

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2016

CORAM

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.No.290 of 2011

and M.P.Nos.1 & 2 of 2011

Surya Begum

.. Petitioner

Vs

1.The Tamil Nadu Wakf Board,
Rep. By its Chairman,
No.1, Jaffar Siran Street,
'Vallal Seethakathi Nagar',
Chennai 600 001.

2.The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, jaffar Srang Street,
'Vallal Seethakathi Nagar',
Chennai 600 001.

3. Masjid - Al - Haromine Wakf Board,
Employees' Colony Mosque,
rep.by its President,
'Vallal Yousuf Nagar',
Rajakilpakkam, Selaiyur,
Chennai 600 073.

.. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari calling for the records of the second respondent - proceedings dated 26.11.2010 bearing Rc.No.9512/C2/10/KPM and to quash the same.

For Petitioner : Mr.A.Prabhakaran
For R1 : No Appearance
For R2 and R3 : Mr.V.Raghavachari

O R D E R

The Wakf land bearing Plot No.75, comprised in S.No.39/1, Rajakilpakkam, Tambaram Taluk, Kancheepuram District, was originally leased out to one Abdul Rasheed in his capacity of an employee of the Wakf Board. The said Abdul Rasheed had sub-leased the said plot to the petitioner for a period of 91 years. By an order dated 26.05.2010 passed under Section 54 (3) of the

Wakf Act 1995, the petitioner has been treated as an encroacher in the subject land and was directed to remove the encroachment and hand over the possession of the land to the President of the said Wakf Board. Challenging the said order, the petitioner is before this Court.

2. Heard Mr.A.Prabhakaran, learned counsel appearing for the petitioner and Mr.V.Raghavachari, learned counsel appearing for the second and third respondents.

3. Admittedly, the petitioner is a sub-lessee under the original lessee namely, Abdul Rasheed. The substantial issue to be determined in this writ petition is as to whether the sub-lease of the Wakf land is permissible or not.

4. The learned counsel for the petitioner would submit that the Wakf Board having allotted the plot to the employee for the lease period of 99 years, has no jurisdiction to cancel the lease on the ground that the same has been sub-leased to the petitioner's name in the absence of any recital in the Lease Deed.

5. Controverting the same, the learned counsel for the respondent would submit that there is no provision under the Wakf Act for sub leasing the Wakf lands and no permission was granted to the lessee under the lease agreement entered into with the original lessee for sub-leasing the plot and hence, the present sub-lease in favour of the petitioner is illegal and consequently, the petitioner has to be treated as an encroacher. The learned counsel for the respondent would also submit that the procedure contemplated under Section 54 of the Wakf Act has been followed before passing the impugned order and therefore, the petitioner, who is deemed to be an encroacher, is liable to be evicted from the subject land.

6. As rightly pointed out by learned counsel for the respondents, the original Lease Deed dated 26.03.1986 does not empower the Lessee from entering into a sub-lease. Further, there is no provision under the Wakf Act for sub-leasing the land belonging to the Wakf Board. In the absence of any agreement or provision in the Act, any sub-lease entered into between the parties contrary to the same, no doubt, amounts to encroachment. The respondent had issued a notice under Section 54(1) of the Wakf Act and on consideration of the objections raised by the petitioner, has now passed the impugned order under Section 54(3) of the Wakf Act. Hence, there is no infirmity in the procedure adopted by the respondent while passing the impugned order. As such, there is no merit in the present writ petition and the writ petition is liable to be dismissed.

7. Accordingly, the writ petition is dismissed. No costs. Consequently connected miscellaneous petitions are also closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

kkd

To

- 1.The Chairman,
Tamil Nadu Wakf Board,
No.1, Jaffa Sirang Street,
' Vallal Seethakathi Nagar,
Chennai 600 001.
- 2.The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, jaffar Sirang Street,
' Vallal Seethakathi Nagar,
Chennai 600 001.
- 3.The President,
Masjid - Al - Haromine Wakf Board,
Employees' Colony Mosque,
' Vallal Yousuf Nagar',
Rajakilpakkam, Selaiyur,
Chennai 600 073.

+1 cc to Mr.V.Raghavachari Advocate sr 69492
+1 cc to Mr.P.Haribabu Advocate sr 69531

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