



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.02.2021

Pronounced on : 22.03.2021

CORAM

THE HON'BLE MR.JUSTICE V.PARTHIBAN

W.P. (MD) No.19280 of 2019

K.Mayilvel

... Petitioner

-vs-

1. The Sub Registrar,
Thiruppuvanam Sub Registrar Office,
Thiruppuvanam,
Sivagangai District - 630 611.
 2. The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Sivagangai.
- ... Respondents

(Respondent 2 is suo motu impleaded vide Court order dated 12.02.2021 by VPNJ)

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the impugned endorsement dated 20.06.2019 made in the receipt for registration in Receipt No.2354/2019 and Document No.P/Thiruppuvanam/127/2019 and quash the same and consequently, direct the respondent to register the document pending registration before the office of the respondent in Document No.P/Thiruppuvanam/127/2019.

For Petitioner : Mr.S.R.Raghunathan
for Mr.V.Ramakrishnan

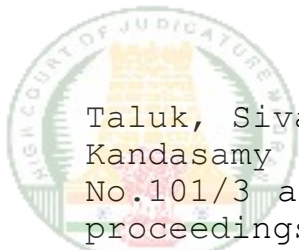
For Respondent 1 : Mr.M.Murugan
Government Advocate

For Respondent 2 : Mr.M.Thilagar
Government Advocate

ORDER

The relevant facts and circumstances which gave rise to the filing of the present Writ Petition are stated hereunder:

1.1.The petitioner is the owner of the property in Survey No.100, Village of Thiruppuvanam Pudur, Thiruppuvanam



Taluk, Sivagangai District. The property originally belonged to one Kandasamy Pillai with a large extent of land in original Survey No.101/3 and the property was the subject matter of the settlement proceedings under Act 30 of 1963. During the settlement proceedings, the patta was issued in the names of Kandasamy Pillai and Tiraviyam Pillai. Later, by virtue of an arrangement of various other co-owners, the property eventually with its larger extent of land was allotted to the said Kandasamy Pillai and he became the absolute owner of the property.

1.2. In view of the above development, the patta was also issued in the name of Kandasamy Pillai and he was in possession and enjoyment of the property through his lessees. As the facts would disclose that the property and its larger extent is leased out to one Venkata Perumal Naidu by giving him a liberty to sub-lease the same and also permitted the lessees to put up temporary structures which shall be removed at the time of termination of the lease.

1.3. One of the lessees of the property was one Swaminatha Pillai and his mother Kamatchi Ammal and the lease was said to have been executed by the original lessee Mr. Venkata Perumal Naidu. Some superstructures were also put up in the property by the lessees and after the demise of Swaminatha Pillai, the leasehold interest devolved on the legal heirs and similarly, the Kamatchi Ammal appeared to have also executed a settlement deed in favour of some of her legal heirs insofar as the right confined to the superstructure put up in the leased out property.

1.4. In the meanwhile, the Kandasamy Pillai who was the absolute owner of the property during his life time executed a Will dated 14.10.1995 in petitioner's favour bequeathing the property under the Will with its larger extent. He died immediately after execution of the Will on 10.11.1995. The petitioner by being a legatee has become the absolute owner of the property and as a consequence of the Will coming into operation the patta was also transferred in his name and the petitioner was paying kist for the property regularly to the revenue authorities.

1.5. According to the petitioner, there were several tenants who were lessees acting against the interest of the petitioner's right and they were also not discharging their obligation under the lease agreement, not paying rents regularly for a considerable period of time. In the said circumstances, a notice was issued under Section 106 of the Transfer of Property Act and the lease was also terminated. As the lessees did not vacate the property despite the notice being issued to them, the petitioner herein was constrained to file a suit for ejectment in O.S.No.105 of 2005 before the District Munsif Court, Manamadurai. After an elaborate trial, the suit was decreed on 15.09.2010. As against the decree and judgment of the trial Court, the lessees filed appeal in A.S.No.124 of 2010 before the District Court, Sivagangai and the same was also dismissed on



02.04.2013. Challenging the concurrent findings of both the trial and first appellate Courts, second appeal in S.A.No.394 of 2013 was filed before this Court.

1.6. In the second appeal before this Court, it was specifically contended by the appellants therein that in the settlement proceedings under Act 30 of 1963, patta ought not to have been issued in favour of the petitioner's predecessor-in-interest, as the property did not belong to them and the same belonged to water charity. According to the appellants, there was a charge over the said property, as the same to be used for water charity purpose during summer days. However, this Court discountenanced the objections by the appellants therein and concluded that the property had not been absolutely dedicated for the water charity purpose but was only burdened with such kind of charity and in the process had held that the petitioner herein had clearly established his title to the said property. Subsequent to the disposal of the second appeal on 18.07.2013, the property was also delivered to the petitioner through Court proceedings on 30.07.2015.

1.7. As the petitioner has become absolute owner of the property and the title has been confirmed by this Court with a specific finding in the second appeal judgment, the petitioner executed a sale deed in favour of one Muthu Mohamed on 13.08.2018 conveying his interest in his favour and presented the document for registration. The first respondent refused to register the document by referring to the communication dated 10.02.2011 of the Joint Commissioner of Hindu Religious and Charitable Endowment Department pointing to the fact that the property was endowed for water charity purpose and therefore, under Section 22-A of the Registration Act, the property cannot be registered. As against the refusal by the first respondent to register the document presented by the petitioner, an appeal was preferred before the District Registrar, Sivagangai in Appeal No.1 of 2018. Although the appellate authority, namely, the District Registrar appeared to have been in agreement with the claim of the petitioner that the property was only burdened with the water charity and it can be subjected to alienation, however, while observing as such, the District Registrar referred to Rule 162A of the Registration Rules and concurred with the views of the first respondent stating that the authority can refuse to register any instrument on the basis of the public policy contemplated under the said Rule, vide his order dated 26.02.2019.

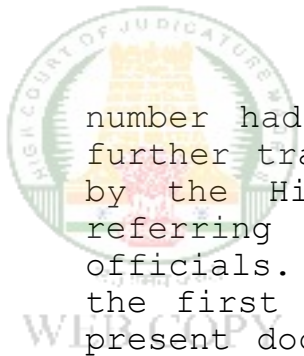
1.8. The petitioner, after the order was passed on 26.02.2019 and taking a cue from its observation, has decided to incorporate necessary recitals in the sale deed so that the document to be presented for registration does not become too vulnerable for its rejection and in that view of the matter, a burden was imposed on the transferee of the title to perform the water charity which was part of the original endowment. By incorporating the necessary



respondent. In the process, a fresh sale deed was presented on 20.06.2019 with the specific recitals imposing the obligation on the purchaser for performing the water charity and necessary charges for registration had also been paid. But, strangely, the registration was not completed and the same was kept pending by the first respondent by making an endorsement in the receipt of the registration that the release of the document will not be effected for want of No Objection Certificate from the Hindu Religious and Charitable Endowment Department and only after obtaining clearance from the said Department, the document would be released. No specific order has been passed for withholding of the document. Challenging the endorsement by the first respondent and withholding of the document is a subject matter of the challenge in this Writ Petition.

2.Mr.S.R.Raghunathan, learned Counsel appearing for the petitioner would make elaborate submissions as to the illegality in the action of the first respondent in withholding of the document on the basis of the endorsement made therein. According to the learned Counsel for the petitioner, the petitioner's title to the property is not open to any dispute in view of the petitioner succeeding before the trial court, first appellate Court and also before this Court in the second appeal. More particularly, this Court in the second appeal has made clear observation that the petitioner has established his title to the property, as the property was merely burdened with water charity. The learned Counsel would particularly lay emphasis that in the proceedings for ejectment of the lessees from the properties owned by the petitioner before the trial Court as well as before the first appellate Court, several contentions were raised and all those contentions were repulsed and disapproved and finally, the petitioner has emerged successful in establishing his indefeasible right as against the tenants and finally, the property has been restored to his possession after culmination of the dispute in the second appeal and the dismissal of the second appeal in favour of the petitioner in 2013.

3.As far as objection of the first respondent that No Objection Certificate to be obtained from the Hindu Religious and Charitable Endowment Department is concerned, the learned Counsel would submit that when a patta was issued in favour of the petitioner's predecessor-in-interest during the settlement proceedings, it was never challenged by any one and more strangely when subsequent mutations in revenue records took place, there was no challenge from any one particularly from the Hindu Religious and Charitable Department. The learned Counsel would submit that as a matter of fact, in respect of a portion of the property in Survey No.101/3A1, the validity of the patta was tested upto the level of the Special Commissioner and Commissioner for Land Administration and the same was upheld and even at that point of time, there was no objection from Hindu Religious and Charitable Endowment Department. The learned Counsel would submit that several portions of the property in the said survey



number had been transferred and the transferees in turn had made further transfers and at no point of time, there was any challenge by the Hindu Religious and Charitable Endowment Department by referring to the water charity and also by the registering officials. Therefore, he would submit that it is surprising that the first respondent herein has raised an objection only when the present document has been submitted for the first time without due appreciation and proper examination of the issue on hand.

4.The learned Counsel would submit that there appears to be a divergent view in regard to the application of the Rule position as between the first respondent and the appellate authority namely the District Registrar. As regards the application of Rule 162A of the Registration Rules is concerned, the public policy referred to in the Rule is not with reference to any public policy as contemplated in Section 22A of the Registration Act and therefore, the invoking the said Rule itself is improper which has no bearing on the registration of the document presented by the petitioner herein. If at all any provision could be invoked, it could only be Section 22A of the Registration Act and according to the learned Counsel, even that provision cannot be invoked in the present case.

5.The learned Counsel would elaborate that this Court in the second appeal in S.A.No.394 of 2013 in its judgment dated 18.07.2013 has clearly held that the property was burdened with water charity and therefore, Section 22A cannot be pressed into service, as the property per se is not endowed with any religious purpose for it to be withheld from any registration. If at all any objection to be made by the Registering authority, the performance of the water charity is to be made as part of any transfer of the property and put the obligation on to the transferee to carry on the activities of the water charity. The learned Counsel in fact would also draw a subtle distinction between a religious charity and water charity and he would submit that Section 22A of the Act would again not applicable for the simple reason that water charity is a secular activity which does not connote any religious activity at all.

6.In any case, the learned Counsel would submit that when the present sale deed dated 20.06.2019 was presented it contained the recitals of performance of water charity as a charge on the property and therefore, there cannot be any justifiable reason for the first respondent to refuse registration of the document. He would, therefore, submit that the impugned endorsement made by the respondent on the document dated 20.06.2019 is liable to be set aside and the respondent may be directed to register the document.

7.Before concluding as above, the learned Counsel would particularly rely on two decision and the observations of the Court as under:



(i) **2017 SCC Online Mad 19191 (Sudha Ravi Kumar v. Special Commissioner and Commissioner, HR & CE Department, Chennai - 34 and others)**. In the above matter, a Division Bench of this Court has observed in paragraph 7 as under:

"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."

(ii) **W.P.(MD) No.1464 of 2020 [P.Varadharajan v. The Special Commissioner and Commissioner HR & CE]** dated 12.02.2020, this Court's attention is drawn to paragraphs 6 and 8 which read as under:

"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 Register 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 H.R. & C.E. Department.

7. ...

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

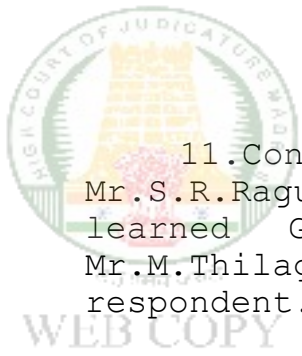


there is no objection by the temple or H.R.&C.E. Department and the absolute title of petitioner is admitted, the Writ Petition deserves to be allowed."

8.The learned Counsel for the petitioner would submit that mere objection without any supportive materials from the Hindu Religious and Charitable Endowment Department cannot tie the hands of the registering authority. In any case alternatively the learned Counsel would also submit that the right of the temple is not completely extinguished in case it has any evidence to establish an iota of right to the property. It is always open to the Hindu Religious and Charitable Endowment Department to work out its remedies in the manner known to law, but as on date it cannot put any obstacles to the registration of the document presented by the petitioner when petitioner's title has been clearly established and confirmed by this Court itself.

9.On behalf of the first respondent, Mr.M.Murugan, learned Government Advocate is appeared and he submitted that in view of the proceedings of the Hindu Religious and Charitable Endowment Department, the first respondent cannot register the document particularly in view of a prohibition under Section 22A of the Registration Act. When in the face of such objection from the Hindu Religious and Charitable Endowment Department, it is upto the petitioner to seek clarification from the department and the first respondent cannot be blamed for refusing to register the document.

10.Originally, the Hindu Religious and Charitable Endowment Department was not arrayed as a party in the Writ Petition but during the course of the preliminary submissions, this Court found that the Hindu Religious and Charitable Endowment Department was proper and necessary party for settlement of the *lis* and therefore, *suo motu* impleaded the Joint Commissioner of Hindu Religious and Charitable Endowment Department, Sivagangai as respondent No.2 in this Writ Petition and notice was ordered and Mr.M.Thilagar, learned Government Advocate, has entered appearance on behalf of the second respondent. The learned Counsel for the second respondent merely questioned the *locus standi* of the petitioner to maintain this Writ Petition, as according to him, the petitioner has nothing to do with the property in question. When this Court repeatedly confronted the learned Counsel for the second respondent that whether the second respondent is proposing to file any counter affidavit opposing the relief prayed for by the petitioner, the learned Counsel categorically submitted that no counter is necessary in this case if his submission on the *locus standi* of the petitioner to maintain this Writ Petition is recorded and the said issue is addressed by this Court. In any case, this Court is of the view that any further objections from the second respondent may not be of much relevance or may not have any bearing on the conclusions to be reached by this Court in the following paragraphs.



11. Considered the elaborate submissions made by Mr.S.R.Ragunathan, learned Counsel for the petitioner, Mr.M.Murugan, learned Government Advocate for the first respondent and Mr.M.Thilagar, learned Government Advocate for the second respondent.

12. The singular point for consideration before this Court is whether it is open to the first respondent to refuse registration of the document presented by the petitioner in the face of the title of the petitioner being declared by the Courts though in collateral proceedings and collaterally whether the authority could rely on Section 22A or any other Rule under the Registration Act/Rules for refusing to register the document merely on the basis of a casual objection from the Hindu Religious and Charitable Endowment Department in the facts and circumstances of this case or not.

13. As a preamble to the submission of the learned Counsel for the petitioner, relevant facts had been narrated tracing back the history of the property and settlement proceedings in favour of Mr.Kandasamy Pillai and also the larger extent of property being leased out to various lessees and the inheritance of the property by the petitioner on the basis of the Will executed by the absolute owner of the property Mr.Kandasamy Pillai in his favour by a Will dated 14.10.1995. In the face of these facts, there cannot be two opinions that the petitioner has become the absolute owner of the property as being a legatee of the Will after the demise of his father Mr.Kandasamy Pillai in the year 1995.

14. When the petitioner after becoming an absolute owner of the property in 1995 had faced certain hurdles in enjoying his property due to unauthorized occupation of the lessees for over a period of time had filed a suit for ejectment in O.S.No.105 of 2005 before the District Munsif Court, Manamadurai and as the facts disclose that the suit was resisted vehemently by the tenants, the defendants therein and yet the suit was decreed on 15.09.2010. The lessees' attempt to challenge it in their appeal in A.S.No.124 of 2010 was unsuccessful, as appeal was dismissed on 02.04.2013 and their further attempt to succeed before this Court in S.A.No.394 of 2013 was also discountenanced by this Court. While disposing the second appeal by a judgment and decree dated 18.07.2013, this Court in paragraph 24 of the judgment has observed as under:

"24. The present suit has been instituted for the relief of recovery of possession by way of stating that the present defendants have been enjoying the suit property as tenants. In fact on the side of the first respondent/plaintiff, exponential evidence has been let in for the purpose of proving that the plaintiff is having title to the suit property and further the suit property has not been absolutely dedicated for the purpose of doing water charity

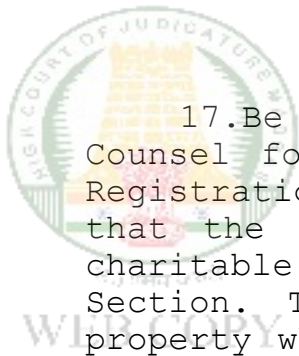
<https://hcservices.mca.gov.in/hcservices/> the suit property is burdened with such kind of



charity and therefore the plaintiff is very well having *locus standi* to institute the present suit. Even at the risk of repetition, the Court would like to point out that the plaintiff has clearly established his alleged title to the suit property and also he clearly terminated the tenancy rights of the defendants and under the said circumstances the plaintiff is entitled to get the relief sought for in the plaint."

15.From the above observation, it could be seen that this Court has used the expression that the petitioner herein was a plaintiff in the suit had let in exponential evidence in establishing his title to the suit property and as rightly contended by the learned Counsel for the petitioner, this High Court has very vividly observed that the suit property itself has not been absolutely dedicated for the purpose of giving water charity and property was merely burdened with such charity which meant that the right to deal with the property is not taken away. This Court in consideration of the above observation is of the view that the title of the petitioner to the subject property is beyond the pale of any doubt and therefore, the interference of the HR & CE Department is misconceived and may not stand the test of judicial scrutiny.

16.Moreover, as rightly contended by the learned Counsel for the petitioner, at no point of time, H.R. and C.E. Department has set up any challenge when the petitioner's predecessor in title was granted patta under settlement proceedings nor the Department had come up with any objection when portion of properties in the larger extent of the property owned by the petitioner was subjected to various transfers and re-transfers in the past years. Moreover, when the petitioner had filed a suit as against his tenants/lessees, which suit proceedings has culminated in the disposal of the second appeal by this Court in Second Appeal No.394 of 2013 dated 18.07.2013, there was no attempt by the Department to raise any objection questioning the title of the petitioner to the property on the basis of the endowment being made originally to the property regarding the charitable purpose. This Court is conscious of the fact that the suit proceedings which culminated in the second appeal was between the petitioner and his lessees and it is possible for the Department to claim ignorance of the proceedings and again it is possible for the department to contend that the department is not bound by any observations made in the collateral proceedings in which the department was not a party. But the fact of the matter was that several transfers had taken place in regard to the subject property in the past years for which transactions there were no objections raised on behalf of the department. Therefore, today, it is not open to the second respondent to raise any objection particularly without providing any material to the satisfaction of the first respondent, assuming that the department can have any valid objections at all in the first place.



17.Be that as it may, as rightly contended by the learned Counsel for the petitioner, the invocation of Section 22A of the Registration Act itself is misplaced and misconceived for the reason that the property as such is not endowed for any religious or charitable purpose for it to attract the mischief of the said Section. The water charity work is merely an appendage to the property which cannot dilute the character of the property being a private property which can be alienated legally and legitimately. If at all is there any objection, the objection could be only to the extent of mandating the performance of water charity work as a condition to be made an integral part of the transferring of the property.

18.This Court is of the view that the first respondent or the appellate authority failed to understand that there are two limbs of issues which arose for consideration before them. Firstly, as far as the objections of the appellate authority was concerned, as rightly contended by the learned Counsel for the petitioner Rule 162A of the Registration Rules can never be pressed into service in the present case as the observation made in that regard by the appellate authority is without any substance and such observation though not being part of the present impugned decision of the first respondent is liable to be rejected outright. As far as the endorsement made by the first respondent directing the petitioner to get No Objection Certificate from the Hindu Religious and Charitable Endowment Department, presumably in terms of Section 22A of the Act, this Court is unable to countenance such endorsement in law for the simple reason that Section 22A has absolutely no application to the case at all. Section 22-A of the Act reads as under:

"22-A. Refusal to register certain documents.-

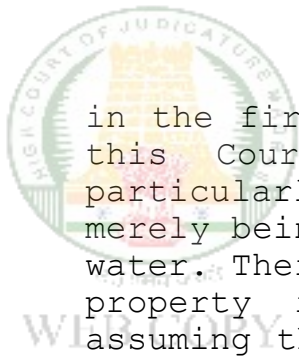
Notwithstanding anything contained in this Act, the registering officer shall refuse to register any of the following documents, namely: -

(1) instrument relating to the transfer of immovable properties by way of sale, gift, mortgage, exchange or lease, -

(i) belonging to the State Government or the local authority or Chennai Metropolitan Development Authority established under Section 9-A of the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972):

(ii) belonging to, or given or endowed for the purpose of any religious institution to which the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959) is applicable; ... "

19.As it could be seen from the above Section, only if the immovable property is endowed for the purpose of any religious institution to which Hindu Religious and Charitable Endowment Act is applicable, a refusal could be justified. As stated above, the property as such is not endowed to any religious cause attracting the provisions of the Hindu Religious and Charitable Endowments Act



in the first place. This is because as clearly and rightly held by this Court in the second appeal judgment dated 18.07.2013, particularly in paragraph 24 which is extracted supra, the property merely being burdened with charity work for distribution of drinking water. Therefore, the authority has misconstrued as if the immovable property itself is being endowed with any religious purpose, assuming that the charity (water distribution) envisaged originally is for any religious purpose at all.

20.The learned Counsel for the petitioner in fact made submissions canvassing that the water charity activity is secular in nature and therefore, whether that would attract the sub-clause (ii) of Section 22A of the Act at all is an another dimension to the dispute. In fact, this submission appears to be having some force as the learned Counsel has made a subtle distinction between a religious charity and a secular charity. However, this Court is not inclined to give any findings as to whether the charity is secular or not, for the reason that the very invoking of Section 22A of the Act even assuming that the water charity is a religious activity as intended originally by the owners, yet in the circumstance of the case, is misplaced and invalid and cannot be legally countenanced.

21.In the conspectus of the above judicial discourse, this Court finds that the first respondent has not appreciated the case of the petitioner in proper perspective and endorsement made by him is also not with reference to proper appreciation of the Rule position and also the case law on the subject matter. The first respondent appears to have made an endorsement without due examination and enquiry on a peripheral understanding of the issue on hand. In fact, the two citations relied on by the learned Counsel for the petitioner fully supported the case of the petitioner but as far as this Court is concerned, even those two decisions need not be a relevant support for allowing this Writ Petition for the reason that Section 22A of the Act itself is attracted in this case, in view of the findings by this Court in the second appeal judgment in S.A.No.394 of 2013, dated 18.07.2013. Once this Court has categorically concluded on the basis of the rival objections, though at the instance of lessees and held that the kind of charity work envisaged originally was only a burden on the property, such conclusion which is in favour of the petitioner herein would hold good for all times to come and against all claims as well. Unfortunately, the first respondent has not taken this succinct observation into consideration which in fact is very much binding on him more than the off hand objection of the H.R. & C.E. Department.

22.This Court in the final consideration is of the view that as observed in the earlier paragraphs of this order, no amount of objections from the second respondent department would sway the case against the petitioner as on date as the only objection the second respondent could have at best is the water charity work attached to the property. It is too if the charity is to be continued as a



religious edict and beyond that this Court does not think that the second respondent can have any say in the property owned by the petitioner. This Court having considered the fact and the petitioner also having incorporated necessary recitals in obligating the transferee to carry on the charitable objective as endowed in the property, it is not open to the first respondent to refuse to register the document on that ground, in the facts and circumstances of this case.

23.For all the above said reasons, the impugned endorsement dated 20.06.2019 made in the receipt for registration in Receipt No.2354/2019 and Document No.P/Thiruppuvanam/127/2019 by the first respondent is hereby set aside. The first respondent is directed to register the document presented by the petitioner namely the sale deed dated 20.06.2019 if the document is otherwise in order and release the document to the petitioner on registration of the same.

24.The first respondent is directed to complete the registration within a period of four weeks from the date of receipt of a copy of this order.

25.The Writ Petition is allowed as above. No costs.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SRM

To

1. The Sub Registrar,
Thiruppuvanam Sub Registrar Office,
Thiruppuvanam,Sivagangai District - 630 611.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Sivagangai.

+1 CC to M/s.V.RAMAKRSIHAN, Advocate (SR-12640[F] dated 22/03/2021)

Order made in
W.P. (MD) No.19280 of 2019
22.03.2021

NSM(CO)

TR(31.03.2021) 12P 4C