

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.27901 of 2019

and

W.M.P.Nos.27480 & 27481 of 2019

N.Manickam

...Petitioner

-Vs-

1.The Joint Sub Registrar,
61, Madathukulam Main Road,
Kaniyur, Madathukulam Taluk,
Tiruppur District – 642 203.

2.The Executive Officer,
Arulmighu Thandaveswarar and Kalyana Varatharaja Perumal Temple,
Kozhumam, Madathukulam Taluk,
Tiruppur District – 642 204.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorarified Mandamus, calling for the records of the second respondent letter dated 29.08.2017 and quash the same and directing the first respondent herein to register the partition deed presented by the petitioner with respect to property situated in Sangaramanallur Village bearing S.F.No.133/2 and pass such further orders.

For Petitioner : Mr.S.Parthasarathy
Senior Counsel

For R1 : Mr.P.Anandakumar
Government Advocate

For R2 : Mr.S.Ravichandran
Additional Government Pleader

ORDER

This writ petition is filed for issuance of a Writ of Certiorarified Mandamus, calling for the records of the second respondent letter dated 29.08.2017 and quash the same and directing the first respondent herein to register the partition deed presented by the petitioner with respect to property situated in Sangaramanallur Village bearing S.F.No.133/2.

2. The facts of the case in a nutshell:-

2.1 The property situated in S.F.No.133/2, Sangaramanallur Village Udumalpet Taluk, Coimbatore District measuring an extent of 2.40 acres was the petitioner's ancestral property and vide Partition deed dated 07.10.1956 registered as Doc.No.2515 of 1956 on the file of Sub Registrar, Udumalpet. The above said property was allotted to the petitioner's father, Nachimuthu. Subsequently on 05.05.1970, the properties which were allotted vide Partition deed dated 07.10.1956 was partitioned between the petitioner and

the petitioner's father. The said Partition deed was registered as Doc No.983 of 1970 on the file of the SRO, Udumalpet, in which the above mentioned property was allotted to the petitioner's father, Nachimuthu. Ever since the date of original partition dated 07.10.1956 the petitioner's father was in absolute possession and enjoyment of the same. While so on 02.04.1971, the petitioner's father had received a notice from the Settlement Thasildhar, Gobichettipalayam calling upon his father and the second respondent to appear for the enquiry for grant of Ryotwari Patta with respect to S.F.No.133/2. As the lands situated in S.F.No.133/2 are Inam lands and in pursuance of the enactment of The Tamil Nadu Minor Inams (Abolition & Conversion into Ryotwari) Act, 1963 the Inam lands stand transferred to the Government and vest in them free of all encumbrances under section 3(b) of the Act. Hence the above notice was issued to the petitioner's father and the second respondent to prove Kudiwaram right in the above said property.

3. After conducting a detailed enquiry by perusing the documentary and oral evidence of both parties, the Settlement Tahsildhar, Gobichettipalayam vide order dated 24.05.1971 granted Ryotwari Patta under section 8(1) of the Tamil Nadu Minor Inams (Abolition & Conversion

into Ryotwari) Act, 1963 in favour of the petitioner's father, Nachimuthu on the ground that ancestors were in enjoyment of the above said property since 1889. By virtue of the same, he became the absolute owner of the above said property.

4. It is seen that the Petitioner's father, Nachimuthu Gounder died on 13.09.1999. Subsequently, patta was transferred in the name of the legal heirs of the petitioner's father and patta was issued bearing Patta No.179 by the Tahsildar, Udumalpet. While being so, on 25.01.2019 the legal heirs of the petitioner's father approached the first respondent through a document writer, namely Ganesan for registering a partition deed between the heirs of Nachimuthu and the first respondent had informed the said Ganesan that they had to obtain a No objection certificate from the second respondent for registering the Partition deed as the above mentioned property belongs to the second respondent. Thereafter on 02.02.2019, the petitioner sent a letter to the first respondent stating that the S.F.No.133/2 absolutely belonged to his father Nachimuthu and enclosed all the documents, including the order of the Settlement Tahsildhar to prove their title. Without considering the documents submitted by the legal heirs of the petitioner's father, the first respondent

vide letter dated 08.03.2019 directed the legal heirs to obtain a No objection certificate from the second respondent as the second respondent had sent a communication dated 29.08.2017 to the first respondent asking not to register any document with respect to the survey numbers listed therein. The said letter was not communicated to the legal heirs at any point of time. Immediately the petitioner sent a letter to the second respondent enclosing all the documents proving their ownership and requested the second respondent to provide under which document they claim title to the property situated in S.F.No.133/2. Till date the second respondent did not response to their letter. Aggrieved by the same, the present writ petition has been filed.

5. Learned senior counsel appearing for the petitioner submitted that the communication dated 29.08.2017 sent by the second respondent to the first respondent came to the petitioner's knowledge only on 02.02.2019 and the said communication was not served to the legal heirs of the petitioner's father.

6. Learned senior counsel for the petitioner relied upon an order passed by the Division Bench of this Court in a batch of cases in ***Sudha Ravi***

Kumar Vs. The Special Commissioner & Commissioner, Hindu Religious and Charitable Endowments Department, Chennai -34, made in ***W.P.Nos.30589 of 2013 etc., dated 05.04.2017***, wherein this Court held as follows:

“23. This contention is seriously objected to by the learned counsel for the petitioners. First of all we should state that we are not going into this issue because the constitutionality of Section 22-A of the Registration Act is not under challenge. Secondly, whether the property which is covered in the deed presented for registration is a religious endowment or not in terms of the TN HR & CE Act also cannot be gone into by us as the said dispute could be resolved only by a Civil Court on evidence. Even the registering authority is not competent to go into the said disputed question as he is not exercising any judicial or quasi judicial function. Similarly, simply because the some lands were shown as the properties belonging to the religious institution in the register maintained by the temple, it cannot be construed that the said land belongs to the said religious institution. It needs to be noted that the register of properties under Section 29 was prepared not after notice to the interested persons. It was done unilaterally by the religious institution. Similarly, the maintenance of the register by updating the same is also not done after notice to the parties who are interested in the property which is included in the register after the preparation of the original register. Thus,

the preparation as well as the maintenance of the register is by the unilateral act of the religious institution and therefore likelihood of the private lands belonging to any individual being included in the register by error cannot be ruled out. All these issues are to be resolved by the Civil Court. Therefore, in our considered view, once patta has been issued under either the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948, Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963 and the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 it is for the temple to establish its title before the Civil Court. The registrar is bound to act on the basis of the ryotwari patta issued by the authority concerned and he shall not refuse to register the said deeds. As we have already pointed out the remedy for the religious institution is to approach the civil court for appropriate remedy.

24. 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.

25. 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.

(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.

(vi) Consequently the connected miscellaneous petitions are closed. No costs.

7. Heard both sides and perused the materials available on record.

8. In view of the ratio laid down by the Division Bench of this Court in ***Sudha Ravi Kumar Vs. The Special Commissioner & Commissioner, Hindu Religious and Charitable Endowments Department, Chennai -34***, made in ***W.P.Nos.30589 of 2013 etc., dated 05.04.2017***, this Court directs the first respondent herein to register the partition deed presented by the petitioner within a period of four weeks from the date of receipt of a copy of the order.

In the result, **the writ petition stands allowed.** No costs.

Consequently, connected miscellaneous petitions are closed.

20.06.2024

cda

Index : Yes/No

Speaking/Non Speaking order

NOTE: Issue order copy by 25.06.2024

J.SATHYA NARAYANA PRASAD, J.

cda

To

- 1.The Joint Sub Registrar,
61, Madathukulam Main Road,
Kaniyur, Madathukulam Taluk,
Tiruppur District – 642 203.
- 2.The Executive Officer,
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