IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.26463 of 2016

Salarul Mulk Burial Ground,
(also known as Haji Murthuza
Sahib Salarul Mulk Burial Ground),
Rep. by its Present Muthawalli
Ameenuddin Abul Hasan,
No.328/3, (New No.110),
T.T.K.Road, Diwan Sahib Garden,
Royapettah, Chennai - 600 014. ... Petitioner

Vs.

1.S.N.Khaja Mohideen,

2.S.K.Mohideen Abdul Khader

3.The Commissioner,
Corporation of Chennai,
Chennai - 600 003.

4.The Revenue Officer,
Corporation of Chennai,
Chennai - 600 003.

5.The Asst. Commissioner,
Corporation of Chennai,
Zonal Office, Zone-9,
Nungambakkam, Chennai - 600 034.

6.The Assistant Revenue Officer,
Corporation of Chennai,
Zonal Officer, Ward No.121, Zone-9,
Nungambakkam, Chennai - 600 034.

7.The Accounts Officer,
C.M.W.S.S.B.Area IX Div.121,
No.1, Dr.Ranga Road,
Abiramapuram, Chennai - 600 018.

8.The Chief Executive Officer,
Tamil Nadu Wakf Board, Chennai.
(R-8 is suo-motu impleaded as per Order

of this court
dated 04/11/2016 in W.P.No.26463 of 2016) ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue Writ of Mandamus directing the respondents 3 to 7 herein to cancel immediately the illegal and unauthorised assessment made without notice to the petitioner and their consent in the name of the second respondent herein bearing new Door No.338A (Old No.144A) Dr.Natesan Road, Triplicane, Chennai - 600 005. with costs.

For Petitioner : Mr.R.Priyakumar

For Respondents : Mr.L.Gavaskar (For R1 & R2)
M/s.Karthikaa Ashok
(For R3 to R6)
Mr.M.Jothi Kumar (For R7)
Mr.V.Lakshminarayanan (For R8)
Standing Counsel

O R D E R

The petitioner is a Wakf, represented by one Mr.Ameenuddin Abul Hasan, claiming to be the Muthawalli and they seek for a direction upon the respondents 3 to 7 to immediately cancel the property tax assessment which has been made in the name of the second respondent in respect of a shop which has been put up on a land owned by the Wakf.

2.The learned Standing Counsel appearing for the eight respondent viz., the Chief Executive Officer, Tamil Nadu Wakf Board, submitted that the petitioner wakf has been taken over under direct management of the Wakf Board and as such, Mr.Ameenuddin Abul Hasan is no longer the Muthawalli of the Wakf. This statement is placed on record.

3.The case of the petitioner is that the wakf had entered into a lease agreement with the first respondent and based on that, he was permitted to put up a shop and subsequently, he has transferred the shop to the second respondent, who is the son of the first respondent and obtained property tax assessment for the said shop in his name and this being done without notice to the petitioner wakf. The petitioner wants the assessment in the name of the second respondent to be cancelled.

4.The second respondent's case is that the lease was entered in to the year 1979, with the first respondent and subsequently, superstructure was put up and the property has been assessed to tax and later, the second respondent came to know that the said Mr.Ameenuddin Abul Hasan has no right to represent the petitioner wakf and the property also does not belong to the wakf, but to some other organization.

5.In this regard, both the petitioner as well as the first respondent have filed suits in O.S.No.5567 of 2016 and O.S.Nos.5479 of 2016 respectively, and both suits are pending before the Wakf Tribunal, Chennai. However, this Court is concerned, only with the manner in which property tax assessment was altered by the Corporation of Chennai. The Corporation of Chennai has filed a status report and the Assistant Revenue Officer has filed a counter affidavit. From the status report filed by the concerned officer, it is seen that initially, the property tax assessment was in the name of Mr.Ameenuddin Abul Hasan and on 20.10.2015, the assessment in respect of New No.338A (Old No.144A) Dr.Natesan Road, Triplicane, Chennai - 600 005, has been made in the name of the second respondent. This assessment has been shown to be a new assessment.

6.The learned Standing Counsel for the respondent Corporation would submit that the new assessment dated 20.10.2015 in the name of the second respondent is based on a return filed by the second respondent and it has been made clear that the said assessment is only for collecting of property tax and if any false information is given, the assessment of property tax would be cancelled without any prior notice. Further, it is stated that levying of property tax does not mean that the unauthorised construction if any made by the applicant has been regularized and the payment of property tax will not be construed as conferring any independent right on the property.

7.In my considered view, the manner in which the self assessment has been made without reference to the existing record viz., as to in whose name the property tax assessment stood is an arbitrary and illegal procedure followed by the Corporation of Chennai. It is high time, the Corporation of Chennai abandons this practice. Assuming the assessee files return requesting for an assessment of property tax in his name under the self assessment scheme, the respondent Corporation is bound to verify the records and ascertain as to in whose name the property has already been assessed and then follow the procedure and then only assess the property in the name of the applicant under the self assessment scheme. However, the respondent corporation has adopted a most arbitrary and illegal procedure of making self assessment without reference to antecedent records. Merely mentioning in small print in the new assessment stating that if any false information is given, the assessment will be cancelled is of little avail as there are unscrupulous elements, who will misuse this procedure. Therefore, the Commissioner of Corporation of Chennai is directed to take note of these observations and pass appropriate orders to device a proper, fair and transparent procedure so that the process of self assessment is not misused.

8.Considering the fact that both the petitioner viz., Ameenuddin Abul Hasan, and the second respondent are before the Wakf Tribunal and each have filed separate suits against each other, the petitioner as well as the second respondent are at liberty to agitate all issues before the Wakf Tribunal. However, in the interregnum, the property tax shall be transferred in the name of Salarul Mulk Burial Ground (also known as Haji Murthuza Sahib Salarul Mulk Burial Ground) represented by the Chief Executive Officer of the Tamil Nadu Wakf Board or the Inspector of Wakf of the concerned area and the property tax assessment shall continue to remain as such and tax shall be paid by the Wakf from and out of the income of the Wakf. After the suits are decided by the Wakf Tribunal, the Executive Officer of the Wakf Board shall take appropriate steps to make the assessment for property tax in the name of the appropriate organization represented by appropriate person. Furthermore, both the plaintiffs in both suits are not entitled to rely upon any of the records pertaining to the property tax assessment in the pending civil proceedings.

9.With the above observations, the writ petition is disposed of. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

abr/svki

To

1.The Commissioner, Corporation of Chennai,
Chennai - 600 003.

2.The Revenue Officer,
Corporation of Chennai, Chennai - 600 003.

3.The Asst. Commissioner,
Corporation of Chennai,
Zonal Office, Zone-9,
Nungambakkam, Chennai - 600 034.

4.The Assistant Revenue Officer,
Corporation of Chennai,
Zonal Office, Ward No.121, Zone-9,
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5.The Accounts Officer,
C.M.W.S.S.B.Area IX Div.121,
No.1, Dr.Ranga Road,
Abiramapuram, Chennai - 600 018.

6.The Chief Executive Officer,
Tamil Nadu Wakf Board, Chennai.

+1cc to Mr.R.Priyakumar,Advocate sr.53692

+1cc to Mr.L.Gavaskar,.Advocate sr.53686

+1cc to Ms.Karthikaa Ashok,Advocate sr.53837

W.P.No.26463 of 2016

gr(co)
ss(22/8/2017)