



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.8859 of 2022

K.Malarvizhi

...

Petitioner

versus

1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
119, Uthamar Gandhi Road,
Nungambakkam,
Chennai - 600 034.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Perumal Koil Complex,
Tirupur Bazaar (Near Old Bus Stand),
Tirupur - 641 604.

3.The Sub-Registrar,
Thottipalayam Sub-Registrar Office,
Integrated Registration Office Complex,
Nerupperichal,
Tiruppur - 641 602.

...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to return check slip issued by the third respondent in RFL/Thottipalayam/27/2022 dated 07.03.2022 and quash the same and



consequently direct the third respondent to register the settlement deed, dated 03.03.2022 executed by the petitioner.

WEB COPY

For Petitioner : Mr.AR.L.Sundaresan
Senior Counsel
for Mr.P.Navaneethakrishnan

For Respondent Nos.1 & 2 : Mr.K.Karthikeyan
Government Advocate (HR&CE)

For Respondent No.3 : Mr.L.S.M.Hasan Fizal
Additional Government Pleader

ORDER

Challenge has been made to the refusal slip issued by the third respondent refusing to register the settlement deed on the ground that the HR&CE Department has issued a letter stating that the property belongs to the temple.

2. It is the contention of the writ petitioner that the patta proceedings issued under Act 30 of 1963 has reached finality and C.M.A.No.360 of 1972 filed against the Settlement Tahsildar has been disposed of and the patta has been granted in favour of the occupier. When the order has reached finality, merely on the basis of the letter, the registering authorities cannot refuse to register the document.



WEB COPY

3. The learned Government Advocate (HR&CE) for the respondents 1 and 2 submitted that, as far as C.M.A. order of the Tribunal is concerned, it is only an *ex parte* order and that the temple authorities are taking steps to retrieve the property. According to them, it is a temple property. Hence, he opposed the writ petition.

4. Heard the learned counsel for the petitioner, the learned Government Advocate (HR&CE) for the respondents 1 and 2 and the learned Additional Government Pleader for the third respondent and perused the materials available on record.

5. As rightly stated that the proceedings were initiated in the year 1968 and the order has reached finality in C.M.A.No.360 of 1972 before the Minor Inams (Tribunal), Coimbatore. Whether that order is right or not cannot be tested at this stage. Even assuming that only *ex parte* order has been passed that cannot be a ground to hold that order is not valid in law unless same is challenged in the manner known to law.



WEB COPY

6. A counter affidavit filed by the respondents 1 and 2 also indicates that they came to know about the issuance of patta in the year 2012. Probably, it has prompted the authorities to issue a letter to the registering authority. However, no steps have been taken so far to challenge that order. Therefore, once the Tribunal constituted under the Special Act has issued a patta, at this stage, the temple cannot claim a title unless the order of the Tribunal is set aside by the competent Court. Therefore, from the admitted facts, as on today, the writ petitioner has a better title. Therefore, merely on the basis of the letter issued by the authorities, the registering authority cannot refuse to register the document.

7. The learned Government Advocate appearing for the HR & CE Department, on instructions, submitted that though patta had been issued to the individual, the same had been issued without proper enquiry. Now the temple is taking steps to retrieve the property from the third parties.

8. It is relevant to note that the very reply and the instructions submitted by the learned Government Advocate appearing for the HR & CE Department indicates that the patta has been issued under Act 30 of 1963 long back and the same has not been challenged so far. Now the instructions



reveal that still they have not taken any steps. It also further reveals that they only intend to take steps to retrieve the property. Therefore, as on today, the title is not vested with the temple. Be that as it may, it is relevant to note that the Division Bench of this Court in the case of **Sudha Ravikumar v The Special Commissioner** reported in **AIR 2017 Mad 203**, held as follows:-

“the registering authority is not bestowed with any quasi-judicial function to hold a roving enquiry in respect of the title to the property. But he has to hold a summary enquiry for the limited purpose of satisfying himself that the document deserves to be registered. Such enquiry is neither judicial nor quasi-judicial.”

9. Following the same, this Court in **Subramani Vs. 1.The Sub-Registrar, Office of the Sub-Registrar, Rasipuram. 2. The Inspector General of Registration, Chennai**, has held as follows:-

“20. It is relevant to note that many registration has been refused citing Section 22-A on the only ground that some requests are made by Hindu Religious and Charitable Endowments Board or the Waqf Board. It is relevant to note that the Division Bench of this Court in the case of Sudha Ravikumar v The Special Commissioner reported in AIR 2017 Mad 203, wherein, it is held as follows:



WEB COPY



“the registering authority is not bestowed with any quasi-judicial function to hold a roving enquiry in respect of the title to the property. But he has to hold a summary enquiry for the limited purpose of satisfying himself that the document deserves to be registered. Such enquiry is neither judicial nor quasi-judicial.”

21. Similarly, this Court in the case of *D.Kalaiyaran v Inspector General* reported in (2018 SCC Online Mad 7224), it was held that unless and until the authority has clinching materials to show that the property belonged to the religious institution, the registration cannot be refused. Also, this Court in the case of *G. Rajasulochana v Inspector General* made in W.P 29706 of 2024 dated 16.04.2024, it was observed as under:

“If there is a serious dispute on the title to the land, such questions cannot be decided by the Registrar at the stage of registering a document since he is only conducting a limited summary enquiry.”

22. Therefore, this Court is of the view that merely on the basis of some letters without production of title deed clinchingly establish the title of the Waqf Board and religious institutions mere citing some objections in the form of letters, document cannot be refused to be registered.”

10. Considering the above, as the title is not in favour of the temple at present, merely on the ground that the temple may take action to retrieve



the property in future may not be a ground to refuse the registration at present. Therefore, the refusal slip issued by the third respondent refusing to register the settlement deed dated 03.03.2022 is set aside. The third respondent is directed to register the settlement deed dated 03.03.2022 and it is upto the HR&CE Department to establish the title in an appropriate manner. Even if the title is established, the property can be retrieved at any time. Mere registration in favour of the third parties is not a bar for retrieving the property, provided, the title is conclusively established in an appropriate manner and not by giving just a letter to the registration authorities.

11. In the result, this Writ Petition is allowed and the impugned order of refusal slip dated 07.03.2022 stands quashed and the third respondent is directed to register the document presented by the petitioner for registration, within a period of one week from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

25.06.2024

Speaking order / Non-speaking order

7/10



Index : Yes / No
Neutral Citation : Yes / No

WEB COPY

W.P.No.8859 of





To

WEB COPY

1. The Commissioner,
Hindu Religious and Charitable Endowment Department,
119, Uthamar Gandhi Road,
Nungambakkam,
Chennai - 600 034.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Perumal Koil Complex,
Tirupur Bazaar (Near Old Bus Stand),
Tirupur - 641 604.
3. The Sub-Registrar,
Thottipalayam Sub-Registrar Office,
Integrated Registration Office Complex,
Nerupperichal,
Tiruppur - 641 602.



WEB COPY

W.P.No.8859 of 2022



N.SATHISH KUMAR, J.

sri

W.P.No.8859 of 2022

25.06.2024