

(2011) 12 MAD CK 0054

In the Madras High Court

Case No : Writ Petition (MD) No. 11706 of 2008

Rathinasabapathi through his power agent Balamurugan

APPELLANT

Vs

The Inspector General of Registration, 120, Santhome High Road, Chennai 600 004, The District Registrar, Tenkasi Registration District Office, Tirunelveli District and The Sub Register, Sankarankovil Sub Registration Office, Sankarankovil, Tirunelveli District

RESPONDENT

Date of Decision : 19-12-2011

Acts Referred:

Registration Act, 1908 — Section 22A

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 34, 34(1)

Tamil Nadu Patta Pass Book Act, 1983 — Section 5(1)

Citation : (2011) 12 MAD CK 0054

Hon'ble Judges : K. Chandruw, J

Bench : Single Bench

Advocate : Chamundi Bose, for the Appellant; T.S. Md. Mohideen, AGP for R1 to R3, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K. Chandruw

1. Though these Writ petitions were covered with the earlier order passed by this Court in W.P.(MD)No. 9895 of 2005 dated 26.09.2008, the Learned Counsel for the petitioner wants to contend that the order passed by this Court dated 26.09.2009 is the subject matter of the Writ Appeal. Therefore, these cases can be posted along with the Writ Appeal. Further the Learned Counsel for the petitioner also placed reliance upon another division bench judgment of this Court in Captain Dr. R. Bellie and Dr. Smt. Seetha Bellie Vs. The Sub Registrar, this Court do not propose to send these matters to the division bench. When once the matter is covered in all respect by the order. These writ petitions were not listed at the relevant time, though they came to be filed immediately after the disposal of the Writ petition. The order passed by this Court will squarely

apply. It is for the petitioners to agitate before an appellate forum rather than seeking for a reference to a larger bench, when there is no legal doubt regarding the proposition law propounded. The judgment relied on by the Learned Counsel for the petitioners is based upon an interpretation of Section 22-A of the Registration Act, 1908. In that contest the Court held that in the guise of laying down a public policy, the amendment made cannot be introduce a new area of jurisdiction on the Registrar. Therefore, the Tamil Nadu Amendment Act introducing Section 22-A was held to be ultra virus of the Registration Act. But the point raised in the earlier writ petition is slightly different.

2. In the earlier writ petition this Court held that if the property belonged to the temple and the temple lands were sought to be taken away by a fraudulent registration with the connivance of the Registration Department certainly the Court cannot close its shut with eyes from taking away the property. Therefore, apart from the fact that Section 22-A cannot clothe power on the Registrar, this Court referred to Section 34(1) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959, wherein any transfer of temple or religious institution property exceeding 5 years shall be null and void unless it is sanctioned by the Commissioner who must have prior approval of the State Government. In a statutory declaration it some transactions are declared void the question of presenting a document, which is void, will not arise. In that contest this Court held that if the owner of the property has raised objection, then the Registrar cannot brush aside such an objection. In fact, it must be noted that the said judgment rendered subsequent to the order passed by this Court in *S. Rangarajan Vs. The District Registrar, The Sub-Registrar, Srirangam Sun Registrar's Officer and The Idol of Arulmighu Sri Ranganathar*, In that case of Arul Migu Sri Ranganatha Swami Temple was the owner and objections were raised by the Joint Commissioner cum Executive Officer regarding registering temple lands by the Registrar without its consent.

3. In that context this Court held that when a temple has able to satisfy that they are the real owners and were eligible to get pattas for the lands in question, the Court cannot give any direction to a statutory authority to perform a duty which will violate the provisions of the HR & CE Act. In such circumstances, this Court declined to issue a mandamus in favour of the Writ petitioners. The said matter was taken on appeal before the division bench and the division bench also confirmed the order passed by this Court. Therefore, there is no impediment for this Court to follow the earlier order passed which dealt with the registration of a temple land. The proposition of Section 34 and the objection of the temple were an additional point to be noted and the matter did not rest on any orders passed in terms of Section 22-A of the Registration Act.

4. The yet another fact is that the petitioners will have to answer. In the typed set produced by the petitioners, they had enclosed a certificate from the Zonal Deputy Tahsildar, Sankarankoil, Revenue Department showing that the land survey documents and the records disclosed that the land purchased, were

classified as Punja land.

5. In this contest a reference was also made to the Tamil Nadu Patta Pass Book, 1983 (Tamil Nadu 4/1986). Section 5 which is relevant to this case reads as follows:

5. Making of entries of registration of alienation or transfer in the patta pass book -

(1) No document relating to transfer of any land by sale, gift, mortgage, exchange, settlement or otherwise shall be registered by the registering authority, unless the patta pass book relating to such land is produced before such registering authority.

(2) No document referred to in sub section (1) shall be registered by the registering authority, unless the person liable to pay the registration fee also pays to the registering authority such fee as may be prescribed for making necessary entries relating to such transfer in the patta pass book. On the registration of such document and after making necessary entries in the patta pass book, the registering authority shall make a report of such registration and also send a certified extract of the said entries to the Tahsildar.

6. Therefore, though the Learned Counsel for the petitioners attempted to contend that there is no admission that the land which is to be registered as a temple land and assuming that the petitioners are able to succeed in demonstrating that it was not a temple land, then Section 5(1) of the Patta Pass Book Act is clearly against the Registrar from registering any document unless patta pass book relating to such land is produced before the registering authority.

7. Mr. T.S. Md. Mohideen, learned Additional Government Pleader states that even the vendor of the property is not having any patta. Then it is clear that the temple is the owner of the land.

8. Though the Learned Counsel for the petitioners states that in W.P. (MD)Nos.11706 and 11712 of 2008 the petitioners are a vendor were having a patta, but the sale deed as such has not been presented before the Registrar and therefore, the Writ petitions are filed on apprehension that such registration may be refused. In any event even assuming that there was a patta in favour of the vendors in W.P.(MD)Nos.11706 and 11712 of 2008 the other objections raised by this Court based upon Section 34 has to be dealt with by the Registrar. Hence, there is no distinction in between the parties writ petitions and the present Writ petitions. Law declared by this Court stands as it is.

9. The Learned Counsel for the petitioners placing reliance upon another order passed by this Court in W.P.(MD)No. 11248 of 2008 dated 05.12.2008 which was filed before the batch of writ petitions by the same counsel. In that case on the day of admission itself the Writ petition was disposed of after directing the Special Government to take notice. Curiously the Learned Counsel never referred to the previous orders passed by this Court in respect of the very same temple

and in respect of the very same issue. In any event, the matter has been disposed of at the admission stage. That cannot be taken to be as a precedent for this issue unless the issues raised here on contest between the parties. Therefore, under the said circumstances, there is no case made out to deviate from the earlier order passed by this Court. Hence, all the Writ petitions stand dismissed. No costs.