

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2018

CORAM

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

WP.No.3318 of 2014

Purana Makkan Wakf,
Rep. by its Hereditary Muthawalli
Mr.B.Ayub Khan ...Petitioner

Vs.

1. The Commissioner,
Hosur Municipality,
Municipal Office,
Hosur - 635 109.
2. The District Collector,
Collector's Office,
Krishnagiri.
3. The Tamil Nadu Wakf Board,
Rep. by its Chief Executive Officer,
No.1, Jaffar Sarang Street,
Vallal Seethakathi Nagar,
Chennai - 600 001. ...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the 1st respondent made in Na.Ka.No.8777/2013/F1, dated 30.09.2013 and quash the same and direct the 1st and 2nd respondents to demolish the compound wall blocking the petitioner wakf land situated at Krishnagiri District, Hosur Taluk and Town, comprised in Survey No.825/3, preventing their entry to the common public pathway.

For Petitioner : M/s.Raj & Rai Asso.
For Respondents : Mr.N.Subbarayalu, (for R1)
Mr.N.Inbanathan, AGP (for R2)
Mr.Mohd. Fayez Ali, (for R3)

ORDER

Heard the learned counsel for the petitioner, the learned standing counsels for the respondents 1 & 3 and the learned Additional Government Pleader for the 2nd respondent.

2. This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus to quash the order of the 1st respondent made in Na.Ka.No.8777/2013/F1, dated 30.09.2013 and direct the respondents 1 and 2 to demolish the compound wall blocking the entry to the petitioner's wakf land situated in Survey No.825/3.

3. According to the petitioner, the petitioner-Association is functioning under the administrative control and supervision of the 3rd respondent, which owned 1 acre and 20 cents in Survey No.825/3 at Hosur Town. The petitioner instituted a suit against the 1st respondent-Municipality in O.S.No.97 of 2000 for permanent injunction and mandatory injunction. The suit was decreed on 31.03.2015 and the appeal preferred by the 1st respondent in A.S.No.27 of 2005 was dismissed by the Sub Court, Hosur on 31.01.2006. Thereupon, the 1st respondent preferred a second appeal with a delay. This Court dismissed the condoned delay application. Thereafter, the petitioner send a representation to the respondent on 09.07.2012, requesting them to remove the compound wall. Since it was not considered, the present Writ Petition.

4. The learned Standing Counsel for the 1st respondent submitted that the entire compound wall was constructed in the land belonging to the 1st respondent-Municipality and the remedy of the petitioner is to approach the Civil Court to execute the decree, where the respondents will have an opportunity to oppose execution on various grounds and this Writ Petition is filed after expiry of the limitation period. Despite the facts that this Writ Petition itself is not maintainable, however, considering the grievance of the petitioner, the 1st respondent is ready to provide access to the petitioner's property by opening southern end of the compound wall. The 1st respondent has filed an affidavit, dated 18.06.2016 in this regard. Para 2 runs thus:-

"2. I submit that the above writ petition came up on 16.06.2016 and heard by this Hon'ble Court. I submit that the main grievance of the writ petitioner as a whole issue is that this respondent municipality blocked their access and thereby preventing them from reaching the municipal passage, which leads the public to the new bus stand, from their property. I submit that in this regard this respondent is agreed to provide access to the petitioner by opening the southern end of the western wall by 20'00 feet width (north-south) and the petitioner can have their access and by provide opening on this side larger public using this short way to reach bus stand, also would not find any difficulty. I submit that this southern side end of the municipal passage

width of the entrance from old Bangalore road is wide.
Hence I submit the public can thoroughfare easily."

5. The learned counsel for the petitioner on instructions, submitted that the petitioner has agreed for the proposal suggested by the 1st respondent and the Writ Petition may be disposed of, recording the undertaking.

6. Recording the above facts, this Writ Petition is disposed of as no further adjudication is necessary in this case. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

pvs
To

1. The Commissioner,
Hosur Municipality,
Municipal Office,
Hosur - 635 109.
2. The District Collector,
Collector's Office,
Krishnagiri.
3. The Chief Executive Officer,
The Tamil Nadu Wakf Board,
No.1, Jaffar Sarang Street,
Vallal Seethakathi Nagar,
Chennai - 600 001.

+1cc to Mr.RAJ & RAJ ASSO. Advocate, S.R.No. 26677
+1cc to the Government Pleader, S.R.No. 27699

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RSY (CO)
TR (09/05/2018)

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