



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. (MD) No.17274 of 2021

and

W.M.P. (MD) Nos.14133 and 14134 of 2021

WEB COPY

M.Sundar

... Petitioner

/vs./

- 1.The Assistant Commissioner,
Hindu Religious and Charitable Endowment Department,
Nagercoil,
Kanyakumari District.
- 2.The Inspector,
Hindu Religious and Charitable Endowment Department,
Bhoothapandi,
Nagercoil, Kanyakumari District.
- 3.The Sub Registrar,
Department of Registration,
Bhoothapandi,
Nagercoil, Kanyakumari District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned communication dated 28.06.2021 issued by the 2nd respondent to the 3rd respondent and a consequential order passed by the 1st respondent in his proceedings Na.Ka.No.2613/2021/A3 dated 03.08.2021 and quash the same as illegal and consequently direct the 3rd respondent to register the documents pertaining to Sy.Nos.658/1, 658/3, 658/6, 659/1, 659/2 and 661/2 of Kadukarai, Kattupudur, Azhagiyapandiyapuram Village, Thovalai Taluk, Kanyakumari District.

For Petitioner	: Mr.M.Sricharan Rangarajan for Mr.D.Saravanan
For R1 & R2	: Mr.P.Subbaraj Special Government Pleader
For R3	: Mr.S.Shanmugavel Additional Government Pleader

ORDER

The petitioner has challenged the impugned communication dated 28.06.2021 of the 2nd respondent/The Inspector of HR and CE Department addressed to the 1st respondent/the Assistant Commissioner, indicating that 'No Objection Certificate' cannot be granted to the petitioner for sale of the subject property. The



impugned order dated 03.08.2021 of the 1st respondent also informs the same.

2.The learned counsel for the petitioner submits that the Division Bench of this Court in the case of **Sudha Ravi Kumar and other Vs. the Special Commissioner and Commissioner, HR and CE Department, Chennai** reported in **2017 SCC Online Mad 19191**, has laid down certain guidelines. It is submitted that the petitioner is yet to approach the Sub Registrar for registering the property. It is further submitted that the 3rd respondent may be directed to consider the above mentioned judgment of the Division Bench of this Court, which reads as under:-

"24.This contention is seriously objected to by the learned counsel for the petitioners. First of all we should state that we are not going into this issue because the constitutionality of Section 22-A of the Registration Act is not under challenge. Secondly, whether the property which is covered in the deed presented for registration is a religious endowment or not in terms of the TN HR & CE Act also cannot be gone into by us as the said dispute could be resolved only by a Civil Court on evidence. Even the registering authority is not competent to go into the said disputed question as he is not exercising any judicial or quasi judicial function. Similarly, simply because the some lands were shown as the properties belonging to the religious institution in the register maintained by the temple, it cannot be construed that the said land belongs to the said religious institution. It needs to be noted that the register of properties under Section 29 was prepared not after notice to the interested persons. It was done unilaterally by the religious institution. Similarly, the maintenance of the register by updating the same is also not done after notice to the parties who are interested in the property which is included in the register after the preparation of the original register. Thus, the preparation as well as the maintenance of the register is by the unilateral act of the religious institution and therefore likelihood of the private lands belonging to any individual being included in the register by error cannot be ruled out. All these issues are to be resolved by the Civil Court. Therefore, in our considered view, once patta has been issued under either the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948, Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963 and the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 it is for the temple to establish its title before the Civil Court. The registrar is bound to act on the basis of the ryotwari patta issued by the authority concerned and he shall not refuse to register the said deeds. As we have already pointed out the remedy for



the religious institution is to approach the civil court for appropriate remedy.

25. But this observation of ours shall not be construed that it is our conclusion that ryotwari patta issued to the ryot concerned is the final adjudication relating to the title for the property. We wish to clarify that the final adjudication regarding the title to the property can be had only before a Civil Court. We only say that at the time of registration of the deed, if any objection is made by the religious institution under Section 22-A of the Act, the registering authority shall issue notice afford opportunity to the parties, apply his mind and only from the materials available before him, if he is satisfied that the land belongs to the religious institution or given or endowed to the religious institution, then, he shall refuse to register such deed.

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

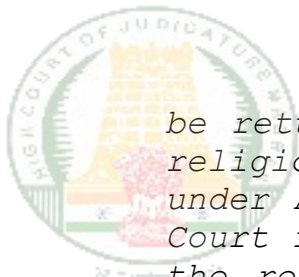
(i) The registering authority before whom the document has been presented shall cause service of notice on the parties to the deeds and also to the objector / religious institution, hold summary enquiry, hear the parties and then either register or refuse to register the document by passing an order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

3.The learned counsel for the official respondents submits that in case, the petitioner presents any documents for registering the property in question, the guidelines of this Court in the above mentioned case will be followed.

4.Recording the above submission, this writ petition stands closed by directing the petitioner to present the documents before the 3rd respondent for registration of the property for the proposed sale. In case, the 3rd respondent is inclined to not to register the property in terms of Section 22A of the Registration Act, 1908, the guidelines of this Court, which has been extracted above may be followed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

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/ /2022

Sub Assistant Registrar(CS)

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To

- 1.The Assistant Commissioner,
Hindu Religious and Charitable Endowment Department,
Nagercoil,
Kanyakumari District.
 - 2.The Inspector,
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Bhoothapandi,
Nagercoil, Kanyakumari District.
 - 3.The Sub Registrar,
Department of Registration,
Bhoothapandi,
Nagercoil, Kanyakumari District.
- +1 CC to M/s.D. SARAVANAN, Advocate (SR-19872[F] dated 20/04/2022)
+1 CC to M/s.SPL.GP (SR-20097[F] dated 21/04/2022)

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