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W.P.No.19815 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.19815 of 2023
and
W.M.P.No.19138 of 2023

1. Sundeep Devarajan

... Petitioner

Vs.

1. The District Registrar,
Administration, Chengalpattu.

2. Nemili Arulmigu Alavanthar Naicker Charity,
Represented by its Executive Officer,
Mammalapuram,
Thirukazhikundram Taluk,
Chengalpet District-603 104.

... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, to quash the Impugned Order No. 1525 / B1 / 2022 dated 09.02.2023 made by the 1st respondent herein and further direct the 1st respondent herein to reconsider the appeal filed by the petitioner herein along with the additional statements made by the petitioner dated 20.05.2022, 15.06.2022 and 22.12.2022 along with supporting documents and the orders of this Hon'ble Court dated 23.01.2023 made in W.P.No. 1463 of 2023.



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For Petitioner : Mrs.A.L.Somayaji, Senior Counsel,
for Mrs.K.Indu Priya

For Respondents :
(for R1) : Mr.D.Ravichander, Spl.G.P.

ORDER

The writ on hand has been instituted questioning the validity of the order passed by the first respondent in proceeding dated 09.06.2023 and to direct the first respondent to reconsider the appeal filed by the petitioner along with the additional statements made by the petitioner on 20.05.2022, 15.06.2022 and 22.1.2022, along with the supporting documents and the orders of this Court dated 23.01.2023, made in W.P. No.1463 of 2023.

2.The petitioner states that he has proposed to purchase the property and presented the document of the property more fully described in the present writ petition. The petitioner presented sale deeds for registration before the sub registrar Tiruppur. The registering authority refused to register the document on the ground that there was an objection from the second respondent religious institutions within the meaning of the provisions of the Hindu Religious and Charitable Endowments Act. Since



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the petitioner was not convinced with the reasons stated in the objections filed by the second respondent, he attempted to clarify that the land belonging to the second respondent is no way connected with the land belonging to the petitioner and submitted his statement and other documents. The registering authority reiterated his refusal and thereafter, the petitioner filed an appeal before the first respondent under Section 72 of the Registration Act.

3.The first respondent adjudicated the issues with reference to the documents placed before the authority. The first respondent rejected the appeal on the ground that there is a dispute existing between the petitioner and the second respondent religious institution and therefore, the document presented by the petitioner cannot be registered.

4.The learned senior counsel appearing on behalf of the petitioner mainly contended that the first respondent has failed to consider all the documents including the statements given by the petitioner. A Civil Court Decree passed in favour of the petitioner also has been produced before the first respondent for consideration, but the first respondent failed to consider any of these document and formed an opinion that there is a



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dispute between the petitioner and the second respondent and thus, the order impugned is to be set aside.

5.The learned Senior Counsel appearing on behalf of the petitioner reiterated that the decree passed in O.S.No.107 of 1994 dated 31.03.1999 is unambiguous and the specific demarcation made in the decree would be sufficient to consider the case of the petitioner for registration. In view of the fact that the first respondent failed to consider any of these documents and statements produced by the petitioner, the impugned order is liable to be set aside.

6.The learned senior counsel drew the attention of this Court with reference to the principles laid down by the Hon'ble Supreme Court of India in the case of ***Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer-cum-Assessing Authority***, reported in ***2023 SCC Online SC 95*** wherein the maintainability and entertainability of the writ petitions under Article 226 of the Constitution of India by the High Court has been distinguished in Para 4 which is extracted as under :

“ 4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by



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Article 226 of the Constitution having come across certain orders passed by the high courts holding writ petitions as "not maintainable" merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to Article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the high court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the high courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the high courts should normally not entertain a writ petition, where an effective and efficacious alternative



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remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the high court under Article 226 has not pursued, would not oust the jurisdiction of the high court and render a writ petition "not maintainable". In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the high courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of



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a writ petition by a high court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.”

7.Relying on the above findings, the learned Senior Counsel reiterated that the writ petition is entertainable in view of the fact that there is no real dispute existing between the parties and the artificial dispute assumed by the first respondent is untenable.

8.That apart, exhausting the appellate remedy may not be followed as a strict rule and only if the High Court is not in a position to decide the factual disputes, then the parties may be insisted to exhaust the appellate remedy contemplated. In the present case, the petitioner has produced all the documents along with the statements which were not considered by the first respondent and therefore, the matter is to be remanded for the purpose of re-considering all those documents.

9.The learned Special Government Pleader appearing on behalf of the first respondent raised an objection by stating that the scheme of the Act requires that the petitioner should exhaust the remedy contemplated



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under Section 77 of the Registration Act. In case of refusal by the Registrar

under Section 72 of the Act, the aggrieved person has to file a suit under

Section 77 for adjudication. In the present case, the petitioner admittedly

has not exhausted the remedy contemplated under Section 77 of the

Registration Act and therefore, the writ petition is liable to be rejected.

10.It is not in dispute that the second respondent raised an objection to register the subject property and on the basis of the said objection, the registering authority refused to register the document sale deed presented by the writ petitioner. Admittedly the second respondent is a religious institution. Section 22(A) of the Registration Act contemplates refusal to register certain documents. Sub Section 1(ii) stipulates that *"belonging to, or given or endowed for the purpose of any religious institution through which the Tamil Nadu Hindu Religious Charitable and Endowments Act is applicable"*. Therefore, the said objection given by the second respondent is to be construed as a statutory objection and accordingly, the document presented by the petitioner was not registered. Section 72 of the Registration Act provides *"appeal to the registrar from the orders of Sub-Registrar refusing registration on ground other than denial of execution"*.



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WEB COPY 11. In the present case, the petitioner rightly preferred an appeal before the District Registrar under Section 72. The grievances of the petitioner is that the documents, Civil Court Decree and statements submitted were not considered. Rule 55 denotes that the Registering Officer, except on certain ground, cannot refuse registration and the present case is not falling under any one of the grounds contemplated under Rule 55 and thus, the impugned order is perverse.

12. Rule 55 of the registration rules reads as under :

55. It forms no part of a registering officer's duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document; but he is bound to consider objections raised on any of the grounds stated below:-

- (a) that the parties appearing or about to appear before him are not the persons they profess to be;*
- (b) that the document is forged;*
- (c) that the person appearing as a representative, assign or agent, has not right to appear in that capacity;*
- (d) that the executing party is not really dead, as alleged by the party applying for registration; or*



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Section 77 (A), the documents, if prima facie found to be fraud or impersonated, then alone it can be cancelled and in the event of any dispute between the parties, the parties are to be relegated to approach the Civil Court of law for the purpose of adjudication of issues and to resolve the disputes. But in the present case, the scheme of the Act itself contemplates institution of suit under Section 77 of the Act.

15. Section 77(1) stipulates that *"Where the Registrar refuses to order the document to be registered, under section 72 or a decree section 76, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situated the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree."*

16. Question arises whether the writ jurisdiction can be an alternate for the Civil Suit, which is otherwise contemplated under Section 77 of the registration Act ? The answer would be, the nature of writ proceedings is



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incomparable with the suit proceedings under the Code of Civil Procedure.

Disputed facts cannot be adjudicated in a writ proceedings.

17.The power of judicial review of the High Court under Article 226 of the Constitution of India is to ensure the processes through which a decision is taken by the competent authorities in consonance with the statutes and rules in force but not the decision itself. Writ petitions are entertained even without exhausting the alternate remedy. However, that cannot be made as a general rule and it is preferable that the power conferred on the appellate authorities must not be allowed to be exercised for the purpose of effective adjudication. The factual findings to be made by the original authority and the appellate authority are of greater assistance to the High Court for exercising the powers of judicial review under Article 226 of the Constitution of India.

18.The legislative intention to relegate the parties to the appellate authorities is to be taken into consideration. The statute provides an appeal with an object to ensure that the decision of the original authorities are checked and in those circumstances, High Court need not exercise the power of judicial review unnecessarily depriving the Parties to avail the



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efficacious remedy otherwise contemplated under the statute or rules in force.

19. In the present case, the scheme of Registration Act contemplates "*a suit in case of order or refusal by Registrar*". If the registrar forms an opinion that there is a dispute existing between the parties and refusing to register any document, then the option left open is to institute a suit under Section 77 for elaborate adjudication of the disputes and roving inquiry in this regard cannot be undertaken by the High Court under Article 226 of the Constitution of India.

20. The very legislative intention to approach the Civil Court at no circumstances be neutralised. In the event of adjudication of such disputed facts in a writ proceedings, there is a possibility of prejudice to either of the parties as trial nature proceedings cannot be conducted in a writ jurisdiction. That apart, even in case such directions are given to remand the matter again, it will do no service to the cause of justice and the parties will be back again to the High Court by way of further litigations and therefore, this Court is of the considered opinion that the remedy contemplated under Section 77 of the Registration Act is efficacious and



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dispensing with the remedy is not preferable at all circumstances, more so,
in the presence of disputed issues between the parties.

21.The case of the petitioner to verify the entire documents and give a finding in a writ proceedings is not desirable. Remanding the matter to the first respondent would do no service to the cause of justice. Thus, in the present case, this court has no hesitation in forming an opinion that the petitioner has to exhaust the remedy contemplated under Section 77 of the Registration Act by approaching the Civil Court for effective adjudication of the disputed issues between the parties.

22.Accordingly, the writ petition stands **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

(sha)
Index : Yes
Speaking Order
Neutral Citation : Yes

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S.M.SUBRAMANIAM. J.,

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