(2008) 09 MAD CK 0128

In the Madras High Court

Case No : Writ Petition (MD) No. 9895 of 2005 and W.P.M.P. (MD) No. 10614 of 2005

Arulmigu Sankaranarayanaswamy Thirukovil	APPELLANT
Vs	
The Inspector General of Registration, The Sub Registrar and Kalappakulam Village Panchayat	RESPONDENT

Date of Decision : 26-09-2008

Acts Referred:

Constitution of India, 1950 — Article 162, 226
Registration Act, 1908 — Section 22A
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 34, 34(1)
Trusts Act, 1882 — Section 34

Citation : (2008) 09 MAD CK 0128

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : K. Srinivasan, for the Appellant; K.A. Thirumalaiappan, A.G.P. for R-1 and R-2 and F.X. Eugene, for R-3, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—The petitioner in this writ petition is Arulmigu Sankaranarayanaswamy Thirukovil, Sankarankovil, represented by its Executive Officer. The prayer in this Writ Petition is for a direction to the first and second respondents from registering any documents in respect of the lands in Old Survey Nos. 438/A1, 438/A, 483, 556, 557 and 572 which is also enclosed as Annexure to the writ petition having a total extent of 460.96 acres of land at Kalappakulam Village, Sankarankoil Taluk in terms of G.O.Ms. No. 150 (Commercial Taxes Department) dated 22.09.2000.

2. The writ petition was admitted on 15.11.2005. Pending the writ petition an interim-injunction was granted on 15.11.2005 which is still in force.

3. On notice from this Court, no reply is forthcoming from the first and second respondents. On the contrary, the third respondent claiming to be the Village

President of Kalappakulam Village, Sankarankovil Taluk had filed a counter affidavit. In the counter affidavit, he has admitted that the land mentioned in the writ affidavit were originally alloted to nine Bhattars for the purpose of doing Poojas in the temple. In the settlement, the Tahsildar, II Kovilpatti, vide his proceedings dated 18.05.1968 has informed that the land belonged to nine Bhattars. The same view was reiterated on 30.04.1972. But, by that time, the number of Bhattars went up by 28.

4. Thereafter, many land transfers had taken place in the said land as there was no bar from registering these lands. He also questioned the competence of the Government issue in G.O.Ms. No. 150 (Commercial Taxes Department) dated 22.09.2000. He has also stated that being an Executive Authority of the Village Panchayat, he has stopped issuing ''No objection Certificate'' for the purpose of registering these survey numbers by any sale deeds. However, he contended that the writ petition deserves to be dismissed.

5. When questioned by this Court, the learned Counsel for the third respondent admitted that he is all the owner of some lands in the said survey numbers. It was submitted by the learned Counsel for the petitioner, that earlier the temple filed a suit before the Civil Court for a similar prayer and the same was dismissed for non-prosecution. Thereafter, they filed the present writ petition. Even after filing the writ petition, they have again instituted another suit. He further contended that under the provisions of the Registration Act, there is no scope for refusing to register any document based on Section 22-A or by the G.O.Ms. No. 150 (Commercial Taxes Department) dated 22.09.2000 issued by the State Government.

6. With reference to the violation of Section 22-A, he referred to the judgment in State of Rajasthan and Others Vs. Basant Nahata, . In that case, the Hon''ble Supreme Court had held that Section 22-A of the Registration Act as amended by the State of Rajasthan introducing a provision for prohibition of registration of documents opposed to public policy was unconstitutional.

7. He also referred to the subsequent Division Bench judgment of this Court in Captain Dr. R. Bellie and Dr. Smt. Seetha Bellie Vs. The Sub Registrar, . In that case, the Division Bench followed the judgment of the State of Rajasthan case (cited supra) and held that Section 22-A as well as G.O.Ms. No. 150 (Commercial Taxes Department) dated 22.09.2000 are invalid.

8. Further, reliance was also placed upon the Division Bench judgment of this Court in S. Arunachalam and Others Vs. State of Tamil Nadu and Others, wherein, it was held that the Government by exercising it executive power under Article 162 cannot issue an order which is contrary to law and it cannot prohibit the Registrar from registering the lands relating to the sale of house sites for 45 days from the date on which notice is served by the Commissioner of Panchayat. During that period if the Registration of house sites is opposed the land cannot be registered. There is no quarrel over the proposition laid in these decisions.

The short question that arises for consideration in this case is, the temple by the ultimate owner of the property, it can certainly object to the registration of the document by the Registrar.

9. In this context, this Court by an order dated 22.09.2008 in S. Rangarajan v. The District Registrar and Ors., has held, that this Court under Article 226 of the Constitution can direct the Registrar not to register the properties of the temple by referring to two decisions of the Supreme Court and to Section 34 of the Hindu Religious and Charitable Endowment Act.

10. In this context, it is necessary to refer to Section 34(1) of the Hindu Religious & Charitable Endowments Act, 1959, which reads 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.

11. Therefore, any sale of a temple land without the sanction by the Commissioner is declared to be null and void. When the sale is held to be void, the question of the third respondent coming forward with a plea that they had purchased it with valuable consideration cannot be countenanced by this Court.

12. The Supreme Court in its decision in A.A. Gopalakrishnan Vs. Cochin Devaswom Board and Others, , cautioned about the misuse of temple properties and the need to protect such properties. Speaking for the Court K.G. Balakrishnan, C.J., in paragraph.10 of the said judgment, it is observed as follows:

10. The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their trustees / archakas / shebaits / employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of "fences eating the crops" should be dealt with sternly. The Government, members or trustees of boards/trusts and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation.

13. The Supreme Court in its decision reported in 2006 1 SCC 287, Joint CommMr. , Hindu Religious and Charitable Endowments, Admn. Department v. Jayaraman and Ors. restored the land to the temple which was sold by orders of the Court by filing application u/s 34 of the Indian Trusts Act. The sale and the subsequent patta obtained were held to be invalid. While holding so, the

Supreme Court forewarned attempts by certain people to corner the temple properties and therefore, the following passaged found in para:12, may be reproduced below:

12. It is seen that there has been a clear attempt by the claimants to overreach the0 deities and the authorities under the HR & CE Act, while managing the properties dedicated for the purposes of the temple, properties granted and managed by them in their capacities as poojaris, for the maintenance of the temples. The attempt has to be deprecated.

14. In the decision in 2006 1 SCC 287, the Supreme

15. Though it is stated that the prayer of the writ petitioner temple was based upon G.O.Ms. No. 150 (Commercial Taxes Department) dated 22.09.2000, for which there is no material available. Under these circumstances, in the light of the earlier decision in the Srirangam Temple Case, the writ petition will stand allowed. However, No order as to Costs. Consequently Miscellaneous Petition is closed.