

HIGH COURT OF MADRAS
Bench: Justice G.R. Swaminathan
Date of Decision: 17th April 2024

W.P. (MD) No. 8319 of 2023

SHALIN ...PETITIONER

VERSUS

THE DISTRICT REGISTRAR, KARAIKUDI, SIVAGANGAI DISTRICT
THE SUB REGISTRAR, TIRUPPATHUR, SIVAGANGAI DISTRICT
...RESPONDENTS

Legislation:

Section 22-A of the Registration Act, 1908

Subject: Writ petition seeking quashing of refusal to register a sale deed and directing the Sub-Registrar to register the said deed.

Headnotes:

Registration of Property – Refusal to Register – Petitioner challenged the refusal of the second respondent to register a sale deed pertaining to the property purchased from Vijaya – Respondent's refusal based on a High Court interim order and subsequent circular prohibiting the registration of properties endowed to TELC without High Court permission – Court found the interim order and circular were no longer in effect following the withdrawal of the related writ petition [Paras 2-5].

Registration Act – Applicability of Section 22-A – Court examined whether Section 22-A of the Registration Act, 1908, could be invoked to sustain the impugned order – Held that Section 22-A, as it currently stands, does not extend to church properties – Provisions pertain specifically to properties belonging to the government, local authorities, and religious institutions covered under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, and the Wakf Act, 1995 – Church properties are not similarly protected under this section [Paras 6-7].

Decision: Writ petition allowed – Impugned order set aside – Petitioner permitted to re-present the document for registration – Respondent directed to register the document upon payment of requisite stamp duty and registration charges [Paras 8-9].

Referred Cases:

None

Representing Advocates:

Ms. A. Amala for the petitioner

Mrs. D. Farjana Ghoushia, Special Government Pleader for the respondents

ORDER

Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents.

2. The petitioner has purchased the petition mentioned property from one Vijaya vide sale deed dated 28.03.2023. It was presented for registration before the second respondent. The second respondent refused registration and issued the impugned refusal check slip. Challenging the same, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

4. The second respondent has filed counter affidavit and the learned Special Government Pleader took me through its contents. The stand of the respondents is that the Hon'ble Division Bench of the Madras High Court vide order dated 04.05.2017 made in W.M.P.No.12710 of 2017 in W.P.No.11679 of 2017 had given a direction that the properties endowed in favour of TELC should not be registered without getting permission from the High Court. Based on this direction, IG of Registration had also issued the circular Lr. No. 21379/C1/2017, dated 24.05.2017. The impugned refusal check slip is based on the aforesaid Court order and the circular issued by IG of Registration. The learned Special Government Pleader therefore submits that interference is not warranted. She called upon this Court to dismiss the writ petition.

5. I carefully considered the rival contentions and went through the materials on record. The circular issued by the IG of Registration on 24.05.2017 is based entirely on the interim order passed by the Hon'ble Division Bench on 04.05.2017. The learned counsel appearing for the petitioner draws my attention to the order dated 27.07.2017 in W.P.No.11679 of 2017. It is true that the writ petition was withdrawn by the learned counsel in view of the circular issued by the District Registrar (Guideline). Copy of the said circular reads as follows:-

“ Copy of the Hon'ble High Court Order in the reference cited is enclosed herewith. As per the Hon'ble High Court Order, it is hereby informed not to register any document in respect of the properties, belonging to or owned by the fourth respondent Church, without getting permission from the Hon'ble High Court”

The above circular was not a statutory direction issued by the IG of Registration. It is a mere communication by the District Registrar (Guideline) intimating all the Sub Registrars, District Registrars and the Deputy Inspector Generals of Registration about the interim order passed by the High Court. I fail to understand as to why the learned counsel for the petitioner therein withdrew the writ petition by citing the said circular. It is well settled that an interim order cannot have life beyond the termination of the main writ petition. In fact, the order dated 27.07.2017 disposing the main writ petition states that the connected miscellaneous petitions are also closed. W.M.P.No.12710 of 2017 is also mentioned in the said order. I therefore have to proceed on the footing that as on date, there is no restraint order issued by the Hon'ble High Court in respect of TELC properties in general.

6. The next question that calls for consideration is whether Section 22(A)(1) of the Registration Act, 1908 can be invoked to sustain the impugned order. Section 22-A (1) of the Registration Act, 1908 is as follows:-

“22-A. Refusal to register certain documents:-Notwithstanding anything contained in this Act, the registering officer shall refuse to register any of the following documents, namely:-

(1) instrument relating to the transfer of immovable properties by way of sale, gift, mortgage, exchange or lease,-

(i) belonging to the State Government or the local authority or Chennai Metropolitan Development Authority established under Section 9-A of the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972);

(ii) belonging to or given or endowed for the purpose of any religious institution to which the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959) is applicable;

(iii) donated for Bhoodan Yagna and vested in the Tamil Nadu State Bhoodan Yagna Board established under Section 3 of the Tamil Nadu Bhoodan Yagna Act, 1958 (Tamil Nadu Act XV of 1958) ; or

(iv) of Wakfs which are under the superintendence of the Tamil Nadu Wakf Board established under the Wakf Act, 1995 (Central Act 43 of 1995), unless a sanction in this regard issued by the competent authority as provided under the relevant Act or in the absence of any such authority, an authority so authorised by the State Government for this purpose, is produced before the registering officer;”

There are two aspects. One is the right to register a transaction. The other is the power to refuse registration. The provisions pertaining to the power to refuse registration must be strictly construed. Their scope and ambit should be confined to what the restrictive provisions specifically envisage and

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contemplate. Section 22-A and Section 22-B which were inserted by TN Act 28 of 2012 and TN Act 41 of 2022 respectively cannot be liberally or expansively interpreted. It is seen that in Section 22-A, only immovable properties belonging to, or given or endowed for the purpose of, any religious institution to which the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and Wakf properties under the superintendence of the Wakf Board are covered. Church properties have not been granted similar protection. I have personally come across quite a few cases wherein church properties have been illegally and unlawfully alienated. There is a popular saying in Tamil “rptd; nrhj;J Fyehrk;”. The belief is that misappropriating temple property will destroy the family of the person committing the act. When the Registration Act contains a provision to protect the properties endowed under Hindu and Islamic Laws, it is surprising that the church properties are not covered. The logical reason that one can give is that in the case of Hindu religious endowments and Wakf properties, there are specific legislations, in the case of church properties, a similar law appears to be absent. India is a secular country. It means that the State should approach all the religions alike. Probably the time has come to include the church properties also within the scope of Section 22-A of the Act. This is a call which future should take. As on date, Section 22-A is not applicable to transactions involving church properties. Looked at from any angle, I do not find any justification for the second respondent declining to register the document in question.

7. The learned counsel for the petitioner points out that the property is being purchased from one Vijaya who in turn got the property through deed of settlement dated 17.03.2017. The settlement deed was executed by one M.Premkumar Prithviraj in whose favour the sale deed was executed by TELC on 19.06.2015. Both the sale deed in favour of Premkumar Prithviraj and the settlement deed in favour of Vijaya are

registered documents. The revenue record has also been mutated. Patta standing in the name of Vijaya has been enclosed at Page No.37 of the typed set of papers.

8. In these circumstances, the impugned order has to be set aside. It is accordingly set aside. The petitioner is permitted to re-present the document before the second respondent. The second respondent shall entertain the same and register it and release it. The petitioner of-course has to pay the requisite stamp duty and registration charges.

9. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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G.R.SWAMINATHAN, J.

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