

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2018

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Civil Revision Petition (NPD) No.1142 of 2007

M.A.Sheriff

.. Petitioner

Vs.

1.The Secretary (Chief Executive Officer),
Tamil Nadu Wakf Board,
No.7, 9th Cross street,
Indira Nagar,
Chennai – 600 020.

2.The Secretary of Big Mosque,
Trunk Road,
Poonamallee High Road,
Chennai – 600 056.

.. Respondents

Revision filed under Article 227 of Constitution of India against the fair and decretal dated 27.04.2006 passed in Wakf O.P.No.308 of 2005 on the file of the Principal Subordinate Judge, Chengalpattu.

For Petitioner : Mrs.R.Kumari

For Respondents : No Appearance

ORDER

Aggrieved by the order dated 27.04.2006 passed by the learned Wakf Tribunal, Chengalpattu in Wakf O.P.No.308 of 2005, the petitioner has preferred this revision.

2. The petitioner has filed Wakf O.P.No.308 of 2005 under Section 83 of the Wakf Act, 1995 seeking to direct the second respondent to execute the sale deed.

3. In the affidavit filed in support of the petition, the petitioner alleged that in order to construct a shopping complex, the second respondent Executive Committee decided to sell the petition mentioned property measuring an extent of 1.31 acres comprised in S.No.91/8 situated at Sennerkuppam village, Sriperumbudur Taluk and sought permission of the first respondent. On 30.05.1985, the Board passed a resolution and a notice to sell the said property was also published in Daily Thanthi on 10.08.1985. Pursuant to the publication, one Mohanasundaram and Rajasekaran submitted their respective offers with condition that vacant possession of the land should be given to them. As the said condition was not complied with, the earnest money deposit made by them were returned. Subsequently, on 14.08.1989, one Navarathnamal Jain submitted his tender and offered to purchase the land for a sum of Rs.3.10 lakhs. The petitioner and his partners through their sealed tender offered to purchase the land for a sum of Rs.3.00 lakhs along with a sum of Rs.10,000/- as a earnest money deposit. Before opening the sealed tender, the petitioner increased his offer from Rs.3.00

lakhs to Rs.3.20 lakhs with the same earnest money deposit.

4. It is averred that by a resolution dated 02.11.1990, the first respondent, after hearing the Secretary of the second respondent mosque, decided to accept the tender of the petitioner and thereafter, the Board directed to complete the sale on and after the deposit of the entire sale proceeds and to execute sale deed in favour of the petitioner. Since the Secretary of the mosque failed to come forward to execute the sale deed, a legal notice dated 21.08.1991 was issued by the petitioner to the Secretary of the mosque to execute the sale deed within a period of 60 days.

5. Despite receipt of the notice, the second has not executed the sale deed. Therefore, the petitioner filed W.P.No.15737 of 1991 seeking a writ of mandamus directing the respondents to execute the sale deed in respect of the land. The second respondent has also filed W.P.No.1448 of 1994. By the order of the High Court, both the writ petitions were remitted back to the second respondent for fresh consideration and liberty was granted to the petitioners to file their objections before the Board and also directed the Board to pass an appropriate orders after affording an opportunity within a time frame.

6. Aggrieved by the said order passed in the writ petitions, writ appeals being W.A.Nos.653 and 654 of 2000 have been filed by the petitioner. The writ appeals preferred by the petitioner were dismissed by a Division Bench on the ground that an alternative remedy available to the petitioner before the Wakf Tribunal. Therefore, the petitioner has filed the petition under Section 83 of the Wakf Act directing the respondents to execute the sale deed for a sum of Rs.3.20 lakhs, deducting Rs.10,000/- already deposited as EMD.

7. Resisting the petition, the first respondent filed the counter stating that the erstwhile Board in its resolution dated 02.11.1990 has accorded sanction to sell the petition mentioned property for a sale consideration of Rs.3.20 lakhs and the petitioner was directed to deposit the amount to the Tamil Nadu Wakf Board and thereafter, the Secretary of the Board was directed to execute the sale deed in favour of the petitioner with other stipulations laid down in the order. It is stated that the petitioner has not remitted the amount specified by the Board in time and dragged the matter years together. It is also stated that the second respondent has not accepted the offer made by the petitioner. According to the first respondent, there is a statutory provision in the Wakf Act, 1954 that two-third majority of Board member should be present at the time

of passing the order. Out of 11 members, only 7 members were present at the time of passing the order and hence the validity of the order was to be confirmed by the Government. The Board, in its resolution dated 02.09.1994 resolved to revoke the earlier resolution of the Wakf Board dated 02.11.1990. Therefore, the question of executing sale deed in favour of the petitioner pursuant to the earlier resolution does not arise.

8. In its counter, the first respondent also stated that Wakf Act, 1954 was replaced by Wakf Act, 1995. Pursuant to the direction of the High Court, the matter was again taken up by the Board on 29.03.2001. Since Wakf Act, 1995 come into force, the proceedings which were taken up for consideration under Wakf Act, 1954 cannot be completed without applying the provisions of the new Act, 1995. Section 51 of the new Act stipulates that any alienation of the wakf property should be only through public auction. Therefore, the tender procedure cannot be followed. Hence, the Board closed the subject at this stage and directed the office to refund the earnest money deposit, if any, received from the bidders. Accordingly, the amount has been refunded. According to the first respondent, the petitioner ought to have filed an appeal against the order of the Wakf Board, but he has not done so.

Therefore, the order becomes final. Hence, prays for dismissal of

the petition.

9. The second respondent filed the counter stating that there was neither Gazette notification nor publication in 1988 to submit any tender or for publication. While so, the contention of the petitioner that he had submitted tender on 05.12.1988 in pursuance of the illegal Gazette and publication effected during 1985 is also illegal, unlawful and against the provision of the Wakf Act. The then Chairman and the petitioner colluded in causing harm to the Wakf land. It is stated that neither the second respondent mosque nor the Jamathars (interested persons of the wakf) were given an opportunity to submit their objections or suggestions. It is also stated in the counter that one-third majority to accept the offer was 8 persons, but the order dated 02.11.1990 reveals the presence of 7 members only. Moreover, the petitioner has failed to deposit the sale consideration for the past 15 years. The case of the second respondent is that on 24.05.1993, the Government issued direction to the Tamil Nadu Wakf Board under Section 63 of the Act to reconsider the resolution of the erstwhile Board relating to the sale and lease of the wakf properties nearly in 41 cases. One among such cases was the sale of the property relating to this petition. By a resolution dated 02.09.1994, the Wakf Board, resolved to revoke the earlier resolution of the Board dated 02.11.1990. Hence, the

question of executing sale deed pursuant to the earlier resolution dated 02.11.1990 does not arise. The value of the land during 1990 was more than Rs.20.00 lakhs and now it will fetch more than Rs.1.00 crore.

10. Before the Wakf Tribunal, the petitioner was examined as P.W.1 and marked 13 documents. On the side of the first respondent one Thiru.Bazul Hug, who was working as the Inspector of the Wakf, was examined as R.W.1 and through him, 3 documents were marked. No oral and documentary evidence was adduced on the side of the second respondent.

11. Upon consideration of the oral and documentary evidence, the Wakf Tribunal dismissed the petition. Aggrieved by the order of the Wakf Tribunal, the petitioner has filed the present revision.

12. I heard Mrs.R.Kumari, learned counsel appearing for the petitioner.

13. The submissions of the learned counsel appearing for the petitioner is as follows:

The Wakf Tribunal has no jurisdiction over the subject matter, which arose prior to the

enactment of Wakf Act, 1995 and that Section 36A of the Wakf Act, 1954 as amended by the Act No.69 of 1984 is not applicable to adjudicate the claim of the petitioner.

The price offered by the petitioner was very low as the Tribunal wrongly placed reliance on Ex.P12 and further in not giving an opportunity to the petitioner to examine the jurisdictional Sub Registrar.

The sanction accorded by the first respondent for transfer of the land of the second respondent by order dated 02.11.1990 as communicated in the letter dated 16.12.1990 was perfectly satisfying the provisions of Section 36A of the Act as it was then in force.

The findings of the Tribunal that the order passed by the Board dated 02.11.1990 is illegal and not binding on the second respondent for non-compliance with the provisions of Section 36A of the Wakf Act, 1954 is not sustainable.

14. Though the respondents have entered appearance, when the matter was taken up for hearing, no one appeared on behalf of

the respondents. Perused the materials available on record.

15. The point arises for consideration is whether the Tribunal was right in dismissing the petition filed by the petitioner directing the second respondent to execute the sale deed?

16. There is no dispute that the land measuring 1.31 acres in S.No.91/8 of Senneerkuppam village is a wakf property belonging to the second respondent mosque. It is also not in dispute that at the relevant point of time the second respondent mosque required funds for construction of a shopping complex in its other land and also in financial liability of Rs.40,000/- to the Canara Bank and the Committee administering the mosque resolved in its meeting dated 4.5.1985 to sell the petition mentioned property and addressed the first respondent to accord sanction for it.

17. On 05.12.1988, the petitioner submitted his tender offering the price of Rs.3.20 lakhs for purchase of the petition mentioned property. By the order dated 02.11.1990, the Board accepted the tender of the petitioner for Rs.3.20 lakhs and directed the Secretary of the second respondent mosque to complete the sale on and after the deposit of the entire sale proceeds with the Board and to execute the sale deed in favour of the petitioner. Since

the respondents failed to execute the sale deed, the petitioner issued a legal notice Ex.P5 dated 21.08.1991 calling upon the respondents to execute the sale deed within 60 days.

18. It is seen that since there was no response from the respondents, the petitioner filed W.P.No.15737 of 1991 before this Court seeking a writ of mandamus directing the respondents to execute the sale deed. It is also seen that the former Secretary of the second respondent mosque namely Dr.Abdhul Razack also filed W.P.No.1448 of 1994 seeking to quash the proceedings dated 02.11.1990 alleging that the proposed shopping complex was completed by raising funds by other source and the necessity to sell the petition mentioned property ceased by the time the proceedings dated 02.11.1990 was passed and that before passing the proceedings dated 02.11.1990, the Secretary of the Board was not consulted.

19. Both the writ petitions were taken up together by this Court. By a common order dated 30.09.1999, this Court dismissed W.No.15737 of 1991 and allowed W.P.No.1448 of 1994 filed by Dr.Abdhul Razack. In paragraph 5, this Court held thus:

"5. ... A perusal of the File reveals that the Board took up the matter in Item No.124/89 RC.No.11368/C1/85/CGT dated 22.12.1999. A resolution has been purported to be

signed on 2.1.1990 by the Chairman. It shows that the matter was taken up for consideration. Fresh tender has been received by the Board and the same was opened at 4.45 p.m. on 22.12.1990. The contents reads that the tenderer has offered the amount of Rs.3,10,000/- for the entire land. The records further shows that on 22.12.1989 a letter has been received from Jaban M.A.Sheriff of Royapuram offering Rs.3,20,000/-. The Board has reserved orders in the above matter. That was not endorsement made on 4.1.1990. However, a further endorsement shows that on 18.10.1990 the parties were directed to be issued with notices about the pronouncement of orders on 31.10.1990. There was no communication from 3.1.90 to 31.10.90 when the parties received the notice of pronouncement of orders. The impugned order was pronounced on 2.11.1990. The impugned order did not clarify whether the aggrieved persons were heard. In the interest of both the parties, it is suffice without going into the merits of the case to remand the matter back to the first respondent to re-hear the matter afresh and after issuing notice to the petitioners in both the writ petitions. Liberty is granted to the petitioners in both the writ petitions to file their objections before the Wakf Board and also the first respondent is directed to pass appropriate orders after affording an opportunity of hearing to both the parties, within a period of three months from the date of receipt of the objections. The impugned order in W.P.No.1448 of 1994 is quashed. W.P.No.1448 of 1994 is allowed. No costs. WMP.No.2323 of 1994 is closed. In view of the order passed in W.P.No.1448 of 1994, W.P.No.15737 of 1991 is dismissed. No costs. W.M.P.No.23725 of 1991 is dismissed."

20. Aggrieved by the said common order, the petitioner has preferred writ appeals being W.A.Nos.653 and 654 of 2000. By a judgment dated 18.02.2005, a Division Bench of this Court dismissed the appeals. The judgment reads as under:

"These writ appeals have been filed against the impugned judgment of the learned Single Judge dated 30.9.1999.

2. Matters relates to a wakf. We have held in W.A.No.2344 of 2000 dated 31.1.2005 (Salamkhanv. The Tamil Nadu Wakf Board rep. by Chairman, Chennai-4) that all matters relating to wakfs are cognizable by the Wakf Tribunal constituted under Section 8i3 of the Wakf Act, 1995. We have held in that decision that even if the dispute arose prior to 1995 or any order has been passed by the Wakf Board prior to 1995, yet the matter can go to the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995.

3. In view of the above, we are of the opinion that the appellant can raise the controversy before the Wakf Tribunal. Both the writ appeals are, therefore, dismissed on the ground of alternative remedy before the Wakf Tribunal.

4. If the appellant files an application before Wakf Tribunal, the same will be decided preferably within three months thereafter after hearing the parties concerned in accordance with law. No costs. Consequently, CMP.No.5591 of 2000 is closed."

21. Pursuant to the aforesaid remedy given by the Division Bench of this Court in W.A.Nos.653 and 654 of 2000, the petitioner has filed petition under Section 83 of the Wakf Act before the Wakf Tribunal, Chengalpattu.

22. It is pertinent to point out that before accepting the offer of the petitioner, the second respondent mosque was not heard. Therefore, the Wakf Tribunal was right in saying that the second respondent mosque was neither officially consulted nor the objections/suggestions were invited from the management committee of the mosque or from any other persons interested in the Wakf before accepting the offer made by the petitioner in his tender quoting the price of Rs.3.20 lakhs. In its order, the Wakf Tribunal has stated that had the Board made due consultation with the second respondent mosque before accepting the tender submitted by the petitioner, all these litigations could have been averted.

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23. Alienation of wakf property has stipulated in the Section 36A of the Wakf Act, 1954. Under the Wakf Act, 1954, the Board was conferred with the power of supervision over the activities of all wakf subjects. Even though, the Board has been conferred with power to accord sanction to alienate the wakf property, the power

of conducting public auction or calling for tenders from the intending purchasers qua sale of the wakf properties has not been conferred upon the Board. Such power of conducting public auction has been vested with the Mutavalli or Management Committee of the mosque. Therefore, the action taken by the Wakf Board in calling for tenders from the intending purchasers of the petition mentioned property is beyond the scope of the Wakf Act, 1954. Thus, the action of the first respondent is in clear violation of the provisions contained in Section 36A of the Wakf Act, 1954. Thus, it is to be held that the order passed by the first respondent dated 02.11.1990 is illegal and not binding on the second respondent mosque. Therefore, the Wakf Tribunal was right in holding that the Ex.P2 is illegal and not binding on the second respondent.

24. It is pertinent to note that by the common order dated 30.09.1999 passed in W.P.Nos.15737 of 1991 and 1448 of 1994, the order of the first respondent dated 02.11.1990 according sanction was quashed by this Court. As against the verdict in the writ petitions, the petitioner has filed writ appeals and the same were also dismissed by the Division Bench of this Court. Thus, it is clear that the order of the first respondent dated 02.11.1990 was not in operation and therefore, the petitioner cannot rely upon the order dated 02.11.1990.

25. Further, the Government of Tamil Nadu, vide letter dated 24.05.1993 given direction under Section 63 of the Wakf Act, 1954 relating to the resolutions passed by the erstwhile Board. The Board, in its resolution dated 02.09.1994, resolved to revoke the earlier resolution of the Wakf Board dated 02.11.1990. Hence, the question of executing the sale deed pursuant to the earlier resolution dated 02.11.1990 does not arise. Moreover, at one stage, the Board had closed the subject and directed the office to refund the earnest money deposit amount, if any, received from the bidders. Accordingly, the amounts have been refunded. Admittedly, the petitioner has not filed any appeal challenging the said order. Therefore, the order becomes final and the petitioner has no right to challenge the same by way of filing petition under Section 83 of the Wakf Act.

26. As rightly held by the Tribunal that the tender submitted by the petitioner is beyond the scope of the Wakf Act, 1954 and the promissory estoppel pleaded by the petitioner does not arise in this case.

27. Coming to the majority of the Board pleaded by the respondents is concerned, the total number of members of the

Tamil Nadu Wakf Board is 11. One-third majority to accept the offer is 8 persons. But the order dated 02.11.1990 reveals presence of 7 members only. For the said reason also, the order dated 02.11.1990 become invalid and based on which, the petitioner cannot seek any relief.

28. Now coming the valuation of the petition mentioned property, the Tribunal held that the petition mentioned property measuring 1 acre 31 cents is situated in S.No.91/8 of Sennerkuppam village. The Wakf Tribunal held that as per Ex.P12 sale deed, 13 cents was sold at Rs.55,750/-. When the value of 13 cents is taken as Rs.55,750/-, then the value of 1 acre 31 cents would come Rs.5,61,788.46. Therefore, the finding of the Wakf Tribunal clearly shows that the price offered by the petitioner was very low as compared to the said rate mentioned in Ex.P12.

29. The learned counsel for the petitioner argued that the petitioner is willing to deposit the entire sale amount, if the Court directs. First of all the price of the land was in dispute between the parties. As stated above, the Wakf Tribunal has also held that the price offered by the petitioner was very low. When such being the finding of the Tribunal, sitting under revisional jurisdiction, this Court cannot determine the value of the property. Therefore, the

approval granted by the Board dated 02.11.1990 is illegal and not binding on the second respondent. Further, fixing of value for the petition mentioned property would not arise in this case.

30. The learned Wakf Tribunal, upon considering the oral and documentary evidence and also upon applying the provision of law, rightly dismissed the petition filed by the petitioner under Section 83 of the Wakf Act. There is no perversity in the order impugned in this revision.

31. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

25.04.2018

VS

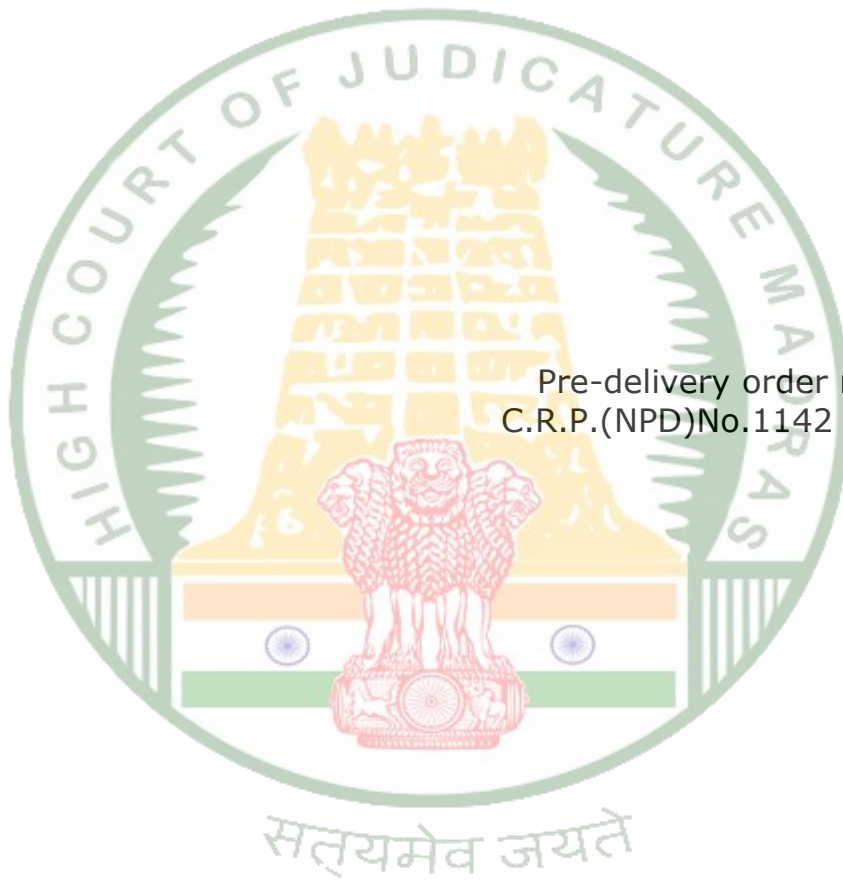
Index : Yes
Internet : Yes

To

The Wakf Tribunal (Principal Sub-Judge),
Chengalpattu.

M.V.MURALIDARAN,J.

VS



Pre-delivery order made in
C.R.P.(NPD)No.1142 of 2007

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