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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2022

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.17994 of 2021
W.M.P.No.19219 of 2021

M/s. Shri Viroomal Issardas Chugani Charitable Trust,
Represented by one of its Trustees,
Mr.KISHORE.B,
Registered Office At Bhagwan Stores,
No.176, NSC Bose Road,
Chennai - 600 001.

... Petitioner

-Vs-

1. The Joint Sub Registrar II,
District Registrar Cadre,
Thousand Lights,
6, KB Dasan Road, Seetammal Colony,
MIG Colony, Alwarpet,
Chennai - 600018.
2. The Commissioner,
Hindu Religious Endowment Board,
Nungambakkam High Road,
Chennai 600 034.
3. The Executive Officer,
Arulmighu Agatheeswara Prasanna Venkateswap Perumal
Temple,
No.11, North Mada Street,
Nungambakkam,
Chennai 600034.
(R2 and R3 impleaded as per order
dated 16.09.2021 made in
W.M.P.No.20494 of 2021 in
W.P.No.17994 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, calling for the records on the files of the respondent impugned check slip bearing No.RFL/2 No. Joint Sub Registrar Central Chennai/3/2021 dated 28.07.2021, refusing to register the Supplementary Deed of Lease dated 05.05.2021 and quash the same and consequently direct the respondent to register the Supplementary Deed of Lease dated 05.05.2021 and release the same.



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For Petitioner : Mr.Jayesh B.Dolia
For R1 : Mr.Yogesh Kannadasan
Special Government Pleader
For R2 : Mr.T.Chezhan
Additional Government Pleader(HR and CE)
For R3 : Mr.Wilson Topaz
for A.S.Kailasam & Associates

ORDER

This Writ Petition has been filed for the issuance of Writ of Certiorarified Mandamus, calling for the records on the files of the respondent impugned check slip bearing No.RFL/2 No. Joint Sub Registrar Central Chennai/3/2021 dated 28.07.2021, refusing to register the Supplementary Deed of Lease dated 05.05.2021 and quash the same and consequently direct the respondent to register the Supplementary Deed of Lease, dated 05.05.2021 and release the same.

2. Heard Mr.Jayesh B.Dolia, learned counsel appearing for the petitioner, Mr.Yogesh Kannadasan, learned Special Government Pleader appearing for first respondent, Mr.T.Chezhan, learned Additional Government Pleader (HR and CE) appearing for the second respondent and Mr.Wilson Topaz, learned counsel appearing for the third respondent.

3. The case of the petitioner is that the petitioner purchased the property comprised in R.S.No.452/71, to an extent of 2 Grounds and 140 sq.ft, bearing Old Door Nos.46 and 47, New Door Nos.16 and 17, West Mada Street, formerly known as Agateeswarar Koil Garden Street, Nungambakkam, Chennai, by the registered sale deed, dated 12.01.1972, registered vide Document No.958 of 1972. Thereafter, the petitioner trust gifted a portion of the said land in favour of another trust called Sindhi Trust and it has been in use and occupation of remaining portion of land and building to an extent of 2764 sq.ft. Thereafter, the petitioner leased out the subject land in favour of Ms.Lisha Tulsi Mahbubani, under a Lease Deed, dated 02.05.2018 and the same was duly registered vide Document No.468 of 2018, in respect of the building together with the vacant land.

4. By subsequent Memorandum of Understanding, dated 04.06.2018, the petitioner trust authorized the lessee to demolish the old building and to put up new construction. Accordingly, the lessee had put up building after obtaining due sanction from the Corporation of Chennai as per building sanction plan under Planning Permit No.PPA/WDCN09/04725/2018. After making new construction, the lessee requested the petitioner trust to grant further permission to sub lease the property.



5. Considering the same, the petitioner executed a Supplementary Deed of Lease, dated 05.05.2021 in favour of his lessee. The said Supplementary Deed of Lease was presented for registration. On receipt of the same, the first respondent refused to register the same by the impugned check slip dated 28.07.2021, for the reason that in view of the order passed in W.P.No.9336 of 2018, dated 19.02.2019 and the letters received from the third respondent and the Tahsildar, Egmore-Nungambakkam, the property comprised in Survey No.452 and its sub divisions, no deed of conveyance can be registered in respect of the subject property.

6. A perusal of the counter filed by the third respondent revealed that the writ petition is not maintainable, since, there is an appeal remedy under Section 72 of the Registration Act, 1908 as against the order passed by the first respondent. Based on the order passed in W.P.No.9336 of 2018, the first respondent had been initiated action to retrieve the temple land sold in violation of Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

7. A perusal of the records revealed that the petitioner's vendor had purchased the subject property by the registered sale deed, dated 07.05.1931, registered vide Document No.605 of 1931 from Sri Agatheeswara and Sri Prasanna Venkateswara Perumal Temple, Nungambakkam, Madras, in pursuant to a petition under Madras City Tenant Protection Act, 1922 in Ejectment Suit No.115 of 1927 on the file of the Small Causes Court, Madras by an order dated 19.07.1928. Thereafter, the petitioner trust had purchased the subject property in the year 1972 by the registered sale deed.

8. The amendment to the Madras City Tenant Protection Act, 1922, came into force on 11.01.1996 and accordingly the property of religious institution was excluded from ambit of the Act. Therefore, any sale done before this amendment is valid.

9. The Hon'ble Division Bench of this Court, held in W.P.No.9336 of 2018, directed the authorities concerned to take action keeping in mind, the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and Madras City Tenant Protection Act, 1922, to recover the properties belonging to Agastheeswarar Temple, which have been sold in violation of Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Further, the Amendment Act came into force on 11.01.1996 that the Section 1 (3) (f) which exempts the applicability of the City Tenants Protection Act, to the properties belonging to religious institutions.



Whereas, the subject land was purchased before the introduction of the above said Amendment Act.

10. That apart, the third respondent did not produce any piece of document to show that the subject property belongs to the third respondent. Therefore, the above Judgment is not at all applicable to the case on hand. Further, the first respondent already registered the lease deed which was presented for registration by the petitioner on 02.05.2018, vide Document No.468 of 2018. Thereafter, the petitioner presented the Supplementary Deed of Lease, dated 05.05.2021 for the registration. Further, on receipt of the notices from the Thasildar, Egmore-Nungambakkam and the third respondent, the first respondent without even conducting any enquiry and without giving any opportunity of hearing to the petitioner, as contemplated under Section 22(A) of the Registration Act, passed an impugned order.

11. In view of the above, the impugned order cannot be sustained as against the petitioner and it is liable to be set aside. Accordingly, the impugned order dated 28.07.2021 in check slip bearing No.RFL/2 No. Joint Sub Registrar Central Chennai/3/2021, is hereby quashed.

12. However, the petitioner is directed to re-present the Supplementary Deed of Lease, dated 05.05.2021 for registration before the first respondent and on receipt of the same, the first respondent is directed to register and release the same forthwith, if it is otherwise in order.

13. In the result, this writ petition stands allowed. Consequently, connected Miscellaneous petition is closed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Joint Sub Registrar II,
District Registrar Cadre,
Thousand Lights,
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2. The Commissioner,
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3. The Executive Officer,
Arulmighu Agatheeswara Prasanna Venkateswap Perumal
Temple,
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Chennai 600034.

+1 cc to M/S.Aiyar & Dolia, Advocate Sr.NO.7494

+1 cc to M/s.A.S.Kailasam & Associates , Advocate Sr.NO.6909

+2 ccs to Government Pleader Sr.NO. 7727,7094

W.P.No.17994 of 2021

W.M.P.No. 19219 of 2021

nk(CO)

A.SK(23.02.2022)