



W.A.(MD)Nos.440 and 630 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the order	Date of Pronouncing the order
07.02.2023	15.02.2023

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE SUNDER MOHAN**

W.A.(MD)Nos.440 and 630 of 2019

W.A.(MD)No.440 of 2019:-

The Assistant Commissioner,
Hindu Religious and Charitable Endowment Department,
Puzhalimalai,
Velayuthampalayam,
Karur District.

... Appellant

vs.

1.D.Kalaiyaran

2.The Inspector General of Registration,
Santhome High Road,
Chennai – 4.

3.The Sub-Registrar,
Velayuthampalayam,
Karur District.

... Respondents

Prayer :- Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 29.10.2018, made in W.P.(MD)No.15967 of 2018.

For Appellant

: Mr.P.Athimoolapandian

For 1st Respondent

: Mrs.Nalini Chidambaram, Senior Counsel
for Mr.S.Karthik

For Respondents 2 and 3

: Mr.D.Sasikumar
Additional Government Pleader



W.A.(MD)Nos.440 and 630 of 2018

W.A.(MD)No.630 of 2019:-

1.The Inspector General of Registration,
Santhome High Road,
Chennai – 4.

2.The Sub-Registrar,
Velayuthampalayam,
Karur District.

... Appellants

vs.

1.D.Kalaiyaran

2.The Assistant Commissioner,
Hindu Religious and Charitable Endowment Department,
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Velayuthampalayam,
Kaurur District.

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For Appellants : Mr.D.Sasikumar
Additional Government Pleader

For 1st Respondent : Mrs.Nalini Chidambaram, Senior Counsel
for Mr.S.Karthik

For 2nd Respondent : Mr.P.Athimoolapandian

COMMON JUDGMENT

DR.G.JAYACHANDRAN, J.

These Writ Appeals are filed against the order of the learned Single Judge, dated 29.10.2018, made in W.P.(MD)No.15967 of 2018.

2. One D.Kalaiyaran the first respondent in both the Writ Appeals is the successful petitioner before the learned Single Judge in W.P.(MD)No.15967 of 2018.



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The respondents 1 and 2 in the Writ Petition are the appellants in W.A.(MD)No.630 of 2019. The third respondent in the Writ Petition is the appellant in W.A.(MD)No. 440 of 2019.

3. The facts leading to filing of these two Writ Appeals, arising out of the judgment of the learned Single Judge, runs as below:-

3.1. D.Kalaiyaran purchased 2.27 Acres of land, comprising in S.Nos.462/1, 462/2 and 462/3, situated at Punjai Pugalur Village, Velayuthampalayam, Manmangalam Taluk. He purchased the property from one N.Rajamanickam and N.Periasamy under a registered sale deed, dated 14.04.2004. His predecessors in title, namely, N.Rajamanickam and N.Periasamy, derived their title through two different registered sale deeds, dated 16.10.1969. D.Kalaiyaran after purchase of the property in the year 2004, had mutated revenue records in his name and got Patta. Based on the said Patta, he applied for conversion of the agricultural land into housing plots and got No Objection Certificate for the said conversion from the revenue authorities. Thereafter, got layout plan approval from the appropriate authorities, vide proceedings, dated 13.10.2015. He has also executed gift deeds in favour of the local authority in respect of the land required for public purpose, as mandated for grant of layout approval.



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3.2. After complying all the required formalities for promoting the layout, he executed a sale deed, dated 16.06.2017, in favour of one Thirumurthy and presented the same before the Sub-Registrar, Velayuthampalayam, Karur District, for registration. The document was accepted and assigned with P.No.5/17. The registration of the document was kept pending in view of the objection received from the Executive Officer of Sri Balasubramaniasamy Temple, Puzhalimalai, Velayuthampalayam, Karur District. D.Kalaiyaran was made to understand that to get the document registered, he has to obtain No Objection Certificate from the H.R. & C.E. Department.

3.3. Contending that the property does not belong to the Temple and when all the revenue records are in his favour and after obtaining requisite permission for conversion of agricultural land into residential plots, layout approval and no objection from the local body, there cannot be any impediment for the Sub-Registrar to register the sale deed. The objection by the H.R. & C.E. Department without any supportive document of title cannot stand in the way of registering the document. Therefore, sought for a Writ of Mandamus, by way of filing Writ Petitions in W.P. (MD)Nos.16892 and 17414 of 2017, seeking direction to the Sub-Registrar to register and release pending document in P.No.5/17, without insisting upon any No Objection Certificate.



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3.4. The said Writ Petitions were disposed of with a direction to the Inspector General of Registration to conduct enquiry on the registration of document in P.No. 5/17 after affording an opportunity of personal hearing to the parties interested and pass orders within a period of eight weeks.

3.5. From the order of the learned Single Judge, which is impugned in these Writ Appeals, this Court finds that earlier Contempt Petitions were filed by D.Kalaiyaran, alleging that the Inspector General of Registration has not conducted enquiry as directed by this Court in W.P.(MD)Nos.16892 and 17414 of 2017. Pending Contempt Petitions, the Inspector General of Registration, vide letter dated 10.05.2018, requested the Sub-Registrar to conduct an enquiry in respect of pending document and pass orders. Accordingly, the Sub-Registrar has conducted enquiry and pass orders, dated 23.05.2018, directing D.Kalaiyaran to take back the documents upholding the objection raised by the H.R. & C.E. Department, on the ground that the land belongs to H.R. & C.E. Department and it cannot be alienated by private parties.

3.6. Aggrieved by the said order of the Sub-Registrar passed pursuant to the delegation of the responsibility by the Inspector General of Registration, W.P. (MD)No.15967 of 2018 filed by D.Kalaiyaran, seeking a Writ of Certiorarified



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Mandamus, calling for the records pertaining to the proceedings passed by the Inspector General of Registration, dated 10.05.2018, delegating the responsibility to the Sub-Registrar for conducting enquiry regarding the pending document in P.No. 5/17 and the consequential order passed by the Sub-Registrar on 23.05.2018, upholding the objection of the H.R. & C.E. Department and directing D.Kalaiyaran to take back the documents.

3.7. The learned Single Judge after considering the rival submissions, has allowed the Writ Petition on the ground that the writ petitioner D.Kalaiyaran has a valid Patta and derived title from his predecessors, who had the title over the property through a registered document, dated 16.10.1969. The revenue records indicates that D.Kalaiyaran is the Patta holder in respect of S.Nos.462/1, 462/2 and 462/3. Pursuant to the title deed and Patta, D.Kalaiyaran has applied for conversion of the agricultural land into residential plots and the Deputy Director of Town Planning Authority, Trichy Zone, has considered the request for layout approval. The local body has passed resolution in favour of D.Kalaiyaran for promoting the agricultural land into residential plots. While so, the Registering Authority based on the objection by the H.R. & C.E. Department, without any supportive document, cannot refuse registration exercising power under Section 22-A of the Registration Act. This order is now impugned by the respondents in the above two Writ Appeals.



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4. The learned Standing Counsel appearing for the H.R. & C.E. Department contended that the learned Single Judge has failed to consider the material evidence placed before the Sub-Registrar in support of the objection while the Inam Fair Register (IFR) maintained by the Revenue Department indicates that the said land is an Inam land of Sri Balasubramaniasamy Temple, Puzhalimalai, Velayuthampalayam, Karur District and the land was granted as Inam coupled with service, the said land cannot be alienated by the Inamdar. The Patta relied by D.Kalaiyaran is issued by the regular Tahsildar, whereas, for the Inam land, conditional Patta was issued by the Settlement Tahsildar, who alone is the authority competent to issue Patta. By suppressing the conditional Patta by the Settlement Tahsildar, transactions have been taken place.

5. The Sub-Registrar has rightly refused to register the document in respect of the land owned by the Temple taking note of the fact that Civil Suit has already been initiated and pending. The order of the Sub-Registrar is in consonance of the spirit of law, particularly, Section 22-A of the Registration Act and Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 [hereinafter referred to as "the H.R. & C.E. Act"] as reiterated by the Division Bench of this Court in **Sudha Ravi Kumar and another vs. The Special Commissioner and Commissioner, H.R. & C.E. Department, Chennai and others** reported in AIR 2017 Mad. 203 :

2017 (3) CTC 135.

<https://www.mhc.tn.gov.in/judis>



6. Erroneously, the learned Single Judge, on a false premise that no supportive document was placed by the Temple *prima facie* to show the title, has allowed the Writ Petition. Since the order of the learned Single Judge is perverse and contrary to the law, the same has to be set aside.

7. Per contra, Mrs.Nalini Chidambaram, learned Senior Counsel appearing for the first respondent submitted that the first respondent/writ petitioner is a *bona fide* purchaser of the said property for valuable consideration from his predecessors, who had a valid title and have been in enjoyment of the property. From 1969 till the document P.No.5/17 presented for registration on 16.06.2017, there was no rival claim from any one much less the H.R. & C.E. Department. Even when the Sub-Registrar withheld the registration of the document, the reason was not properly assigned and only after much persuasion, the writ petitioner could gather information about the objection raised by the H.R. & C.E. Department. Soon thereafter, he filed W.P.(MD)No.16892 of 2017 for Mandamus, directing the Sub-Registrar to register and return the pending document P.No.5/17 without insisting upon No Objection Certificate. Along with this Writ Petition, he also filed another W.P.(MD)No.17414 of 2017 with the similar prayer to accept the gift deed, dated 31.08.2017, executed by him in favour of Panchayat in respect of the land marked for public purpose. Both the Writ Petitions came for admission on 27.11.2017, wherein, a common order was passed by consent, taking note of the law laid down in **Sudha Ravi Kumar's case**



[cited supra]. Accordingly, the Writ Petitions were disposed of directing the Inspector General of Registration, Chennai, to consider the claim of the first respondent on merits and in accordance with law in the light of **Sudha Ravi Kumar's case** [cited supra] and also keeping in mind the land revenue document, dated 20.10.2016, after affording due opportunity of personal hearing to the first respondent and any of the interested parties, within a period of eight weeks from the date of receipt of a copy of that order. In fact, even after the said direction, the Inspector General of Registration did not enquire the petition himself, but vide his proceedings, dated 10.05.2018, delegated the responsibility to the Sub-Registrar, who conducted truncated enquiry and passed order on 23.05.2018.

8. Both the proceedings were challenged in W.P.(MD)No.15967 of 2018. The learned Single Judge after thorough consideration of the facts of the case and the judgments rendered in similar cases, after taking note of the embargo under Section 22-A of the Registration Act, *vis-à-vis* facts of the case in hand, held that H.R. & C.E. Commissioner cannot make request to the Registering Authority to stop registration without supporting document. Therefore, the prohibitory order by the Commissioner of H.R. & C.E. Department to the Registering Authority is impermissible.



9. The learned Senior Counsel appearing for the first respondent submitted that **Sudha Ravi Kumar's case** [cited supra] does not permit the Commissioner of H.R. & C.E. Department to make baseless objection. Therefore, the learned Single Judge right in holding that the first respondent having a Patta for the said property is entitled to alienate. The two suits filed by the Temple, one for bare injunction in O.S.No.303 of 2005, on the file of the District Munsif Court, Karur, and another for declaration and possession in O.S.No.20 of 2018, District Court, Karur, no order prohibiting the Registering Authority from registering the document granted.

10. Therefore, the learned Senior Counsel submitted that in the absence of material to claim title, mere objection to the Registering Authority by the H.R. & C.E. Department cannot be a reason to withhold a document in exercise of power under Section 22-A of the Registration Act. Hence, the well reasoned order of the learned Single Judge must be upheld.

11. Heard the rival submissions.

12. The power of the Registering Authority to refuse the registration emanates from Section 22-A of the Registration Act. This provision came under heavy legal assault and finally, its constitutionality has been upheld. A batch of Writ Petitions touching upon the order of the Sub-Registrar refusing to register the sale deed or



refusal to return the sale deed after registration in exercise of power under Section 22-A of the Registration Act came up for consideration before the Division Bench of this Court in **Sudha Ravi Kumar's case** [cited supra]. The learned Judges after an erudite discussion on the law and the precedent laid down the following directions:-

"(i) The registering authority before whom the document has been presented shall cause service of notice on the parties to the deeds and also to the objector/religious institution, hold summary enquiry, hear the parties and then either register or refuse to register the document by passing an order having regard to the relevant facts as indicated above.

(ii) If the registering authority, refuses to register any document by accepting the objections raised under Section 22-A of the Registration Act, the aggrieved may file a statutory appeal under the Act.

(iii) If the objections raised under Section 22-A of the Act by the religious institution are rejected and the document is registered, the remedy for the religious institution is to either approach this Court by way of a writ petition seeking cancellation of the registration or for any other relief or to approach the civil Court for declaration of the title and for other consequential reliefs.

(iv) If the registering authority refuses to register the document acting on the objections raised by a religious institution under Section 22-A of the Registration Act, the



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parties to the deed will be at liberty to straightaway approach the Civil Court for declaration of title and other relief without availing the opportunity for filing a statutory appeal.

(v) We further direct that if the deed has already been registered without there being any objection by the religious institution under Section 22-A of the Act, the document shall be returned to the parties concerned leaving it open for the religious institution to approach either the High Court under Article 226 of the Constitution of India or the Civil Court for appropriate relief as indicated above. At any rate, the registering authority shall not withhold the deed which has already been registered."

13. In this appeal, the prime reason for the learned Single Judge to concede the request of the Writ Petitioner/D.Kalaiyaran is based on the premise that the Temple has not placed any supportive document to claim title and mere objection by the H.R. & C.E. Department not to register the document is insufficient to exercise power under Section 22-A of the Registration Act. Whereas, it is contended by the learned Additional Government Pleader that the necessary document had been placed before the Sub-Registrar during the enquiry and he, in his report, has at length, discussed about the documents placed by the Temple authorities in support of their claim over the property.

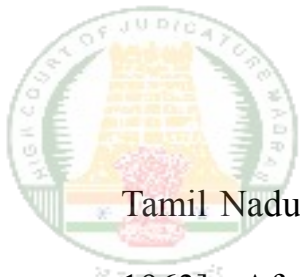


14. The learned Additional Government Pleader appearing for the appellants draw the attention of this Court to the relevant portion of the order passed by the Sub-Registrar, dated 23.05.2008, which is impugned in the Writ Petition.

15. This Court from the list of documents referred in the proceedings finds that the Temple authorities have furnished the proceedings of the Settlement Tahsildar, Act 30/63/Karur Taluk/993/67 etc., same has been considered and discussed at length in this order of the Sub-Registrar.

16. The said entries in the Re-settlement Register is of the year 1967, to ensure whether there exists any such proceedings, this Court directed the learned Standing Counsel for the H.R. & C.E. Department to furnish a copy of it. Pursuant to the said direction, the order of the Settlement Tahsildar, dated 04.09.1967; the Inam Fair Register (IFR) pertaining to the said land and Re-settlement Register of the Village were furnished to this Court for verification.

17. On perusing these documents, this Court finds that the Settlement Tahsildar, Tiruchirappalli, in exercise of the power conferred on him under the Act 30/1963, has passed a proceedings on 04.09.1967, wherein he has stated that the lands mentioned in the schedule are TD Minor Devadayam Inams, situated at Punjai Panchayat Pugular Village in Karur Taluk. It is so notified under Section 1(5) of the



Tamil Nadu Minor Inams (Abolition and Conversion Into Ryotwari) Act [Act 30 of 1963]. After conducting enquiry, *suo motu* for the land in S.No.462, measuring an extent of 8.70 Acres, Ryotwari Patta been granted under Section 8(2)(2) of the Act on condition of continuance of service, as the Inam tenure of the lands stands abolished.

18. Further scrutiny of the entries in the schedule indicates that the land in S.No.462, measuring an extent of 8.70 Acres granted as "Maniyam Gurukkal". The name of the claimants mentioned as Chidambara Gurukkal, S/o.Saminatha Gurukkal. Thus, after abolishing the Inam tenure in view of the Tamil Nadu Minor Inams (Abolition and Conversion Into Ryotwari) Act, the said land being enjoyed as grant [Gurukkal Maniyam] by Chidambara Gurukkal. It was a Ryotwari Patta with condition to perform the Gurukkal activity. The Inam Fair Register for the respective survey numbers shown that the lands in the said survey numbers have been granted as Inam for the service to be rendered to Sri Balasubramaniasamy Temple, Puzhalimalai, Velayuthampalayam, Karur District. The Re-settlement Register finds a name of one R.Subramania Iyer as Karnam Maniyam. The earliest document pertaining to the said land indicates that it is a land associated to the Temple given as Inam on condition to continue the service. The first respondent, who claims to have purchased the property from one N.Rajamanickam and N.Periasamy recently on 14.04.2004 under a registered document No.289 of 2004, is bound to explain how his predecessors in title namely, N.Rajamanickam and N.Periasamy got the said



property. The first respondent also duty bound to explain when a conditional Patta granted in favour of R.Subramania Iyer and his son Suggameswara Iyer, vide proceedings, dated 04.09.1967, by the Settlement Tahsildar under the Act 30 of 1963, how the Patta without any reference to the condition for the said land has been given by the regular Tahsildar in the year 2016 based on the sale deeds executed by N.Rajamanickam and N.Periasamy.

19. Precisely, for the said reason, the Temple has first initiated a suit for injunction, restraining the Registering Authority from registering any property of the Temple pertaining to the said survey numbers and when the said suit is pending, the second suit of the year 2018 is filed for declaration of title.

20. The learned Single Judge having recorded the said fact, has held that since there is no injunction granted prohibiting the registration of the document, there is no impediment for the Registering Authority to go ahead and release the document. Such an observation and order goes against direction of the Division Bench rendered in **Sudha Ravi Kumar's case** [cited supra].

21. The Sub-Registrar, in the impugned order, dated 23.05.2018, has clearly narrated the facts and the documents, which he has considered for arriving at the said conclusion. From the said order, this Court could finds that Suggameswara Iyer, who



had a conditional Patta, had sold a portion of the property in the year 1969 to one N.Rajamanickam and got the same registered. The said transaction itself *per se* contrary to the condition imposed by the Settlement Tahsildar while granting Patta. While so, subsequently, in the year 2014, the said N.Rajamanickam and his brother N.Periasamy have sold 2.27 Acres of land to the first respondent/D.Kalaiyaran in the year 2004 and the sale deed has been registered as Document No.289 of 2004.

22. In this case, it is incorrect to say that the Temple authorities has merely made objection without any supporting documents. Also it is improper to proceed with the premise that the Patta held by the first respondent/D.Kalaiyaran is a valid Patta, in spite of judicial pronouncements, which say Patta is not a proof for title.

23. Thus, we find the learned Single Judge has erred both on law and on facts while considering the Writ Petition filed by the first respondent/D.Kalaiyaran challenging the order of the second respondent/Sub-Registrar, who has conducted due enquiry and pass a reasoned order. The dispute over the title necessarily to be agitated in a Civil Court or filing a statutory appeal and not by way of filing writ petition. The Division Bench of this Court in **Sudha Ravi Kumar's case** [cited supra] has categorically guided the litigants the remedy available. The same cannot be ignored.



24. At the risk of repetition, this Court extracts the direction of the Division

Bench of this Court in **Sudha Ravi Kumar's case** [cited supra].

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"(iv) If the registering authority refuses to register the document acting on the objections raised by a religious institution under Section 22-A of the Registration Act, the parties to the deed will be at liberty to straightaway approach the Civil Court for declaration of title and other relief without availing the opportunity for filing a statutory appeal."

25. In this case, already the Temple has approached the Civil Court and the case is pending. It is immaterial whether any interim relief is granted or not. When there is a cloud over the title and the Registering Authority is satisfied unless the cloud over the title is clear, the document cannot be registered, the said decision is not subject to judicial review. Since the Court has already laid the law, the next avenue for redressal for the writ petitioner is either to approach the competent Civil Court or to file a statutory appeal before the authorities.

26. For the above said reason, the Writ Appeals are allowed. The order of the learned Single Judge, dated 29.10.2018, made in W.P.(MD)No.15967 of 2018, is set aside and the order of the Sub-Registrar, dated 23.05.2018, is upheld and confirmed.

No costs.

NCC : Yes
Index : Yes / No

[G.J., J.] [S.M., J.]
15.02.2023



W.A.(MD)Nos.440 and 630 of 2017

To

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- 1.The Inspector General of Registration,
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- 2.The Sub-Registrar,
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- 3.The Assistant Commissioner,
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and
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PRE-DELIVERY COMMON JUDGMENT MADE IN
W.A.(MD)Nos.440 and 630 of 2019

DATED : 15.02.2023