to present the document for registration, as the temple admits the title of petitioner. In other words, the temple does not claim any right or title over the property, which is the subject matter of the present Writ Petition. It

is stated by the second respondent that the temple



authorities have intimated the concerned Sub Registrars about particulars of immovable properties belonging to Temple. The learned counsel for the second respondent submitted that the second respondent has also undertaken the job of identifying the lands as of now, which have been acquired from the temple long back for the society. The learned counsel for the second respondent further stated that the temple will also submit No objection Certificate for registering those lands, for which the temple does not claim any right or title.

8.It is made clear that in a case, where the temple claims title to a property, the temple should give the list of document, of title to prima facie satisfy the registering officer that the temple has lawful claim against the property referred to in such objection. After satisfying that the properties belongs to the temple as per the old revenue records or that the temple has a lawful claim against any strangers, the third respondent is expected to entertain such objection. When further objection is received from the HR & CE Department, the third respondent is directed to hold an enquiry after giving opportunity to the person, who present the document for registration and others, who are interested, including HR & CE Department and take a decision in accordance with law. The procedure directed by this Court referred to above shall be followed by the Registering Officer in all cases in future. Since there is no objection by the temple or H.R & CE Department and the absolute title of petitioner is admitted, the Writ Petition deserves to be allowed.

9.As a result, this Writ Petition is allowed and the impugned order passed by the third respondent, dated 10.01.2020 is set aside and the third respondent is directed to register the document of the property in question, which was presented by the petitioner, within a period of six weeks from the date of receipt of a copy of this order after complying with other formalities. No Costs.

6.The learned counsel would also refer to the earlier Division Bench Judgment of this Court, reported in 2017 (3) CTC Page 135, wherein, he would refer to in regard to the point in issue.

7.A perusal of Section 22 A of the Act would make it crystal clear that it is mandatory on the part of the registering authority to refuse to register any document



of sale, transfer, gift, mortgage, exchange or lease in respect of any property belonging to or given or endowed for the purpose of any religious institution governed by TN HR & CE Act. But at the same time, in order to satisfy himself that the property belongs to or given or endowed for the purpose of any religious institution, he should have some material before him which can be obtained by holding a summary enquiry.

7. According to the learned counsel for the petitioners, the impugned action is invalid and illegal. In any case, the learned counsel would submit that it is always open to the temple to claim ownership, if they are otherwise entitled to claim in a manner known to law. But it cannot prevent the registration of the document as such by merely making a claim without any supporting materials, as on date.

8. Notice was ordered and Mr.K.P.Narayanakumar, the learned Special Government Pleader entered appearance and counter affidavit has been filed.

9. Mr.K.P.Narayana Kumar, the learned Special Government Pleader has strongly resisted the claim of the petitioner. The learned Special Government Pleader submitted that the subject lands actually belong to the temple and unfortunately alienations had taken place over the years illegally and fraudulently by many persons. He submitted that in any case, the property belongs to the Religious Institution and which cannot be sold without obtaining prior permission from the HR & CE Officers, under the provisions of the Tamil Nadu Religious and Charitable Endowments Act, 1959. According to the learned Special Government Pleader, in respect of the orders passed by the Deputy Commissioner in OA.81 of 1974, dated 27.01.1975, the said Vallinayagam had obtained order by suppressing several material facts and now steps are being taken to approach the Commissioner in order to prove the illegality of the order passed by the Deputy Commissioner on 27.01.1975. He impressed upon this Court that the property factually belonged to Religious Institution and they would be able to demonstrate their claim over the property as the Department has been in possession of clinching materials and in support of its claim. He therefore submitted that refusal by the fourth respondent herein is valid and the Writ Petition is liable to be dismissed.

10. Mr.Sathiyasingh, the learned Additional Government Pleader adopted the arguments of the learned Special Government Pleader appearing for the respondents 1 to 3 and added that in view of the communication of the HR & CE Department dated, 25.01.2020, the fourth respondent has rightly refused to register the documents, under the Provisions of the Registration Act.



11.This Court has considered the rival submissions and perused the pleadings and materials available on record.

12.The only point in issue that calls for adjudication in this case is whether the fourth respondent can refuse to register the sale deed presented by the petitioners, on the ground of an objection which was conveyed through a communication of the HR & CE Department dated 25.01.2020 or not? The cumulative facts would disclose that the properties belonging to Arulmighu Karpaga Vinayagar Temple have been subjected to several alienations over the years and the Registration Department has registered those transactions and as a consequence of which, the said registrations have been reflected in the Encumbrance Certificates maintained by the Department. Strangely, when numerous transactions have taken place in regard to the same property over the years, there was absolutely no objection raised on behalf of the respondents 1 to 3 in respect of those transactions at any point of time resisting registration of any document pertaining to the subject property. The very fact that those transactions had gone through smoothly and registered in the past demonstrated the admitted position that there was no objection at all from the HR & CE Department in the past.

13.Be that as it may, the present issue for consideration before this Court is whether the registration of the document can be held up by the registering authority at the instance of the respondents 1 to 3 on the basis of a mere communication from their end or not? On this aspect, the law is well settled as contended by the learned counsel for the petitioner, mere objection from the HR & CE Department cannot be a reason for refusal of registration, unless such objection from the Department is concretely supported with documents or materials. In this regard, two decisions relied upon by the counsel would have to be applied on the factual matrix of this case as well. More so, as far as the case on hand is concerned, the Deputy Commissioner, HR & CE Department himself has categorically concluded that the suit institution was not a Religious Institution, as defined in the Tamil Nadu Religious and Charitable Endowments Act, 1959, on the basis of the evidence, which was made available before him, in the proceedings in OA.No.81 of 1974 dated, 27.01.1975. In the face of the finding of the Department, whatever be the objections that may be raised on behalf of the Department, now the same cannot erase the finding of the Department in proceedings, culminating in the order being passed in O.A.No. 81 of 1974 dated, 27.01.1975.

14.On the plea of the Department that steps have been taken to test the validity of the order passed by the Deputy Commission, HR & CE Department on 27.01.1975, the present registration cannot be refused or withheld. This is more so, the finding of the Deputy Commissioner was in relation to his order dated 27.01.1975, four decades before which in fact paved for numerous registration of



transactions relating to the larger extent of the subject properties for years together.

15. Therefore, this Court has to take a call in the prevailing factual circumstances of the case. As on date, the Department has not come up with any clinching material to sustain its claim as against the right of the petitioner, but at the same time, it is always open to the Department to workout its remedies in a manner known to law, in future, seeking to re-visit the order dated 27.01.1975. At the same time, as far as the present issue on hand is concerned, the registration cannot be refused or withheld lawfully. As far as the facts and circumstances available today, the right of the petitioners to have documents registered cannot be successfully resisted by the claim of the HR & CE Department.

16. In the above circumstances, this Court has no hesitation in allowing the Writ Petition. The impugned proceedings of the second respondent/Assistant Commissioner of the Hindu Religious and Charitable Endowment department dated 25.01.2020 in Na.Ka.No.5167/2019/A3-2 along with the undated communication issued by the third respondent/Inspector of HR & CE department and the consequential order issued by the fourth respondent/ Sub Registrar, Kottaram dated 13.02.2020 are set aside. The fourth respondent is directed to register the document/the sale deed, dated 13.02.2020, presented by the petitioners, if the document is otherwise in order and release the same to the parties concerned as expeditiously as possible, not later than four weeks from the date of receipt of a copy of this order.

17. It is hereby clarified that the decision in this Writ Petition will not be an impediment for the HR & CE Department, to proceed with their contemplated action as projected above, if they are so advised.

18. The Writ Petition is therefore allowed accordingly, with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar(CS)

vrn



To

1.The Joint Commissioner,
HR & CE Department,
Tirunelveli Town & District.

2.The Assistant Commissioner,
HR & CE Department,
Nagercoil,
Kanyakumari District.

3.The Inspector,
HR & CE Department,
Nagercoil,
Kanyakumari District.

4.The Sub Registrar,
Kottaram - 629 703,
Kanyakumari District.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-15124[F] dated 01/04/2021)

+1 CC to M/s.SPL GP (SR-15358[F] dated 07/04/2021)

Pre-delivery order made in
W.P(MD) No.4287 of 2020 and
WMP(MD) No.3611 of 2020
01.04.2021

RK (29.04.2021) 8P 7C