

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(NPD) NOS.1807 AND 1808 OF 2017
AND
CMP NO.8607 OF 2017

Syed Abrar Ahmed
Rep. by its Power Agent
Syed Naveed Ahmad

... Petitioner
in both CRPs'

Vs.

1.S.Syed Mohideen

2.The Estate Officer
Tamil Nadu Wakf Board
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai - 600 002.

3.The Secretary
Managing Committee of
Barafath Charities & Sheikh
Dawood Meelad Wakf
17/18, Adipattan Street,
Mount Road, Chennai - 600 002.

... Respondent Nos.1 to 3
in both CRPs'

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India against the judgment and decree passed by the learned Principal Judge, City Civil Court, Chennai, in C.M.A.No.130 of 2013 and C.M.P.No.131 of 2017 in C.M.A.No.130 of 2013 respectively, dated 06.03.2017.

For Petitioner : Mr.A.Haja Mohideen
For Respondents
1 and 2 : Mr.R.Lakshminarayanan
For Respondent 3 : Mr.N.A.Nissar Ahmed

COMMON ORDER

Aggrieved over by the order passed by the Estate Officer under the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975, in Case No.PP/7/Chen/2013 dated 25.09.2013 and the order dated 06.03.2017 passed in CMA No.130 of 2013 and CMP No.131 of 2017 in CMA No.130 of 2013 respectively, on the file of Principal Judge, City Civil Court, Chennai, the petitioner / appellant prefers the above Civil Revision Petitions.

2. The revision petitioner is a tenant under the first respondent. The petitioner is in occupation of the property measuring 1350 sq.ft at Door No.13, Triplicane High Road, Chennai - 600 005. By way of notice dated 10.11.2008, the second respondent has requested the petitioner to pay rent by way of demand draft at the rate of Rs.13,500/- per month with effect from 01.05.2008. This was followed by several notices from the first and third respondents demanding arrears of rent, in default, initiation of further action under Wakf Act

1995 and Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975. Finally, on 10.05.2013, in Case No. PP/7/CHE/2013, show cause notice under Section 4 of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 was issued by the second respondent.

3. Before the second respondent, the revision petitioner has filed a counter affidavit and contested the case. It was stated therein that the rent was fixed at Rs.4,500/- per month and corresponding expenses at the rate of Rs.6,000/- per annum for conducting yearly fathiyas.

4. After considering the contention of the parties, the Estate Officer has passed an order of eviction. Against which, the revision petitioner has preferred an appeal in CMA No.130 of 2013. Further, for deposit of rent, the revision petitioner has preferred CMP No.131 of 2017 in CMA No.130 of 2013.

5. The revision petitioner in his appeal has stated that sudden increase in rentals from Rs.1,500/- to Rs.13,500/- is totally

against the objectives and interest of the Trust. The revision petitioner has also consented to pay a sum of Rs.4,500/- as monthly rent as against Rs.13,500/- per month fixed by the Wakf Board. Further, the Estate Officer has failed to consider the taxes and charges paid to the authorities to the tune of Rs.1,37,375/- and for conducting yearly fathiyas. Without adjusting the said amount, the Estate Officer has erroneously passed the order.

6. The revision petitioner has also raised a ground that the Estate Officer has no authority to initiate proceedings against the premises belonging to the Wakfs and on the other hand, empowered to initiate proceedings only against the properties belonging to the Wakf Board.

7. The learned Principal Judge has considered all these issues along with CMP No.131 of 2017, wherein the revision petitioner sought permission to pay monthly rent at the rate of Rs.175/- per month from May 2008 to December 2016 in five equal installments, along with the present monthly rent fixed by the Estate Officer with effect from January 2017.

8. After considering all these issues, the learned Principal Judge has come to the conclusion that the revision petitioner / appellant was a chronic defaulter from 2008 onwards and has failed to pay the rentals in spite of repeated notices for several years. Such failure by itself determines the tenancy and even after issuing notice under Section 4(1) of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975, the revision petitioner / appellant has not paid rent, but sought permission to pay rent at the rate of Rs.175/- by itself shows that the revision petitioner lacks *bonafides* and therefore, the eviction order passed by the Estate Officer was confirmed, by dismissing the appeal preferred by the revision petition. Further, the revision petitioner / appellant was directed to vacate the property and hand over vacant possession to the first respondent, within a period of two months.

9. Aggrieved over the order dated 06.03.2017 passed in CMA No.130 of 2013 and CMP No.131 of 2017 in CMA No.130 of 2013 respectively, by the learned Principal Judge, City Civil Court, Chennai, the present Civil Revision Petitions are filed on various grounds.

10. The main grounds of attack made by the revision petitioner is that the eviction notice issued by the respondents is not in accordance with Section 4 of the Tami Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975. Secondly, as per Section 2(e) and 2(g) of the Act, the property belongs to a private party and the petitioner was not an unauthorized occupant. The change in the management of the subject Wakf was not properly notified. The demand of rent at the rate of Rs.13,500/- per month was not fixed in the manner known to law and the demand is exorbitant. The other ground was that the respondents ought not to have initiated separate proceedings under Section 55 of the Wakf Act for enforcing eviction order under Section 54 of the Wakf Act and in the absence of valid service of notice, suit for ejectment itself is not maintainable.

11. Both C.M.A.No.130 of 2013 and C.M.P.No.131 of 2017 in C.M.A.No.130 of 2013 were disposed of by a common order and that there are two Civil Revision Petitions on the same grounds, both the matters were heard together and disposed of by a common order.

12. The contention of the revision petitioner that he was not an unauthorized occupant, does not hold good.

13. Section 2(e) of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975, reads as under:

(e) "public premises" means any premises belonging to or taken on lease or requisitioned by, or on behalf of, the Government, and includes-

(1) any premises belonging to, or taken on lease by, or on behalf of-

(i) any company as defined in section 3 of the Companies Act, 1956 (Central Act 1 of 1956) in which not less than fifty-one per cent of the paid up share capital is held by the Government ; and

(ii) any corporation [not being a company as defined in section 3 of the Companies Act, 1956 (Central Act 1 of 1956) or a local authority] established by or under any law and owned or controlled by the Government ; and

(2) any premises belonging to, or vested in, a local

authority or any Board constituted under any law ;

(f) " rent " in relation to any public premises means the consideration payable periodically for the authorised occupation of the premises, and includes-

(i) any charge for electricity, water or any other services in connection with the occupation of the premises ;

(ii) any tax (by whatever name called) payable in respect of the premises, where such charge or tax is payable by the Government or the corporate authority ; "

Further, the statute clearly provided that any premises belonging to a Wakf registered under the Tamil Nadu Wakf Board will become a public institution and as per the Act, the respondents have power to initiate action under Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975.

14. In so far as Section 2(g) of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975, is concerned, it is defined as under:

"(g) "unauthorized occupation", in relation to any public premises, means the occupation by any person of the

public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."

Therefore, the action taken by the respondents under the Wakf Act, 1995, as well as the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975, is sustainable in law.

15. The next contention raised by the revision petitioner is that notice under Section 4 of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975, was not issued to him.

16. But contradicting the statements, learned counsel appearing for the respondents 1 and 3 would show that a notice under Section 4 of the Act was issued on 10.05.2013. The notice was served on the petitioner through registered post with acknowledgment due. After receipt of the notice, a counter affidavit was filed on 30.07.2013. Therefore, it is clearly proved by the respondents that the statutory requirement of serving notice under Section 4 of the Act is complied

with and a reading of the notice dated 10.05.2013 by itself clearly shows that the respondents have complied with all the statutory requirements. Therefore, the grounds raised by the petitioner is not sustainable on this aspect also.

17. The revision petitioner has raised an issue that the demand notice dated 23.01.2015 was issued by the Corporation of Chennai in the name of an individual namely, Ethishamuddin. Therefore, the property does not belong to Wakf Board and the respondents have no authority to fix and demand rent from the petitioner.

18. However, the proforma report filed by the petitioner in his additional typed set would show the name of the Wakf as "Barafath Charity (Sunni) 14, Burgava Naicken Street, Madras - 2". The name of Muthavalli was shown as M.Fhtishaminuddin, 14, Bangaru Naick Street, Sri Abdullah and Sri Mohammed Ali. Further, the said proforma report was attached with the proceedings of the Chief Executive Officer of Tamil Nadu Wakf Board, Chennai-1, dated 21.02.2017. In the proceedings of the Chief Executive Officer dated 21.02.2017, life of the

Adhoc Committee was extended for a period of one year. Therefore, the contention of the revision petitioner that he was not notified about the change in Management as well as the property belongs to a private agency, does not hold water and accordingly, is rejected.

19. Consequently, the statement that there is no agreement with the Wakf Board and the rent is not determined in accordance with law also does not hold water, since in his own counter affidavit, it is stated that he would request to renew the lease agreement in his favour and to fix a sum of Rs.4,500/- as monthly rent. The very statement that "to renew the lease agreement" by itself shows that there was an lease agreement. The contention that there was no lease agreement will still worsen the case of the revision petitioner as he was treated as an unauthorized occupant and is continuing without any right. Therefore, the contention that the decision is not binding on the petitioner and the authority of the respondents in fixing the rentals are not validly countenanced by the petitioner and therefore, this Court is not inclined to accept the contention on this aspect. If the petitioner contends that there is no lease agreement, he will straight away fall within the ambit of Section 2(g) of the Act and he shall be branded as unauthorized

occupant only.

20. The petitioner has filed C.M.P.No.131 of 2017 in C.M.A.No.130 of 2013 for payment of rent at the rate of Rs.175/- per month with effect from 2008 to 2016 and to pay the enhanced rent from January 2017. The very petition itself clearly shows that the petitioner is not *bonafide* in making such statements. In the counter affidavit, he has come out with a proposal to fix the monthly rent at the rate of Rs.4,500/-. Contrary to his own stand, he would come forward with a proposal to pay rent at the rate of Rs.175/- per month for the period between 2008 and 2016. Such statement does not show that the petitioner is acting with a *bonafide* motive and he has a genuine case.

21. Furthermore, the petitioner has been successfully dragging on the proceedings from 2008 onwards, in spite of receiving repeated notices under the provisions of the Wakf Act as well as the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975, for the past almost ten years. Therefore also, the act of the petitioner shall be construed not only lacking *bonafides*, but also *malafide*. Further, from his own counter, the petitioner has accepted to pay Rs.13,500/- as monthly rent. The property is situated on a very busy

commercial locality in Triplicane and the extent of the property is 1350 sq.ft. Therefore, the contention that the enhancement of rent is too high and exorbitant, cannot be accepted, as contended by the petitioner. Therefore, on all grounds, the contentions of the petitioner does not merit any consideration.

22. Finally, the petitioner would pray that six months time may be granted for vacating the premises and handing over vacant possession and undertook to file an affidavit to this effect on 07.07.2017. The request made by the petitioner is considered and accordingly, the petitioner is granted six months time viz., till 06.01.2018, for vacating the premises. The affidavit to be filed will form part of the record.

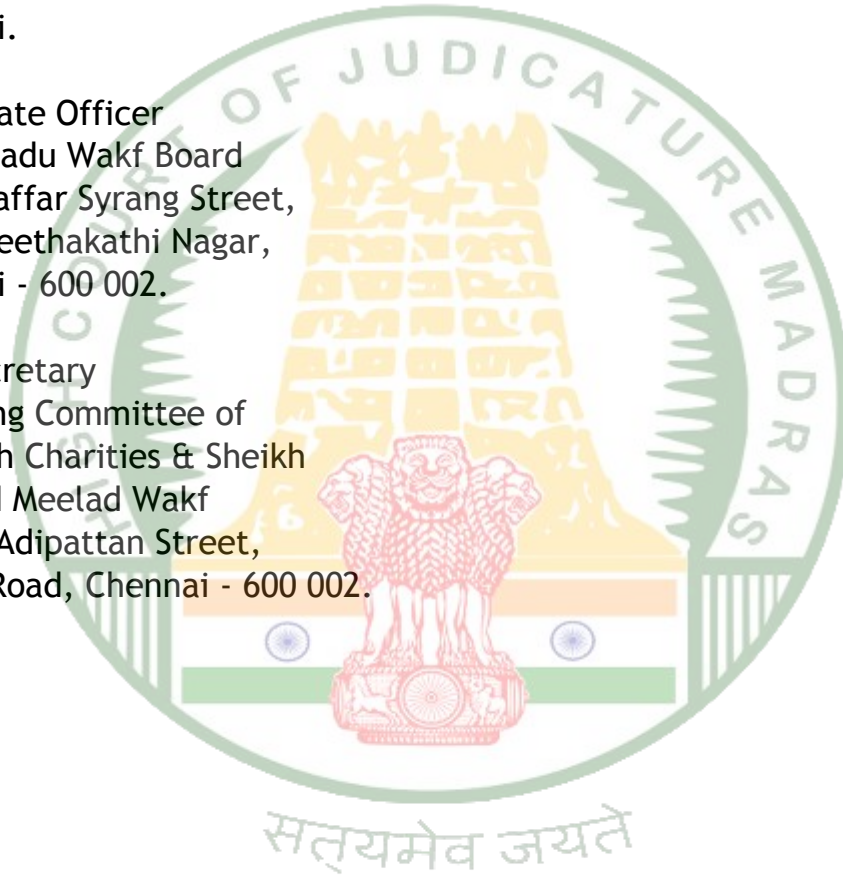
23. With the above observations and directions, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

05.07.2017

Index : Yes/No
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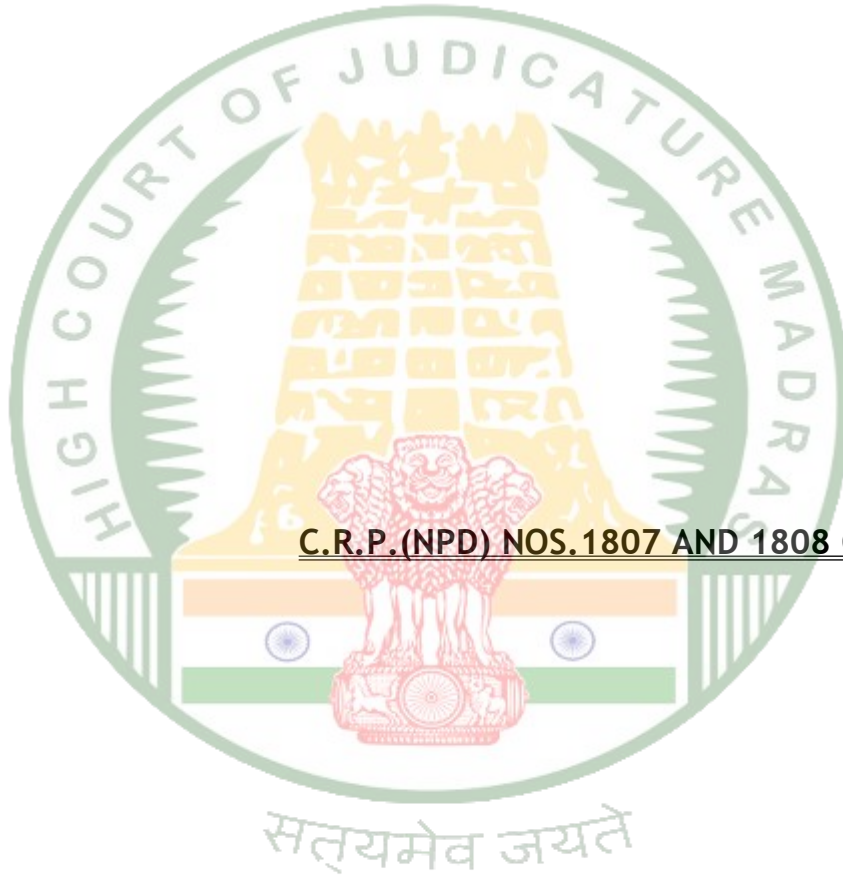
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M.GOVINDARAJ, J.

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