



W.P.No.14925 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2022

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THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.14925 of 2014

C.Irusappan

...Petitioner

Vs.

1. The Sub Registrar
Edapadi, Salem District.

2. The Tamil Nadu Wakf Board,
Rep. by Chief Executive Officer,
Santhome High Road,
Nochi Kuppam, Mylai,
Madras, Tamil Nadu - 600 004.

...Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the letter No.Aa.Thi.Mu.No.XXX/2012 dated 28.05.2014 issued by the 1st respondent and quash the same and consequentially directing the 1st respondent to permit the petitioner to alienate the petitioner's property in Survey No.165/2AC situated at Avani Perur Kzheel Mugam Village, Edapadi Taluk, Salem District.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondents : Mr.G.Krishna Raja, AGP, for R1.
: Mr.V.Lakshminarayana, for R2



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ORDER

The petitioner has filed this Writ petition seeking issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in respect of the letter No.Aa.Thi.Mu.No.XXX/2012 dated 28.05.2014, quash the same and to consequently direct the 1st respondent to permit the petitioner to alienate the subject property.

2. The case of the petitioner is that the subject property comprised in S.No.165/2AC, to an extent of 30-1/2 cents, situated at Avani Perur Kzheel Mugam Village, Edapadi Taluk, Salem District was settled in favour of the petitioner, vide settlement deed dated 12.07.2006 bearing Doc.No.1408 of 2006 executed by his father namely Chinapaiyan and pursuant to the said settlement, the petitioner is in absolute possession and enjoyment of the said property and patta has also been transferred to the petitioner's name. While so, as the petitioner decided to alienate the subject property to the third parties, he approached the 1st respondent seeking to register the document for alienating the subject property, however, the 1st respondent has orally refused



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to register the same, on the ground that the subject property belongs to the 2nd respondent and pursuant to the notice issued by the petitioner's counsel, the 1st respondent, vide letter bearing No. Aa.Thi.Mu.No.XXX/2012 dated 28.05.2014, communicated the rejection order to the petitioner. Challenging the same, the present Writ petition is filed.

3. Learned counsel for the petitioner submitted that, the petitioner and his family members were in absolute possession and enjoyment of the subject property for the past 60 years and the revenue records in respect of the same also stand in the name of the petitioner's predecessors and thereafter in the name of petitioner. While so, refusing to register the document on the ground that, the 2nd respondent, vide letter dated 22.05.2013, has requested the 1st respondent as well as the District Registrar, not to entertain any type of document for transfer in respect of the wakf properties is not sustainable, as the list of properties stated by the 2nd respondent in the above said letter does not contain the subject property. Further, even in the reply dated 19.07.2013 given by the 2nd respondent for the application dated 17.06.2013 made by the petitioner under the Right to Information Act, 2005, it has clearly



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stated that they are not in possession of the title deed in respect of the subject property. Even though the 3rd respondent allege that the subject property belongs to the 2nd respondent / Wakf board, it is the duty of the 1st respondent to serve notice to the Wakf board and pass appropriate orders, after hearing the petitioner and the Wakf board, while so, without affording any opportunity to the petitioner to substantiate his contention, refusing to register the document is not sustainable. Further, it is submitted that, the very same issue fell under the consideration, the Hon'ble Division Bench of this Court in the case of ***Sudha Ravi Kumar vs The Special Commissioner and Commissioner othrs. (2017 3 CTC 135)***, held that, the Sub Registrar has no authority to conduct detailed enquiry to ascertain the title and it is only *prima facie* satisfaction which is necessary upon conduct of enquiry and, thereafter, on the basis of the enquiry the Sub Registrar is bound to register the document presented for registration based on the procedures contemplated in the Registration Act, 1908. Hence, he prayed for appropriate orders.

4. On the above said contention, heard learned counsel appearing for the respective respondents.



WEB COPY 5. In *Sudha Ravi Kumar's case (supra)*, a Division Bench of this Court

held as under :-

25. In view of the above discussions, all the writ petitions are allowed and the impugned orders are set aside with the following directions:

(i) The registering authority before whom the document has been presented shall cause service of notice on the parties to the deeds and also to the objector / religious institution, hold summary enquiry, hear the parties and then either register or refuse to register the document by passing an order having regard to the relevant facts as indicated above.

(ii) If the registering authority, refuses to register any document by accepting the objections raised under [Section 22-A](#) of the Registration Act, the aggrieved may file a statutory appeal under the Act.

(iii) If the objections raised under [Section 22-A](#) of the Act by the religious institution are rejected and the document is registered, the remedy for the religious institution is to either approach this Court by way of a writ petition seeking cancellation of the registration or for any other relief or to approach the civil Court for declaration of the title and for other consequential reliefs.

(iv) If the registering authority refuses to register the document acting on the objections raised by a religious institution under [Section 22-A](#) of the Registration Act, the parties to the deed will be at liberty to straightaway approach



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the Civil Court for declaration of title and other relief without availing the opportunity for filing a statutory appeal.

(v) We further direct that if the deed has already been registered without there being any objection by the religious institution under [Section 22-A](#) of the Act, the document shall be returned to the parties concerned leaving it open for the religious institution to approach either the High Court under [Article 226](#) of the Constitution of India or the Civil Court for appropriate relief as indicated above. At any rate, the registering authority shall not withhold the deed which has already been registered.

(vi) Consequently the connected miscellaneous petitions are closed. No costs.

(Emphasis)

6. The decision in *Sudha Ravi Kumar's case (supra)* would clearly show that it is the duty of the registering authority to conduct a summary enquiry by causing service of notice to the parties as also the objector and, thereafter, pass order having regard to the relevant facts of the case, either accepting or rejecting the objections. However, in the case on hand, no notice has been served on the parties and without conducting any enquiry and without ascertaining any of the above said facts, the 1st respondent has mechanically refused to register the petitioner's document, that too orally, and only upon receipt of the notice from the petitioner's counsel seeking for written form of the rejection, the 1st respondent, vide present impugned



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order communicated the ground for rejection to the petitioner, which is not sustainable. Hence, on the sole ground, the present impugned order issued by the 1st respondent is liable to be set aside and the matter is remanded to the 1st respondent to conduct enquiry by calling upon the petitioner and also the 2nd respondent to appear for the enquiry fixing a date for the enquiry within a period of two weeks from the date of receipt of a copy of this order and on the said date hear either side and conclude the enquiry proceedings and pass orders on the said enquiry within a period of four weeks thereafter.

7. With the above observations and directions, this Writ petition is allowed. No costs.

28.09.2022

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Speaking Order : Yes/ No

Index : Yes/ No

To

1. The Sub Registrar

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2. The Tamil Nadu Wakf Board,
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M.DHANDAPANI, J.

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