IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.NOS.518 & 519 OF 2022

Arulmigu Pongalur Amman @
Kandiamman @ Neelakandiamman Thirukoil
Rep. by Mr.K.Natarajan
The Chairman, Board of Trustees
Thirukoil campus, Pongalur – 641 667
Palladdam Taluk, Tirupur District.

.. Appellant/Petitioner in both WAs.

Vs.

1 The Inspector General of Registration
No.100, Santhome High Road
Pattinapakkam, Chennai – 600 028.

2 The District Registrar
Tirupur district, Tirupur

3 The Sub-Registrar
Sub-Registrar Office, Mangalam Road
Palladam, Tirupur District.

4 The Authorized Officer
Canara Bank, ARM Branch
166, Thiruvenkatasamy Road West
Coimbatore – 641 002.

5 M/s.VIP Grand Properties
Rep. by its partner, E.Kandhasami
S/o.Elayappagounder
No.32, Mariyamman Nagar
Appamasamuthiram Post
Attur Taluk, Thanmangudipalayam
Salem District.

6 M/s.Pioneer Breeding and Hatcheries Pvt. Ltd.
Door No.1/85, Trichy Road
Pongaur - 641 667
Palladam Taluk, Tiruppur District.

.. Respondents/Respondents in WA No.518/22

1 M/s.VIP Grand Properties
Rep. by its partner, E.Kandhasami
S/o.Elayappagounder
No.32, Mariyamman Nagar
Appamasamuthiram Post
Attur Taluk, Thanmangudipalayam
Salem District.

2 The District Collector
District Collector Office
Tiruppur District, Tiruppur.

3 The Sub-Registrar
Sub-Registrar Office, Mangalam Road
Palladam, Tirupur District.

4 The Authorized Officer
Canara Bank, ARM Branch
166, Thiruvenkatasamy Road West
Coimbatore - 641 002.

5 The Revenue Tahsildar
Tahsildar Office, Palladam
Palladam Taluk, Tiruppur District.

.. Respondents/Respondents in WA No.519/22

Prayer: Appeals filed under Clause 15 of the Letters Patent against the order dated 21.01.2022 made in W.P.No.13005 of 2021 and W.P.No.14624 of 2021 respectively.

Prayer in W.P.No.13005 of 2021:

Writ Petition filed under Article 226 of the Constitution of India, praying this court to issue Writ of Certiorarified Mandamus, Calling for the records of the 3rd Respondent herein pertaining to the registration of the sale certificate in Document No.5560/2019 dated 25.04.2019 and quash the Registration of the same and further direct the 3rd Respondent herein to hold enquiry as envisaged U/s. 22-A of the Registration Act 1908 in respect of the registration concerning the lands in S.F. No. 350/1 with an extent of 8.68 acres of

Pongalur Village, Palladam Taluk, Tiruppur Distirct.

Prayer in W.P.No.14624 of 2021:

Writ Petition filed under Article 226 of the Constitution of India, praying this court to issue Writ of Certiorarified Mandamus, Directing the 4th Respondent herein to issue patta in the petitioners name for the property in S.F. No. 350/1 in pongalur Village, Palladam Taluk, Tiruppur Distirct by considering the petitioner representation dated 31.10.2020

For the Appellant : Mr.P.M.Duraiswamy

For the Respondents : Mr.P.Muthukumar
State Government Pleader
for Respondents 1 to 3
in WA No.518 of 2022 &
for Respondents 2, 3 & 5 in
WA No.519 of 2022.

JUDGMENT
(Delivered by the Hon'ble Chief Justice)

In these writ appeals, a challenge is made to the common order dated 21.01.2022 passed in W.P.No.13005 of 2021, which was filed seeking a restraint on the registration of the sale certificate dated 25.04.2019 and quash the registration of the same in regard to the property for which patta was issued almost 45 to 50 years back, and in W.P.No.14624 of 2021 which was filed seeking patta in the name of the writ petitioner for the property for which patta was issued in favour of the private respondent almost 45 to 50 years back. It is only on the ground that statutory appeal is pending to challenge the patta issued in favour of the private respondents.

2. To challenge the patta issued in favour of the private respondent, a statutory appeal was maintained by the appellant after a period of 45 years and the said appeal was dismissed for default and till date, it has not been restored. Taking the overall facts into consideration, the learned Single Judge did not find a case for grant of relief, as prayed for.

3. In paragraph 6 of the order, the learned Single Judge observed that no parent document was produced by the appellant. The appellant had maintained an appeal in CMA No.18 of 2013 against the order of the Settlement Tahsildar dated 14.10.1968 and it was dismissed for default on 18.07.2018. The writ petition thereupon was filed in the year 2021 and till then, the appeal was not restored.

4. In the meanwhile, the fourth respondent put the property for sale by way of e-auction held on 08.03.2019, wherein the fifth respondent was declared to be a successful bidder and accordingly, the sale certificate was issued on 25.04.2019. The document was then registered bearing No.5560 of 2019 in the office of the third respondent.

5. In view of the above, mere raising an objection in the writ petition was not sufficient. Rather, in a case where the sale document has been registered, it can be challenged by way of suit for its cancellation. The learned Single Judge has noted that the third respondent had not refused to register the document pursuant to the provision of Section 22A of the Registration Act. Rather, it can be refused only when the Registering Authority has reasons to believe that the property belongs to a temple. It was found that as far as the appellant is concerned, it could not show any semblance of right over the property in question.

6. The counter filed by the fifth respondent was also taken note of by the learned Single Judge. The fifth respondent is none else than the successful bidder in the auction of the property conducted by the fourth respondent and thus, the sale certificate, followed by the registration of the document, were made. Accordingly, the fifth respondent was in possession and enjoyment of the property comprised in S.No.350/1 of an extent of 8.68 acres. Therefore, the fifth respondent was entitled to the patta.

7. A finding has also been recorded by the learned Single Judge that the subject property does not fall under the category of religious endowment in terms of HR & CE Act and that such issue cannot be gone into, as the jurisdiction lies with the Civil Court requiring a finding of fact based on the evidence to be adduced by the parties.

8. The learned Single Judge further found that the appellant had challenged the auction sale notice dated 20.03.2009 before the Division Bench of this Court by maintaining W.P.No.7568 of 2009, which was dismissed by order dated 23.04.2009 with an observation that the appellant may avail alternative remedy as contemplated under Section 17 of the SARFAESI Act, 2002. However, the appellant failed to approach the Debts Recovery Tribunal to challenge the auction notice.

9. Taking the overall facts into consideration, the learned Single Judge recorded the finding in paragraphs 13 to 18 in the following terms and they are quoted as under:

13. On perusal of the counter filed by the fifth respondent in W.P.No.13005 of 2021 viz., the auction purchaser revealed that the fifth respondent was the highest bidder in the auction sale conduced by the fourth respondent and accordingly, the fifth respondent was issued sale certificate and registered vide document No.5560 of 2019. The fifth respondent is in physical possession and enjoyment of the property comprised in S.No.350/1 ad measuring 8.68 acres situated at Pongalur Village. Therefore the fifth respondent is entitled for patta in respect of the subject property. The subject property does not fall under the category of religious endowment or in terms of the HR & CE Act and as such issue cannot be gone into and the same can be resolved only by the Civil Court by adducing evidence. Therefore, the enquiry is not mandatory under Section 22-A of the Registration Act, by the third respondent. With regard to the title dispute, the parties ought to have approached the Civil Court and by way of evidence, the petitioner/temple has to establish its title. When it being so, the claim of the petitioner in W.P.No.13005 of 2021 is unsustainable and untenable.

14. Further, the petitioner challenged the auction sale notice dated 20.03.2009 before the Hon'ble Division Bench of this Court in W.P.No.7568 of 2009 and this Court by an order dated 23.04.2009 dismissed the petition with observation that the petitioner may avail alternative remedy as contemplated under Section 17 of the SARFEASI Act, before the Debt Recovery Tribunal. Further, the petitioner did not approached the Debt Recovery Tribunal challenging the auction sale notice issued by the fourth respondent herein.

15. That apart, by an order dated 14.10.1968 vide proceedings in S.R.No.295/19687/M.I.Act/Palladam Taluk, the Settlement Tahsildar No.II, Gobichettipalayam had passed an order by granting Ryotwari Patta under Section 8(2)(i)(b) of the Madras Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 to Ramakrishnan and V.Venkatapathi to an extent of 11.20 acres of land comprised in S.F.No.350. Therefore, the subject property does not vest with the petitioner/temple and the revenue records were mutated in the name of the

private parties. Therefore, the objections raised by the petitioner in W.P.No.13005 of 2021 cannot be sustained before the third respondent.

16. The said V.Ramakrishnan and V.Venkatapathi by the registered sale deed dated 10.06.1987 sold the subject land comprised in S.No.350/1 to an extent of 8.68 acres and the land comprised in 351/2A ad measuring 56 cents in favour of the sixth respondent. Thereafter, by way of deposit of memorandum of title deed in respect of the subject property along with the other properties availed credit facilities to the tune of Rs.33,05,31,000/- from the Specialized Agricultural Finance Branch of the fourth respondent Bank at Coimbatore. However, the sixth respondent failed and neglected to operate their accounts and defaulted in repayment of credit availed under the facility. Therefore, the fourth respondent had initiated recovery of debts under the SARFEASI Act. Accordingly, after compliance of all formalities and finally the fourth respondent issued demand notice as contemplated under Section 13 of the SARFEASI Act, thereby demanding the sixth respondent to pay a sum of Rs.94,66,54,502.11. Since the sixth respondent did not comply the same, the fourth respondent brought the subject property for auction. In the public auction sale, the fifth respondent was being the highest bidder, he was declared as successful bidder and the sale certificate was also issued and present for registration as document No.5560 of 2019 in the office of the third respondent. The third respondent registered the same vide document No.5560 of 2019 and the fifth respondent is in possession and enjoyment of the subject property.

17. Though the petitioner in W.P.No.13005 of 2021 challenged the order passed by the Settlement Thasildar dated 14.10.1968, in C.M.A.No.18 of 2013 on the file of the Principal Subordinate Court, Tirupur, that too after the period of 45 years, the said appeal was also dismissed for default and even till today the same has not been restored on file. Therefore, the sale certificate presented for registration does not fall under the category of religious endowments or under the HR & CE Act. That apart, the petitioner in W.P.No.13005 of 2021 did not even take any steps to challenge the sale certificate issued in favour of the fifth

respondent. More over, the issue raised by the petitioner cannot be gone into, as the same can be resolved only by the Civil Court. In view of the above discussion, this Court does not find any infirmity or illegality in the registration of sale certificate vide document No.5560 of 2019 and as such it does not require any enquiry as envisaged under Section 22-A of the Registration Act, in respect of the subject property. Hence, the Writ Petition is devoid of merits and is liable to be dismissed.

W.P.No.14624 of 2021 :-

18. In view of the order passed in W.P.No.13005 of 2021, the petitioner in W.P.No.14624 of 2021 is entitled for patta as per the sale certificate dated 25.04.2016 registered vide document No.5560 of 2019 in respect of the property comprised in S.F.No.350/1 situated at Pongalur Village, Palladam Taluk, Tiruppur District. Therefore, the fourth respondent is directed to pass order for issuance of patta to the petitioner in W.P.14624 of 2021 in respect of the above said property within a period of four weeks from the date of receipt of a copy of this Order."

10. In the light of the facts narrated in the relevant portion of the order of the learned Single Judge, we do not find any reason to cause interference with the order of the learned Single Judge as it does not suffer from any error and accordingly, the appeals fail and are dismissed. There will be no order as to costs. Consequently, CMP Nos.3772 and 3773 of 2022 are also dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

kpl/drm

To

1. The Inspector General of Registration
   No.100, Santhome High Road
   Pattinapakkam, Chennai – 600 028.

2. The District Registrar
   Tirupur district, Tirupur

3. The Sub-Registrar
   Sub-Registrar Office, Mangalam Road
   Palladam, Tirupur District.

4. The Revenue Tahsildar
   Tahsildar Office, Palladam
   Palladam Taluk, Tiruppur District.

5. The Authorized Officer
   Canara Bank, ARM Branch
   166, Thiruvenkatasamy Road West
   Coimbatore – 641 002.

+2ccs to Mr.P.M.Duraiswamy, Advocate, S.R.No.18277
+1cc to Government Pleader, SR.NO.19192(30/03/2022)

W.A.Nos.518 & 519 of 2022

NRL(CO)
PM/28/03/2022