



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 25.08.2022

PRONOUNCED ON : 11.10.2022

WEB COPY

CORAM :

THE HONOURABLE MR. JUSTICE **G.R. SWAMINATHAN**

W.P. (MD) No.10641 of 2020

and

W.M.P (MD) Nos.9368 to 9371 of 2020 & 4281 of 2021

Arulmigu Meenakshi Sundareshwarar Temple,
Madurai through its Joint Commissioner/
Executive Officer

... Petitioner

Vs.

1.The Inspector General of Registration,
No.100, Santhome High Road,
Foreshore Estate, Pattinampakkam,
Chennai- 600 028.

2.The Sub-Registrar,
Office of Sub-Registrar,
Arasaradi, Madurai.

3.Jai Auto Industries
Through its Partners
D.P.Gokulji and M.P.Raja
Residing at Flat No.A02,
Thuvariman Colony, Melakkal Main Road,
Madurai - 625 019.

4.Ramesh Markandey (Died)

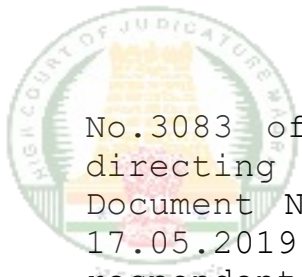
5.The Commissioner,
Madurai Corporation,
Madurai.

6.Shanthi

... Respondents

*[R6 is suo motu impleaded vide Court order
dated 01.07.2022 in W.P.(MD) No.10641 of 2020]*

Prayer : Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Declaratory Mandamus, holding that the sale deed registered by 2nd respondent bearing Document



No.3083 of 2019 dated 17.05.2019 is illegal, null and void and directing the 2nd respondent to cancel the sale deed bearing Document No.3083 of 2019 on the file of the 2nd respondent dated 17.05.2019 executed by 3rd respondent in favour of the 4th respondent in respect of the property of the petitioner in Madurai District, Ponmeni Village, S.No.62/5-A measuring 4207.5 square feet.

For Petitioner : Mr.S.Manohar
For R1 and R2 : Mr.K.S.Selva Ganesan
Additional Government Pleader

For R3 : Mr.T.Joseph Jayakumar

R4 : Died

For R5 : Mr.R.Murali

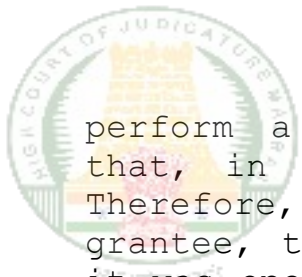
For R6 : Mr.S.Madhavan
for Mr.Arun Srivatsava

O R D E R

Heard the learned counsel on either side.

2.The writ petitioner is one of the most important temples of India. The petition mentioned property, measuring 0.24 cents, is an Inam land belonging to the Temple. Patta was granted in its favour under Tamil Nadu Act 30 of 1963. The land is located in an important area and is very valuable. Questioning the order passed by the Settlement Tahsildar in favour of one Rathinam, the Temple filed C.M.A.(MD) No.316 of 1970 before the Principal Sub-Court, Madurai, and its appeal was allowed. Based on the order of the Inam Abolition Tribunal, the Temple filed a recovery suit and it was also decreed. Execution Petition filed by the petitioner could not attain finality on account of the tactics adopted by the contesting defendants. Though the civil proceedings had concluded in favour of the Temple, in order to defeat its rights, transactions had been effected and they have also been registered by the 2nd respondent. Seeking declaration that the sale deed executed by the 3rd respondent in favour of the 4th respondent is illegal and void and for directing the registering authority to cancel the same, this writ petition has been filed.

3.The 4th respondent filed a detailed counter affidavit. His contention was that he had purchased the said property for valuable consideration on 17.05.2019 in good faith. It is further claimed that the land was granted in favour of the Temple to



perform a particular service known as "Kaluvettram Leela" and that, in the year 1958, the said festival was also abolished. Therefore, the Inam became free of conditions and hence, the grantee, thereafter, enjoyed the land without any restriction and it was open to the Inam holder to alienate the property also. In that view of the matter, the purchase by the 4th respondent was legally valid. A number of legal contentions had been set out in the counter affidavit in support of the claim that the restriction on alienation ceased to operate. In any event, in view of the decisions of the Hon'ble Supreme Court, a registered document cannot be cancelled by the registering authority and the only remedy open to the petitioner is to move the jurisdictional Civil Court. Filing of the writ petition is misconceived - is the contention of the contesting respondents. During the pendency of the writ petition, the 4th respondent passed away and his wife was impleaded as the 6th respondent.

4.The registering authority has also filed a counter affidavit praying for dismissal of the writ petition. The registering authority would take a stand that based on the previous sale deeds and after verifying the title of the vendor, the impugned registration was carried out. The 2nd respondent had also stated that, since dispute has arisen regarding title and right over the property, it is only the competent Civil Court that can go into the same.

5.The learned counsel for the respective parties reiterated all the contentions set out in their respective pleadings. The learned counsel for the contesting respondents relied on the following decisions :

- i. *State of Tamil Nadu v. Ramalinga Samigal Madam* [1985 (4) SCC 10]
- ii. *R.Manicka Naicker v. E.Elumalai Naicker* [1995 (4) SCC 156]
- iii. *Srinivasan and others v. Sri Madhyarjuneswaraswami, Pattavaithalai, Tiruchirapalli District by its Executive Officer and others* [1998 (2) MLJ 722]
- iv. *Satya Pal Anand v. State of Madhya Pradesh and others* [2015 (15) SCC 263]
- v. *S.Abubakkar Siddiq v. The District Collector, Sivagangai District and others* [W.P.(MD) No.8425 of 2015, dated 18.12.2015]
- vi. *S.C.Pandian and others v. The Inspector General of Registration, Chennai* [W.P.(MD) Nos.1202 and 1203 of 2017, dated 09.08.2019]
- vii. *S.P.Velayutham and another v. Asset Reconstruction Company (India) Limited and others* [W.A.Nos.59 and 60 of 2016, dated 28.09.2021]



viii. *P.V.Bheemsena Rao v. Sirigiri Pedda Yella Reddi and others* [AIR 1961 SC 1350]

ix. *T.K.Lakshmana Iyer and others v. State of Madras and others* [1968 (2) MLJ 127]

x. *P.S.Chandrasekara Raja v. Sankaranarayana Swamy Devasthanam through its Executive Officer and others* [2012 (1) MWN (Civil) 99].

6.I carefully considered the rival contentions and went through the materials on record.

7.Even though the learned counsel appearing for the contesting respondents strongly urged that the writ petitioner-Temple does not have any right or title over the petition mentioned property and also referred to quite a few statutory provisions and also relied on a host of case laws, I cannot go into the said aspect. A mere look at the materials on record is enough to conclude that this contention cannot be re-agitated. O.S.No.1 of 1984 was instituted by the writ petitioner-Temple on the file of the Sub-Court, Madurai, for directing the contesting defendants to deliver possession of the petition mentioned property. In the said suit, Jai Auto Industries, the 3rd respondent herein, figured as the 4th defendant. The suit was decreed on 15.11.1988. Aggrieved by the same, the Jai Auto Industries filed A.S.No.208 of 1989 before the High Court. The First Appeal was dismissed on 04.08.2010. The 3rd respondent herein was given six months' time to hand over possession of the suit property to the Temple. Jai Auto Industries took the matter to the Supreme Court. S.L.P.(Civil) No.28201 of 2011 was dismissed on 13.01.2012. When the right over the property was thus decided in favour of the Temple, and when the 3rd respondent herein had suffered a decree, it is not open to the contesting respondents, who claim title only through the 3rd respondent, to once again re-argue the very same issues. The Doctrine of *Res Judicata* has been incorporated in the Statute book so as to give finality to concluded matters. Matters once settled cannot be reopened. I, therefore, reject the contention of the learned counsel appearing for the contesting respondents that the 3rd respondent has passed on valid title and interest over the petition mentioned property under the impugned sale deed.

8.The next question that arises is, whether, the petition mentioned registration can be quashed. In normal circumstances, where there are disputed questions of fact, the parties must be relegated to go before the jurisdictional Civil Court. In any event, the registering authority will not have the jurisdiction to cancel a document that has already been registered. But the Inspector General of Registration in Tamil Nadu has issued more



conduct an enquiry, if a document had been fraudulently registered. It is open to the District Registrar to render a finding and the same will also be entered in the Encumbrance Certificate. Of course, the Registration Act had also been amended by a State Amendment, recently. The impugned registration took place in the year 2019 and therefore, the petitioner cannot invoke the subsequent developments.

9. But, in view of the following two reasons, relief has to be granted to the writ petitioner.

a) the writ petitioner is a Temple. It is well settled that, Courts must assume the role of *parens patriae*, when it comes to protecting the interests of minors, the mentally infirm, and idols. Since the issue on hand concerns protection of the property belonging to an idol, this Court will be justified in assuming jurisdiction.

b) if facts are in dispute, the parties have to necessarily move the Civil Court for establishing their right by adducing evidence. Here, as already noticed, the facts are not in dispute. The 4th respondent purchased the petition mentioned property under the impugned sale deed. The 3rd respondent had sold the property in the year 2019. The 3rd respondent had already lost the battle in the year 2012 in the Supreme Court. The litigation commenced way back in 1984 and concluded after 28 years. It is not open to the vendor of the 4th respondent to continue to claim that he still had right over the property. He sold the same to the 4th respondent. One of the recitals in the sale deed, dated 17.05.2019, executed by the 3rd respondent in favour of the 4th respondent, is that, in respect of the petition mentioned property, there is no dispute pending in any Court. This recital was clearly false.

10. Under Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, a Temple property cannot be sold without getting prior permission from the Government. This power has been delegated in favour of the Commissioner. Any alienation made in contravention of this provision is void. It is such a declaration that is sought in this proceedings. Of course, the Civil Court can grant such a relief. There is, however, no bar on the writ Court to give such a declaration, more so, when the petitioner is a Temple.

11. Under certain circumstances, writ petitions questioning registration of documents can be maintained. For instance, the registering authority cannot register a deed unilaterally cancelling a registered sale deed. The Hon'ble Full Bench of the Madras High Court vide order, dated 02.09.2022, made in **W.P. (MD)**

<https://www.mhco.in/judis> No. 6889 of 2020 etc., held as follows:-



" 44.

(a) A sale deed or a deed of conveyance other than testamentary dispositions which is executed and registered cannot be unilaterally cancelled.

(b) Such unilateral cancellation of sale deed or a deed of conveyance is wholly void and non est and does not operate to execute, assign, limit or extinguish any right, title or interest in the property.

(c) Such unilateral cancellation of sale deed or deed of conveyance cannot be accepted for registration.

(d) The transferee or any one claiming under him or her need not approach the civil Court and a Writ Petition is maintainable to challenge or nullify the registration."

12. In fact, the aforesaid decision rests on the recent decisions of the Hon'ble Apex Court reported in **(2022) 7 SCC 1 (Veena Singh (Dead) through LRs. Vs. District Registrar / Additional Collector and another)** and **2022 SCC On-line SC 544 (Asset Reconstruction Company (India) Limited V. S.P.Velayutham and Others)**. In **(Veena Singh (Dead) through LRs. Vs. District Registrar / Additional Collector and another) (2022) 7 SCC 1**, it was held as follows:-

"30. In the event of a refusal by the Registrar, a suit can be filed by a party in terms of the provisions of Section 77 before a civil Court, praying for a decree directing the document to be registered. On the other hand, an order of the Registrar directing the registration of a document is amenable to a challenge under Article 226 of the Constitution. While seeking a writ of Certiorari, the person moving the petition before the High Court would be entitled to establish whether the registration has been ordered in breach of the statutory provisions and is contrary to law. The mere existence of the remedy available before a civil court, under Section 9 of the CPC to avoid the document or to seek a declaration in regard to its invalidity, will not divest a person, who complains that the order passed by Registrar for the registration of the document was contrary to statutory provisions, of the remedy which is available in the exercise of a Court's writ jurisdiction under Article 226 of the Constitution."



13. In **2022 SCC On-line SC 544 (Asset Reconstruction Company (India) Limited V. S.P.Velayutham and Others)**, it was held as follows:-

"29. ... Section 34(3) speaks about the enquiry to be conducted and the satisfaction to be arrived at by the Registering Officer. Section 34(3) (c) imposes an obligation on the Registering Officer to satisfy himself about the right of a person appearing as a representative, assign or agent. This prescription has to be read with rule 46 of the Tamil Nadu Rules.

...

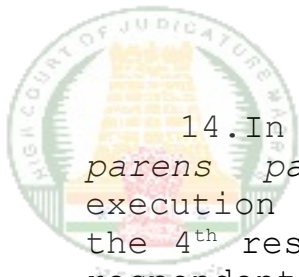
37. Therefore, if the Registering Officer had verified the recitals contained in the registered deed of PoA dated 23.08.2006, to see if the power agent had the power to do what he did, he would have refused the registration of the document. Rule 46 of the Tamilnadu Registration Rules ordains what the Registering Officer is obliged to do, (i) when a document is presented for registration under a special PoA; and (ii) when a document is presented for registration under a general PoA. It was the failure on the part of the Registering Officer to do what he is required to do, that convinced the learned Single Judge to invoke the writ jurisdiction. But the Division Bench overturned the decision of the learned Judge on the ground that the writ court ought to have relegated the parties to the civil Court.

...

53. ... But where a party questions only the failure of the Registering Authority to perform his statutory duties in the course of the third step, it cannot be said that the jurisdiction of the High Court under Article 226 stands completely ousted. This is for the reason that the writ jurisdiction of the High Court is to ensure that statutory authorities perform their duties within the bounds of law. ...

...

58. ... If the Registering Officer under the Act is construed as performing only a mechanical role without any independent mind of his own, then even Government properties may be sold and the documents registered by unscrupulous persons driving the parties to go to civil court. Such an interpretation may not advance the cause of justice."



14. In view of the undisputed facts and in exercise of the *parens patriae* jurisdiction, this Court declares that the execution of the impugned sale deed dated 17.05.2019, in favour of the 4th respondent by the 3rd respondent, is null and void. The 2nd respondent is directed to cancel the same.

15. The writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

11.10.2022

(*) This matter having been posted under the Caption for Being Mentioned on 28.03.2023 and upon hearing Mr.S.Manokar, Advocate for the petitioner and Mr.K.S.Selva Ganesan, Additional Government Pleader for the respondents 1 & 2 and Mr.T.Joseph Jeyakumar, Advocate for the third respondent and Mr.R.Murali, Advocate for the 5th respondent and of Mr.S.Madhavan, Advocate for Mr.Arun Srivastava, Advocate for the sixth respondent, this court made the following order:

The writ petition filed by the temple was allowed by me on 11.10.2022. The matter has been posted under the caption 'for being mentioned'.

2. The learned counsel appearing for the contesting respondents states that in view of the status quo order made on 07.09.2020, the private party may not be able to remove the construction and other building materials. Since the writ petition itself has been disposed of, status quo order will no longer operate. The contesting respondents are very much at liberty to remove the articles that belong to them.

Sd/-

Assistant Registrar(CS I)

// True Copy //

/04/2023

Sub Assistant Registrar(CO)

To

To be substituted to the order already despatched on 31/10/2022

1. The Inspector General of Registration,
No.100, Santhome High Road,
Foreshore Estate, Pattinampakkam,
Chennai- 600 028.

<https://www.mhc.tn.gov.in/judis>



2.The Sub-Registrar,
Office of Sub-Registrar,
Arasaradi, Madurai.

+1 CC to M/s.M.ARUN SRIVASTAVA, Advocate (SR-48851[F] dated
12/10/2022)

+1 CC to M/s.S.MANOHAR, Advocate (SR-49036[F] dated 12/10/2022)

+1 CC to M/s.B.SARAVANAN, Advocate (SR-49163[F] dated
13/10/2022)

+1 CC to M/s.SPL.GP (SR-48978[F] dated 12/10/2022)

W.P. (MD) No.10641 of 2020

11.10.2022

MGJ(20.10.2022) 9P 7C

MK(12.04.2023) 9P 7C