

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.3206, 3207 and 3260 of 2014
and M.P.Nos.1,1,1 of 2014

Alaudeen

.. Petitioner in
C.R.P.No.3206 of 2014

1.Abdul Ghafoor
2.Thanigaivel

.. Petitioners in
C.R.P.No.3207 of 2014

Mohammed Mohideen

.. Petitioner in
C.R.P.No.3260 of 2014

Vs.

1.The Chairman
Tamil Nadu Wakf Board
No.1 Jaffer Syrang street
Vallalar nagar
Chennai-1.

2.The Estate Officer
Tamil Nadu Wakf Board
No.1 Jaffer syrang street
Vallalar nagar
Chennai-1.

3.Shahjehan

.. Respondents
in all the three CRPs.

PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the judgment and decree dated 22.04.2014 made in C.M.A.Nos.16, 17 and 15 of 2013 on the file of the Principal District Court, Villupuram, confirming the order dated 25.09.2013 made in Case Nos.PP/15/VPM/2012, PP/16/VPM/2012 and PP/14/VPM/2012 on the file of the Estate Officer, Tamil Nadu Wakf Board, Chennai.

For Petitioners : Mr.V.Balasubramanian for
Mr.M.Mohammed Rafi

For R2 : Mr.V.Lakshminarayanan

For R3 : Mr.N.A.Nissar Ahmed

COMMON ORDER

सत्यमेव जयते

The Civil Revision Petitions are filed against the judgment and decree dated 22.04.2014 made in C.M.A.Nos.16, 17 and 15 of 2013 on the file of the Principal District Court, Villupuram, confirming the order dated 25.09.2013 made in Case Nos.PP/15/VPM/2012, PP/16/VPM/2012 and PP/14/VPM/2012 on the file of the Estate Officer, Tamil Nadu Wakf Board, Chennai.

2. In all the three Civil Revision Petitions, the issues are one and the same and hence, they are disposed of by this common order.

3. The petitioners in all the three Civil Revision Petitions are tenants in respect of public premises of the property belonging to the Haji Mansoor Shah Dargah and Mosque and they did not pay the rent. Third respondent, who is Muthavalli of the said Wakf issued notices to the petitioners in C.R.P.Nos.3206 and 3207 of 2014 on 23.01.2012, 25.05.2012 and 20.06.2012 and issued notices to the petitioner in C.R.P.No.3260 of 2014 on 23.01.2012, 22.05.2012 and 20.06.2012 and terminated the lease in favour of the petitioners. The petitioners sent reply dated 01.02.2012, 02.06.2012 and 27.06.2012 stating that the third respondent was not properly elected as Muthavalli and O.S.No.189 of 2011 filed by the petitioner in C.R.P.No.3260 of 2014 is pending before the Wakf Tribunal with regard to election of third respondent.

4. The third respondent gave complaint to the second respondent for eviction of the petitioners. The second respondent issued show cause notices dated 10.12.2012 to the petitioners under Section 4 of the Tamil Nadu Public Premises (Eviction of unauthorised occupants) Act, 1975, as to why an order of eviction should not be made against them. The petitioners sent reply dated 22.12.2012 and 26.12.2012 raising very same plea taken in the earlier reply sent by them to the third respondent. In addition to that the petitioners have taken a plea that one Janab M.K.Shakul Hameed, who is a care taker up to May 2010 was collecting the rent, issued receipts and subsequently, he refused to receive the rent from the petitioners. Money orders sent by the petitioners to the said M.K.Shakul Hameed also were returned, as he refused to receive the same.

5. The petitioners and other tenants formed an association in the name and style of "Bhagarshah street Haaji Mansoorshah Avuliya Pallivasal" and are paying monthly rent into bank account of the said association. The petitioners have not committed any default and they are willing to pay the rent fixed by the first respondent.

6. The Estate Officer/second respondent by order dated 25.09.2013 considering the complaint given by the third respondent, reply by the petitioners and Section 2(e) of Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975, held that the properties occupied by the petitioners are Wakf properties and covered provisions of the Public Premises Act. The Estate Officer/second respondent also held that the lease in favour of the petitioners had been terminated and they are unauthorised occupants, ordered eviction and directed the petitioners to vacate the premises within 15 days from the date of that order.

7. Against the said order dated 25.09.2013 made in Case Nos.PP/15/VPM/2012, PP/16/VPM/2012 and PP/14/VPM/2012 on the file of the Estate Officer, Tamil Nadu Wakf Board, Chennai, the petitioners filed C.M.A.Nos.16, 17 and 15 of 2013 on the file of the Principal District Court, Villupuram.

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8. Before the learned Appellate Authority, the petitioners have taken a stand that the third respondent is not a Muthavalli. The suit is pending with regard to the third respondent's election as Muthavalli. Notice under Section 106 of the Transfer of Property Act was not issued to the petitioners terminating the tenancy. The Estate Officer has no jurisdiction to entertain and decide the issue.

9. The learned Appellate Authority/Principal District Judge, Villupuram, considering all the materials on record, order of Estate Officer and judgment relied on by the parties, dismissed all the three appeals confirming the order of Estate Officer dated 25.09.2013 made in Case Nos.PP/15/VPM/2012, PP/16/VPM/2012 and PP/14/VPM/2012.

10. Against the said judgment and decree dated 22.04.2014 made in C.M.A.Nos.16, 17 and 15 of 2013 on the file of the Principal District Court, Villupuram, confirming the order dated 25.09.2013 made in Case Nos.PP/15/VPM/2012, PP/16/VPM/2012 and PP/14/VPM/2012 on the file of the Estate Officer, Tamil Nadu Wakf Board, Chennai, the present three Civil Revision petitions are filed by the petitioners/tenants.

11. The learned counsel for the petitioners reiterated the averments raised in the notices, contentions raised in the grounds of appeals and the present revisions.

12. The learned counsel for the petitioners contended that amendment to include the Wakf property in the Tamil Nadu Public Premises and eviction of unauthorised occupants is discriminatory and violative of rights guaranteed under the Constitution of India, particularly under Article 14 of the Constitution of India.

13. Heard the learned counsel for the petitioners as well as the learned counsel for the respondents 2 and 3 and perused the materials available on record.

14. The petitioners are admittedly tenants occupying the property belonging to the Haji Mansoor Shah Dargah and Mosque. They did not accept the third respondent as Muthavalli and according to them, he is not a Muthavalli of the said Wakf entitled to take action for evicting the petitioners from the Wakf properties. According to the petitioners, the suit in O.S.No.189 of 2011 filed by the petitioner in C.R.P.No.3260 of 2014 challenging the election of third respondent as Muthavalli, is pending.

15. From the records, it is seen that the first respondent has approved the third respondent as Muthavalli of Haji Mansoor Shah Dargah and Mosque along with the committee for administration of the above Wakf from 11.03.2011 to 10.03.2014, by the proceedings dated 02.06.2011 in Rc.No.3809/05/VPM/B4. In view of such approval, the contention of the learned counsel for the petitioners that the third respondent is not Muthavalli of Haji Mansoor Shah Dargah and Mosque, is without merits.

16. As far as terminating tenancy is concerned, the third respondent has issued notices dated 23.01.2012 and 25.05.2012 terminating tenancy of petitioners. In addition to the same, third respondent issued notices to the petitioners through advocate of Wakf dated 20.06.2012. The petitioners sent reply dated 27.06.2012 through their advocate. This clearly shows that tenancy of the petitioners were terminated by above letters and notices. Further on the complaint given by the third respondent, Estate Officer/second respondent has issued show cause notices dated 10.12.2012 under Section 4 of the Tamil Nadu Public Premises (Eviction of unauthorised occupants) Act, 1975, calling upon the petitioners to show cause as to why they should not be vacated

from the petition premises on the ground that they are unauthorised occupants. All these letters and notices would clearly reveal that tenancy of the petitioners was duly terminated as per law.

17. The contention of the petitioners that the Estate Officer/second respondent has no jurisdiction to entertain and decide the complaint given by the third respondent is contrary to the facts. As per Section 2(e)(3) of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975, Wakf property is public premises and a person, who is in unauthorised occupation can be evicted from the Wakf property. Further, a person, whose tenancy has expired or terminated, is termed as unauthorised occupant, as per the provision of the Act. Tenancy of the petitioners were terminated by the third respondent and thereby, they became unauthorised occupants.

18. Third respondent sought eviction of the petitioners on the ground of failure to pay the rent. According to the petitioners, third respondent is not duly elected Muthavalli and M.K.Shakul Hameed, who is the care taker, was collecting rent and issuing receipts up to May 2010 and thereafter, refused to receive money orders sent by the petitioners. According to the petitioners, they formed an

association, opened account in the name of the said association and all members like the petitioners are depositing the rent in the said bank account and the same can be withdrawn towards rent payable by the petitioners. The Estate Officer rejected the said contention on the ground that third party cannot withdraw any amount from the account of the association. From the materials on record, it is seen that the petitioners have not made any attempt to withdraw amount deposited by them and pay the same, when the proceedings are pending before the Estate Officer or before the Appellate Authority. The petitioners without any valid reason failed to pay the rent and tenancy was validly terminated.

19. The Estate Officer as well as the learned Principal District Judge/Appellate Authority have considered all these aspects in proper perspective and rejected the contention of the petitioners by giving valid reason. There is no irregularity or illegality warranting interference by this Court with the order of the learned Appellate Authority and Estate Officer/second respondent.

20. In the result, the Civil Revision Petitions are dismissed. The learned counsel for the respondents submitted that the respondents received rent up to November 2017. The learned

counsel for the petitioners submitted that the petitioners undertake to vacate the petition premises on or before 30.06.2018 and they will pay the rent from December 2017 to 30.06.2018 i.e., up to the date of vacating the premises, without any default. The counsel for the petitioners submitted that the petitioners will file an affidavit of undertaking to that effect on 18.12.2017. No costs. Consequently, connected Miscellaneous Petitions are closed.

14.12.2017

Index : Yes/No

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To

1.The Principal District Munsif
Villupuram.

2.The Estate Officer
Tamil Nadu Wakf Board, Chennai.

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V.M.VELUMANI, J.

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V.M.VELUMANI,J.

The Civil Revision Petitions are posted today for filing affidavit of undertaking by the petitioners. The learned counsel for the petitioners filed an affidavit of undertaking to vacate and deliver vacant possession of the petition premises on or before 30.06.2018 and also undertook to remit the rent every month till vacating and handing over the possession. The affidavit of undertaking is taken on file and the same is recorded. The same will be part and parcel of this order. The petitioners are directed to vacate and hand over petition premises to the third respondent on or before 30.06.2018.

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18.12.2017

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C.R.P.(NPD)Nos.3206, 3207 and 3260 of 2014
and M.P.Nos.1,1,1 of 2014

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18.12.2017