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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.12.2016

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.15509 of 2014

and

M.P(MD)No.1 of 2014

Hazarath Eakrar Shah Avulia Dargah,
No.47, Mandhagadi Street,
Kumbakonam,
Through its Muthawalli (Trustee),
K.Maqbul Sheriff (Aged 49 years)

... Petitioner

vs.

1)The Commissioner,
Kumbakonam Municipality,
Kumbakonam.

2)The Wakf Board,
Through its Chief Executive Officer,
No.1, Jaffar Syrang Street,
Valal Sethakathi Nagar,
Chennai-1.

3)V.Subramani

4)S.Vijaya

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the 1st respondent to implement the order in Na.Ka.No.7863/2011/D3, dated 07.05.2012 with the cooperation of the above 2nd respondent.

For Petitioner	: Mr.B.N.Raja Mohamed
For R1	: Mr.M.Rajaraman, Government Advocate
For R2	: Mr.K.K.Senthil
For R3 & R4	: Mr.B.Jameel Arasu

O R D E R

[Order of the Court was made by **R.SUBBIAH, J.**]

The prayer in the writ petition is for issuance of a Writ of Mandamus, directing the 1st respondent to implement the order in Na.Ka.No.7863/2011/D3, dated 07.05.2012 with the co-operation of the 2nd respondent.



2.The petitioner is the Muthavalli of Hazarath Eakrar Shah Avilia Dargah, Kumbakonam, situated to an extent of 44368 sq.ft comprised in S.Nos.618 to 626, within which a Mosque exists wherein, regular prayers are conducted. As per the notifications issued in Fort St.George Gazette dated 24.12.1958, the above property is a wakf property. While so, the respondents 3 and 4 encroached an extent of 583 sq.ft in Survey Nos.618 and 619 and made an unauthorised construction by building a dwelling unit in violation of Section 192 of the Tamil Nadu District Municipalities Act, 1920 and also committed encroachment of the wakf property.

3.It is further submitted that in fact, the 1st respondent passed an order dated 07.05.2012, restraining the respondents 3 and 4 from proceeding with the construction in the abovesaid site. In the concluding portion of the order dated 07.05.2012, it has been stated that final order would be passed as per Section 216(1) and (2) of the Tamil Nadu District Municipalities Act, 1920.

4.Learned counsel for the respondents 3 and 4 submitted that in fact, the construction was over long back and that the respondents 3 and 4 were only doing the renovation work. Therefore, if the petitioner is aggrieved, he has to work out the remedy by filing Wakf O.P before the Wakf Tribunal.

5.By the order dated 07.05.2012, the 1st respondent gave a direction to the respondents 3 and 4 not to proceed with any construction. However, it is submitted by the counsel for the respondents 3 and 4 that construction was already over.

6.Be that as it may, this Court cannot conduct any roving enquiry on these factual aspects. Hence, this Court is not inclined to render any finding in this regard. However, we find from the order dated 07.05.2012, that the 1st respondent has not passed the final order as per Section 216(1) and (2) of the Tamil Nadu District Municipalities Act, 1920. We are of the opinion that it would be appropriate to direct the 1st respondent to pass final order within a specified time.

7.Accordingly, the 1st respondent is directed to pass final order as per Section 216(1) and (2) of the Tamil Nadu District Municipalities Act, 1920, within a period of four weeks from the date of receipt of a copy of this order.

8.With the above direction, this Writ Petition stands disposed of. No costs. Consequently, M.P(MD)No.1 of 2014 is closed.

Sd/-

Assistant Registrar(RTI)



To

The Commissioner,
Kumbakonam Municipality,
Kumbakonam.

+1cc to Mr.B.N.Raja Mohamed, Advocate in SR No.81688
+1cc to Mr.M.Rajarajan, Advocate in SR No.81710
+1cc to Mr.Jameel Arasu, Advocate in SR No.82029
+1cc to Mr.K.K.Senthil, Advocate in SR No.81816

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19.12.2016

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