BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.03.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.17802 of 2022

Sundarrajan ... Petitioner

Vs.

1.The District Collector,
Madurai District,
Madurai.

2.The District Registrar,
Madurai District,
Madurai.

3.The Sub Registrar,
District Registrar Cadre,
Arasaradi, Madurai.

4.The Secretary to Government,
Home Department,
Fort St.George,
Chennai.

5.Jairaj, I.A.S.,
Administrator,
Sri Vysyaraja Mutt (Sosalai),
Having its Main Office at
No.1, Benne Govindappa Chatra,
Basavangudi, Bangalore. ... Respondents

(R4 & R5 are impleaded vide order dated 20.01.2023 in W.M.P.(MD)No.21925 of 2022 in W.P.(MD)No. 17802 of 2022 by GRSJ)

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 pertains to the impugned proceedings of the 3rd respondent dated 04.07.2022 issued vide his Refusal Check Slip in Refusal Number RFL/ ARASARADI/4/2022 and quash the same as illegal and consequently direct the 3rd respondent to register the petitioner's settlement deed dated 25.04.2022 within a time frame as fixed by this Court.

For Petitioner : Mr.K.Sukumaran,
For Mr.S.Sukumar.

For Respondents : Mr.S.Shanmugavel,
Addl. Government Pleader for R1 to R4.
Mr.M.Karthikeyavenkatachalapathy,
For Mr.S.Madhavan for R5.

ORDER

Heard both sides.

2.The writ petitioner purchased the site comprised in T.S.No.1208/46, Petchiamman Padithurai Road, Madurai Town vide sale deed dated 31.01.1994. He subsequently put up superstructure thereon. The property is being assessed to tax. Mutation of revenue record has also been effected. Now the petitioner wants to settle the property in favour of his son. The settlement deed dated 25.04.2022 was presented for registration before the third respondent. The third respondent declined to entertain the document and issued the impugned refusal check slip dated 04.07.2022. Challenging the same, the present writ petition came to be filed. Since the impugned refusal slip pointed to the objection raised by Vysyaraja Mutt, the said mutt was impleaded as the fifth respondent. The Secretary to Government, Home Department was also impleaded as fourth respondent.

3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He pointed out that the petitioner's vendor executed the sale deed dated 31.01.1994 on the strength of power of attorney executed by the mutt head. It was a transfer for valuable consideration. Till date, no action has been taken by the mutt impeaching the title deed standing in the name of the petitioner. He pointed out that the Hon'ble Division Bench of this Court in the decision reported in ***2017 (3) CTC 135 (Sudha Ravi Kumar v. The Special Commissioner & Commissioner, HR & CE Department)*** had outlined the procedure to be followed in cases where any objection is received from an religious institution. The learned counsel's contention is that the procedure set out by the Hon'ble Division Bench has not been followed in this case. He also pointed out that a learned Judge of this Court vide order dated 12.02.2020 in W.P.(MD)No.1464 of 2020 (P.Varadharajan Vs. The Special Commissioner & Commissioner, HR & CE Department, Chennai – 14) had held that mere claim by the Hindu Religious and Charitable Endowment Department is not sufficient for the registering authority to refuse to register the document. The temple's title must be acknowledged by the Civil Court or the temple must produce sufficient documents to prove its lawful title. Only then, Section 22(A) of the Registration Act, 1908 will kick in and not otherwise. He also drew my attention to Paragraph No.8 of the said order in which it has been held that the temple must give the list of documents of title to prima facie satisfy the registering authority that the temple has lawful claim over the subject matter. The registering authority cannot mechanically issue refusal check slip. He called upon this Court to set aside the impugned order and grant relief as prayed for.

4.The learned Additional Government Pleader for the Government as well as the learned counsel for Mutt submitted that the impugned order is well reasoned and that it does not call for interference. They pressed for dismissal of the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. It is seen that one Latha had sought to register a document pertaining to T.S.No.1208/22(2A) in the very same locality. Registration was refused. That led to the filing of W.P.(MD)Nos.1460 of 2022 etc. A learned Judge of this Court vide order dated 28.01.2022 had observed as follows:-

> *"5.It is also seen that the subject property under investigation by the Karnataka High Court is with respect to Town S.No.1208/22/2. The learned counsel seeks to differentiate the properties herein with a minor qualification saying that these properties are in Town S.No.1208/22/2A. By any reasoning, the sub-division 2A would only be part of S.No.2 and any consideration of the cases of the petitioners would only amount to a further fraud committed and multiply the fraud already committed which issues are now under the consideration of the Karnataka High Court/Government of Karnataka.*
>
> *6.All these writ petitions are dismissed. They have been filed with malafide intentions. They are mischievous and they do not deserve any consideration of these petitions. No costs."*

6.The learned counsel for the petitioner would point out that the subject matter of the said writ petitions pertained to T.S.No.1208/22. In this case, T.S.No.1208/46 is the subject-matter and that therefore, the order passed in W.P.(MD)Nos.1460 of 2022 etc should not have governed the discretion of the registering authority.

7.The learned counsel for the petitioner is right in his contention that the subject matter of W.P.(MD)Nos.1460 of 2022 etc and the present writ petition are different. But the question is whether on that score, I should interfere in favour of the petitioner.

8.If the petitioner had set up an independent title and had taken the position that the religious institution has no interest in the matter, then I would not have followed the order dated 12.02.2020 in W.P.(MD)No.1464 of 2020. The petitioner in fact traces his title to Vysyaraja Mutt only. According to the petitioner, the then Head of Vysyaraja Mutt had executed a power of attorney in favour of one Y.S.Ranganatha and that the said Ranganatha on the strength of power of attorney executed sale deed dated 31.01.1994 in favour of the petitioner for valuable consideration.

9.The learned Additional Government Pleader draws my attention to the definition set out in Tamil Nadu Act 22 of 1959. Section 6(13) of the said Act reads as follows:-

*"**6.Definitions.** In this Act, unless the context otherwise requires, _*

*(13) "**math**" means a Hindu religious institution with properties attached thereto and presided over by a person, the succession to whose office devolves in accordance with the direction of the Founder of the institution or is regulated by usage and –*

(i) whose duty it is to engage himself in imparting religious instruction or rendering spiritual service; or

(ii) who exercises or claims to exercise spiritual headship over a body of disciples;

and include places of religious worship or instruction which are appurtenant to the institution;

***Explanation.**— Where the headquarters of a math are outside the State but the math has properties situated within the State, control shall be exercised over the math in accordance with the provisions of this Act, in so far as the properties of the math situated within the State are concerned;"*

10.Vysyaraja Mutt may have its headquarters in the State of Karnataka. But it has properties in the State of Tamil Nadu also. Therefore, Vysyaraja Mutt will definitely fall within the sweep of the definition set out in Section 6(13) of the Act. Section 6(18) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 defines a religious institution. It is as follows:-

*"(18) "**Religious institution**" means a math, temple or specific*

endowment and includes,: —

(i) a samadhi or brindhavan; or

(ii) any other institution established or maintained for a religious purpose.

Explanation.- For the purpose of this clause-

(1) "samadhi" means a place where the mortal remains of a guru, sadhu or saint is interned and used as a place of public religious worship;

(2) "brindhavan" means a place established or maintained in memory of a guru, sadhu or saint and used as a place of public religious worship, but does not include the samadhi;"

11.Therefore, one cannot have any difficulty in coming to the conclusion that Vysyaraja Mutt is a religious institution for the purpose of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 insofar as its properties in Tamil Nadu are concerned. Section 34 of the Act is as follows:-

"34. ***Alienation of immovable trust property.****—(1) Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution shall be null and void unless it is sanctioned by [the Commissioner] as being necessary or beneficial to the institution :*

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in such *manner as may be prescribed, inviting objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly consider by [the Commissioner] :*

[Provided further that the Commissioner shall not accord such sanction without the previous approval of the Government].”

12.In this case, there is nothing on record to show that statutory sanction contemplated by the provision was obtained before the sale deed dated 31.01.1994 was executed. Therefore, I have no hesitation to come to the conclusion that the sale deed dated 31.01.1994 is void. On the strength of such a document, the petitioner has executed the settlement deed dated 25.04.2022 in favour of his son. The registering authority rightly applied Section 22(A) of the Registration Act and declined to entertain the document. The head of a mutt is in the position of trustee. The mutt properties are not his private properties. The function of mutt head is to take care of the properties. He could not have executed any power of attorney conferring the authority on the power agent to sell the property. Such endowed properties can be dealt with only in the manner known to law. Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 has been incorporated only to ensure that there is no illegal or private alienation of the endowed properties. Conveyance or transfer of an endowed property can pass muster only if the procedure has been complied with. If the procedure has not been complied with, the transfer cannot be legitimized. The stand taken by the registering authority cannot be faulted. I decline to interfere and the writ petition stands dismissed. No costs.

18.03.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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