



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.01.2017

CORAM:

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THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. [MD].No.21444 of 2016
and
W.M.P. (MD) Nos.15325, 15326 and 17447 of 2016

Meer Hasanullah Sha Dargah Wakf,
Represented by its Secretary,
M.Mahaboob Sheriff

: Petitioner

Vs.

1.The Authorized Officer,
Trichy Cantonment Branch,
Indian Bank, Trichy.

2.The Tamil Nadu Wakf Board,
Represented by its Chief Executive Officer,
Door No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai-600 001.

3.M/s.Excellent Construction,
Door No.75, Sivaprakasam Salai,
Anna Nagar, Thennur,
Trichy-17.

4.M.Thirisangu

5.T.Sumathi

6.K.Akila

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling upon the records of the impugned sale notice dated 04.10.2016, as far as item I is concerned and quash the same.

For Petitioner : Mrs.S.Srimathy

For Respondent No.1 : Mr.T.Govindasamy

For Respondents 3to6 : Mr.S.Alagusundar

**O R D E R**

[Order of the Court was made by **R.SUBBIAH, J.**]

Seeking quashment of the impugned sale notice dated 04.10.2016, insofar as item No.I is concerned, the present Writ Petition has been filed.

2. The case of the petitioner is that the petitioner Wakf has many properties and one such property is situated at New Ward E, Block No.26, S.No.6, Thennur, Trichy, admeasuring 6825 square feet of land. The said land was assigned to the petitioner Wakf through the proceedings in T.D.No.1142. The fourth respondent has trespassed into the said land and encroached upon the same and tried to put up construction. Therefore, the petitioner wakf filed a Wakf Original Petition in W.O.P.No.21 of 2009 *inter alia* praying for the relief of recovery of possession after removing the offending construction. During the pendency of the Wakf Original Petition, an interlocutory application was filed in I.A.No.294 of 2009 *inter alia* praying for interim injunction restraining the fourth respondent or his men from putting up further construction in the suit property and the Court below has granted an order of interim injunction on 05.08.2009. The fourth respondent filed a petition to vacate the interim injunction in I.A.No.384 of 2009 stating that he spent a huge amount to put up construction and the constructions are half way through and because of the interim injunction, the remaining construction could not be completed. After hearing the arguments, interim injunction was vacated on 06.11.2009.

3. It is the further case of the petitioner that the main Wakf Original Petition is pending from 2009 onwards and the same could not be taken up for trial, since there is no Presiding Officer in the Court. In the meanwhile, the fourth respondent mortgaged the disputed property in Indian Bank and obtained loan and since he has not repaid the loan amount, the first respondent has initiated proceedings under SARFAESI Act. The first respondent issued a sale notice dated 04.10.2016 and in the sale notice, item No.1 alone is the property belonging to the petitioner Wakf and the said property is covered under the Wakf Original Petition in W.O.P.No.21 of 2009. Since the interim order was vacated by the Wakf Tribunal, the fourth respondent put up construction and obtained loan. If the respondents proceed with sale, the petitioner Wakf would be prejudiced. Hence, the petitioner has come up with the present Writ Petition for the reliefs stated earlier.

4. Today, when the matter was taken up for consideration, the learned counsel for the petitioner submitted that so far as item No.I is concerned, the property situated at New Ward E, Block No.26, S.No.6, Thennur, Trichy, is concerned, the petitioner Wakf is the



owner of the property and in respect of the said property, already proceedings is pending between the petitioner and the fourth respondent. Under such circumstances, when there is a dispute over the ownership of the property, the bank has to be restrained to bring the said property for auction.

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5. But the learned counsel for the respondent bank vehemently opposed the prayer of the petitioner stating that as on date, there is no interim order. Hence, the bank is entitled to do the auction. Furthermore, when the petitioner is having an alternative remedy before the Debts Recovery Tribunal, he cannot seek relief from this Court under Article 226 of the Constitution of India.

6. In our considered view, as rightly contended by the learned counsel for the respondent bank, the petitioner is having an alternative remedy before the Debts Recovery Tribunal and without availing such recourse known to law, he approached this Court by filing the present Writ Petition, which, this Court is not inclined to entertain. Hence, without going into the merits of the claim made by the petitioner, we dismiss the Writ Petition by giving liberty to the petitioner to approach the Debts Recovery Tribunal. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

SML

+1CC to S.M.S.Jonny Basha, Advocate Sr.No.3646
+1CC to Mr.T.Govindhasamy, Advocate Sr.No.3881

GJM/BS/MR/6.2.17-3p-3C

Order made in
W.P. [MD].No.21444 of 2016
Dated: 23.01.2017