IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.03.2023

CORAM
THE HON'BLE MR.JUSTICE **M.S.RAMESH**

W.P. No.5368 of 2020

N.Elavarasan .. Petitioner

Vs

1.The Assistant Commissioner,
Hindu Religious & Charitable
Endowment Department,
Cuddalore,
Cuddalore District.

2.The Joint I Sub Registrar,
Virudhachalam Sub-Registrar Office,
Cuddalore,
Cuddalore District.

3.Sri Kumara Dev Mutt
represented by its Madapathi
Kalyana Sundara Siva Prakasa
Pandara Sannadhigal,
Vridhachalam,
Cuddalore District. .. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the records pertaining to the order in Na.Ka.No.3075/AaPaBi/2019 dated 09.01.2020 passed by the second respondent herein and quash the same and consequently direct the second respondent to register the sale deed dated 21.11.2013 bearing pending document P.36/2013.

For Petitioner	:	Mr.K.Raja for Mr.Kaviveerappan
For Respondents	:	Mr.N.R.Arul Natarajan, Special Government Pleader for R1
		Mr.Yogesh Kannadasan, Special Government Pleader for R2
		No appearance for R3

ORDER

This writ petition has been filed, challenging the order in Na.Ka.No.3075/AaPaBi/2019 dated 09.01.2020, passed by the second respondent herein and seeking a direction to the second respondent to register the Sale Deed dated 21.11.2013, bearing pending document P.36/2013.

2.The subject property in Re Survey No.38/2 of Sathukoodal Kizhpatti Revenue Village, under the jurisdiction of Sub Registrar, Chidambaram, measuring 0.49 cents, originally belonged to the third respondent herein. When the Mutt third respondent herein had originally filed petitions in O.P. Nos.35 of 1949 and 37 of 1950 before the District

Munsif, Tiruchirappalli under Section 84(2) of the then Madras Hindu Religious and Charitable Endowments Act for setting aside the orders of the Hindu Religious Endowments Board dated 02.11.1948, which declared that the Institutions called Periamadam in Turaiyur in Tiruchirappalli District and Sri Gnanakoothar Mutt in South Arcot District were Mutts within the meaning of Section 9(7) of Act II of 1927, the District Court had declared that it was not competent for the Hindu Religious Endowments Board to reopen the matter by holding that the Mutt is a Private Mutt and not a Public Mutt. The order of the District Court claims to be confirmed by a Division Bench of this Court in Appeal Suit Nos.192 and 193 of 1955 through a judgment and decree dated 17.02.1959. The findings of the District Court as well as the Hon'ble Division Bench has become final.

3.In this background, when the petitioner herein had purchased the subject properties from the third respondent through a Sale Deed dated 21.11.2013 for a valid sale consideration and the Sale Deed was presented before the second respondent herein for registration, the same has been rejected through the impugned order dated 09.01.2020 by holding that since the properties are endorsed as the Mutt under the Hindu Religious and

Charitable Endowments Department, they are not subject for registration in the absence of any orders granting sanction by the Hindu Religious and Charitable Endowments Department.

4.The learned counsel for the petitioner submitted that when the District Court as well as the Hon'ble Division Bench had already declared the third respondent Mutt as a Private Mutt, there was no authority on the part of the second respondent herein to insist for prior orders of the Hindu Religious and Charitable Endowments Department to facilitate any sale of the immovable properties belonging to them.

5.The learned Special Government Pleader appearing for the second respondent places reliance on the impugned order as well as the counter affidavit filed by them and submitted that the third respondent Mutt is under the control of the Hindu Religious and Charitable Endowments Department and therefore, in view of Section 22-A(1)(ii) of the Registration Act, 1908, such documents, dealing with the properties, which are under the control of Hindu Religious and Charitable Endowments Department, cannot be registered.

6.The learned Special Government Pleader appearing for the first respondent/HR&CE submitted that as per the judgment in A.S. Nos.192 and 193 of 1955, the third respondent Mutt has been declared to be a Private Mutt and not a Public Mutt.

7.As stated earlier, when the third respondent herein had filed petitions in O.P. Nos.35 of 1949 and 37 of 1950 under Section 84(2) of the Hindu Religious and Charitable Endowments Act, which is pari materia to Madras Hindu Religious Endowments Act II of 1927 before the District Court, Tiruchirapalli seeking for a declaration to declare the third respondent institution along with other institutions as a Mutt within the meaning of Section 9(7), the District Court had passed orders, holding that it was not competent for the Hindu Religious Endowments Department to reopen the matter as the third respondent Mutt is a Private Mutt. In the Intra Court Appeals before this Court in A.S. Nos.192 and 193 of 1955, the order of the District Court was upheld holding that the third respondent Institution, which was the subject matter of the Appeals, would not be a Mutt within the definition of the Act. Hence, by referring to the previous decisions of the Board, taken in 1932 and 1935, it was held that the board has no authority to reopen the matter.

8.The second respondent herein has now placed reliance on Section 22-A(1)(ii) of the Registration Act, 1908 and submitted that the Registering Officer has to refuse to register a document, which relates to any transfer of an immovable property belonging to, or given or endowed for the purpose of, any religious institution to which the Tamil Nadu Hindu Religious and Charitable Endowments Act is applicable. The said reasoning is misconceived. When there is a specific declaration by the Civil Court to the effect that the third respondent Trust is not a Public Mutt as defined under the Act, this Court is unable to comprehend as to how the subject property would be under the control of the Hindu Religious and Charitable Endowments Department.

9.Thus, when the Hon'ble Division Bench of this Court has accepted the findings of the District Court with regard to the status of the third respondent as being a Private Mutt, which is not covered under the provisions of the Hindu Religious and Charitable Endowments Act, placing reliance on Section 22-A(1)(ii) for the purpose of refusing the registration, is opposed to the judgment and decree passed in the Civil proceedings, as confirmed by the Hon'ble Division Bench of this Court and therefore the same is illegal. Consequently, the second respondent is bound to register the Sale Deed dated 21.11.2013, executed in favour of the petitioner herein, which has now been kept as pending Document P.36/2013.

10.In the light of the above findings, the impugned order dated 09.01.2020, passed by the second respondent since being opposed to the judgment and decree passed in O.P. Nos.35 of 1949 and 37 of 1950 as confirmed in the judgment and decree passed by the Hon'ble Division Bench of this Court in A.S. Nos.92 and 193 of 1955, is set aside. Consequently, there shall be a direction to the second respondent to forthwith register the Sale Deed dated 21.11.2013, executed by the third respondent in favour of the petitioner herein, which has been kept as pending Document P.36/2013, subject to a proper valuation and payment of stamp duty as on 21.11.2013, within a period of two weeks from the date of

M.S.RAMESH,J.

vga

receipt of a copy of this order. Accordingly, this writ petition stands allowed. No costs.

20.03.2023

Index : Yes
vga

To

1.The Assistant Commissioner,
Hindu Religious & Charitable
Endowment Department,
Cuddalore,
Cuddalore District.

2.The Joint I Sub Registrar,
Virudhachalam Sub-Registrar Office,
Cuddalore,
Cuddalore District.

W.P. No.5368 of 2020