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W.P(MD).No.13184 of 202



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.10.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD).No.13184 of 2022

and

W.M.P(MD)No.9368 of 2022

S.Thangamani

... Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
No.119, Uthamar Gandhi Salai,
Chennai-600 034.

2.The Joint Commissioner/Executive Officer,
Arulmigu Meenakshi Sundareswarar Thirukovil,
Madurai-625001.

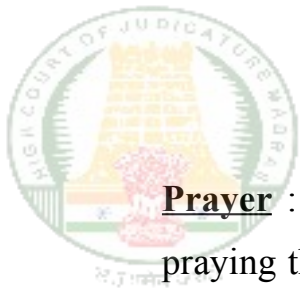
3.The Commissioner,
Corporation of Madurai,
Aringar Anna Maligai,
Madurai-625 002.

4.The No.1 Joint Sub-Registrar,
(District Registrar Cadre),
Madurai North,
Integrated Registration Office Complex,
Y.Othakkadaai,
Madurai-625107.

5.The Tahsildar,
Madurai North Taluk,
Madurai.

...Respondents

(R5 is impleaded vide Court order dated
15.07.2022 in W.M.P(MD)No.10159 of 2022)



W.P(MD).No.13184 of 202

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, forbearing the Respondents 1 and 2 from in any way preventing the members /flat owners of the petitioner's association from registering any document in respect of their own flats situated in “Max Towers” apartment, Door No.100, Meenakshi Nagar, Vilangudi, Madurai-625018 covered under the Survey Nos.123/1A1A, 123/1A1B,123/1A1C,125/8B,125/8C,125/8D and 125/8E and consequently direct the 4th Respondent to register any type of document to be presented by the members /flat owners of the petitioners association.

For Petitioner : Mr.N.Sathish Babu
For R1, R4 & R5 : Mr.P.Subbaraj
Special Government Pleader
For R2 : Mr.V.R.Shanmuganathan
For R3 : Mr.S.Vinayak
Standing Counsel

ORDER

This writ petition is filed praying for a writ of Mandamus to forbear the Respondents 1 and 2 from in any way preventing the members /flat owners of the petitioner's association from registering any document in respect of their own flats situated in “Max Towers” apartment, Door No.100, Meenakshi Nagar, Vilangudi, Madurai-625018 covered under the Survey No.123/1A1A, 123/1A1B, 123/1A1C, 125/8B, 125/8C, 125/8D and 125/8E and consequently direct the 4th Respondent to register any type of document to be presented by the members /flat owners of the petitioner's association.



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2. It is submitted that the Petitioner is a Secretary of the Max Towers Flat Owners Welfare Association registered under the Tamil Nadu Societies Registration Act, 1975 and its Registration Number is 103/2013. The above said apartment was constructed by a company called “Max Properties Private Limited”. The construction was completed and flats handed over to the buyers in the year 2010. There are 108 flats and the company constructed the above said apartment after obtaining proper building plan approval and obtained proper permission from other authorities concerned. From the date of purchase of the above said flats, all the owners are paying their property tax, water tax and underground drainage charges to the 3rd Respondent authority regularly.

3. It is submitted that the apartment title documents relating to the land is available from the year 1923 and the company constructed the above said apartment by entering into a joint venture agreement with one Raju Thevar and his family members. The title documents belonging to the Raju Thevar and his family members is comprised in sale deed in Document No. 1155/1982, 1327/1985, 1328/1985, 2193/1986, 2368/1986, 2369/1986, 2370/1986, 2394/1986, 2395/1986 and 2979/1986. The UDR survey number



mentioned in the above said Document Nos.123/1A1A, 123/1A1B, 123/1A1C, 125/8B, 125/8C, 125/8D and 125/8E and the patta stands in the name of the Raju Thevar and his family members. The total extent of the above said apartment property is 62.25 cents.

4. It is submitted that some of the members/flat owners of the association intended to sell their flats and at the time of presentation of the documents, the flat owners were informed by the 4th Respondent that Survey No.123/1 mentioned in their document belong to Arulmigu Meenakshi Sundaraeswarar Arakkattalai and Respondents 1 and 2 had informed the Registering Authorities not to register any documents covered under the said survey number as the said survey number belongs to the temple.

5. It is submitted by the learned counsel for the Petitioner that they had verified the revenue documents including A-Register. It was found that the Survey No.123/1 earlier classified as survey No.164/1 and the said A-Register disclosed the very same patta No.1001. The Respondents 1 and 2 had mistaken that the property comprised in Survey No.123/1, as belonging to Arulmigu Meenakshi Sundaraeswarar Arakattalai. The Petitioner has been residing in the above said flat for over 12 years and the refusal on part of the



4th Respondent to register the sale documents infringes their right to property.

It was submitted that Section 22-A of the Registration Act, 1908 mandates the Registering Authority to refuse to register certain documents which *inter alia* includes properties belonging to or given or endowed for the purpose of any religious institution, which reads as under:

“22-A. Refusal to register certain documents-

Notwithstanding anything contained in this Act, the registering officer shall refuse to register any of the following documents, namely:-

(1) Instrument relating to the transfer of immovable properties by way of sale, gift, mortgage, exchange or lease,-

(i) Belonging to the State Government or the Local Authority or Chennai Metropolitan Development Authority established under Section 9-A of the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972);

(ii) Belonging to, or given or endowed for the purpose of, any religious institution to which the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959) is applicable.”

6. It is also submitted by the learned counsel for the Petitioner that under identical circumstances, the Division Bench of this Court in the case of ***Sudha Ravi Kumar and others Vs The Special Commissioner and Commissioner, Hindu Religious and Charitable Endowments Department, Chennai-34 and others*** reported in ***2017-2-L.W.637*** issued the following directions:



“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 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."

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7. It was thus submitted that the action of the 4th Respondent in refusing registration without passing any orders is contrary to the above directions of the Division Bench of this Court.

8. The learned Special Government Pleader for the Respondents 1, 4 and 5 submits that the above directions of the Division Bench of this Court would be complied with.

9. This Court is of the view that before initiating proceedings under Section 22-A of the Registration Act, it is open to the Petitioner as well as the Respondents to approach the 5th Respondent to conduct a survey of the relevant survey number. It is open to the Petitioner and Respondents to submit their representation along with relevant documents within a period of four weeks from the date of receipt of copy of this order. On receipt of such representation, 5th Respondent shall pass orders within a period of eight weeks thereafter. It is made clear that this Court has not expressed any views with regard to the merits of the representation. The concerned respondent shall consider the representation on its own merits.



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11. With the above direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

26.10.2022

Index : Yes / No
Internet : Yes/ No
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To

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No.119, Uthamar Gandhi Salai,
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2.The Joint Commissioner/Executive Officer,
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MOHAMMED SHAFFIQ, J.

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