



W.P.(MD)No.20630 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 30.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.20630 of 2022

and

W.M.P.(MD)No.14956 of 2022

T.Thamodaran

... Petitioner

versus

1. The Sub Registrar,
O/o. The Sub Registrar,
Karunkalakudi,
Madurai District.

2. The Chief Executive Officer,
Tamilnadu Wakf Board,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 001.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorari Mandamus, to call for the records pertaining to the Refusal Number: RFL/Karunkalakudi/3/2022 dated 26.08.2022 on the file of the Respondent No.1 and quash the same as illegal and consequently, direct the respondent No.1 to register



W.P.(MD)No.20630 of 2022

the Sale Deed dated 26.08.2022 executed by the petitioner in favour of Manimaran within the time frame stipulated by this Court.

For Petitioner : Mr.M.Mahaboob Fazil
for M/s.T.Lajapathi Roy Associates

For R1 : Mr.P.T.Thiraviam,
Government Advocate

For R2 : Mr.D.S.Haroon Rasheed
Standing Counsel

ORDER

The case of the petitioner is that he has purchased a property in S.No.262/1E4 by a registered sale deed document No.2768/2021. From the date of purchase, he was in peaceful possession and enjoyment of the property. Thereafter, he has decided to sell the property to one Manimaran and submitted a sale deed for registration before the first respondent on 26.08.2022. The said document was refused by the first respondent/the Sub Registrar, Karunkalakudi, Madurai District, based on the objection made by the Waqf Board. The Waqf Board has submitted a proforma that the land in Survey No.262 belongs to the Wakf Board. Based on that proforma, the petitioner's



W.P.(MD)No.20630 of 2022

document was not registered by the first respondent and the refusal slip dated 26.08.2022 is challenged in this writ petition.

2. The learned counsel appearing for the petitioner, by relying on the order of this Court in the case of ***Sudha Ravi Kumar and another vs. The Special Commissioner and Commissioner, HR&CE Department, Chennai and others***, reported in (2017) 3 CTC 135 submits that in the event of any objection, the Registrar cannot simply refuse to register the document; he can conduct an enquiry and only thereafter, he has to take a decision. He has also relied on another Judgment of this Court passed in W.P.(MD)No.29222 of 2022 (***A.Ramasamy and others vs. The District Registrar, Tamil Nadu Religious Department, Trichy District and others***)

3. The learned counsel appearing for the second respondent/Waqf Board submits that the proforma of the Waqf Board was made only based on the report of the Survey Commissioner of Waqfs dated 14.09.1956 that the property in S.No.262/1 to an extent of 6.09 Acres



W.P.(MD)No.20630 of 2022

at Karungalkudi Village, Melur Taluk, Madurai District belongs to Peer

Mohamed Alee Sahila Kadiri Madharsha Waqf, which dedicated the property to the second respondent Waqf Board. The learned counsel has also relied on Section 6 of the Waqf Act and submits that once a Wakf is created, it is always a Waqf and the nature of the property cannot be changed or altered in any manner known to law.

4. The learned counsel for the petitioner submits that the subject property comprised in S.No.262/1 to an extent of 6 acre 9 cents belongs to one Mohammed Sayigu and thereafter, several documents were registered to various persons in respect of S.No.262/1 and it was subdivided in several sub-divisions and some land owners are constructed a dwelling houses in S.No.262/1 and enjoying the same without any hindrance.

5. This Court considered the rival submissions and perused the materials available on record.



W.P.(MD)No.20630 of 2022

WEB COPY

6. A Division Bench of this Court, in the case of ***Sudha Ravi Kumar and another vs. The Special Commissioner and Commissioner, HR&CE Department, Chennai and others***, reported in ***(2017) 3 CTC 135***, has held as follows:

25. *But this observation of ours shall not be construed that it is our conclusion that ryotwari patta issued to the ryot concerned is the final adjudication relating to the title for the property. We wish to clarify that the final adjudication regarding the title to the property can be had only before a Civil Court. We only say that at the time of registration of the deed, if any objection is made by the religious institution under Section 22-A of the Act, the registering authority shall issue notice afford opportunity to the parties, apply his mind and only from the materials available before him, if he is satisfied that the land belongs to the religious institution or given or endowed to the religious institution, then, he shall refuse to register such deed.*



26. In view of the above discussions, all the writ petitions are allowed and the impugned orders are set aside with 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.



W.P.(MD)No.20630 of 2022

(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.

(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.

7. In this case, the first respondent has refused to register the document submitted by the petitioner, based on the objection made by the second respondent Waqf Board, without giving an opportunity of hearing to the petitioner.



W.P.(MD)No.20630 of 2022

WEB COPY

8. In view of the decision *cited supra*, this writ petition is allowed, by setting aside the refusal check slip in Number: RFL/Karunkalakudi/3/2022 dated 26.08.2022. The first respondent shall issue a notice to the petitioner as well as to the second respondent Waqf Board, hold a summary enquiry, hear the parties and thereafter, take a decision either to register the petitioner's document or refuse to register the same, by recording reasons. No costs. Consequently, connected miscellaneous petition is closed.

30.08.2023

ogy

NCC : Yes / No.

Index : Yes / No.

Internet : Yes / No.



W.P.(MD)No.20630 of 2022

WEB COPY To

1. The Sub Registrar,
O/o. The Sub Registrar,
Karunkalakudi,
Madurai District.
2. The Chief Executive Officer,
Tamilnadu Wakf Board,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 001.



WEB COPY



W.P.(MD)No.20630 of 2022

B.PUGALENDHI, J.

ogy

W.P.(MD)No.20630 of 2022

30.08.2023