



W.A.(MD)No.1533 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.04.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

W.A(MD)No.1533 of 2021

and

C.M.P(MD)No.6305 of 2021

1.The Joint Commissioner,
HR&CE Department,
Tirunelveli Town & District.

2.The Assistant Commissioner,
HR&CE Department,
Nagercoil,
Kanyakumari District.

3.The Inspector,
HR&CE Department,
Nagercoil,
Kanyakumari District.

4.The Sub Registrar,
Kottaram – 629 703,
Kanyakumari District.

... Appellants /
Respondents

Vs.

1.Sree Kala

2.Murugesan
Represented by his power agent
Mrs.Sree Kala



W.A.(MD)No.1533 of 2021

3. Vanmathi

4. Justin

Represented by his power agent
Mrs. Vanmathi

5. P. Rethinakaran

Represented by his power agent
Mrs. Vanmathi

6. R. Ganesan

Represented by his power agent
Mrs. Vanmathi

7. Meena

Represented by his power agent
Mrs. Vanmathi

... Respondents /
Writ Petitioners

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 01.04.2021 passed by this Court in W.P(MD)No.4287 of 2020 and allow the Writ Appeal.

For Appellants : Mr.K.S.Selvaganesan
Additional Government Pleader

For Respondents : Mr.N.Dilip Kumar

JUDGMENT

(Judgment of the Court was made by G.R.Swaminathan J.)

Heard both sides.



W.A.(MD)No.1533 of 2021

WEB COPY 2.The writ petitioners presented the petition mentioned sale deed for registration. The registering authority citing the objection of the HR&CE Department decline to register the same. Challenging the stand of the registering authority, W.P(MD)No.4287 of 2020 was filed. It was allowed by the learned single Judge on 01.04.2021 in the following terms:

“12.The only point in issue that calls for adjudication in this case is whether the fourth respondent can refuse to register the sale deed presented by the petitioners, on the ground of an objection which was conveyed through a communication of the HR & CE Department dated 25.01.2020 or not? The cumulative facts would disclose that the properties belonging to Arulmighu Karpaga Vinayagar Temple have been subjected to several alienations over the years and the Registration Department has registered those transactions and as a consequence of which, the said registrations have been reflected in the Encumbrance Certificates maintained by the Department. Strangely, when numerous transactions have taken place in regard to the same property over the years, there was absolutely no objection raised on behalf of the respondents 1 to 3 in respect of those transactions at any point of time resisting registration of any document pertaining to the subject



WEB COPY



W.A.(MD)No.1533 of 2021

property. The very fact that those transactions had gone through smoothly and registered in the past demonstrated the admitted position that there was no objection at all from the HR & CE Department in the past.

13.Be that as it may, the present issue for consideration before this Court is whether the registration of the document can be held up by the registering authority at the instance of the respondents 1 to 3 on the basis of a mere communication from their end or not? On this aspect, the law is well settled as contended by the learned counsel for the petitioner, mere objection from the HR & CE Department cannot be a reason for refusal of registration, unless such objection from the Department is concretely supported with documents or materials. In this regard, two decisions relied upon by the counsel would have to be applied on the factual matrix of this case as well. More so, as far as the case on hand is concerned, the Deputy Commissioner, HR & CE Department himself has categorically concluded that the suit institution was not a Religious Institution, as defined in the Tamil Nadu Religious and Charitable Endowments Act, 1959, on the basis of the evidence, which was made available before him, in the proceedings in OA.No.81 of 1974 dated, 27.01.1975. In the face of the finding of the Department, whatever be the objections that may be raised on behalf of the Department, now the same cannot erase the finding of the



WEB COPY



W.A.(MD)No.1533 of 2021

Department in proceedings, culminating in the order being passed in O.A.No. 81 of 1974 dated, 27.01.1975.

14.On the plea of the Department that steps have been taken to test the validity of the order passed by the Deputy Commission, HR & CE Department on 27.01.1975, the present registration cannot be refused or withheld. This is more so, the finding of the Deputy Commissioner was in relation to his order dated 27.01.1975, four decades before which in fact paved for numerous registration of transactions relating to the larger extent of the subject properties for years together.

15.Therefore, this Court has to take a call in the prevailing factual circumstances of the case. As on date, the Department has not come up with any clinching material to sustain its claim as against the right of the petitioner, but at the same time, it is always open to the Department to workout its remedies in a manner known to law, in future, seeking to re-visit the order dated 27.01.1975. At the same time, as far as the present issue on hand is concerned, the registration cannot be refused or withheld lawfully. As far as the facts and circumstances available today, the right of the petitioners to have documents registered cannot be successfully resisted by the claim of the HR & CE Department.

16.In the above circumstances, this Court has no hesitation in allowing the Writ Petition. The impugned proceedings of the second respondent/Assistant



WEB COPY



W.A.(MD)No.1533 of 2021

Commissioner of the Hindu Religious and Charitable Endowment department dated 25.01.2020 in Na.Ka.No. 5167/2019/A3-2 along with the undated communication issued by the third respondent/Inspector of HR & CE department and the consequential order issued by the fourth respondent/ Sub Registrar, Kottaram dated 13.02.2020 are set aside. The fourth respondent is directed to register the document/the sale deed, dated 13.02.2020, presented by the petitioners, if the document is otherwise in order and release the same to the parties concerned as expeditiously as possible, not later than four weeks from the date of receipt of a copy of this order.

17.It is hereby clarified that the decision in this Writ Petition will not be an impediment for the HR & CE Department, to proceed with their contemplated action as projected above, if they are so advised.”

Challenging the said order, this Writ Appeal has been filed by the Department.

3.We wanted to know from the learned Additional Government Pleader if the order dated 27.01.1975 made in O.A.No.81 of 1974 by the then Deputy Commissioner, HR&CE Department, Madurai declaring the subject institution as a non-religious institution had attained finality.



W.A.(MD)No.1533 of 2021

4.The learned Additional Government Pleader submitted that now a *suo motu* revision is contemplated.

5.This lies in the womb of the future. As on date, the order dated 27.01.1975 in O.A.No.81 of 1974 is holding the field. That is why the learned single Judge rightly set aside the stand taken by the registering authority. Interference with the said order is not warranted.

6.This Writ Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[G.R.S., J.] [M.J.R., J.]
04.04.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
MGA



WEB COPY



W.A.(MD)No.1533 of 2021

G.R.SWAMINATHAN,J.

AND

M.JOTHIRAMAN, J.

MGA

W.A(MD)No.1533 of 2021

04.04.2025