

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 16.3.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) No.1055 of 2018
and C.M.P.No.5577 of 2018

Md. Kabeer

... Petitioner

Vs.

1 President
Masjid Al Harmine,
Tamil Nadu Wakf Board Employees
Colony Mosque.

2 Aftab Begum
3 Asadulah

.. Respondents

This Civil Revision Petition is filed under section 227 of Constitution of India to strike off the PP/39/CHE/2016, which was renumbered as PP/39/KPM/2016 on the file of the Estate Officer (Chief Executive Officer), Tamil Nadu Wakf Board, Chennai 600 001 as illegal and miscarriage of justice.

For Petitioner

: Mr.C.P.Sivamohan

Mr.V.Lakshminarayanan
Standing counsel for
Wakf Board (Amicus Curie)

ORDER

According to the petitioner, the first respondent has moved the Estate Officer (Chief Executive Officer), Tamil Nadu Wakf Board, seeking an order of eviction against the respondents 2 and 3 as well as the revision petitioner in PP No.39/CHE/2016 invoking Sections 4, 5 and 7 of the Tamilnadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975. On the basis of the aforesaid application made by the first respondent, the Estate Officer (Chief Executive Officer) issued a show cause notice, dated 21.12.2016 to the respondents 2 and 3 and the revision petitioner under Form A invoking Section 4 of the Tamilnadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 to show cause within 10 days, why an order of eviction should not be made under Sub-Section 1 of Section 4 of the Tamilnadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975. Challenging the aforesaid show cause notice, the present Civil revision petition has been filed before this Court.

2 According to the petitioner, petitioner has submitted a memo on 8.3.2018 to decide on the maintainability of the application in view of the Wakf Act being prevailing over the Tamilnadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975, which is a State one, whereas Wakf Act is

Central Act. Further, the submission of the counsel for the petitioner is that memo of objection filed by the petitioner was not considered and without passing any order, Estate Officer proceeded with the enquiry. Further, it is the contention of the petitioner that the Estate Officer has to proceed only in accordance with Section 54 of the Wakf Act. Proceedings invoked under the Tamilnadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 is wholly unjustifiable and without jurisdiction. As per the provisions under Section 54 of the Wakf Act, the Chief Executive Officer is the competent authority to remove any encroachment in the Wakf property. Therefore, the first respondent has to move to the tribunal as per the amended act and proceedings cannot be initiated under the provisions of Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 which is State Act. Therefore, the petitioner seeks to strike off the impugned proceedings as illegal and without jurisdiction.

3 Mr.Lakshminarayanan, learned Standing counsel for Wakf Board

appeared in this case as Amicus Curie would submit that the contention of the petitioner is not sustainable in view of Section 2(3) of amended Act 33 of 2010 of Tamilnadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975, which reads as under:

"any premises belonging to a wakf, registered with the

Tamil Nadu Wakf Board."

Therefore, the Estate Officer have power to initiate action under Section 2 of Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 for removal of encroachment in the property belongs to Wakf Board.

4 The learned counsel for the petitioner would submits that the petitioner is not come under the purview of amended provision of the Act. Therefore, it is open to him to raise all the objections before the authority concern.

5 In the light of the amended Act of Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975, the Estate Officer is the competent authority to conduct an enquiry and to pass appropriate orders and to take action in accordance with the provisions of the State Act. Therefore, the impugned proceedings is sustainable in law. In view of the above, this Court is not inclined to interfere with the proceedings.

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6 Accordingly, the Civil revision petition fails and the same is dismissed. No costs. Connected miscellaneous petition is closed.

16.03.2018

Speaking/Non Speaking Order

Index: Yes/No

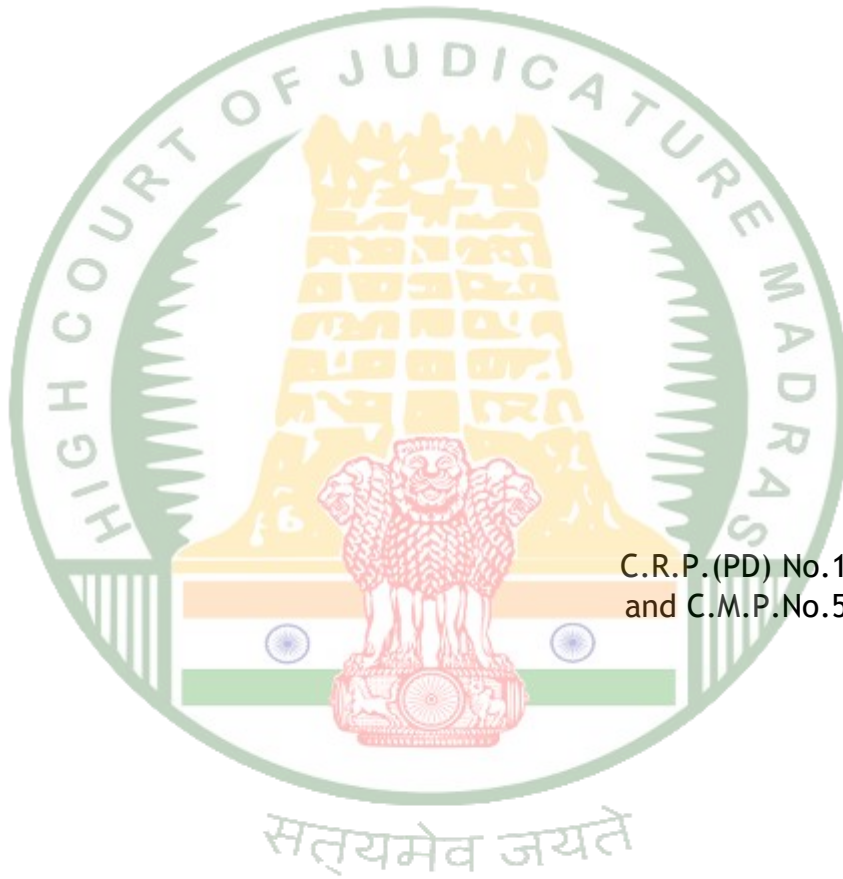
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D.KRISHNAKUMAR,J.

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