

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.39131 to 39134 of 2015

and

M.P.Nos.1 & 2 , 1 & 2, 1 & 2 and 1 & 2 of 2015

1. Kurshid Begum ...Petitioner in WP.No.39131/15
 2. Jabarullah Khan ...Petitioner in WP.No.39132/15
 3. Mohammed Abubacker ...Petitioner in WP.No.39133/15
 4. Rahmanullah ...Petitioner in WP.No.39134/15
- ... Petitioners

vs.

1. The Chairman,
Tamil Nadu Wakf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai - 600 001.
2. The Estate Officer,
Wakf House,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai - 600 001.
3. Masjid - e- Sayeedia Wakf,
Rep. by its Secretary,
25, Pilliar Koil Street,
Tripilicane High Road,
Chennai - 600 005.

... Respondents

(For all the writ petitions)

Prayer in W.P.No.39131 of 2015: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of certiorarified Mandamus calling for the records relating to impugned notice issued by the 3rd respondent herein dated 23.11.2015 and quash the same and consequently direct the

respondents to strictly follow the provisions of The Wafk Properties Lease Rules, 2014 as per order of this Hon'ble Court in CRP (NPD) No.3400 of 2015.

Prayer in W.P.No.39132 of 2015: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of certiorarified Mandamus calling for the records relating to impugned notice issued by the 3rd respondent herein dated 23.11.2015 and quash the same and consequently direct the respondents to strictly follow the provisions of The Wafk Properties Lease Rules, 2014 as per order of this Hon'ble Court in CRP (NPD) No.3407 of 2015.

Prayer in W.P.No.39133 of 2015: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of certiorarified Mandamus calling for the records relating to impugned notice issued by the 3rd respondent herein dated 23.11.2015 and quash the same and consequently direct the respondents to strictly follow the provisions of The Wafk Properties Lease Rules, 2014 as per order of this Hon'ble Court in CRP (NPD) No.3401 of 2015.

Prayer in W.P.No.39134 of 2015: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of certiorarified Mandamus calling for the records relating to impugned notice issued by the 3rd respondent herein dated 23.11.2015 and quash the same and consequently direct the respondents to strictly follow the provisions of The Wafk Properties Lease Rules, 2014 as per order of this Hon'ble Court in CRP (NPD) No.3402 of 2015.

For Petitioners : M/s. G. Muthukumar
(for all the writ petitions)

For Respondents : Mr.V.Raghavachari for R1 & R2
Mr.N.A.Nissar Ahamed for R3.
(for all the writ petitions)

COMMON ORDER

The auction notice issued in proceeding dated 23.11.2015 is sought to be quashed in the present writ petition. The petitioner was a tenant under Mohammed Faud Badsha Sayeed Trust from the year 1980 onwards in respect of the shop premises admeasuring 32 sq.ft in Old No.52, New No.115, Bharathi Salai, Triplicane, Chennai-600 005.

2. The nature of tenancy is non-residential and the petitioner entered in to a lease agreement with old Trust. The shop premises under the occupation of the writ petitioner originally belong to one Hajee Mohammed Badsha charities for several decades and there was a dispute regarding the ownership of the premises between the Trust and Muthavalli. The Trust is collecting the rent from all the tenants up to the year 2009. Thereafter the property in question was declared as Wakf under the provisions of the Wakf Act. After declaration the property belongs to the Wakf and governed under the provisions of the Wakf Act.

3. The grievances of the writ petitioner is that, an auction notice was issued by the third respondent in an arbitrary and by illegal manner. It is contended that, the writ petitioner was not given an opportunity to defend his case in the manner known to law. The impugned notice is liable to be set-aside on the ground that, it violates the provisions of the Wakf Act. The other grounds raised are in relation to the merits of the case.

4. The learned counsel appearing on behalf of the third respondent opposed the contention by stating that, the auction notice was issued by the Muthavalli and the writ petitioner is at liberty to approach the Wakf Tribunal under Section 83 of the Wakf Act and thereafter if he aggrieved he is at liberty to approach the Wakf Board by way of further appeal under the rules in force. Thus the writ petitioner has filed the present writ petition, even without exhausting the remedies available to him under the provisions of the Wakf Act.

5. The learned counsel appearing on behalf of the Tamil Nadu Wakf Board also states that, the notice was issued by the Muthavalli and therefore the present writ petition is not maintainable. This Court is of an opinion that, the writ against a notice cannot be entertained in a routine manner. Judicial review against the notice is limited. A common notice issued against the concerned persons are to be responded by submitting explanation/objections in respect of the notice to the competent authorities in order to defend their case.

6. Contrarily the present writ petition cannot be entertained against the notice. The writ petition against such notices can be entertained if the same has been issued by an authority having no jurisdiction or incompetence or if the allegation of malafides are raised or if the same is violation of the statutory rules in force. Even in case of raising allegation of malafides, the authority whom such a allegation is raised to be impleaded as party respondent in his personal capacity in the writ proceedings. In the absence of any one of

these legal grounds, no writ can be entertained against the notice.

7. The learned counsel for respondents 1 and 2 states that, it is a common notice issued in respect of certain properties belongs to Wakf Board. Hence the aggrieved persons may submit their respective objections/ explanations before the authorities concerned and thereafter they can prefer an appeal to the Wakf Tribunal and before the Wakf Board. Such being the provisions contemplated under Wakf Act, the present writ petition cannot be entertained.

8. Intermittent intervention in such proceeding are not preferable and this Court is of an opinion that, initiation of such proceedings under the statute must be allowed to be concluded by the competent authorities by following the procedures contemplated. In the event of such intermittent interventions, the proceedings initiated will not only suffer, it will create prejudice to all other parties in respect of the allegations or claims set out in the notice.

9. Further the statute provides an appeal before the Wakf Tribunal and before the Wakf Board and the petitioner is bound to exhaust the remedy and the writ petition cannot be entertained in respect of merits placed in the present writ petition. Such complex, facts and circumstances are to be adjudicated before the competent authorities by submitting original documents and by adducing evidences. Such an exercise cannot be done in a writ jurisdiction under Article 223 of the Constitution of India.

10. In this view of the matter, writ petitioner is permitted to submit his explanation or complaints or otherwise before the competent authorities setting out his grievances and accordingly this Court is not inclined to entertain this writ petition, as the writ petitioner has not established any legally accepted grounds to interfere.

Accordingly the writ petition stands dismissed. There shall be no order as to Costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman,
Tamil Nadu Wakf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai - 600 001.

2. The Estate Officer,
Wakf House,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai - 600 001.

+4cc to Mr.G.Muthukumar, Advocate, S.R.No.66409 to 66412

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.66073

+1cc to Mr.N.A.Nissar Ahmed, Advocate, S.R.No.66333

+3cc to Mr.N.A.Nissar Ahmed, Advocate, S.R.No.66334 to 66336
(25/10/2018)

W.P.Nos.39131 to 39134 of 2015
and
M.P.Nos.1 & 2 , 1 & 2, 1 & 2 and 1 & 2 of 2015

MP (CO)
GSP (12/10/2018)

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