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C.R.P.(PD).No.3074 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:28.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.3074 of 2021
and CMP.Nos.21660 and 21662 of 2021

1.M.Gopi @ Gopinath
2.Dinesh Nathan
3.Ammu
4.Kalavani

... Petitioners

vs.

1.The Estate Officer,
Under the Tamil Nadu Premises
(Eviction of Unauthorised Occupants) Act,
1975 (TN Act of 1976),
Waqf House,
No.1, Jaffarsyrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 001.

2.M/s.Nawab Kathirunissa Begum Sahiba
Endowment and Hazarth Pappu Masthan Dargah Wakf,
Represented by its President/Muthavalli
Dr.G.S.M.P.Khaderi,
Having Office at 31, Big Street,
Triplicane, Chennai – 600 005.

... Respondents



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Prayer: Civil Revision Petition is filed under Section 227 of the Constitution of India, against the judgment and decree in CMA.No.8 of 2021, dated 02.09.2021 passed by the learned Principal Judge, City Civil Court, Chennai, by confirming the order dated 05.11.2020 passed by the 1st respondent in P.P.Case No.74/Che/2018.

For Petitioners	: Mr.G.Vigneshwar for M/s.M.Saranya
For Respondents	: Mr.Mohammed Fayas Ali for R1 M/s.L.Gavaskar Caveator for R2

ORDER

The Civil Revision Petition is filed challenging the order passed by the Principal Judge, City Civil Court, Chennai, in CMA.No.8 of 2021 confirming the order of eviction passed by the first respondent at the instance of the second respondent Waqf under provisions of Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975.

2. The second respondent Waqf filed a petition dated 20.12.2017 before the first respondent under the provisions of Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 (hereinafter called Tamil Nadu Act 1/1976) to evict the petitioners from the petition mentioned



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property. The second respondent is a waqf notified and registered with the Tamil Nadu Waqf Board and the registration is No.345. The case of the second respondent was that the petition mentioned property measuring about 400 sq.ft, situated at Door No.8, Pappu Masthan Dargah, 6th land, Lloyds Road, Triplicane, Chennai – 600 005, belonged to it and the petitioners herein had been in unauthorised occupation of the said property. After taking the petition filed by the second respondent into the file, the first respondent issued a notice on 10.12.2018 under Section 4 of the Act, calling upon the petitioners to show cause within 10 days from the date of receipt of the said notice as to why an order of eviction should not be passed. The petitioners failed to submit any reply, thereafter, the matter was adjourned on 09.01.2020 for personal enquiry. On 09.01.2020 it was informed that the petitioner's predecessor in interest Vijaya to whom earlier notice was issued had passed away and hence the notice was ordered to petitioners who are her legal heirs. On 12.03.2020, the counsel for the petitioners appeared and undertook to file vakalat and finally on 30.09.2020, the petitioners filed counter and sought time for filing documents and at his request the matter was adjourned to 13.10.2020. On 13.10.2020, there was no representation for the petitioners.



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Thereafter, the counsel for petitioners filed written arguments on 21.10.2020.

The first respondent came to the conclusion that the petition mentioned property belonged to second respondent waqf and petitioners were unauthorised occupants of the waqf property and passed an order of eviction. Aggrieved by the same, the petitioners preferred an appeal in CMA.No.8 of 2021 on the file of the Principal Judge, City Civil Court, Chennai. The said appeal was dismissed and hence the petitioners are before this Court.

3. The learned counsel appearing for the petitioners submitted that the petition mentioned property is not the property of the second respondent Waqf and revenue document stands in the name of one individual namely Janab Mohammed Fiaz Hussain, Muthawalli of the burial ground and hence the petition for eviction filed by the second respondent before the first respondent under Act 1 of 1976 was not maintainable. The learned counsel further submitted that when there is a dispute as to whether the property is a Waqf property or not, only the Waqf Tribunal will have jurisdiction to decide the issue and provisions of Public Premises Act cannot be invoked.



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4. In support of his contention, the learned counsel appearing for the petitioners relied on the following judgements of Hon'ble Apex Court:

(i) Rashid Wali Beg Vs Farid Pindari and others in Civil Appeal No.6336 of 2021;

(ii) Chief Engineer, Hydel Project and others Vs. Ravinder Nath and others reported in AIR 2008 SCC 1315.

5. The learned counsel appearing for the respondents submitted that there is no dispute with regard to the fact whether the petition mentioned property belonged to the second respondent Waqf and hence the eviction petition under Act 1 of 1976 is maintainable. The learned counsel by taking this Court to the scheme settled by this Court in C.S.Nos.47 and 148 of 1954, dated 01.05.1959 submitted that the second respondent waqf is governed by the scheme settled by the High Court and perusal of the same would indicate that the entire property in dispute in Re-Survey No.1055/2 belongs to the second respondent waqf.



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6. In order to invoke the provisions of Act 1 of 1976, the second respondent must satisfy two conditions:

(i) The property in question must belong to the second respondent waqf;

(ii) The person in occupation should be shown to be unauthorised occupant.

7. The petitioners herein disputed the right of the second respondent waqf over the petition mentioned property. It is the case of the petitioners that the property in question stands in the name of one individual namely Janab Mohammed Fiaz Hussain in revenue documents and therefore, it is not the waqf property belonged to the second respondent. A perusal of the scheme decree passed by this Court in C.S.Nos.47 and 148 of 1954, dated 01.05.1959 would indicate that the scheme was framed for administration of Nawab Khairunissa Begum Sahiba burial ground Trust and Pappu Masthan Dargha. The property of the waqf was described in the



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schedule to the scheme decree as property bearing old survey No.3327 and part of 3336 and Re-survey No.1055/2 measuring 5 Cawnies, 20 grounds and 1233 sq.ft.

8. It is the specific case of the petitioners that the above said property situated in Re-survey No.1055/2 does not belong to second respondent but it belongs to one Janab Mohammed Fiaz Hussain Muthawalli of burial ground. The Quit Rent-Permanent Land Register produced in the typed set of papers would indicate that the name of the owner was mentioned as Janab Mohammed Fiaz Hussain, Muthawalli of the burial ground. The survey number was mentioned as 1055/2. The description of the property was mentioned as burial ground house sites. This revenue document relied on by the petitioners to non-suit the second respondent has to be read along with scheme decree passed in C.S.Nos.47 and 148 of 1954. As mentioned earlier, scheme decree was passed for administration of Nawab Khairunissa Begum Sahiba burial ground Trust and Pappu Masthan Dargha. The property of the waqf was described as Re-survey No.1055/2 with an extent of 5 Cawnies, 20 grounds and 1233 sq.ft.



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9. A perusal of permanent land register produced by the petitioners would indicate that the name of Janab Mohammed Fiaz Hussain was mentioned only in his capacity as Muthawalli of burial ground but not in his individual capacity. When, he is described as Muthawalli of the burial ground, the property cannot be termed as his individual property. Such description clearly indicates that the property belongs to second respondent waqf, which is governed by the scheme framed by this Court.

10. Further, proforma report by the Chief Executive Officer of Tamil Nadu Waqf Board in respect of the second respondent waqf would indicate that the object of the waqf was providing for burial of poor Muslims. The property situated in Re-survey No.1055/2 was shown to be the property of second respondent waqf in the proforma report.

11. It is seen from the scheme decree passed by the High Court, the Nawab Khairunissa Begum Sahiba endowment and Pappu Masthan Dargha are two different waqfs clubbed together for administration by the



scheme decree passed by this Court. The first respondent as well as the Appellate Court by properly taking into consideration the scheme decree passed by this Court and also the proforma report, rightly came to the conclusion that the property in question belonged to second respondent waqf and the said conclusion is based on the evidence available on record and hence need not be interfered with.

12. The petitioners herein who are in occupation of the disputed property is unable to produce any document or evidence to show under what authority or under what right they have been occupying the said property. In the absence of any evidence to show the right of the petitioners to occupy the said property, they shall be presumed to be in unauthorised occupation of 2nd respondent waqf property and hence the second respondent is justified in invoking the provisions of Act 1 of 1976. In view of the documents produced by the second respondent to establish that the property in question belongs to waqf, there is no dispute with regard to the right of waqf over the property in question. In such circumstances, the contention made by the learned counsel for the petitioners that there is a dispute with regard to the question whether



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the property belongs to the second respondent waqf or not is not acceptable to this Court.

13. In view of the above discussions, I do not find any reason to interfere with the order passed by the Appellate Court confirming the order of eviction passed by the first respondent. Accordingly, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

28.03.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

The Principal Judge,
City Civil Court, Chennai.



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S.SOUNTHAR, J.

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