



W.P(MD)No.27591 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.12.2023

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**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

W.P(MD)No.27591 of 2023

and

W.M.P.(MD)No.23695 of 2023

G.Rajeshwari @ Gunam Rajeshwari

... Petitioner

**Vs.**

1.The Joint Commissioner of Hindu Religious & Charitable,  
Endowment,  
O/o.the Joint Commissioner of HR & CE,  
Madurai.

2.The Executive Officer,  
Arulmigu Thathankulam Vinayagar Thirukovil,  
Aruppukottai-626 101.

3.The District Registrar (Administration),  
District Registrar Office,  
Virudhunagar District.

4.The Sub-Registrar,  
Sub-Registrar Office,  
Aruppukottai,  
Virudhunagar District.

... Respondents

**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned Refusal Check Slip in Refusal Number. RFL/Aruppukottai/11/2023 dated 30.03.2023 on the file of the respondent No. 4 and the consequential Impugned Order in Na.Ka.No. 2429/Aa1/2023 dated



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10.04.2023 on the file of the respondent No. 3 and quash the same as illegal and consequently for a direction, directing the respondent No. 4 to conduct enquiry as per the directions issued by the Hon'ble Division Bench of Madras High Court in *Sudha Ravi Kumar Vs Special Commissioner* reported in (2017) 3 CTC and register the document submitted by the petitioner within a time period stipulated by this Court.

For Petitioner : Mr.T.Aswin Raja Simman  
M/s.Lajapathi Roy and Associates

For Respondents : Mr.K.Balasubramani  
Special Government Pleader for R1, R3 & R4  
: Mr.P.Mahendran for R2

### **ORDER**

Heard both sides.

2. The petitioner has executed the Will in favour of her son bequeathing the petition mentioned property. The Will was presented for registration. The 4<sup>th</sup> respondent refused registration and issued the impugned refusal check slip. The stand of the registering authority is that in respect of the said property, the second respondent has a claim and that they have objection for registering any document pertaining to the said property. Challenging the same, the present writ petition came to be filed.



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3. The stand of the respondents is that Section 22-A(1)(ii) of the Registration Act, 1988 will come in the way. They wanted this Court to sustain the impugned order and dismiss the writ petition.

4. I am not persuaded by the objection raised by the respondents. It is well settled that a Will does not require registration. It is only optional. In this case, the petitioner presented the testament for registration before the 4<sup>th</sup> respondent. By invoking Section 22-A of the Act, the registration was refused. Section 22-A(1)(ii) of the Act is as follows:-

*“ 22-A. Refusal to register certain documents .—Notwithstanding anything contained in this Act, the registering officer shall refuse to register any of the following documents, namely:—*

*(1) instrument relating to the transfer of immovable properties by way of sale, gift, mortgage, exchange or lease,—*

.....

*(ii) belonging to, or given or endowed for the purpose of, any religious institution to which the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 is applicable ”*

5. The provision can be invoked only if the deed of transfer of an immovable property is by way of sale, gift, mortgage, exchange or lease. No other category has been mentioned. The transfer of immovable property by way of bequest is not the one of the prohibited categories. Therefore, on this



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ground, the impugned order is set aside. The petitioner is permitted to re-present the testament before the fourth respondent. The fourth respondent cannot refuse registration by citing Section 22-A of the Act. If there is no other impediment, the testament shall be registered and released. Of-course, if the Will is not revoked and it comes into force after the demise of the petitioner, when the legatee wants to deal with the property by way of sale, gift, mortgage, exchange or lease, certainly, Section 22A of the Act if it still remains in statute book will kick in. I make it clear that the outcome of this writ petition will not have any bearing on the claim of the second respondent. The learned counsel for the second respondent asserts that the property in question is a kattalai property. I make it clear that merely because I had directed the fourth respondent to register the petitioner's testament / Will, that will not mean that I have pronounced on the character of the land. All the contentions and defences of the second respondent are left open.

6. The impugned refusal check slip is set aside. With this observation in favour of the second respondent, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

**01.12.2023**

Index : Yes / No  
Internet : Yes/ No  
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To



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**G.R.SWAMINATHAN, J.**



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