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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2022

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P. Nos.13005 & 14624 of 2021
and
W.M.P.Nos.13810, 13811 of 2021

W.P.No.13005 of 2021:-

Arulmighu Pongalur Amman @
Kandiamman @ Neelakandiamman Thirukoil,
Rep. by K.Natarajan
The Chairman, Board of Trustees,
Thirukoil Campus,
Pongalur - 641 667,
Palladam Taluk,
Tirupur District.

...Petitioner

-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
Private Limited,
D.No.1/85, Tiruchy Road,
Pongalur - 641 667,
Palladam Taluk,
Tiruppur District.

(R6 impleaded vide order dated 25.08.2021
made in WMP.No15037 of 2021 in
W.P.No.13005 of 2021)

...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the third respondent herein pertaining to the registration of the Sale Certificate in Document No.5560 of 2019 dated 25.04.2019 and quash the registration of the same and further direct the third respondent herein to hold enquiry as envisaged under Section 22-A of the Registration Act, 1908 in respect of the registration concerning the land in S.F.No.350/1 with an extent of 8.68 acres of Pongalur Village, Palladam Taluk, Tiruppur District.

For Petitioner : Mr.P.M.Duraiswamy

For Respondents

For R1 to R3 : Mr.Yogesh Kannadasan
Special Government Pleader

For R4 : Mr.P.Raghunathan
For M/s.T.S.Gopalan & Co

For R5 : Mr.S.Parthasarathy,
Senior Counsel
For Mr.M.Guruprasad

W.P.No.14624 of 2021:-

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.

...Petitioner

-Vs-

1. The District Collector,
District Collector Office,
Tirupur District.



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2. The Sub-Registrar,
Sub-Registrar Office,
Mangalam Road,
Palladam,
Tirupur District.
3. The Authorized Officer,
Canara Bank, ARM Branch,
166, Thiruvengatasamy Road West,
Coimbatore - 641 002.
4. The Revenue Tahsildar,
Tahsildar Office,
Palladam,
Palladam Taluk,
Tiruppur District.
5. Arulmighu Pongalur Amman @
Kandiamman @ Neelakandiamman Thirukoil,
Rep. by K.Natarajan
The Chairman, Board of Trustees,
Thirukoil Campus,
Pongalur - 641 667,
Palladam Taluk,
Tirupur District.

(R5 impleaded vide order dated 25.08.2021
made in WMP.No16468 of 2021 in
W.P.No.14624 of 2021)

...Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, to directing the fourth respondent herein to issue patta in the petitioner's name for the property in S.F.No.350/1 in Pongalur Village, Palladam Taluk, Tiruppur District, by considering the petitioner's representation dated 31.10.2020.

For Petitioner : Mr.S.Parthasarathy,
Senior Counsel
For Mr.M.Guruprasad

For Respondents

For R1 & R4 : Mr.S.Rajesh,
Government Advocate

For R2 : Mr.Yogesh Kannadasan
Special Government Pleader.

For R3 : Mr.P.Raghunathan
For M/s.T.S.Gopalan & Co

For R5 : Mr.P.M.Duraiswamy



COMMON ORDER

The Writ Petition in W.P.No.13005 of 2021 has been filed to call for the records of the third respondent herein pertaining to the registration of the Sale Certificate in Document No.5560 of 2019 dated 25.04.2019 and quash the registration of the same and further direct the third respondent herein to hold enquiry as envisaged under Section 22-A of the Registration Act, 1908 in respect of the registration concerning the land in S.F.No.350/1 with an extent of 8.68 acres of Pongalur Village, Palladam Taluk, Tiruppur District and the Writ Petition in W.P.No.14624 of 2021 has been filed to direct the fourth respondent herein to issue patta in the petitioner's name for the property in S.F.No.350/1 in Pongalur Village, Palladam Taluk, Tiruppur District, by considering the petitioner's representation dated 31.10.2020.

W.P.No.13005 of 2021 :-

2.The case of the petitioner in W.P.No.13005 of 2021 is that, in the year 1863, the then Governor, Council of Madras issued a pattayan (title deed) vide pattayam No.1028, granting total extent of about 54 acres comprised in S.F.Nos.350, 351, 356, 591, 526, 530 and 533 with the extent of 11.20, 0.22, 19.15, 11.38, 2.97, 2.72 and 6.46 acres respectively situated at Pongalur Village, Palladam Taluk, Tirupur District for maintenance and performance of Poojas to the petitioner temple. However, the said properties are in possession and enjoyment of the occupiers through fraudulent and unlawful transactions. Therefore, the petitioner temple has initiated steps to recover the said properties from the occupation of the encroachers or illegal purchasers.

3.The agricultural land comprised in S.F.No.350/1 to an extent of 11.20 acres encroached by one V.Ramakrishnan and V.Venkatapathi and created sale deed in favour of the sixth respondent herein. Thereafter, it was mortgaged with the fourth respondent for securing loan. Thereafter, the sixth respondent had become defaulter and as such the fourth respondent brought the property for auction sale by invoking the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (herein after called as "the SARFEASI Act") on 25.04.2009. Therefore, the petitioner temple had submitted written objections on 25.04.2009. The petitioner also lodged complaint before the Inspector of Police, Palladam Police Station and the same was acknowledged in C.S.R.No.258 of 2009 dated 25.04.2009. Thereafter, there was no action in respect of the same property.

4.While being so, the petitioner temple also filed an appeal in C.M.A.No.18 of 2013 on the file of the Principal Subordinate



Court, Tiruppur challenging the order of the Settlement Officer, thereby granting ryotwari patta in favour of the said V.Ramakrishnan and V.Venkatapathi, invoking Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963, without even hearing the petitioner as well as the Hindu Religious and Charitable Endowments Department (herein after called as "HR&CE Department"), as mandated under Section 11(2) of the Act. Thereafter the appeal filed by the petitioner in C.M.A.No.18 of 2013 was dismissed for default. The petitioner has filed petition to restore the appeal with petition to condone the delay in I.A.No.385 of 2019 on the file of the Principal Subordinate Court, Tiruppur.

5.While pending the application for condone the delay, the subject property was sold out in the public auction by invoking the SARFEASI Act on 08.03.2019 in favour of the fifth respondent. The fourth respondent executed sale certificate and registered vide document No.5560 of 2019 dated 25.04.2019 on the file of the third respondent. However, the case of the petitioner is that apart from the objections raised by the petitioner, the petitioner temple, through public notice in the daily newspaper dated 06.03.2019 warned the general public not to enter into any transaction with the above said property, since the fourth respondent has no title over the property, as such the entire sale had become void.

6.In fact, no parent document was produced in respect of the subject property before the registering authority. The third respondent had full knowledge about the subject property owned by the petitioner and even then registered the sale certificate without even conducting enquiry as contemplated under Section 22-A of the Registration Act. Therefore, the petitioner made complaint on 29.05.2019 before the first respondent and the same has been forwarded to the second respondent to conduct enquiry as contemplated under Section 68(2) of the Registration Act. The second respondent by an order dated 23.03.2021 dismissed the complaint lodged by the petitioner for the reason that the issues raised by the petitioner are civil in nature. Therefore, the petitioner in W.P.No.13005 of 2021 filed the petition with the above said prayers.

7.Heard Mr.P.M.Duraiswamy, learned counsel appearing for the petitioner in W.P.No.13005 of 2021 and fifth respondent in W.P.No.14624 of 2021, Mr.Yogesh Kannadasan, learned Special Government Pleader appearing for the respondents 1to 3 in W.P.No.13005 of 2021 & for the second respondent in W.P.No.14624 of 2021, Mr.S.Rajesh, learned Government Advocate appearing for the respondents 1 & 4 in W.P.No.14624 of 2021, Mr.P.Raghunathan, learned counsel appearing for the fourth respondent in W.P.No.13005 of 2021 and third respondent in W.P.No.14624 of



2021 and Mr.S.Parthasarathy, learned Senior Counsel, appearing for the fifth respondent in W.P.No.13005 of 2021 and petitioner in W.P.No.14624 of 2021 .

8.On perusal of the counter filed by the fourth respondent in W.P.No.13005 of 2021 revealed that, by the registered sale deed dated 05.05.1943, one Lakshmi Narayanasamy sold out the property to an extent of 17.75 acres of land comprised in S.No.351/2, 323/2, 350 and 351/1 situated at Pongalur Village, Palladam Taluk, Tirupur District, registered vide document No.1068 of 1943 in favour of the V.Ramakrishnana Naicker and V.Venkatapathi. In turn, they sold out the land to an extent of 8.68 acres comprised in S.No.350/1 and the land to an extent of 0.56 acres comprised in S.No.351/2A, in favour of the sixth respondent herein by the registered sale deed dated 10.06.1987, registered vide document No.2154 of 1987.

9.During the year 2005, the sixth respondent approached the fourth respondent for availing credit facility by way of memorandum of deposit of title deeds, in respect of the properties comprised in survey Nos.231/2, 325/2, 334/1, 345/2, 346, 348/1, 348/2, 350/1, 351/2A, 352/3B and 365 dated 21.06.2005 registered vide document No.7043 of 2005 and sanctioned credit facilities to the tune of Rs.33,05,31,000/-. However, the sixth respondent defaulted in repayment of credits availed under the facility.

10.Hence, the fourth respondent declared the loan account as non-performing assets and proceeded under the SARFEASI Act. Accordingly, the fourth respondent published notice in the Hindu newspaper dated 10.07.2008 putting the public on notice about the fourth respondents charge over the said property, cautioning public in general not to deal with the subject property. On 06.09.2008, the fourth respondent caused demand notice as contemplated under Section 13 of the SARFEASI Act, and filed original application before the Debt Recovery Tribunal on 16.10.2008, against the sixth respondent and others for recovery of Rs.101,23,81,314.11 with further interest and costs. After completion of all formalities by notice dated 20.03.2009, the fourth respondent brought the subject property for sale in public auction. The public auction scheduled on 25.04.2009 and notice was published in two local newspapers including Hindu newspaper dated 23.09.2009.

11.In fact, the petitioner in W.P.No.13005 of 2021, filed Writ petition before this Court in W.P.No.7568 of 2009 and by an order dated 23.04.2009 this Court dismissed the Writ Petition by observing that the petitioner in W.P.No.13005 of 2021 had alternative remedy by way of Section 17 of the SARFEASI Act before the Debt Recovery Tribunal. Further, on 25.04.2009, there



was no bidder in the auction. The petitioner in W.P.No.13005 of 2021 did not avail any indulgence granted by this Court and approached the Debt Recovery Tribunal for determination of its claim in respect of the subject property.

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12. In the mean while, the petitioner in W.P.No.13005 of 2021 filed an appeal in C.M.A.No.8 of 2013, as against order of the Settlement Tahsildar, dated 14.10.1968 and it was dismissed for default on 18.07.2018. The petitioner filed petition to restore appeal with condone delay petition. Therefore, the fourth respondent brought the subject property for sale under E-auction to be held on 08.03.2019. On 08.03.2019, the fifth respondent was declared as successful bidder and the sale certificate was issued and the same was presented for registration on 25.04.2019 and it was registered vide document No.5560 of 2019 in the office of the third respondent. Mere raising objections by the petitioner in W.P.No.13005 of 2021 is not sufficient for the third respondent to refuse to register the document and the provisions under Section 22-A of the Registration Act attract only the registering authority has reasons to believe that the property belonged to the temple. The petitioner in W.P.No.13005 of 2021 has absolutely no semblance of right over the subject property to question the registration of sale certificate.

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 conducted 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 approach the Debt Recovery Tribunal challenging the auction sale notice issued by the fourth respondent herein.

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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.

19.Accordingly, the Writ Petition in W.P.No.13005 of 2021 stands dismissed and the Writ Petition in W.P.No.14624 of 2021 stands allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

rts

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 District Collector,
District Collector Office,
Tirupur District.

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

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

+1cc to Mr.T.S.Gopalan & Co, Advocate, S.R.No.4477
+1cc to the Government Pleader, S.R.No.4288
+2cc to Mr.P.M.Duraiswamy, Advocate, S.R.No.3836, 3835
+2cc to Mr.M.Guruprasad, Advocate, S.R.No.3787, 3786

W.P. Nos.13005 & 14624 of 2021
and W.M.P.Nos.13810, 13811 of 2021

MT(CO)
RGA(17/02/2022)