BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.18922 of 2020
and
W.M.P.(MD)No.15851 of 2020

Selvi ... Petitioner

Vs.

1.The Deputy Inspector General of Registration,
Tirunelveli Range, Palayamkottai,
Tirunelveli District.

2.The District Registration (Administration),
Additional Charge,
District Registrar Office,
Nagercoil – 629 001,
Kanyakumari District.

3.The Joint Sub Registrar No.1,
Kanyakumari,
Office of the Sub Registrar,
Near PWD Office,
Nagercoil – 629 001.

4.Kunjararaj ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the 1st respondent in Na.Ka.No.3468/Vu/ThaPi/2019, dated 20.11.2020 and quash the same.

For Petitioner : Mr.R.Subramanian

For Respondents : Mr.C.Satheesh,
Government Advocate for R1 to R3.

ORDER

Heard the learned counsel for the writ petitioner and the learned Government Advocate for the respondents 1 to 3.

2.The petitioner purchased the petition mentioned land measuring little over five cents vide sale deeds dated 29.03.2001 and 09.04.2001. The said sale deeds were cancelled by the District Registrar (Administration), Nagercoil at the instance of the fourth respondent. Questioning the same, the petitioner filed an appeal before the first respondent. The first respondent vide order dated 20.11.2020 confirmed the order passed by the original authority and dismissed the appeal. Challenging the same, the present writ petition came to be filed.

3.The writ petition has to be allowed on a short ground. Admittedly, the impugned orders were passed by invoking G.O.(Ms)No.150, Commercial Taxes Department, dated 22.09.2000. The said government order was struck down by the Hon'ble Division Bench in the decision reported in ***2007 (3) CTC 513 (Captain Dr.R.Bellie Vs. The Sub Registrar)***. Paragraph Nos.3 and 9 of the said order read as follows:-

> *"3. When the case was taken up, learned Counsel for the appellant submitted that similar provision like Section 22A of the Registration Act, 1908 as amended vide Registration (Tamil Nadu Amendment) Act, 1994 has been held to be ultra vires by the Supreme court in the case of State of Rajasthan and Ors. v. Basant Nahata and G.O. Ms. No. 150, Commercial Taxes, dated 22.9.00 issued in exercise of power conferred by Sub-section (1) of Section 22-A has also been held to be illegal and quashed by a learned single Judge of this Court vide judgment dated 20.3.06 passed in W.P. No. 7237/06.*
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> *4. In the writ petition, W.P. No. 42945/06, the petitioner having challenged the validity of Section 22-A as inserted by Registration (Tamil Nadu Amendment) Act, 1994, both the writ appeal as well as the writ petition were heard together. We mainly heard on the question of legality of Section 22-A (State Amendment), which reads as follows:*
>
> > *22-A. Documents registration of which is opposed to public policy. -*
> >
> > *(1) The State Government may, by notification in the Tamil Nadu Government Gazette, declare that the registration of any document or class of documents is opposed to public policy.*

> *(2) Notwithstanding anything contained in this Act, the registering officer shall refuse to register any document to which a notification issued under Sub-section (1) is applicable."*

Therefore, the impugned order is set aside.

4.But the matter cannot rest there. It is obvious from the materials on record that the lands belonged to Perumalsamy temple. It is also stated by the learned Government Advocate that the temple has been under the supervision of Hindu Religious and Charitable Endowments Department since 1976. "A" register also indicates that the property was endowed in favour of the temple. In these circumstances, Section 34 of the Hindu Religious and Charitable Endowments Act, 1959 will come into play. The said provision reads as under:-

> *"**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 1[the*

Commissioner] :

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

5.In this case, the temple land had been sold by the local villagers. Permission from the Government or the Commissioner of Hindu Religious and Charitable Endowments Department was not taken. It is obvious that the transactions effected in favour of the petitioner are void from the inception. Therefore, the temple management would be very much at liberty to take appropriate action under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act. Equities obtaining in this case cannot be lost sight of. The petitioner is a widow. She is also a senior citizen. She had paid a sum of Rs.2,00,000/- to the village committee. It is further claimed that the amount was used for renovating the temple. Therefore, Hindu Religious and Charitable Endowments Department can very well consider treating the petitioner as a tenant and allow her to be in occupation of the house that has been put by her on payment of ground rent. But this call only the department can take and this Court can only make some remarks and observations in favour of the petitioner.

6.With these observations, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

16.02.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:

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G.R.SWAMINATHAN, J.

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