

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.2198 to 2205 of 2009
and M.P.No.1 of 2009
and C.M.P.Nos.13309 to 13311 of 2017

Orders reserved on 11.09.2017	Orders pronounced on 21 .09.2017
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Agah Mohideen Mosque and Burial Ground
 at Mandaveli Rep.by its Secretary
 Jarook Ali,
 S/o. Ahmed Kabir,
 10/14th Cross Street,
 Mandavelipakkam,
 Chennai 28

Vs.

.. Petitioner in
 all the C.R.Ps'

1.R.Rudrapathi
 1.S.Saroja
 1.N.V.Loganathan
 1.K.Rubavathi Ammal
 1.Dr.Raman
 1.K.Saraswathi
 1.J.Durai
 1.K.Munusamy

..1st respondent in
 C.R.P.Nos.2198 to 2205/2009
 respectively

2.Tamil Nadu Wakf Board,
 Rep.by its Chief Executive Officer,
 No.1 Jaffer Syrang Street,

Vallal Seethakathi Nagar, Chennai 1

3.Shia Trust,
Rep.by its Family Trustee,
Syed Muntazar Ali,
Having Office at No.25-L Mosque Street,
Mylapore, Chennai 4

4.The Managing Director,
Tamilnadu Slum Clearance Board,
Kamarajar Salai, Chennai – 5 .. Respondents
2 to 4 in all C.R.Ps'

5.K.Chandrasekar
6.K.Thangaraj
7.P.kumuthavalli
8.M.Devi
9.V.Gowri
10.G.Lakshmi .. Respondents
5 to 10 in C.R.P.No.2201/2009

RR4 suo motu impleaded as party
respondent vide order of Court
dated 17.07.2017

RR5 to R10 brought on record as LRs
of deceased 1st respondent vide order
of Court dated 05.09.2017, by VMVJ,
made in C.M.P.No.13308/2017 in
C.R.P.No.2201/2009.

COMMON PRAYER: Civil Revision Petitions filed Under Article 227
of the Constitution of India, against the fair and decretal orders
dated 31.01.2008 made in O.A.Nos.11 to 16, 19 & 20 of 2003 on
the file of the I Assistant Judge Wakf Tribunal City Civil Court,
Chennai.

For Petitioners : Mr.N.A.Nissar Ahamed
(in all C.R.Ps')

For R1 : Mr.M.Balasubramanian
(in C.R.P.Nos.2198 to 2200/2009)

For R2 : Mr.V.Lakshmi Narayanan
(in all C.R.Ps')

For R3 to R10 : Mr.M.Balasubramanian
(in C.R.P.No.2201/2009)

For R4 : Mr.S.Prabhu
(in all C.R.Ps')

For R3 : No appearance
(in C.R.P.Nos.2198 to 2200 & 2202 to 2205/2009)

COMMON ORDER

These Civil Revision Petitions have been filed against the fair and decretal orders dated 31.01.2008 made in O.A.Nos.11 to 16, 19 & 20 of 2003 on the file of the I Assistant Judge Wakf Tribunal City Civil Court, Chennai.

2. The issues involved in all the Civil Revision Petitions are one and the same. Therefore, disposed of by this common order.

3. The petitioner is the third defendant, first respondent is the

applicant and respondents 2 and 3 are the defendants 1 and 2 in O.A.Nos.11 to 16, 19 & 20 of 2003 on the file of the I Assistant Judge, Wakf Tribunal City Civil Court, Chennai. According to the first respondent, the property originally belonged to third respondent, Shia Trust and its Muthavalli, C.A.Khaja Mohideen executed a lease deed dated 07.08.1947, in favour of one P.R.Sambanda Mudaliar with a power to sub-let and to put up superstructure in the property. The original lessee, P.R.Sambanda Mudaliar put up superstructure after obtaining sanctioned building plan from the Corporation of Chennai on 28.11.1947 and no objection certificate from the lessor, third respondent trust. The Corporation of Madras issued planning permission on 23.09.1948. The said lessee after construction of the building, sold the superstructure with leasehold right in favour of one P.R.Kanniappa Mudaliar by registered sale deed dated 12.11.1948. The said P.R.Kanniappa Mudaliar mortgaged the property to one Krishnamurthy Iyer on 05.01.1949. By the sale deed dated 26.06.1950, P.R.Kanniappa mudaliar sold the superstructure with leasehold interest on the land with subsisting mortgage to one S.G.Ganapathy Iyer on 28.01.1952 and cleared off the subsisting mortgage and cancelled the mortgage deed. The father of the first respondent, Sri.K.V.Ramaswami Iyer purchased

the suit property from the said S.G.Ganapathy Iyer by the registered sale deed dated 02.02.1952 and subsequently, the suit property was partitioned between the father of the first respondent and his sons on 23.05.1959, in which the suit property was allotted to the first respondent. The first respondent and his sons became the owners of the building. The first respondent was paying the lease amount regularly for the land to the third respondent trust. The second respondent sent a letter to the first respondent calling upon them for a meeting with officials on 24.08.1998. In the meeting it was decided that the second respondent would sell the land to the first respondent for the price fixed for respective extent of land in the possession of the first respondent. The terms of payment also was agreed upon. The second respondent did not confirm the said agreement. After lapse of some years, the second respondent sent notice to the first respondent under Section 54 (1) of Tamilnadu Wakf Act,1995, stating that the first respondent in all the Civil Revision Petitions are encroachers and called them to submit explanation as to why they should not be vacated from petition premises. The first respondent in all the Civil Revision Petitions have explained. Again the second respondent called upon the first respondent by issuing notice under Section 54(3) of

Tamilnadu Wakf Act to appear for enquiry. The first respondent appeared and submitted his explanation. In spite of the same, the second respondent has sent stereo typed letter to the first respondent in all the Civil Revision Petitions terming them as encroachers. The first respondent received notice from the Executive Magistrate, Mylapore-Triplicane Taluk to vacate the suit land, failing which they will be evicted. The first respondent in all the Civil Revision Petitions filed the above O.A.Nos.11 to 16, 19 & 20 of 2003.

4. The second respondent filed counter affidavit in all the O.As'. According to the second respondent, Muthavalli did not have power to lease out the land and did not have power to issue no objection certificate for putting up construction. The erst while Muthavalli, Mir Sardar Ali had mismanaged the fund and he was removed from the office. The second respondent has assumed direct management of the Wakf. The Muthavalli granted lease in violation of provisions of Wakf Act and therefore the first respondent in all the civil revision petitions are encroachers, as grant of lease is void ab initio. The earlier Wakfi in violation of provisions of Wakf Act, agreed to sell the property to the first respondent. But the

same was not implemented.

5. Before the learned Judge, it was admitted that the land in question was declared as slum area and Government passed an order whereby the land was acquired by the Government and handed over to Slum Clearance Board. The Slum Clearance Board allotted petition property to the respective occupants. The second respondent received compensation. In view of the above facts, the learned Judge allowed the applications, holding that the second respondent has no power to deal with the property as it is proved that the second respondent is not having title and second respondent has no authority to deal with the property and declared that the order of the Wakf Board issued under Section 54 of the Wakf Act directing the first respondents to vacate within such time is invalid and set aside the said notice.

6. Against the said orders dated 31.01.2008 made in O.A.Nos.11 to 16, 19 & 20 of 2003, the present Civil Revision Petitions are filed by the petitioner.

7. The learned counsel appearing for the petitioner submitted that the property belonging to the petitioner was encroached by various parties and petitioner filed W.P.No.14000 of 2001 before this Court for a direction to the second respondent to evict the encroachers. This Court by the order dated 03.08.2001, directed the second respondent to take appropriate steps for removal of such encroachers. As per the orders of this Court, the second respondent has taken action to evict the first respondent in all the civil revision petitions. The first respondent in all the Civil Revision Petitions have admitted that the property belongs to the Wakf and they are the tenant Under the Wakf. The Courts below without any oral and documentary evidence, merely on the statement of Wakf Board counsel allowed all the O.As' and set aside the order of Wakf Board. The Court below held that the property is not a Wakf property and the erroneous concession of Wakf Board counsel admittedly will not confer any right. No document has been produced for declaring the area as slum area and no document has been produced for having paid compensation to second respondent. If second respondent had received compensation, it must be credited to petitioner's account.

8. The learned counsel appearing for the first respondents in

all the Civil Revision Petitions filed typed set of papers and also written arguments and submitted that originally petitioner was owner of the land and first respondent was tenant in respect of the land and after discussion, the cost of the land was agreed upon by the second respondent to convey the land to first respondent. But subsequently second respondent failed to proceed further. The petitioner or the second respondent are not owner of the property. The said area was declared as slum area. The Government subsequently acquired the land and handed over to the Slum Clearance Board. The second respondent received compensation and petitioner or second respondent is no longer owner of the land and has no right to evict the first respondent. In the earlier O.As' filed by some of the occupants, it was stated that Government declared the area as slum area, acquired the land and handed over to Slum Clearance Board and second respondent received compensation. These were not denied by second respondent and all the O.As' were allowed. The second respondent did not challenge the said order and it has become final. The second respondent has not challenged the impugned order and hence has no locus standi to challenge the order in the Civil Revision Petition. The learned counsel for first respondent relied on the judgment reported in

(2008) 4 SCC 219 in Chokalingaswami Idol Vs. Gnanapragasam (dead) by L.Rs', wherein the paragraphs 6 and 7 are extracted hereunder:

"6. The only issue raised by the learned Senior Counsel for the appellant is that in view of the findings of the trial Court with regard to the ownership of the land against Defendant 1 i.e., the State Government, no appeal had been filed by the State Government and an appeal had been prepared by only one of the private co-defendants who was allegedly a lessee of the land in question and in the light of this situation it was not permissible for the first and second appellate courts to hold in favour of the State Government and against the appellant-plaintiff. We find merit in this plea.

7. In Para 16 of the judgment that we have quoted above, the High Court was cognizant of the fact that it was perhaps overstepping its jurisdiction in the matter but chose to circumvent the requirement of law in the belief that it was justified in doing so as the appellant-plaintiff was attempting to swallow government property. We are of the opinion, however, that the State Government had accepted the judgment of the trial Court as no appeal had been filed by it. We accordingly allow the appeal, set aside the judgments of the first appellate Court and the High Court dated

21.11.1988 and 10.01.2001 respectively and restore the judgment of the trial Court. There will be no order as costs."

The learned counsel referred the G.O and payment of compensation to second respondent and acknowledgement by second respondent filed in the typed set of papers.

9. The learned counsel for the second respondent filed written arguments and submitted that first respondent has approached the Tribunal on the specific case that they are the tenants of the petitioner and at the time of arguments, they came out with a new case that the Government declared the area as slum area and acquired the land and handed over to Slum Clearance Board and they are the allottees of Slum Clearance Board. The second respondent has received compensation. No document was produced to substantiate this contention and no opportunity was given to the second respondent to disprove the said contention. Based on the erroneous concession, by counsel for second respondent, the Tribunal has allowed all the O.As'. Based on the erroneous concession, the order passed by the Tribunal is invalid. The first respondents' in all the Civil Revision Petitions have not issued notice

under Section 89 of the Wakf Act to the second respondent and O.As' filed by the first respondent without such mandatory notice is not maintainable. This Court, suo motu, impleaded Slum Clearance Board as fourth respondent. The learned counsel appearing for the second respondent submitted in view of impleading Slum Clearance Board the matter must be remanded to the Tribunal for fresh consideration to give an opportunity for the contesting parties to let in evidence and rebut the documents filed by the fourth respondent. During arguments, the learned counsel appearing for the second respondent submitted that the petitioner is owner of the two different properties. The property declared as slum area and acquired by Government is not the petition property in occupation of the first respondent. The contentions of the learned counsel appearing for the second respondent is that lease granted by Muthavalli of petitioner is void ab initio and first respondent is only an encroacher. The second respondent, due to mismanagement of funds by Muthavalli of petitioner, took direct management of petitioner. The earlier Board erroneously agreed to sell the land to first respondent. But the subsequent Board did not implement the same. The order of second respondent is valid since first respondent is an encroacher.

10. Heard the learned counsel appearing for the petitioner and respondents and perused the materials available on record.

11. The point for consideration in these Civil Revision Petitions are whether the petitioner is owner of the property and whether the second respondent has power to evict the first respondent in all the Civil Revision Petitions as per the provision of Wakf Act.

12. The property in question is 19 grounds 329 square ft. in S.No.3092 in Papu Masthan Durga and Mosque Stree, Mylapore. It is not in dispute this property originally belonged to petitioner and Muthavalli of petitioner leased out the vacant land to various third parties with permission to put up construction and sub let the same. As per the lease and permission, lessee put up construction and let out to various third parties from the year 1948 onwards. The second respondent agreed to sell the property to the first respondent and subsequently did not sell the property. According to the second respondent, who has taken direct management of the property in question, the lease is void ab initio and first respondent in all the Civil Revision Petitions are only encroachers and notice issued under

Section 54 of the Wakf Act dated 04.01.2003 for evicting the first respondent in all the Civil Revision Petition is valid and legal. When the O.As' filed by the first respondent challenging the said notice, the petitioner brought to the notice of the Tribunal that Government has acquired entire area as slum area, acquired the land and allotted to the fourth respondent herein. The second respondent received compensation and issued acknowledgement. The learned counsel appearing for the second respondent, before the Tribunal, admitted this fact.

13. The learned counsel appearing for the first respondent submitted that in respect of some of the tenants relating to very same property, the proceedings were issued by the second respondent for evicting them. They filed O.S.Nos.135 to 137, 485 and 485 of 2005, challenging the said order. The learned counsel appearing for the first respondent produced common order dated 23.11.2007, wherein after contest, it was held that the property belongs to Slum Clearance Board and the second respondent has received compensation and plaintiffs therein are absolute owners of the suit schedule property and that second respondent is not having any right over the property and notice issued by the second

respondent is without authority or right and it is illegal and not binding on the plaintiff. The second respondent did not challenge the said judgment. In the circumstances, the contention of the learned counsel appearing for the first respondent that second respondent has no right or power to issue impugned notice and has no locus standi to challenge impugned order second respondent has not filed Civil Revision Petition has considerable force. The judgment reported in **(2008) 4 SCC 219 in Chokalingaswami Idol Vs. Gnanapragasam (dead) by L.Rs'**, referred to by the learned learned counsel for the first respondent is squarely applicable to the facts of the present case. The petitioner has not challenged the Government G.O.Ms.No.378 dated 02.11.1972, declaring the area as slum area, acquisition of the land and allotting the same to the Slum Clearance Board. The second respondent has not denied that the fourth respondent has paid compensation for 19 grounds 329 square ft. in S.No.3092 in Papu Masthan Durga and Mosque Stree, Mylapore. According to the learned counsel for the second respondent, the land acquired by the Government is different land belonging to the petitioner and it is not the suit land. The document filed by the respondents 1 and 4 clearly reveals that land acquired is 19 grounds 329 square ft. in S.No.3092 in Papu Masthan Durga and

Mosque Stree, Mylapore. The learned counsel appearing for the second respondent has not produced any document to show that land acquired by Government is different from suit land. The contention of the learned counsel appearing for the second respondent that no opportunity was given to them to rebut the documents filed about acquisition is without merits. Having received compensation, having failed to challenge the declaration by Government that property is slum area and acquisition by the Government, it is not open to the second respondent to contend that no opportunity was given to them to rebut the contention of the first respondent. Further, by common order dated 23.11.2007, the Court has held that property was acquired and allotted to Slum Clearance Board and second respondent has no longer any authority or interest in the said property. In the said suits, the second respondent alone is defendant. The second respondent has not challenged the said order.

14. This Court, by order dated 17.07.2017 suo motu impleaded Slum Clearance Board as the fourth respondent. The fourth respondent filed affidavit, typed set and additional typed set of papers containing extract of G.O, Annexure XII, proceedings of

Chairman, letter for payment and acknowledgement by second respondent. The learned counsel for fourth respondent contended that the entire area was declared as slum area by Government by G.O.Ms.No.378 dated 02.11.1972 and acquired the land. The fourth respondent took possession of 4 grounds 667 sq. ft. in S.No.1055/2B and 19 grounds 329 Sq. ft. in S.No.3092 in Papu Masthan Durga and Mosque Street, Mylapore. The fourth respondent paid a sum of Rs.5,52,446/- by Cheque No.24451 dated 26.05.1998 to second respondent on 26.05.1998. The Chief Executive officer of second respondent confirmed the receipt by his letter No.17007/C2/CHE/03 dated 06.01.2004. After taking possession of the land, the fourth respondent constructed 3 blocks of tenaments, allotted to occupiers and permitted others to put up huts and persons who had put up pucca construction to be in occupation. The learned counsel referred to sketch filed along with Additional typed set.

15. In view of the fact that the land area was declared as Slum area and land was acquired and allotted to fourth respondent, second respondent having failed to challenge the Government Order and acquisition but received compensation I hold that there is no

irregularity in the impugned order warranting interference by this Court.

16. The learned counsel for first respondent in the written argument and oral submissions stated that first respondent in C.R.P(NPD).Nos.2203 to 2005 of 2009 were dead even before filing of Civil Revision Petitions. This statement is not denied by petitioner. In view of the fact that the first respondent in the said Civil Revision Petitions are dead, the Civil Revision Petitions are dismissed as not maintainable.

17. For the above reason, all the Civil Revision Petitions are dismissed. The learned counsel appearing or the petitioner submitted that petitioner is entitled to receive the compensation as the land belongs to them and second respondent has to credit the compensation amount received by them in the petitioners account. It is for the petitioner to take appropriate steps in this regard. In view of the orders passed in all the Civil Revision Petitions, the Civil Miscellaneous Petitions are closed.

21.09.2017

Index: Yes/No

gsa

To

1.The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1 Jaffer Syrang Street,
Vallal Seethakathi Nagar, Chennai 1

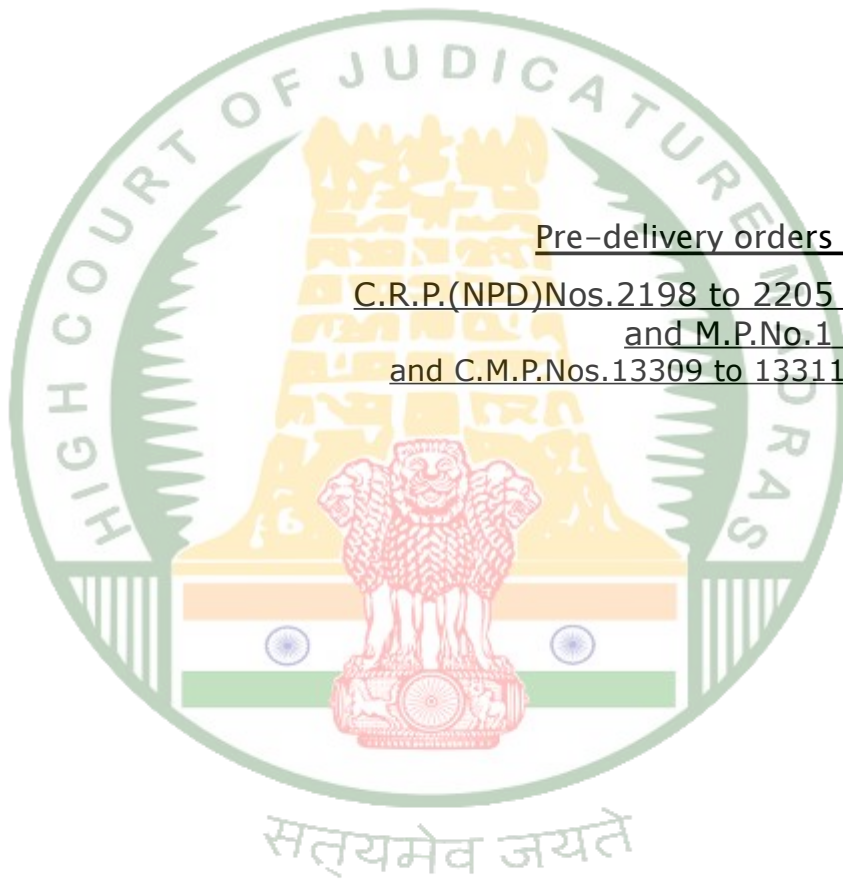
2.The Managing Director,
Tamilnadu Slum Clearance Board,
Kamarajar Salai, Chennai – 5



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V.M.VELUMANI, J.

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Pre-delivery orders made in
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21.09.2017