



W.P.No.23221 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.23221 of 2023
and
W.M.P.Nos.22754 & 22755 of 2023

Syed Bashu

... Petitioner

Vs.

1. The Superintendent of Wakf,
Trichy Zonal Office,
No.8/124, Kayithe Millath Salai,
Trichy-620 008.

2. The Sub Registrar,
Office Of The Sub-Registrar,
Valikandapuram.

...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus, calling for the records of the impugned communication dated 18.02.2020 vide Na.Ka. 786/ VA.KA/ THI.SA/ AAVANAPATHIVU/ 2020 of the 1st respondent in so far as the property measuring 1 Acres and 34 4/6 cents (53.00 Ares) in Ayan Punja in Survey No.319/7C situated at Vallikandapuram Revenue Village, Vepenthattai Taluk, Perumbalur District and quash the same as illegal and without jurisdiction and consequently direct the 2nd respondent to register



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the intended conveyance deeds in respect of petitioner's said property without insisting NOC.

For Petitioner : Mr.K.Nizamuddin

For Respondents :
(for R1) : Mr.S.Haja Mohideen Gisthi
(for R2) : Mr.T.Arun Kumar,
Additional Government Pleader

ORDER

The objection letter submitted by the Tamil Nadu Wakf Board, under Section 22A of the Registration Act, to the Sub Registrar, in letter dated 18.02.2020, with reference to the subject property is under challenge in the present writ petition.

2. The learned counsel for the petitioner states that even as per the proforma report, the document number is available but the survey number is missing.

3. However, it is clarified by the learned counsel appearing on behalf of the Tamil Nadu Wakf Board that the subject property has been covered under the proforma report and furnished the original report before this



Court. When there is an objection from the Tamil Nadu Wakf Board under Section 22A of the Registration Act, then the Registering Authority is bound to refuse the document, if any, presented for registration by any person. Thus, the action of the Registering Authority refusing the document presented by the petitioner is in consonance with Section 22A of the Registration Act.

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 Waqfs 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 Officer 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 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 Authority has notified the submissions under Section 22-A of the Registration Act, in a proper manner or not?

8. 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.

9. 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.

10. 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”.



11. 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”.

12 Once privilege of raising objection has been conferred under an enactment for the religious institutions, it is for the persons claiming to rebut 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 into 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 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 is 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.



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13. In view of the factum established, the relief as such sought for in the present writ petition deserves no merit consideration and accordingly, this writ petition stands **dismissed**. No costs. Consequently, connected miscellaneous petitions are closed.

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

30.08.2023

To

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2. The Sub Registrar,
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S.M.SUBRAMANIAM. J.,

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