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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.10.2024

CORAM :

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P(MD)No.8145 of 2024

M.Ramkumar ...Petitioner

Vs.

1.The Sub Registrar,
Sankarankovil, Thenkasi District.

2.The Executive Officer,
Sankaranarayana Swamy Thirukovil,
Sankarankovil, Thenkasi District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari or any other appropriate writ or order or direction in the nature of writ, calling for the records relating to impugned refusal check slip passed by the 1st Respondent through its proceedings in RFL/Sankarankovil/81/2023 dated 20.12.2023 and to quash the same.

For Petitioner : Mr.B.Muneeswaran

For R1 : Mr.M.Siddharthan,
Addl. Government Pleader

For R2 : Mr.VR.Shanmuganathan,
Standing Counsel

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ORDER

According to the petitioner, the property in Old Survey No.438A/1A1A to the extent of 2 acres, situated at Kalappakulam Village, Sankarankovil Taluk, Tenkasi District, belonged to the petitioner's grandfather. After his demise, the said property had been enjoyed by the legal heirs of the petitioner's grandfather. The petitioner's grandfather had three sons. One of the sons of petitioner's grandfather, decided to sell the subject land and the petitioner was decided to purchase the said property. Hence, a sale deed was executed on 15.12.2023 and the same was presented for registration. However, the same was refused to be registered by the 1st respondent vide refusal check slip dated 20.12.2023, citing that the property belonged to the 2nd respondent and a communication was given by the 2nd respondent to the effect that no registration has to be done with the regard to the subject property. Challenging the same, the petitioner has filed this Writ Petition.

2. The learned counsel appearing for the petitioner would submit that patta proceedings had been initiated under Act 30 of 1963 and vide order dated 30.04.1972, ryotwari patta had been issued in favour of the predecessors of the petitioner in respect of the properties in question and that order has been

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reached finality, which has not been challenged. Ever since the date of patta, the predecessor in title enjoyed the properties in question and several transaction had also taken place. Now, by giving mere objection before the registering authority, the Temple cannot prevent the transaction. Hence, the impugned order passed by the 1st respondent based on the objection of the 2nd respondent is liable to be quashed.

3. The learned counsel appearing for the 2nd respondent would submit that the subject properties are service inams and patta has been granted only under Section 8(2)(ii) and 8(5) r/w Section 21 of Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 (hereinafter, referred to as 'Act 30 of 1963) and if the service is not rendered by the pattadharars, they do not have any right either to enjoy the lands or to alienate the same and the Temple can resume the lands at any time as per Section 41 of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter, referred to as HR & CE Act'). That apart, Section 38 of Act 30 of 1963 also makes such transaction as void. Hence, he opposed this Writ Petition.

4. Heard the learned counsel on either side and perused the materials available on record.

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5. At the outset, this Court is of the view that the the impugned order has been passed, deciding the title of the parties. It is not disputed by both sides that patta had been originally granted under Section 8(2)(ii) and 8(5) r/w Section 21 of Act 30 of 1963. That order has been reached finality, which has not been challenged.

6. It is relevant to extract Sections 8(2)(ii) and 8(5) of Act 30 of 1963, which read as follows:-

> *"8.Grant of ryotwari Pattas:-*
>
> *(2)(ii)In the case of any other land, the institution or the individual rendering service shall, with effect on and from the appointed day, be entitled to a ryotwari patta in respect of that land.*
>
> *(5)In the case of a minor inam held immediately before the appointed day by an individual on condition of rendering service to a religious, educational or charitable institution, the grant of ryotwari patta under sub-section (1) or (2) shall be subject to the provisions of section 21."*

7. The above provisions make it clear that any patta granted under Section 8 of Act 30 of 1963 shall be subject to the provision of Section 21.

8. Section 21 of Act 30 of 1963 reads as follows:-

> *"21. Service inams.*

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(1)The provisions of this section shall apply in respect of any minor inam which was held immediately before the appointed day by an individual (hereinafter referred to in this section as the service-holder) on condition of rendering service to a religious, educational or charitable institution.

(2)The service-holder shall, subject to the provisions of sub-section (3), be bound to continue to render the service after the appointed day.

(3)(i)Where a service-holder is entitled to a ryotwari patta under section 8 in respect of any land, he shall have the option -

(a)either to pay to the religious institution the amount specified in subsection (4) and on such payment the land shall, notwithstanding anything contained in sub-section (7), be discharged from the condition of the service; or

(b)to hold the land and continue to render service subject to the provisions contained in sub-sections (1), (2), (6) and (7).

(ii)The option referred to in clause (i) shall be twenty times the difference between the fair rent in respect of such land determined in accordance with the provisions contained in the Schedule and the land revenue due on such land.

(5)Where the service-holder has exercised his option to pay the amount specified in sub-section (4), the tasdik allowance referred to in sub-section (6) in respect of the period subsequent to the date of the exercise of such option shall be the absolute property of the institution and the institution shall be at liberty to make such arrangements as it thinks fit for the performance of the service.

(6)(a)For so long as the service-holder renders the service, the institution shall pay to the service-holder the tasdik allowance paid by the Government under section 20.

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(b)If the service-holder fails to render the service, the prescribed officer shall, after such inquiry and after such notice to the service-holder as may be prescribed in this behalf, notify such failure in such manner as may be prescribed. He shall then declare that the tasdik allowance payable to the institution in respect of the period subsequent to the failure shall be the absolute property of the institution and the institution shall be at liberty to make such arrangement as it thinks fit for the performance of the service.

(7)(a)For so long as the service-holder renders the service, he shall be entitled to occupy permanently the lands in respect of which he is entitled to a patta under section 8, subject however, to the payment of the assessment fixed [under section 16 or under section 16-A, as the case may be] [Substituted for the expression 'under section 16' by section 13 of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Amendment Act, 1964 (Tamil Nadu Act 33 of 1964).], in respect of such lands.

(b)If the service-holder fails to render the service, the prescribed officer shall, after such inquiry and after such notice to the service-holder as may be prescribed in this behalf, notify such failure in such manner as may be prescribed. He shall then declare that the service-holder's right to occupy permanently the land under clause (a) shall cease and determine, and the institution shall be at liberty to make such arrangement as it thinks fit for the performance of the service and shall be entitled to hold the land as its absolute property subject, however, to the payment of the assessment fixed therefor [under section 16 or under section 16-A, as the case may be] [Substituted for the expression 'under section 16' by section 13 of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Amendment Act, 1964 (Tamil Nadu Act 33 of 1964).].”

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9. The above Section makes it clear that when the ryotwari patta is granted under Section 8 in respect of any land, the pattadharar will have option either to pay to the religious institution the amount specified in subsection (4) and on such payment the land shall, notwithstanding anything contained in sub-section (7), be discharged from the condition of the service; or to hold the land and continue to render service subject to the provisions contained in sub-sections (1), (2), (6) and (7). However, such amount has not been specified while passing the order.

10. Be that as it may, Section 21 further makes it clear that as long as the service holders renders the service, the institution shall pay to the service-holder the tasdik allowance paid by the Government under section 20. However, if the pattadharar failed to render any service, then notice shall be issued to such pattadharars by the concerned authorities, then, order has to be passed to the effect that the properties are belonged to the institution.

11. Now, except issuing the objection letter to the authorities, no action has been taken under Section 21 either to resume the land or to declare that the service is not rendered by the concerned person. Whether the service has been properly rendered or discontinued is a matter of fact, which has to be

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established in the manner known to law. Once it is established that there is no service, the Temple is entitled to resume the land and there is no difficulty at all. However, if it is established that service is continuing, the pattadharar is entitled to occupy the land permanently in respect of which patta has been granted. Without establishing these facts, merely by giving application before the authorities, the Temple cannot establish their right. No doubt, Section 41 of HR & CE Act, Section 38 of Act 30 of 1963 make the transfer of land as void.

12. In such view of the matter, this Court is of the view that mere objection before the registering authorities itself is not sufficient to refuse the registration. Therefore, the impugned order passed by the 1st respondent is quashed and this Writ Petition is allowed with a direction to the 1st respondent to register the document presented by the petitioner within a period of one week from the date of receipt of a copy of this order. It is for the temple to take appropriate action to resume the land or atleast to file a suit to recover the entire land, if the service is not properly rendered or discontinued. No costs.

16.10.2024

NCC : Yes / No
Index : Yes / No
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N.SATHISH KUMAR, J.

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