IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2022

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.11259 of 2017

1. N.Samiappan (Died)
2. J.Madeshwaran
3. N.Jayanthi ... Petitioners

[P3 substituted as legal heirs of
deceased 1st petitioner vide
order dated 02.09.2022 made
in WMP No.19628 of 2021 in
W.P.No.11259 of 2017
by RSMJ]

Versus

1. The District Registrar,
Erode District
Erode

2. The Sub-Registrar Joint II,
District Registrar's Office
Erode

3. The Commissioner,
Hindu Religious & Charitable Endowment
Department,
119, Gandhiji Road,
Nungambakkam,
Chennai – 600 034

4. The Joint Commissioner,
Hindu Religious & Charitable Endowment
Department,
Coimbatore – 18

5. The Assistant Commissioner,
Hindu Religious & Charitable Endowment
Department, Erode

6. Sri Sripadaraja Mutt
Mulbagal rep. By its authorised agent
No.58, Ragavendra Colony,
Jamrajpet, Bangalore Town,
Karnataka ... Respondents

Prayer: Writ Petition filed under Article 226 Constitution of India for issuance of a Writ of Mandamus directing the 3rd respondent to issue necessary orders sought for by the 2nd respondent by his letter in pending Document No.P77/2015 dated 25.07.2016 and consequently, direct the 2nd respondent to duly register the pending document No.P77/2015 presented on 26.11.2015 and return the same to the petitioners.

For Petitioners : Mr.V.S.Kesavan for
Mr.P.P.Shanmugasundaram

For Respondents : Mr.K.Tippusultan for R1 & R2
Government Advocate

Mr.M.Bindran for R3 to R5

Additional Government Pleader(HR&CE)

R6 – No appearance

O R D E R

The present Writ Petition has been filed for issuance of a Writ of Mandamus directing the 3rd respondent to issue necessary orders sought for by the 2nd respondent by his letter in pending Document No.P77/2015 dated 25.07.2016 and consequently, direct the 2nd respondent to duly register the pending document No.P77/2015 presented on 26.11.2015 and return the same to the petitioners.

2. The case of the petitioners is that the property originally belong to the 6th respondent. The petitioners were the lessees of the said land and cultivating the same. The 6th respondent agreed to sell the land, for which, a sale agreement was entered into between the petitioners and the 6th respondent on 31.03.2009 for a total consideration of Rs.3,50,000/- [Rupees Three Lakhs Fifty Thousand only] and advance of Rs.3,20,000/- was paid to the 6th respondent on 31.03.2009. Thereafter, the petitioners were ready to pay the balance consideration, but the 6th respondent has not come forward to execute the same. Therefore, the

petitioners have filed O.S.No.307 of 2012 and the same was decreed exparte on 31.01.2013. Thereafter, Execution Petition has been filed and the document is executed by the court. When the document was presented for registration, the same has been kept as pending vide document D.No.P77/2015 and directed to obtain the No Objection Certificate (NOC) from the Hindu Religious Charitable Endowment Department, [in short, HR&CE Department], hence this Writ Petition seeking a direction.

3. It is the stand of the respondents that the suit property belong to the 6th respondent and originally, it was in one land and given for 'Math', therefore, any sale contravening the provision of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 is void and no sanction permission is obtained, hence the respondents also issued a objection to not to register the document.

4. The learned counsel appearing for the petitioners submitted that the petitioners, who are the lessees under the 6th respondent, only on the basis of the agreement executed by the 6th respondent, filed a suit for specific performance, which was decreed ex parte and when the sale

deed presented for registration, the same was kept pending document and directed the petitioners to obtain No Objection Certificate from HR&CE Department, therefore, seeks for a direction for registering the document.

5. The learned Government Advocate for respondents 1 and 2 and the learned Additional Government Pleader for the respondents 3 to 5 submitted that the property belongs to HR&CE Department, hence submitted that any sale of the property is void abinitio and no permission has been obtained for sale of the property.

6. I have heard the learned counsel on either side and perused the documents placed on record.

7. Though the petitioners claims to have paid an advance sale consideration of Rs.3,20,000/- in the year 2009, the petitioners have filed a suit only in the year, 2012 that too without making HR &CE Department as a party to the suit and obtained ex parte decree.

8. It is relevant to note that the Sub Clause (13) of Section 6 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 reads as 'math' means a Hindu religious institution with properties attached thereto and presided over by a person, the succession to whose office devolves in accordance with the direction of the founder of the institution or is regulated by usage and -

> *"(i) whose duty it is to engage himself in imparting religious instruction or rendering spiritual service ; or*
>
> *(ii) who exercises or claims to exercise spiritual headship over a body of disciples;*
>
> *and includes places of religious worship or instruction which are appurtenant to the institution ;*
>
> *Explanation – Where the headquarters of a math are outside the State but the math has properties situated within the State, control shall be exercised over the math in accordance with the provisions of this Act, in so far as the properties of the math situated within the State are concerned;"*

Therefore, explanation makes it very clear that any property of the 'Math' situated within the State of Tamilnadu, the provisions of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 will apply.

9. It is the admitted case of the petitioners that the property belong to 'Math', therefore, the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 will certainly apply to the said property. Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, makes it very clear that any sale or mortgage and any lease for a term exceeding five years of any immovable property belonging to, or given or endowed for the purposes of, any religious institution shall be null and void unless it is sanction by the Commissioner as being necessary to beneficial to the institution. Admittedly, no such sanction was also obtained in this regard.

10. Section 41 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 also makes it very clear that any sale of immovable property or mortgage and any lease for a term exceeding five years of the whole or any portion of any inam granted for the support or maintenance of a religious institution or for the performance of a charity or service connected therewith or of any other religious charity and made, confirmed or recognised by the Government shall be null and void.

11. Therefore, when the property belonged to a 'Math' and same falls within the purview of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the same cannot be sold by the 6th respondent. Merely because exparte decree has been obtained without making the HR & CE officials, as party to the suit, registration of such document is not automatic.

12. Section 22A of the Registration Act, [was inserted by Tamil Nadu Act 28 of 2012], is a non-obstante provision makes it very clear that registering officials would refuse to register the documents of any property belonging to, or given or endowed for the purpose of, any religious institution to which the Tamil Nadu Religious and Charitable Endowments Act, 1959 is made applicable. Now, Section 77A was also inserted in Tamil Nadu Act 41 of 2022 to cancel such documents consequent to Sections 22A & 22B of the Registration Act, in such view of the matter, this Court is of the view that the Registrar has rightly rejected and exercised the power in refusing to register the document.

Accordingly the Writ Petition is not maintainable to direct the respondents to register the document. It is for the petitioner to work out his remedy to approach the Commissioner for grant of sanction for sale of property, as per law and the Writ Petition is dismissed. No costs.

08.11.2022

Index: Yes/No
Internet: Yes/No
speaking / non speaking order
ssd

To

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N.SATHISH KUMAR, J.

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