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W.P. No.33911 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.33911 of 2022 and
W.M.P. No.33404 of 2022

R.Nathan

... Petitioner

Vs

1.The District Registrar
Tiruppur District

2.The Sub Registrar
Nallur Sub Registrar Office
Nallur, Tiruppur District

3.The Executive Officer
Arulmigu Visvasuvaraswami,
Visalachiamman Subramaniasami Temple
Nallur, Tiruppur District

... 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 the refusal check slip No.RFL/Nallur/Tiruppur/114/2022 dated 07.12.2022 of the 2nd respondent herein in respect of the Mortgage Deed dated 07.12.2022 relating to the property of an extent of 4860 Sq.ft. in Survey



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No.71/2A2A, Nallur Vilalge, Tiruppur Taluk and District, quash the same and consequently direct the 2nd respondent herein to forthwith register the documents presented in respect of the property of an extent of 4860 Sq.ft. in Survey No.71/2A2A, Nallur Village, Tiruppur Taluk and District.

For Petitioner : Mrs.AL.Ganthimathi, Senior Counsel
for Mr.AR.Karthik Lakshman

For Respondents : Mr.Yogesh Kannadasan
Spl. Govt. Pleader for R1 and R2
Mr.R.Rajesh Vivekananthan for R3

ORDER

Challenge has been made to the refusal check slip issued by the second respondent herein dated 07.12.2022 refusing to register the Mortgage Deed dated 07.12.2022, mainly on the ground that the property is the temple property as per the letter issued by the third respondent.

2. The writ petitioner would submit that the property is a separate property and the patta proceedings under the Act 30 of 1963 has already reached finality and the patta has been issued in favour of the predecessor-in-



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title. In the said proceedings, the temple was also a party. Therefore, now the temple cannot claim any title to the property.

3. Counter has been filed by the third respondent. According to them, the subject property was originally inam property for doing service to the temple. However, in the patta proceedings, the temple has not been made as a party. That apart, patta has been issued as if the temple is in dilapidated condition and it is no longer in existence. According to the third respondent, still the temple is in existence. Further, in an earlier writ petition filed by the petitioner, this court had directed the petitioner to establish his title before civil court. Therefore, this writ petition has to fail.

4. It is relevant to note that, as rightly pointed out by the learned senior counsel appearing for the petitioner, the proceedings under the Act 30 of 1963 has reached finality on 31.07.1972. Though the Settlement Officer has recorded that the lands were granted for performing certain service to the temple, he has not issued patta under Section 8 of the Patta Passbook Act, whereas patta has been issued under Section 9 of the Act on the basis of the continuous cultivation of the person entitled for the patta.



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5. It is relevant to note that in those proceedings, the temple was also a party. The orders originally granted right in favour of the temple was challenged before the Tribunal on appeal. The appeal has been allowed and the matter has been remanded back once again to the Settlement Officer. Thereafter, the patta has been issued in favour of the predecessor-in-title by order dated 31.07.1972. Thereafter that order has not been challenged, in view of said fact now the temple cannot claim absolute right. Of course they may have a right, to establish their right by filing necessary suit, as long as the orders remains in tact and this has not been challenged, now the temple cannot prevent the persons who have better title, from enjoying the property.

6. In this regard, it is relevant to note that a 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."



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7.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:

"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. Kalaiyarasan 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



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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."

8. It is up to the temple authority to establish their title in the manner known to law. If the temple authority succeeds in proving their title in a proper forum, they can very well resume their property as per HR&CE Act.



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9. Accordingly, this writ petition is allowed. The refusal check slip No.RFL/Nallur/Tiruppur/114/2022 dated 07.12.2022 of the 2nd respondent herein in respect of the Mortgage Deed dated 07.12.2022, is quashed. The second respondent is directed to register the Mortgage Deed dated 07.12.2022 relating to the property of an extent of 4860 Sq.ft. in Survey No.71/2A2A, Nallur Vilalge, Tiruppur Taluk and District, within a period of 15 days from the date of receipt of a copy of this order. No costs. Consequently, the connected writ miscellaneous petition is closed.

21.06.2024

Index : Yes / No
Neutral Citation : Yes / No
Asr

To

1.The District Registrar
Tiruppur District

2.The Sub Registrar
Nallur Sub Registrar Office
Nallur, Tiruppur District

3.The Government Pleader
High Court, Madras



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N.SATHISH KUMAR, J.

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