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W.P.No.8457 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.8457 of 2023

Mrs.K.Annapooshanam
@Pushparani (Age-62 years)

... Petitioner

Vs.

1.Inspector General of Registration,
Santhome High Road,
Santhome,
Chennai – 600 028.

2.The Deputy Registrar General,
Chennai Zone,
Integrated Building for offices of the
Commercial Taxes and Registration Department,
Fanepet, Nandanam,
Chennai – 600 035.

3.Chief Executive Officer,
Tamil Nadu Waqf Board,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 001.

4.The Tahsildar,
Mylapore Taluk,
No.46, Greenways Road,



Raja Annamalai Puram,
Chennai – 600 028.

5. The Sub-Registrar,
No.268, Bharathi Salai,
Express Estate,
Royapettah,
Chennai – 600 014.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to consider the petitioner's representation dated 27.01.2023 and direct the 5th respondent to transfer the petitioner's property by way of registration and allow to rectification in Document No.720/2008.

For Petitioner : Mr.A.Manogaran

For R1, R2, R4 & R5 : Mr.G.Krishna Raja,
Additional Government Pleader

For R3 : Mr.S.Haja Mohideen Gisthi

ORDER

The writ petition has been filed for directing the respondents to consider the representation dated 27.01.2023 submitted by the petitioner and direct the fifth respondent to transfer the property of the petitioner by way of registration and to allow rectification in Document No.720/2008.



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2. The petitioner states that she is the absolute owner of the property more fully described in the present writ petition. The petitioner had decided to sell her property in favour of one A.Bois Khan, on account of her old age ailments. She had presented a Sale Agreement for registration. The 5th respondent / the Sub-Registrar issued the Refusal Check Slip on the ground that the 3rd respondent / the Chief Executive, Tamil Nadu Waqf Board raised an objection for registering any document in respect of the subject property. Therefore, the petitioner has to secure no objection from the Tamil Nadu Waqf Board for the purpose of registration of the documents presented by the writ petitioner.

3. The learned counsel for the petitioner mainly contended that the petitioner is in possession and enjoyment of the subject property for several decades and the Tamil Nadu Waqf Board has not established any right, therefore, the direction has to be issued to complete the process of registration in respect of the documents presented by the writ petitioner.

4. Section 22-A of the Registration Act was inserted by Tamil Nadu Act 22 of 2012 dated 21.06.2012 with effect from 20.10.2016. Sub Clause



(iv) of Sub Section (1) to Section 22-A of the Registration Act, stipulates that “of Waqf which are under the superintendence of the Tamil Nadu Waqf Board established under the Waqf Act, 1995 (Central Act 43 of 1995). Further Section 22-A denotes that “Notwithstanding anything contained in this Act, the Registering Authority shall refuse to register any of the documents stipulated in Sub Section (1). Therefore, the Registering Authority has no option but to refuse to register the documents, if those documents are falling under anyone of the clauses stipulated in Sub Section (1) to Section 22-A of the Registration Act.

5. The very purpose and object of the amendment and insertion of Section 22-A is to ensure that the properties of the religious institutions are protected. In respect of the properties belonging to Temple, Churches and Waqf Board, certain greedy vendor transacts in several manner and registering number of documents, so as to create an anomalous situation to defeat the right of the religious institutions.

6. Pertinently, the religious institutions are finding it difficult to protect its properties, since several documents were created for the purpose



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of grabbing the properties belonging to the religious institutions. Due to the inaction or lack of knowledge about the properties donated by the worshippers, the Tamil Nadu Waqf Board is also not in a position to initiate immediate action during the relevant point of time. In order to retrieve the properties belonging to the religious institutions, the legislatures thought fit and inserted Section 22-A of the Registration Act, so as to ensure that the properties belonging to the religious institutions are protected. Therefore, in the event of knowledge about the properties belonging to the religious institutions, either the authorities under the Hindu Religious and Charitable Endowments Act or the authorities of the Tamil Nadu Waqf Board are empowered to submit their objections and such objections submitted are to be acted upon by the registering authority, if any document is presented with reference to the properties mentioned in the objections.

7. The only question, which is to be considered is whether the objections raised by the Tamil Nadu Waqf Board is in consonance with the provisions of the Registration Act or not? Whether the Registering the Authority has notified the submissions under Section 22-A of the Registration Act, in a proper manner or not?



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8. When the Waqf Board presented the original documents before this Court i.e., Proforma Report, which all are being maintained under Sections 4, 5 and 6 of the Waqf Act, 1995, it is for the petitioner to establish her title or ownership in the manner known to law.

9. The Powers of Judicial Review of the High Court under Article 226 of the Constitution cannot be expanded for the purpose of adjudication of the disputes of civil nature. All such disputes are to be resolved based on the documents and evidences available on record and before the Competent Forum. Merely drawing an inference based on the revenue documents, title cannot be settled and in the event of passing any such order, it would cause prejudice to either of the parties.

10. In the present case, the Waqf Board presented the original documents to establish that the subject properties, wherein they raised an objection belonged to the Waqf Board. The petitioner also claim title over the property.



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11. The learned counsel for the petitioner states that their ancestors were parties, but the Survey Numbers do not tally. There are many discrepancies with reference to the Survey Numbers now stated in the affidavit and the schedule mentioned in the decree relied on by the petitioners.

12. This Court cannot conduct a roving enquiry in respect of such controversies or discrepancies in the matter of property disputes. Therefore, the petitioner, if at all aggrieved, has to approach the Competent Forum.

13. As far as the powers of the Registering Authority under Section 22-A is concerned, the Registering Authority has acted in consonance with the provisions of the Act and based on the objections raised by the Waqf Board. Once objections are filed by the Religious Institutions and/or by the Tamil Nadu Waqf Board, the Registering Authority has no objection, since the language of the word used in the Section 22-A is 'shall', the Registering Authority has no power of adjudication on these disputed issues of civil nature. Therefore, they acted in accordance with Section 22-A of the Act and if the parties are claiming any right, they have to establish their case



before the Competent Forum. Thus, this Court do not find any infirmity in respect of the stand taken by the Registering Authority based on the objections submitted by the Tamil Nadu Waqf Board. The petitioner is at liberty to approach the appropriate Forum.

14. It is brought to the notice of this Court that under Section 83(1) of the Waqf Act, 1995, the Tribunal has already been constituted and enumerates that “The State Government shall, by Notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a Waqf or Waqf property under this Act and define the local limits and jurisdiction of such Tribunals”.

15. The scope of Section 83(1) has been elaborately discussed by the Apex Court in the case of ***Rashid Wali Beg vs. Farid Pindari*** [(2022) 4 SCC 414]. Section 83(7) in unambiguous terms stipulates that “the decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by the Civil Court”.



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16. Once privilege of raising objection has been conferred under an enactment for the religious institutions, it is for the persons claiming to revert the same in the manner contemplated. Contrarily, a person claiming right of property cannot question the religious institutions nor ask them to produce the documents to establish their case. The legal presumption is that the objections raised by the religious institutions in respect of the properties are to be taken in to account for the purpose of refusal of registration. Therefore, the religious institutions are standing in a higher pedestal than that of a citizen, in view of the fact that the properties belonging to the religious institutions are frequently grabbed by the individuals one way or other by creating numerous documents. Once a person approaches the competent Civil Court, then alone the religious institutions is bound to establish the case, contrarily, the religious institutions need not establish their title before the registering authority nor the registering authority is empowered to adjudicate the dispute relating to title, ownership or civil rights. Thus, mere summary proceedings would be insufficient to form an opinion regarding title, ownership or civil rights. Contrarily, such summary enquiry would create further confusion between the parties and therefore, it is always preferable to approach the competent Civil Court of law for the



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purpose of establishing right to property. The statute contemplates that the religious institutions are empowered to submit their objections. Once such objections are filed, the registering authority shall refuse to register the documents. The option left open to the persons seeking registration to approach the Civil Court of law and establish their title, ownership, civil rights or otherwise. Any intermediary way to resolve the issues would undoubtedly end with complications and the parties may not be in a position to reach finality. Thus, this Court is of the considered opinion that powers conferred on the Registrar to refuse the documents based on the objections raised by the religious institutions are to be implemented by the registering authority and the person claiming right against the religious institutions is at liberty to approach the Civil Court of law for the purpose of establishing the title, ownership, civil rights or otherwise.

17. In the present case, the Tamil Nadu Waqf Board furnished a copy of the original Proforma before this Court, so as to establish that the subject property is a Waqf property. Therefore, the petitioner is at liberty to approach the competent Civil Court of law for the purpose of establishing her case in the manner known to law.



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18. With this liberty, the writ petition stands disposed of. No costs.

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Index : Yes

Speaking order

Neutral Citation : Yes

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S.M.SUBRAMANIAM, J.

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