



W.P.No.33760 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.33760 of 2022

1.M.Rajan
2.M.Joseph
3.M.Eburaj
4.M.Solomon

.... Petitioners

-Vs-

1 The Sub Registrar
Pammal Thiruneermalai road Pammal
Chennai 75

2 The Executive Officer
Arulmigu Renganatha Perumal Thirukoil
Thiruneermalai Chennai 44.

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling of the records culminated in refusal of registration order passed by the 1st respondent vide proceedings dated 12.07.2022 in RFL / Pammal/ Book 2/2 quash the same consequently direct the 1st respondent to register the power of Attorney dated 20.06.2022 presented by the petitioner within a time frame fixed by this Honble court.

For Petitioner : Mr.A.Swaminathan
For Respondents : Mr.P.Sathish,
Additional Government Pleader - for R1
Mr.N.R.R.Arun Natarajan
Special Government Pleader - for R2



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ORDER

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The prayer sought for herein is for a Writ of Certiorarified Mandamus calling of the records culminated in refusal of registration order passed by the 1st respondent vide proceedings dated 12.07.2022 in RFL / Pammal/ Book 2/2 quash the same consequently direct the 1st respondent to register the power of Attorney dated 20.06.2022 presented by the petitioner within a time frame fixed by this Court.

2. In respect of the property situated at Survey No.70, Patta No.2478, Old Survey No.70/2, New Patta No.3688, New Survey No.70/2B to the extent of 0.30 cent at Thiruneermalai Village, Pallavaram Taluk, Chengalpattu District, it is the claim of the petitioner that the property belongs to the petitioners as they purchased the property from the vendors, who are the erstwhile owners of the property by valid sale consideration.

3. However, it is the strong claim of the 2nd respondent temple that the property belongs to the 2nd respondent temple. In this regard, the patta given in respect of the property ie., at S.No.70 was sought to be cancelled by the application filed by the temple authorities. The said application submitted before the Revenue Divisional Officer (RDO), Tambaram was considered and decided by order dated 24.03.2020, where, after having found that the land in question



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belongs to the said temple as per the Survey and Settlement Register prepared in the year 1876 and the 'A' Register prepared and maintained by the Revenue Department from the year 1911, the Revenue Divisional Officer decided to cancel the patta. Thereby, by the said order dated 24.03.2020, patta issued in the name of the predecessor-in-title of the petitioners in respect of the property in question has been cancelled.

4. As against the said order passed by the Revenue Divisional Officer, the petitioners preferred an appeal before the District Revenue Officer (DRO) concerned before whom, the appeal is admittedly pending. When that being the position, the petitioners wanted to execute a power of attorney in favour of one Florence and when the said power of attorney document was produced before the 1st respondent for registration, he has refused to register the same by issuing a refusal check slip dated 12.07.2022, which is under challenge in this writ petition.

5. Assailing the said communication issued by the 1st respondent refusing to register the document ie., power of attorney presented by the petitioners, the learned counsel for the petitioners would contend that, as against the order passed by the Revenue Divisional Officer, appeal has been filed by the petitioner before the District Revenue Officer which is pending. Therefore, pending



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disposal of the appeal, the property in question which has been in possession and enjoyment of the petitioners have to be maintained properly. Therefore, in order to maintain the property only the power of attorney document was executed and when it was presented before the 1st respondent, he has refused to receive the same.

6. When this stand was taken by Mr. A. Swaminathan, learned counsel for the petitioners when the writ petition was taken up for hearing on 16.12.2022, this Court passed the following order.

" 3. *Perusal of the records, it appears that the subject property is originally an inam land and thereafter it appears that patta has been obtained by some persons and later it was cancelled by the authorities. In respect of the above issue, enquiry is also pending before the District Collector. Such view of the matter alienation or creating encumbrance of the temple land is totally prohibited.*

4. *At this stage, the learned counsel appearing for the petitioner would submit that he will not create any alienation or encumbrance over the property. Since he is interested only in managing the property, power of attorney will be registered for a specific purpose of managing the property, he also submitted that he will file an affidavit in this regard before this Court the next hearing date.*



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5. Such view of the matter, post this writ petition on 19.01.2023 for filing such affidavit by the petitioner. In the meantime, the respondents shall get instructions in this regard."

7. Pursuant to the said order dated 16.12.2022 today when the case is taken up for further hearing, learned counsel for the petitioner has filed an affidavit on behalf of the petitioners, where inter alia the petitioners have stated the following.

" a) The Deed of Special Power of Attorney sought to be registered pertaining to S.No.70/2B Thiruneermalai Village, is only towards management and development of the lands therein and the deed does not authorize the Power Agent to alienate the property in any manner known to law.

b) The Deed of Power of Attorney is carefully worded in such a way that alienation of the schedule property is prohibited.

c) Subject to the result of the proceedings pending before DRO Chengalpattu pertaining to cancellation of Patta in S.No.70/2B Thiruneermalai Village, further course of action regarding the property will be dealt by the petitioners insofar as the alienation of the property is concerned, till such time the petitioners will only focus on management of the said property."

8. Relying upon the averments made in the affidavit, learned counsel for the petitioner would seek the indulgence of this court to give a direction to the 1st respondent registering authority to register the power of attorney document



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which is in question, as the undertaking given before this Court would safeguard the interests of the respondents in respect of the property in question.

9. However, Mr.N.R.R.Arun Natarajan learned Special Government Pleader appearing for the 2nd respondent temple has relied upon various findings given by the Revenue Divisional Officer in his order dated 24.03.2020 and would further submit that, since the property has been temple property for more than one century and the revenue records discloses the said fact that the property belongs to the temple, subsequent transactions if any made pursuant to which if the petitioners claim title over the property, the same having been considered in a detailed order dated 24.03.2020 the Revenue Divisional Officer was pleased to cancel the patta as against which, the petitioners preferred an appeal before the District Revenue Officer. Mere filing of an appeal will not *ipso facto* give any right to the petitioners to claim right over the property. Therefore, in the guise of maintaining the property if the document in question is permitted to be registered under which the petitioners would take advantage and claim right over the property because of the words 'management and development' mentioned in the affidavit filed before this Court today and under the guise of development of the land in question, the petitioners would exploit the property or on their behalf the power of attorney holder would exploit the property in any manner.



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Therefore, that kind of permission cannot be granted and hence the plea raised by the petitioner seeking direction to the 1st respondent to register the power of attorney document also cannot be granted, he contended.

10. I have also heard Mr.P.Sathish, learned Additional Government Pleader appearing on behalf of the 1st respondent, who would submit that, since objection had come from the 2nd respondent temple that the impugned refusal check slip was issued and so long as the 2nd respondent raises the dispute with regard to the title of the property and the Revenue Divisional Officer already passed a detailed order in favour of the 2nd respondent temple, where patta already issued in the name of the petitioners or their predecessors-in-title has been cancelled, as of now the petitioners cannot exploit the property and in no capacity the petitioners can execute any power in favour of any third party. Therefore, there is every justification on the part of the 1st respondent in refusing to register the power of attorney document, he contended.

11. I have heard the learned counsel for the parties and have perused the materials placed on record.

12. It is a fact that the Revenue Divisional Officer concerned has passed a



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detailed order on 24.03.2020 whereby the patta granted in favour of the private parties has been cancelled. Even though appeal was filed against the same, the appeal is pending before the District Revenue Officer concerned and there has been no stay granted by the District Revenue Officer as against the order passed by the Revenue Divisional Officer. Strictly speaking, as per the order passed by the Revenue Divisional Officer dated 24.03.2020 the patta stood in the name of the individuals has been cancelled. By thus, the Revenue Department accepted the plea of the 2nd respondent temple with regard to the title of the property in question.

13. However, since the appeal has already been filed and it is pending before the District Revenue Officer, he has to hear the appeal by giving an opportunity to both sides including the petitioners and ultimately it is for the DRO to pass orders. Till such time, it cannot be conclusively decided as to who will have the title over the property in question.

14. At this juncture, in view of the continuous possession and enjoyment of the property in question, the petitioners wanted to execute a general power of attorney in favour of a third party for the purpose of exploiting the property and the recital of the power of attorney ie., the document in question reveals that it is



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not a mere power given to the third party to maintain the property in question, but also to exploit the property in question. Therefore, to that extent this Court has no hesitation to hold that such kind of general power of attorney which is in question cannot be permitted to be registered.

15. At the same time, it is the stand of the petitioners as projected by the learned counsel for the petitioners that, the said power has been given to the third party only to maintain the property and not for any other purpose like development of the property, plotting out of the property, selling the property or creating any encumbrance, mortgage etc., in any manner.

16. It is also the undertaking on behalf of the petitioners that, the property can only be managed as it is and no additions would be made by putting up any temporary or permanent structure in any manner. As this kind of undertaking since has been given before this Court which has been extracted herein above, there could be no impediment at present to permit the petitioners to execute a power in favour of the third party only to maintain the property for the time being till a decision is taken by the DRO in the appeal filed by the petitioners.



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17. Even for the said purpose, the document in question executed on 20.06.2022 cannot be used as a document for registration because the recital therein is to the extent 'to exploit the property in any manner including for sale'. Therefore, if the petitioners come forward to execute a fresh power of attorney, not a general power of attorney but a specific power only for the purpose of maintaining the property in question not with any other power to be executed in favour of any third party, such kind of document if it is presented before the 1st respondent registering authority, this Court feels that the same can be registered.

18. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order.

- That the document in question dated 20.06.2022 cannot be permitted to be registered as it is. Therefore, the petitioners' counsel since wanted to withdraw the same and to execute a fresh power of attorney ie., special power of attorney in favour of any third party only to maintain / manage the property in question with the following conditions that contains, no right to encumber, no right to sell, no right to mortgage, no right right to



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put up any temporary or permanent structure, no right to make any application to any authority like the revenue authorities / local bodies / planning authorities to get any approval for development or progression of the property.

- If such a document is prepared and presented by the petitioners before the 1st respondent the same shall be considered and if it is otherwise in order, it can be registered.
- Provided such a registration, if it is made by the 1st respondent, that will not confer any right on the petitioners in any manner and whatever the order passed by the DRO in the pending appeal that would bind both parties viz., the petitioners as well as the 2nd respondent temple.
- Merely because this order is passed by this Court permitting the petitioners to present a new specific power of attorney document for registration as indicated above, that will not give any right or advantage on the petitioners to make any claim in future with regard to the title of the property.
- If the document as indicated above does not contain the clauses mentioned herein above or in violation of the directions herein above mentioned, and if such a document is presented for



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registration, the 1st respondent need not register the same.

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19. With the above directions and observations, this writ petition is disposed of. No costs.

19.01.2023

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Index : Yes/No
Neutral Citation : Yes/No
Speaking Order / Non-speaking order
KST
To

- 1 The Sub Registrar
Pammal Thiruneermalai road Pammal
Chennai 75
- 2 The Executive Officer
Arulmigu Renganatha Perumal Thirukoil
Thiruneermalai Chennai 44.



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R. SURESH KUMAR, J.

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