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W.P.No.4847 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.08.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.4847 of 2021

K. Gopalasamy Gounder

...Petitioner

Vs.

1. The Commissioner
Hindu Religious and Charitable Endowments Board,
Uthamar Gandhi Salai
Nungambakkam ,
Chennai - 600 034.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowments Board,
Coimbatore - 641 018.
3. The Assistant Commissioner
Hindu Religious and Charitable Endowments Board,
Coimbatore - 641 018.
4. The District Registrar
Hindu Religious and Charitable Endowments Board,
Coimbatore - 641 018.
5. The Sub Registrar,
Office of the District Registrar,
Coimbatore – 641 018.



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6. Arulmighu Badharakali Amman and Vinayagar Temples

Devambadi Village, Pollachi Taluk,

Coimbatore District

(R6 Suo-Moto impleaded vide Order dt.03/03/2021

made in WP.4847 / 2021)

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order of the 3rd respondent namely, the Assistant Commissioner of HR and CE Coimbatore in his proceedings Na.Ka.No.4833/2019/A7 dated 25.02.2020 and quash the same and consequently direct the respondents 2 and 3 to issue the no objection certificate to the petitioner for registration of documents relating to S.No.21 measuring 7.22 Acres and S.No.23 measuring 5.71 Acres Devambadi Village, Pollachi Taluk, Coimbatore District.

For Petitioner

:Mr. V. Nicholas

For R1 to R3

: Mr. K. Karthikeyan

Government Advocate(HR&CE)

For R4 and R5

: Mr. Naveenkumar

Government Advocate

For R6

: Mr. Rajesh Vivekanandan

ORDER

The writ petition is filed challenging the order passed by the 3rd respondent rejecting the petitioner's request for No Objection certificate for registration of documents in respect of property situated in Survey Nos.21 and



23 at Devambadi village, Pollachi Taluk, Coimbatore District.

2. It is the case of the petitioner that he is the owner of property with extent of 7.22 Acres in Survey No.21 and extent of 5.71 Acres in Survey No.23 situated at Devambadi village, Pollachi Taluk, Coimbatore District. He has purchased the same under registered sale deed dated 07.12.1972 from one T.K.Subramaniam Mudaliyar. It is the further case of the petitioner that when proceedings were initiated under Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963, the Settlement Tahsildar, Gobichettipalayam passed an order on 14.10.1968 granting ryotwari patta in respect of above mentioned properties in favour of Bathrakali Amman Temple/6th respondent temple herein. In the settlement proceedings, the 6th respondent was represented by hereditary poosari of the temple namely Natesa Pandaram. The order passed by the Settlement Tahsildar was challenged by the vendor of the petitioner namely T.K.Subramaniam Mudaliyar in C.M.A.No.27 of 1969 on the file of Minor Inams Tribunal, Coimbatore (Principal Sub-Ordinate Judge, Coimbatore). The said appeal was allowed and the patta granted in favour of the 6th respondent temple was set aside. Further, a direction was issued for grant of absolute patta in the name of vendor of the



petitioner. Thereafter, the petitioner purchased the above said properties from T.K.Subramaniam Mudaliyar on 07.12.1972. The petitioner also produced the patta in his name in respect of Survey Nos.21 and 23. The A register of the village produced by the petitioner in respect of Survey Nos.21 and 23 also stand in the name of one Gopalsamy Goundar. In the circumstances, the 3rd respondent herein sent a communication to the 5th respondent claiming that properties in Survey Nos.21 and 23 belongs to the 6th respondent temple and therefore, no documents for registration in respect of the said Survey Numbers shall be entertained for registration. Thereafter, the petitioners submitted a representation before the 3rd respondent on 04.11.2019 narrating the entire facts mentioned above and requested him to issue no objection certificate for registration of the documents in respect of Survey Nos.21 and 23. The said request of the petitioner came to be rejected by the 3rd respondent by impugned order.

3. The request of the petitioner was rejected by the 3rd respondent mainly on the ground that 3rd respondent has taken steps to challenge the order passed against the temple in C.M.A.No.27 of 1969 dated 24.12.1970



Aggrieved by the said order, the petitioner is before this Court.

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4. The learned counsel for the petitioner by taking this Court to the order passed in C.M.A.No.27 of 1969 on the file of Minor Inams Tribunal, Coimbatore (Principal Sub-Ordinate Judge, Coimbatore) submitted that patta issued in favour of 6th respondent temple was set aside and patta was ordered to be issued in favour of petitioner's vendor one T.K.Subramaniam Mudaliyar and the said order has become final. Now, the request of the petitioner for No Objection Certificate was rejected by the 3rd respondent mainly on the ground that they had taken steps to challenge the order passed in appeal after 50 years.

5. The learned counsel for the 6th respondent submitted that in the judgment passed in C.M.A.No.27 of 1969 relied on by the petitioner, the 6th respondent temple was not properly represented by a competent person and therefore, the judgment is not binding on the temple. The learned counsel for the 6th respondent also relied on the judgment of the Hon'ble Apex Court reported in **1967 0 AIR(SC) 1044** in the case of ***Bishwanath and another Vs Sri Thakur Radha Ballabhli and others***, in this regard.



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6. The learned Government Advocate for the official respondents 1 to 3, 4 and 5 also supported the line of the arguments of the learned counsel for the 6th respondent.

7. In reply to the submission of the learned counsel for the 6th respondent, the learned counsel for the petitioner submitted that in the proceedings before the Settlement Tahsildar, the 6th respondent temple was represented by its hereditary Poosari namely Natesa Pandaram and the said Natesa Pandaram was also impleaded as one of the respondent in C.M.A.No.27 of 1969. Therefore, the person, who represented the temple had the knowledge of the appeal filed before the Minor Inams Tribunal, Coimbatore and consequently, the submission made by the counsel for the 6th respondent cannot be accepted.

8. It is seen from the order passed in C.M.A.No.27 of 1969, the 6th respondent temple was arrayed as 2nd respondent. As nobody entered appearance for 6th respondent temple, it was set ex-parte and order was passed



setting aside the patta granted in favour of the temple. In the impugned order, the 3rd respondent stated that the temple is taking necessary steps to challenge the order passed in C.M.A.No.27 of 1969 after 50 years. It is not the stand of the 3rd respondent that the order passed against the temple was not within their knowledge and now only they acquired knowledge about the judgment. In fact, the writ petition was of the year 2021. The impugned order was passed by 3rd respondent on 25.02.2020. Till date, no materials are produced before this Court to say that 3rd respondent filed any appeal challenging the order passed in C.M.A.No.27 of 1969. Therefore, the order passed against the temple in C.M.A.No.27 of 1969 has become final. Accordingly, the petitioner was also issued with patta in pursuance of the order passed in his favour in C.M.A.No.27 of 1969. In such circumstances, the 3rd respondent is not entitled to claim that the property belonged to the temple and refuse to issue no objection certificate in respect of the properties in Survey Nos.21 and 23.

9. When the person namely hereditary poosari of the 6th respondent temple, who represented the temple in the settlement proceedings before the Settlement Tahsildar was also arrayed as one of the respondent in



C.M.A.No.27 of 1969 and he was also represented by the counsel before the Minor Inams Tribunal, Coimbatore. In such circumstances, the 6th respondent temple cannot say that the order passed in C.M.A.No.27 of 1969 is not binding on it by taking shelter under technicalities.

10. The learned counsel for the 6th respondent submitted that the 6th respondent-temple was not represented by a competent person in earlier proceedings in C.M.A.No.27 of 1969 and consequently, the order passed therein is not binding on the temple. In this regard, he relied on the judgment in *Bishwanath and another Vs Sri Thakur Radha Ballabhli and others* reported in *1967 0 AIR(SC) 1044*. The question that came up for consideration in the said judgment was maintainability of a suit filed by a worshipper on behalf of the idol. The Hon'ble Apex Court after considering various judgment held that when Shebait (Manager) acts against the interest of the idol, any worshipper can maintain a suit for recovery of possession against the encroachers. Therefore, the judgment relied on by the learned counsel is not helpful to him to advance his argument.



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11. This Court in ***His Holiness Sri Kanchi Kamakoti Peetadhipathi Jagadguru Sri Sankaracharya Swamigal Srimatam Samasthanam vs. State of Tamil Nadu*** reported in ***2005 (1) CTC 657 : MANU/TN/0207/2005*** held that Temple and Mutt are juristic personalities and they can maintain legal proceedings in their own name. The relevant observation of this Court in this regard reads as follows:-

“25. I am unable to sustain the said objection. It is not disputed that the Mutt is an ancient religious Institution in existence for more than several hundreds of years. The Institution, though it is popularly known as "Kanchi Mutt" in common parlance, appears to bear a traditional name as "Srimatam Samasthanam". It is stated to be headed by Sri Kanchi Kamakoti Peetadhipathi. The Mutt is, therefore, a religious institution, entitled to constitutional protection, as envisaged under Article 26 of the Constitution. "Religious institution" is defined under Section 6(18) of the Act as math, temple or specific endowment. "Math" is defined under Section 6(13) as a Hindu Religious Institution with properties attached thereto and is presided over by a person, the succession to whose office devolves in accordance with the directions of the Founder



of the Math.

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26. *Such institutions, in view of their antiquity and acceptance by a large section of the members of the society as representing their faith, are also accepted as institutions/juridical persons and they are entitled to sue or liable to be sued, and such rights have never been disputed or questioned. The same conclusion would apply to other ancient institutions belonging to other religions also, such as, Christianity and Islam. There are several ancient institutions subscribing to Christian faith, churches, mosques, wakfs, functioning and recognised as legal entities, without registration under any Act. There were several unregistered wakfs which were governed by the provisions of the earlier Wakf Acts and it is only under the Wakf Act, 1995, registration of the wakfs have been made compulsory, and that too, only with the Wakf Board and not under any general statutes or authorities relating to registration of companies, societies or other organisations. Registration of such religious institutions may not also be possible in terms of such general statutes under which any institution, society or a company would be usually registered. There is no possibility of such institutions conforming to the various statutory requirements of having various offices like President, Vice President, Secretary, etc., much less elections*



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to such offices in the case of a religious institution like Mutt. Further, unlike Wakf Act, 1995, there is no corresponding provision under the Tamil Nadu Act 22 of 1959, requiring compulsory registration at least under that Act.

27. It is only in the said background, such institutions have always been recognised by the Courts and other authorities as juridical persons who can sue or be sued even though they are not registered under any of the modern statutes. As pointed out by the learned senior counsel for the petitioner, there are several examples of Court proceedings including writ petitions where such institutions have been parties, one such example being the Shirur Mutt case which went up to the Supreme Court. Therefore, it follows that the petitioner Mutt or Samasthanam, in whatever name it is called, being a Mutt and religious institution as defined under Section 6(13) and Section 6(18) of Act 22 of 1989, can maintain a writ petition.”

12. In view of the law laid by this Court in the above said judgment, there is no difficulty in coming to the conclusion even though in C.M.A.No.27 of 1969, the 6th respondent-temple was not represented by any living person, the temple as a juristic personality, can be sued in its own name. Therefore,



the judgment in C.M.A.No.27 of 1969 is binding on the 6th respondent-temple.

Further, in the above said judgment, it was recorded by the learned Judge inspite of notice to the 6th respondent-temple, nobody entered appearance. The statement recorded by a Judge, is deemed to be correct unless a contrary is proved. Judicial acts deemed to be performed regularly unless the contrary is proved. The presumption available under Section 114 (e) of the Evidence Act, 1872 is available to the Judicial Acts. In the case on hand, it has not been established before this Court that the order in C.M.A.No.27 of 1969 was passed without notice to the 6th respondent-temple. In fact, no such reason is mentioned in the impugned order also. In such circumstances, the judgment passed in C.M.A.No.27 of 1967 is binding on 6th respondent.

13. The copy of the property register of the temple was also produced by the petitioner which was approved by 3rd respondent on 17.10.2005. In the property register of the 6th respondent temple, the above said lands are not mentioned as the properties of the temple. In fact, there is an endorsement in the property register that the temple has no properties. Therefore, the impugned claim made by 3rd respondent as if the lands in question are



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properties of 6th respondent temple is without any basis. The allowing of Writ petition will not deter 6th respondent temple from establishing its title before Civil Court. Hence, 6th respondent is given liberty to work out its remedy before Civil Court.

14. Therefore, the impugned order passed by the 3rd respondent is set aside and the 4th respondent is directed to consider registration of documents presented by the petitioner, in respect of the properties covered under Survey Nos.21 and 23 with extent of 7.22 Acres and 5.71 Acres respectively in Devambadi Village, Pollachi Taluk, Coimbatore District, if it is otherwise in order, without insisting on objection certificate from the temple authorities. Accordingly, the writ petition stands allowed as indicated above. No costs.

29.08.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
nr

To
1. The Commissioner

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Hindu Religious and Charitable Endowments Board,
Uthamar Gandhi Salai
Nungambakkam ,
Chennai - 600 034.



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S.SOUNTHAR, J.
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