

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.07.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.14820 of 2015
and
M.P.No.1 of 2015

Hayath Basha

..Petitioner

vs

1.The District Collector,
Tiruvannamalai District,
Tiruvannamalai.

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

3.Mr.K.Syed Yasin

.. Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the impugned notice dated 22.04.2015 passed in Na.Ka.M2/44168/2009 on the file of the 1st respondent, quash the same.

For Petitioner : Mr.K.Govi Ganesan

For Respondents : M/s.A.Srijayanthi, Spl GP for R1
Mr.Mohammed Fayaz Ali for R2

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O R D E R

The notice issued by the District Collector, Tiruvannamalai District, stating that the encroachers, who are in occupation of the Wakf property should vacate the encroached premises within thirty days, failing which further actions will be initiated for eviction. The said notice dated 22.04.2015 is under challenge in this writ petition.

2.The learned counsel appearing on behalf of the writ petitioner made a submission that the writ petitioner is not an encroacher and the property in question has already owned by the writ petitioner. The learned counsel for the petitioner emphasized that the writ petitioner is the absolute owner of the property against which the present impugned notice has been issued. The petitioner claims that he purchased the said land by way of a sale deed and patta also stands in his favour. Thus, the very notice issued by the 1st respondent is untenable. The learned counsel for the petitioner urged this Court by stating that earlier, the very same issue had been adjudicated by the Principal Sub Ordinate Court, Tiruvannamalai in O.S.No.93 of 2009. However, the said suit filed by Nawab Chanda Mian Mosque represented by its Mutawalli K.Syed Yasin Sahib was dismissed and against the judgment and decree, a Civil Revision Petition in CRP.No.95 of 2010 was filed before this Court and the same is pending as of now. The learned counsel is of an opinion that when there was an adjudication in respect of the property by the Principal Sub Ordinate Court, Tiruvannamalai, the writ petitioner may not be driven to adjudicate the very same issue before the Wakf Tribunal under the Provisions of the Wakf Act. He further made a representation that the Civil Revision Petition is also pending. Under these circumstances, the petitioner need not approach the Wakf Tribunal once again for the adjudication of the title, ownership and possession. Thus, the writ petition deserves to be considered.

3.The learned counsel appearing on behalf of the Wakf Board strenuously opposed the contention by stating that the writ petitioner is not the owner of the property. The writ petitioner is an encroacher of the land belongs to the Wakf Board and identifying the encroachments in the particular locality, the notice was issued to all the persons, who have encroached the Wakf properties. Thus, there is no irregularity in the issuance of the notice and it is for the petitioner to approach the Wakf Tribunal under the provisions of the Wakf Act and before exhausting the remedy provided under the statute, the present writ petition cannot be entertained.

4.The learned counsel for the Wakf Board emphasized that the ground raised by the writ petitioner that the adjudication in respect of the property in question in this writ petition was undertaken earlier by the Principal Sub Ordinate Court, Tiruvannamalai is incorrect. The earlier suit in O.S.No.93 of 2009 is no way connected with the property, now involved in the impugned notice issued to the writ petitioner. The survey numbers and details of the properties in respect of O.S.No.93 of 2009 and the present impugned notice are enumerated in Paragraph No.6 of the counter affidavit filed by the Wakf Board and the

said paragraph is extracted hereunder:

"6.I further state that the properties involved in both the proceedings are different. The subject matter in the suit is :-

Property situated at Old SF No.93/2, New S.F.No.125/2 and Old S.F.No.118/2 and New S.F.No.157/1 measuring 1.34.0 Hectare & 3.80.0 Hectares at Seelapandal Village, Tiruvannamalai Taluk & District.

Whereas the property involved in this writ petition is:

Property situated in S.F.No.13/1A to 3A measuring 0.10.0, 0.10.5, 0.19.0 hectares situate in Inam Velankanandal Village, Tiruvannamalai Taluk and District. The revision relates to properties situated in Seelapandal Village, whereas the writ petition relates to Velakanandal Village. The comparison is but an argument in vain and is as tainted as a red herring."

5.The learned counsel for the Wakf Board is of an opinion that the suit filed in O.S.No.93 of 2009 and pending CRP.No.95 of 2010 are absolutely unconnected with the properties involved in the present impugned notice, which is different one and therefore, there is no error in respect of the issuance of the impugned order for eviction of the encroachers.

6.This Court is of an opinion that encroachment of a public property or a Wakf property is certainly to be treated as an offence and an illegality. Persons, encroaching the public property, Wakf property are to be dealt with in accordance with law and there cannot be any leniency or misplaced sympathy in respect of the maintenance of Wakf properties. Some great souls of the Muslim Community had contributed their valuable properties in favour of the Mosque concerned for the purpose of performing certain charities. The purpose and the object of such donations were also well enumerated by this donors and it is the duty of the Wakf Board to ensure that the wishes of those great souls are fulfilled in all means and without any dilution. The properties donated by these people are only from and out of their faith in their religion and therefore, such a faith can never be misused or abused. If the wishes of those great souls are not fulfilled as per their own wishes, then Wakf Board has failed in its duty to fulfill the requirements as contemplated in the gift deed or any other documents, donating such lands in favour of the Mosque or Wakf Board. Thus, the Wakf Board must be vigilant in respect of maintaining these properties and those properties are to be utilized for the benefit of the worshipers of Mosque, Dharka or any other Muslim Religious places. It is to be utilized to cater the needs of the poor Muslims, who are in need of such help.

7. At the outset, the wishes of those donors are to be fulfilled in all respects and encroachers or land grabbers in respect of Wakf properties are to be dealt strictly in accordance with law. Wakf Board, while entering into a lease agreement with the third parties in respect of the Wakf properties are also to be careful and the terms and conditions stipulated in the lease agreement are also to be followed scrupulously. Collection of monthly rent or renewal of lease deed is to be done prudently and vigilantly. Proper assessment of the lease holder and their continuance are also to be taken note of. In all respects, the properties belongs to the Wakf Board to be protected without any dilution or deviation. The Wakf Act provides various provisions for eviction of these encroacher's and for the purpose of entering into a lease deeds or in respect of collection of rent and eviction. The authorities competent are bound to implement the provisions of the Act and rules in its strict terms. Thus, this Court is of an opinion that all such properties belongs to the Mosque or Wakf are to be dealt with in accordance with law and the encroachers in such properties are to be evicted without any further delay.

8. In this regard, the Wakf Board should act strictly in respect of all the encroachments of such Wakf property in the State and forward necessary proposals to the District Collector for the purpose of evicting such encroachers. In the event of submitting any such proposals, the authorities competent are bound to initiate appropriate action without any lapse of time. Under these circumstances, if any lapse found by any authority or the Wakf Board, suitable actions are also to be initiated against such officials, who all are committing an act of negligence or dereliction on duty.

9. In respect of the present writ petition on hand, it is only a notice issued to the writ petitioner. This Court is also of the view that a writ petition against a notice can be entertained only on limited grounds and on exceptional circumstances. No writ can be entertained against a notice when the proceedings are sub-judice before the competent authority. Intermittent interventions in such proceedings are not preferable in view of the fact that the competent authorities shall be allowed to complete the proceedings in all respects and take a final decision and communicate the same. The cause will arise to the aggrieved persons only on receipt of the final order in this regard. A writ against the notice can be entertained only if the same was issued by an incompetent authority having no jurisdiction or an allegation of mala fides is raised or if the same is in violation of the statutory rules. Even in case of raising allegation of mala fides against the authority, it is necessary that such an authority against whom

allegations are raised is to be impleaded as a party in the writ proceedings in his personal capacity. In the absence of any one of the legal grounds, no writ can be entertained and judicial review in this regard is limited. The Constitutional Courts are to be cautious while undertaking the process of judicial review against the notice. Thus, this Court is of the view that intermittent interventions in these kind of matters are not certainly preferable and the institutional responsibilities are to be considered in this regard by the Courts also.

10. Even otherwise, the writ petitioner has to approach the Wakf Tribunal under the provisions of the Wakf Act. Thus, it is left open to the writ petitioner to approach the Wakf Tribunal under the provisions of the Wakf Act for the purpose of redressing his grievances by way of an adjudication.

11. With these observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

12. Registry is directed to return the original impugned order, if any attached, to the learned counsel appeared on behalf of the writ petitioner.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Tiruvannamalai District,
Tiruvannamalai.
2. The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffer Syrans Street,
Vallal Seethakathi Nagar,
Chennai - 1.

+1cc to Mr.K.Govi Ganesan, Advocate, S.R.No.44628

W.P.No.14820 of 2015

CP(CO)
CS/20/07/18