



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :18.08.2015

CORAM

THE HONOURABLE **MR. JUSTICE R. SUBBIAH**

W.P (MD) .No.5046 of 2015
and
M.P (MD) Nos.1 to 3 of 2015

K.M.Ahamed Jalal ... Petitioner

Vs.

1.The District Collector,
Ramanathapuram District,
Ramanathapuram.

2.The Executive Officer,
The Thondi Town Panchayat,
Thiruvadanai Taluk,
Rameswaram,
Ramanathapuram District.

... Respondents

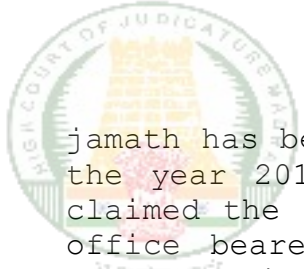
This Writ Petition has been filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records relating to the impugned order made by the second respondent by his proceedings in Na.Ka.No.60 of 2015, dated 06.02.2015 and quash the same as illegal.

For petitioner	: Mr.M.Mahaboob Athiff for M/s.Ajmal Associates
For R-1	: Mr.M.Murugan, Government Advocate
For R-2	: Mr.R.Anandaraj, Government Advocate

ORDER

This Writ Petition has been filed praying for a Writ of Certiorari calling for the records relating to the impugned order passed by the second respondent by his proceedings in Na.Ka.No.60 of 2015, dated 06.02.2015 and quash the same as illegal.

2. The case of the petitioner is that the petitioner is the President of South Street Muslim Jamath, Thondi, which is a notified Wakf under Section 6 of the Wakf Act, 1995. The said Wakf consists of a mosque and various properties belonging to the mosque. The Wakf has been registered under G.S.No.309 RMD with the Tamil Nadu Wakf Board and is administered by the Administrative body elected and approved by the Tamil Nadu Wakf Board. The Wakf has various properties including the landed property to an extent of 46 cents comprised in Survey Nos.83/5 and 83/6 at Thondi. The petitioner mosque is in possession and enjoyment of the said lands till today. In the land comprised in Survey No.83/5 belonging to the petitioner mosque, a fair price ration shop is being operated and the



jamath has been receiving rent from the said shop till date. While so, in the year 2013, the second respondent without any authority or material, claimed the land belonging to the Wakf in Survey No.83/5 stating that the office bearers of the Wakf had gifted the said land in favour of the panchayat in the year 1960. The claim of the panchayat was resisted by the petitioner stating that even assuming that the office bearers of the Wakf had gifted the said property to the panchayat, the same would be void by operation of Section 51 of the Act of 1995. While the matter stood thus, the petitioner Wakf had put up construction in Survey No.83/6. Hence, they have made application to the second respondent seeking planning permission to an extent of 176.21 sq. mts. The second respondent has also by his proceedings, dated 17.01.2014 granted planning permission. In consonance with the planning permission accorded, the petitioner Wakf had started construction. When the construction is in progress, the second respondent issued the impugned proceedings inter alia stating that in the inspection conducted by the panchayat, they came to know that the lands in Survey No.83/5 belongs to the panchayat and that until the dispute is resolved, the petitioner Wakf should not effect any construction in the land in Survey No.83/6 and in default, the planning permission granted on 17.01.2014 would be cancelled and thus, directed the petitioner to stop the construction. Challenging the said order, the present Writ Petition has been filed.

3. The second respondent has filed a counter affidavit inter alia stating that the petitioner jamath kept silent for more than 30 years after transferring the property to panchayat and the same is put to public use by way of Radio Station and thus they have waived their right, easement and other civil rights over the said property which accrued to the public. Hence the issue can be agitated only before the appropriate civil Court. Now the petitioner has sought for permission to build a shopping complex in Survey Nos.83/5 and 83/6 and the same has been accorded by the proceedings, dated 17.01.2014 on a bonafide impression that the petitioner has submitted all the documents in a proper manner without any suppression of material facts. But, later it was found that permission was granted to build a shopping complex including the land in Survey No.83/5, which form part of the land that has been gifted by the office bearers of the petitioner jamath to the panchayat in the year 1960. Since vide proceedings dated 06.02.2015 the petitioner was ordered to stop further construction of the building until the survey of land being conducted to ascertain whether the land was gifted to the panchayat by the registered deed, dated 30.06.1960. Further it has been stated in the counter affidavit that the property in Survey No.83/5 was gifted by the petitioner Wakf on 30.06.1960 to the panchayat and the same has been put to public use for the past 30 years. The petitioner has not filed any iota of proof to show that the above said land has been in their possession. Further the petitioner has not questioned the public use of the property in Survey No.83/5 for the past thirty years. Thus, the second respondent prayed for dismissal of the Writ Petition.

4. The learned counsel for the petitioner submitted that the Wakf has various properties including the landed properties comprised in Survey No.83/5 and 83/6. But the second respondent is claiming right over the property in Survey No.83/5 stating that the petitioner Wakf



has gifted the said property situated in Survey No.83/5 in the year 1960 itself. He further submitted that even assuming that the office bearers of the petitioner Wakf has gifted the said property to the second respondent panchayat in the year 1960, the same is void by operation of Section 51 of the Wakf Act. In fact, the said property in Survey No.83/5 is only in possession of the Wakf and a portion of the said property is also let out to fair price shop by the Wakf and the petitioner jamath is receiving rent from the said shop and hence, the impugned is liable to be set aside.

5. It is the reply of the learned counsel for the second respondent that the property situated in Survey No.83/5 belongs to the panchayat, because the said property was gifted to the panchayat in the year 1960. He further submitted that the Section 51 Wakf Act came to effect only in the year 1995 whereas the property was gifted to the panchayat as early as in the year 1960. Therefore, Section 51 of the Wakf Act, will not apply to the property gifted by the Wakf and therefore, he prayed for dismissal of this Writ Petition.

6. Heard the learned counsel for the petitioner and the learned Government Advocates for the respondents.

7. From the above submissions made on either side, it could be seen that the dispute between the petitioner and the second respondent panchayat is only in respect of Survey No.83/5 and both of them are claiming right over the property situated in Survey No.83/5. Therefore, the said issue cannot be decided in this Writ Petition with regard to the right over the property situated in Survey No.83/5. Both the parties have to seek their remedy only before the civil Court by instituting appropriate proceedings.

8. Though series of disputes were raised with regard to the right over the property situated in Survey No.83/5, the core issue involved in this Writ Petition is as to whether the petitioner jamath is entitled to put up construction in the adjacent survey No.83/6 which was not admittedly gifted to the panchayat. Now, according to the panchayat though permission was granted to the petitioner jamath to put up construction in Survey No.83/6, now the petitioner is making attempt to put up construction in Survey No.83/5, which was gifted to the panchayat. The same is denied by the petitioner stating that the petitioner is putting up construction only in respect of Survey No.83/6 in respect of which, there is no dispute between the parties.

9. Therefore, by considering the submissions made on either side, this Court is of the view that it would be appropriate to conduct a survey of the land to ascertain whether the petitioner is putting up construction only in respect of Survey No.83/6 or inclusive of Survey No.83/5 in respect of which there is a dispute between the parties. After conducting such survey, the petitioner can be permitted by the second respondent to proceed with the construction in accordance with law.

10. In view of the above, the Writ Petition is allowed and the impugned order of the second respondent, dated 06.02.2015, is hereby set aside. No Costs. The second respondent is directed to conduct a survey



of land and based on such survey, the second respondent can pass an appropriate order in accordance with law permitting the petitioner to put up construction in respect of Survey No.83/6 alone excluding Survey No.83/5. So far as Survey No.83/5 is concerned, the parties can seek their remedy by approaching the civil Court. The entire exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The District Collector,
Ramanathapuram District,
Ramanathapuram.

2.The Executive Officer,
The Thondi Town Panchayat,
Thiruvadanai Taluk,
Rameswaram,
Ramanathapuram District.

+1cc to M/S.R.Anandaraj, Advocate in SR.No 47662

+1cc to M/S.Ajmal Associates, Advocate in SR.No 47733

+1cc to Special Government Pleader in SR.No. 47792.

TS/02.09.2015/4P - 6C SKS-RR/SAR

W.P(MD) .No.5046 of 2015

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