

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:10.11.2017
CORAM
THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE N.SESHASAYEE
W.P.No.28735/2017
&
W.M.P.Nos.30911 & 30912/2017

A.Hamsa Bai

... Petitioner

vs

1 The Commissioner,
Avadi Municipality,
Avadi, Chennai-54.

2 The Tamil Nadu Wakf Board,
Rep.by its Chief Executive Officer,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai-1.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorari or any other appropriate writ or order or direction in the nature of writ, calling for records of the 1st respondent in Rc.8099/15/F1 dated 02.11.2017 and quash the same.

For Petitioner : Mr.N.A.Nissar Ahmed
For R1 : Mr.P.Srinivas
For R2 : Mrs. Abitha Banu

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

By consent, the writ petition is taken up for final disposal. Mr.P.Srinivas, learned standing counsel accepts notice on behalf of the 1st respondent and Mrs. Abitha Banu, learned standing counsel accepts notice on behalf of the 2nd respondent.

2 The petitioner claims to be a Secretary of Majjeedhe Mohammadia Wakf at Avadi, Chennai - 54 and according to him, the said Wakf is registered and notified under the purview of the second respondent and according to him, the property comprised in "Grama Natham" in S.No.246/6, ad measuring 13 cents out of 1 acre 01 cent, was endowed to the said Wakf through a registered Document No.1484/1979 dated 05.05.1979, and on the said

property, a tiled house and a shop are located and the rest of the land is remaining vacant. The said property is also subject to statutory levies.

3 According to the petitioner, the first respondent in their records had wrongly mentioned that there is a lane right on the middle of the 13 cents Wakf property and in this regard, the Chief Executive Officer of Tamil Nadu Wakf Board, Chennai-1, has sent a communication dated 17.09.2013 to the first respondent pointing out that the said land in question belong to the petitioner/Wakf and therefore, the construction of drainage should not be done. The Tamil Nadu Wakf Board also sent yet another communication to the Revenue Divisional Officer, Thiruvallur requesting them to modify the revenue records to incorporate the name of the petitioner / Wakf in respect of the land in question. The Sub-Collector, Tiruvallur, in the letter bearing No.Na.Ka.43/2016/A2, dated 14.01.2016, has directed the Tahsildar, Avadi, to take action on the transfer / change of patta in the name of the petitioner and it is also followed by an endorment dated 01.03.2016 and Tahsildar, Avadi in turn, has directed the Revenue Inspector, Avadi, Village Administrative Officer, Vinjiyambakkam and Town Surveyor, Avadi, to inspect the said land in question and to submit a detailed report.

4 Mr.N.A.Nissar Ahmed, learned counsel for the petitioner would submit that pending consideration of the request made by the petitioner-Wakf for change/incorporation of the name in the relevant records, the first respondent-Municipality has issued a notice dated 09.03.2017 pressing their claim that it is a road and the drainage will be laid and challenging the same, the petitioner filed OS.No.86/2017 on the file of the Court of the District Munsif, Poonamallee and the said suit has been entertained and however, no interim order has been passed and despite the pendency of the said suit, the first respondent issued the impugned notice dated 02.11.2017 under sections 182 and 183 of the Tamil Nadu District Municipalities Act calling upon the petitioner to remove the encroachment on the public road within the stipulated time, failing which, further action will be taken under sections 339(2), 340(1) and 344 of the said Act and challenging the legality of the said notice, the present writ petition came to be filed by the petitioner.

5 It is submission of the learned counsel appearing for the petitioner that based on the communication sent by the Tamil Nadu Wakf Board, the Tahsildar, Avadi, had directed the concerned officials to make inspection of the land in question and submit a report and the said proceedings are pending and despite that, the first respondent is proceeding further alleging encroachment on the part of the petitioner and therefore prays for appropriate orders.

6 The learned counsel for the petitioner on instructions, would also submit that the suit filed by the petitioner/Wakf Board in OS.No.86/2017 pending on the file of the Court of District Munsif, Poonamallee, will be withdrawn forthwith.

7 Per Contra, Mr. P.Srinivas, the learned standing counsel appearing for the 1st respondent would submit that the petitioner has encroached upon the road belonging to the first respondent-Municipality and action is taken strictly in accordance with law and as such, the petitioner / Wakf cannot have any grievance.

8 The Court has considered the rival submissions and also perused the materials placed before it.

9 The fact remains the Tamil Nadu Wakf Board has sent a communication to the jurisdictional District Revenue Officer pointing out that the land in question belongs to the petitioner / Wakf and the

Tahsildar, Avadi, has also directed the jurisdictional officials to cause an inspection of the land and submit a report.

10 In the light of the above facts and circumstances, the petitioner is at liberty to submit a representation along with the relevant and authenticated documents to prove their right, title and possession, to the 1st respondent within a period of four weeks from the date of receipt of a copy of this order and upon receipt of the same, the first respondent is directed to put the 2nd respondent on notice and thereafter, consider and dispose of the representation to be submitted by the petitioner, on merits and in accordance with law within a further period of eight weeks thereafter and communicate the decision taken, to the petitioner as well as to the second respondent and till such time, the 1st respondent shall defer further proceedings in terms of the impugned notice dated 02.11.2017. It is made clear that the petitioner, till the disposal of representation by the 1st respondent, shall not further create any third party rights and alter the physical features of the land in question.

11 The writ petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

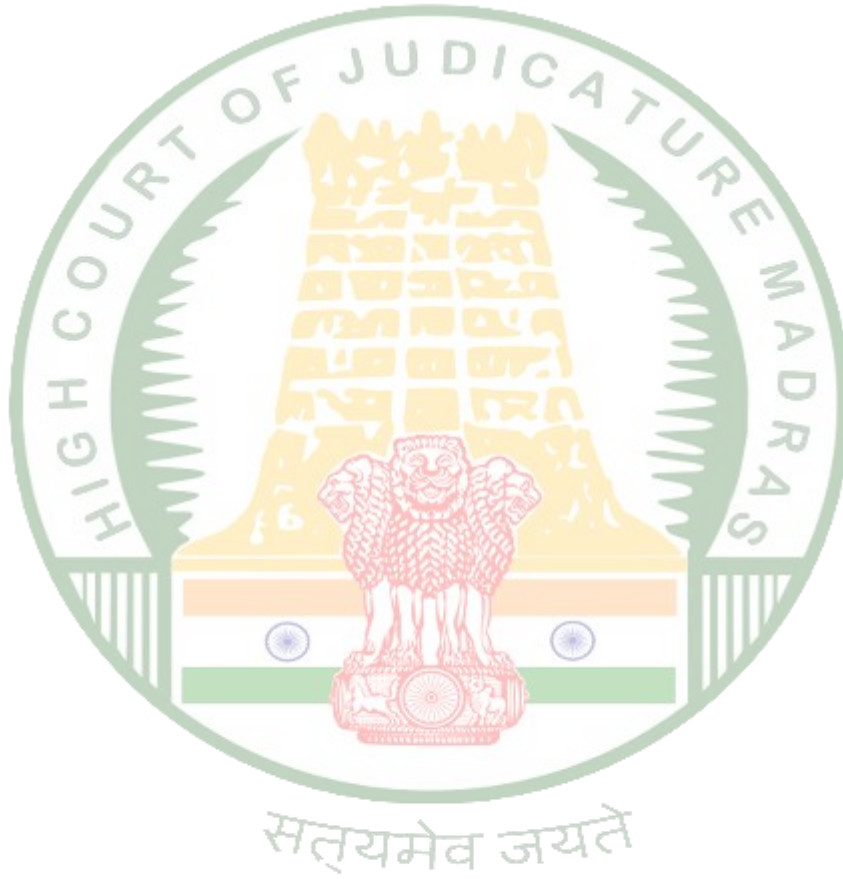
rpl

+lcc to Mr.A.Nissar Ahmed, Advocate Sr.No.79837

+lcc to P.Srinivas, Advocate SR.No.80688

W.P.No.28735/2017

sm:4.12.2017



WEB COPY