
(2007) 12 MAD CK 0177

In the Madras High Court

Case No : Writ Petition (MD) No. 9405 of 2007 and M.P. (MD) No"s. 1 and 2 of 2007

R. Subramanian

APPELLANT

Vs

The Inspector General of Registration, The District Registrar,
The Sub-registrar and The Joint Commissioner, HR and CE

RESPONDENT

Date of Decision : 14-12-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 246
Registration (Tamil Nadu Amendment) Act, 1994 — Section 22A
Registration Act, 1908 — Section 22A
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 34

Citation : (2007) 12 MAD CK 0177

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Advocate : S. Vijayakumar, for the Appellant; K.M. Vijayakumar, Additional Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

M. Jeyapaul, J.—The writ petition is filed seeking to quash the impugned proceedings No. 397 of 2007 dated 22.10.2007 passed by the

third respondent and consequently direct the third respondent to release the pending document P. No. 20070078 without insisting for no objection

certificate from the fourth respondent in respect of the lands comprised in Survey Nos. 361 and 362 in Punjai Pugalur Village, Karur.

2. The case of the petitioner in brief is as follows:

(a) The petitioner is the owner of the land comprised in Survey Nos. 361 and 362 Punjai Pugalur Village, Karur Taluk. The petitioner entered into

an agreement of sale on 19.10.2005 with K. Subramanian of Kolnathur Village, Karur. In terms of the aforesaid agreement, sale deeds were

executed and the same were presented for registration with the second respondent. The second respondent declined to register the said documents and insisted for production of no objection certificate from the Commissioner of HR & CE Department.

(b) The Devasthanam has no right over the property in Survey Nos.361 and 362 of Punjai Pugalur Village, Karur Taluk. The Tahsildar, Karur has issued no objection certificate to convert those landed properties into the house sites. Aggrieved by the refusal of registration of the documents in favour of the purchaser Sivagamiammal, the petitioner filed W.P. No. 6915 of 2006 before this Court. This Court directed the third respondent to register the documents presented by the petitioner, if it was otherwise in order. Further, the Government of Tamil Nadu has cancelled the G.O.Ms.

No. 150 dated 22.09.2000 by issuing a G.O.Ms. No. 136 dated 25.07.2007.

(c) The petitioner along with his purchaser Sivagamiammal presented the sale deed to the third respondent on 22.10.2007 for registration. But the third respondent refused to register the documents. In spite of the direction flowed from this Court in W.P. No. 6915 of 2006 to register the documents, the third respondent having flouted the orders passed by this Court, has sought for no objection certificate from the HR & CE Department to register the documents. Hence, the writ petition for the reliefs as detailed above.

3. The averments in brief found in the counter affidavit filed by the fourth respondent are as follows:

(a) The disputed property in Survey Nos.361 and 362 of Punjai Pugalur Village, Karur, absolutely belongs to the idol of Sri

Balasubramaniaswamy at Pugalimali, Velayuthapuram Village, Karur Taluk. The Suit in O.S. No. 155 of 2006 filed by the Executive Officer of the

Temple was dismissed on the ground that he had no competency to file the said suit. The petitioner taking advantage of the dismissal of the

injunction petition moved by the incompetent Executive Officer, has obtained a final order from this Court in W.P. No. 6915 of 2006, directing the

Registration Department to register the documents even without impleading the fourth respondent or the competent authority who is empowered to

safeguard the properties of the idol. The final order passed by this Court in W.P. No. 6915 of 2006 in the presence of the Executive Officer who

is incompetent as observed by the Court below based on such an order of dismissal of the injunction petition is not binding on the competent

Authority.

(b) The third respondent has rightly informed the fourth respondent Department to seek remedy before the Civil Court if there is any objection to

register the documents. The petitioner has illegally obtained an order in W.P. No. 6915 of 2006 from this Court by filing a writ petition against the

incompetent person, the fourth respondent herein. Therefore, the fourth respondent seeks for dismissal of the writ petition.

4. The third respondent having directed the fourth respondent to obtain necessary orders, forbearing the third respondent from registering the

documents within 45 days, as otherwise, he will register the documents presented for registration by the petitioner, lay over the document of sale.

An observation also has been made by the third respondent that as per the updating Resurvey Register, Arulmigu Balasubramaniaswamy

Thirukoil has been shown as the owner of the property bearing Survey Nos. 361 and 382.

5. The Court will have to see whether such an impugned proceedings has been issued by the third respondent as per law.

6. The learned Counsel appearing for the petitioner would submit that G.O.Ms. No. 150 dated 22.09.2000 was withdrawn by the later G.O.Ms.

No. 139 dated 25.07.2007 in the aftermath of the declaration of Section 22-A of the Registration Act, 1908 (hereinafter referred to as "the Act")

as unconstitutional. The third respondent has not chosen to comply with the directions to register the documents as per the orders passed by this

Court in W.P. No. 6915 of 2006. The injunction application moved by the Executive Officer of the Temple was dismissed on merit. The third

respondent has no authority to decide whether the transaction is a void one. Therefore, the third respondent has issued the impugned proceedings

beyond the jurisdiction confer on him, he would contend.

7. The learned Additional Government Pleader appearing for the fourth respondent would argue that the application moved by the Executive

Officer who had no authority to file the suit as per the decision of the Court below, was dismissed. The third respondent could not entertain the

sale deed for registration, as the alienation of any immovable property of the

Temple has been declared as null and void u/s 34 of the Tamil Nadu

Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as ""the HR & CE Act""). As the transaction itself has been

statutorily avoided, the third respondent has rightly alerted the fourth respondent to come out with some order from the Court to protect the

interest of the property of the temple as per the updating Resurvey Register, he submits further.

8. Section 22-A of the Registration as amended by the Registration (Tamil Nadu Amendment) Act, 1994 reads that 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. The Registering Officer has been mandated thereunder to refuse to register any document to which a notification issued as aforesaid, is

found applicable. Notification in G.O.Ms. No. 150 Commercial Taxes Department dated 22.09.2000 was issued declaring registration of certain

categories of documents as opposed to public policy.

9. Following the ratio laid down by the Supreme Court in State of Rajasthan and Others Vs. Basant Nahata, , the amended provision u/s 22-A of

the Act was struck down as unconstitutional and ultra virus of Articles 14 and 246 of the Constitution of India by the Bench of this Court in

Captain Dr. R. Bellie and Dr. Smt. Seetha Bellie Vs. The Sub Registrar, . Thereupon G.O.Ms. No. 139 Commercial Taxes and Registration (J1)

Department dated 25.07.2007 was issued revoking the operation of the earlier G.O.Ms. No. 150 Commercial Taxes Department dated

22.09.2000. Therefore, the respondents cannot bank on either Section 22-A of the Act or the G.O.Ms. No. 150 dated 22.09.2000 to deny

registration of a document on the ground that conveyance of a property belonging to a temple is opposed to public policy.

10. In the earlier writ petition in W.P. No. 6915 of 2006 filed by the very same petitioner in respect of the same transaction, this Court was

pleased to direct the third respondent herein to register the documents presented by the petitioner if the same was otherwise in order. It is quite

unfortunate that the fourth respondent has taken a stand that he was not a party to the aforesaid writ proceedings initiated by the petitioner in

respect of the very same transaction and that the order of this Court passed

therein in the presence of the Executive Officer who was declared as Incompetent Officer by the Court of law, does not bind the fourth respondent.

11. It is to be noted that the temple concerned was a party in the earlier writ proceedings in W.P. No. 6915 of 2006. Therefore, the stand of the fourth respondent that the direction found in W.P. No. 6915 of 2006 does not bind him appears to be totally untenable. The third respondent sitting over such a direction given earlier in W.P. No. 6915 of 2006 has directed the fourth respondent to approach the Court to obtain necessary orders to restrain him from registering the document. This Court in W.P. No. 6915 of 2006 has directed the third respondent to register the documents presented by the petitioner, taking into consideration that the temple could not convince the trial Court to obtain an order of injunction as sought for by the temple. Now the pendency of the suit before the Subordinate Court has been taken as a defence by the fourth respondent. The third respondent has ventured to outsmart the orders passed by this Court directing him to register the document produced by the petitioner. It is not as if the injunction application filed by the temple was disposed of in absentia of the temple. It is found that the said application was dismissed on merit. Therefore, as on date, there is no order from the competent Court forbearing the third respondent from registering the documents presented by the petitioner.

12. Of course, Section 34 of the HR & CE Act declares that any sale of any immovable property belonging to any religious Institution is null and void, unless it is sanctioned by the Commissioner of Hindu Religious and Charitable Endowments with the previous approval of the Government. The third respondent being the Sub Registrar has no authority to verify whether a particular transaction is null and void. The party who claims that the transaction is statutorily declared as null and void, has to establish the same before the Court and obtain necessary orders to restrain the Sub Registrar from registering the documents of sale.

13. In this case, the Temple has miserably failed to obtain any such orders from the competent Court to forbear the Sub Registrar from registering the documents.

14. In spite of the above facts and circumstances, the third respondent has simply lain over the documents after instructing the fourth respondent to

approach the Court and obtain necessary order. The Sub Registrar is bound to entertain a document for registration within the four corners of the

law enunciated under the Act. There is no provision under the Act, debarring the Sub Registrar from going ahead with the process of registration of

a document if a document is found to be null and void.

15. The third respondent has simply flouted the directions flowed from this Court in W.P. No. 6915 of 2006. The fourth respondent has also could

not obtain any prohibiting orders from the competent Court to restrain the third respondent from registering the documents presented by the

petitioner. The provision u/s 34 of the HR & CE Act, does not automatically debar the Sub Registrar from registering the documents presented for

registration. The impugned order has been passed by the third respondent arbitrarily, without any sanction of law. Therefore, the said impugned

order is liable to be quashed.

16. In the result, quashing the impugned proceedings No. 397 of 2007 dated 22.10.2007 passed by the third respondent, the third respondent is

directed to register the document P. No. 20070078 in receipt No. 313 dated 22.10.2007 presented by the petitioner in respect of the lands

comprised in Survey Nos. 361 and 362, Punjai Pugalur Village, Karur. The writ petition stands allowed. There is no order as to cost. Connected

MPs are closed.