

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.01.2018

Delivered on : 10.01.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.1458 of 2013 and
MP No.1 of 2013

The Secretary
Hameedia Jamia Pallivasal
No.1, Arcot Road,
Saligramam, Chennai - 600 093. ...Appellant/Respondent 3

Vs

1.The Government of Tamil Nadu,
Rep. by the Collector (Incharge)
District Revenue Officer,
Chennai District, No.32, Rajaji Salai,
Chennai - 600 001.

2.The Thasildar,
Egmore - Nungambakkam Taluk,
Chetpet, Chennai - 600 031.

...Respondent 1 & 2/ Respondent 1 & 2

3.K.Rajammal

4.K.Kangavalli

...Respondent 3 & 4/Petitioners

5.The Tamil Nadu Wakf Board,
Rep. by its Chief Executive Officer,
No.1, Jaffar Sarang Street,
Chennnai - 1.
(Cause title accepted vide order of court
dated 3.7.2013 made in M.P.No.1/2013
in WA.SR.No.20031/2013)

...Respondents

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent
to set aside the order dated 08.01.2013 in W.P.No.28012 of 2011.

WP.28012 OF 2011 PRAYER:

Writ of Certiorari, Calling for the records relating to the impugned order dt 28.10.2011 in No. 03/34841/2010, on the file of the District Collector (i/c)/DRO, Chennai quash the same

For Appellant : Mrs.Hema Sampath
Senior Counsel for
Ms.A.Ajimath Begam

For Respondents : Mrs.A.Sri Jayanthi
Special Government Pleader
for R1 and R2
Mr.V.T.Gopalan
Senior Counsel for
Mr.K.Ravindranath for R3 and R4
Mr.V.Lakshmi Narayanan for R5

J U D G M E N T

K.K. SASIDHARAN,J.

Introductory

The Tahsildar, notwithstanding the availability of records and string of documents relating to ownership of the subject property by the appellant including the report of survey and notification of Wakf property in the Gazette Notification dated 4 May, 1959 issued patta to the legal representatives of the Watchman employed by a trespasser, who was in possession of a portion of the land illegally and that too without even issuing notice to the Wakf Board and in violation of the provisions of the Waqf Act, 1995. The illegal order was set aside by the Revenue Divisional Officer pursuant to the appeal filed by the Wakf. The learned single Judge entertained the writ petition filed by the aggrieved and while setting aside the order passed by the Revenue Divisional Officer directed the Wakf to approach the Civil Court for declaring its title and possession by wrongly interpreting a decision of the Division Bench of this Court, instead of directing the writ petitioners, who have no semblance of right to approach the concerned Civil Court or adjudication of the right claimed by them. The order is under challenge at the instance of the notified Wakf represented by the Secretary, Hameedia Jamia Pallivasal, Chennai.

Brief Facts

2. The respondents 3 and 4 filed a petition before the Tahsildar, Egmore - Nungambakkam Taluk, claiming that the property admeasuring 0.30.60 Hectares in Block No.41 T.S.No.61

O.S.Nos.124/part, 125/part and 128/part of Saligramam Village has been in the possession and enjoyment of Thiru.P.Karuppasamy Thevar, the husband of the third respondent and father of the fourth respondent from 1970 onwards. The revenue records available with the Tahsildar indicated that the land was registered in the name of Muthavalli, Hameedia Jamia Pallivasal and Wakf Board. However, without even issuing notice to the appellant or the Wakf Board, the Tahsildar, by order dated 9 February, 2010 granted patta to the respondents 3 and 4. The said order was challenged by the appellant before the Revenue Divisional Officer, Chennai under the provisions of the Tamil Nadu Patta Pass Book Act, 1983. The Revenue Divisional Officer called upon the respondents 3 and 4 to submit documents to substantiate their ownership and possession of the property. However, no such document was produced. The Appellate Authority found that the property was registered in the name of Hameedia Jamia Pallivasal and Wakf Board and that the civil suit filed by the Wakf Board in O.S.No.932 of 1986 for eviction of trespasser has already been decreed by the Civil City Court. The Appellate Authority, therefore, allowed the appeal by setting aside the order passed by the Tahsildar. The original entry was directed to be restored.

3. The order passed by the Appellate Authority dated 28 October, 2011 was challenged by the respondents 3 and 4 before the writ court in W.P.No.28012 of 2011. Even before the writ court, documents were not filed by the respondents 3 and 4 to substantiate their contention with regard to ownership and possession.

4. The learned single Judge by placing reliance on the judgment rendered by a Division Bench of this Court in Vishwas Footwear Company Ltd., v. The District Collector, Kancheepuram [2011 (5) CTC 94] allowed the writ petition. The learned single Judge directed the appellant to approach the Civil Court for declaration. It is the said order, which is under challenge in this appeal.

Submissions

5. The learned Senior Counsel for the appellant by placing reliance on the Proforma Report dated 29 May, 1956, prepared by the Assistant Commissioner of Wakf, Madras, the Statutory Declaration published in the Gazette on 4 May, 1959 notifying the subject property and the judgment and decree dated 25 February, 2008 in O.S.No.932 of 1986 on the file of the First Assistant City Civil Court, Chennai, contended that the property absolutely belongs to Hameedia Jamia Pallivasal and the name of the Wakf Board was rightly recorded in the revenue registers. According to the learned Senior Counsel, the predecessor-in-

interest of the respondents 3 and 4 was employed as a Watchman by Thiru.C.A.Doraimanickam against whom, a civil suit was filed in O.S.No.932 of 1986 for eviction. The respondents 3 and 4 made a wrongful claim before the Tahsildar that their predecessor-in-interest has been in possession and enjoyment of the land right from 1970. The Tahsildar committed a jurisdictional error by allowing the application notwithstanding the revenue documents relating to the ownership and possession of the property by the Wakf. According to the learned Senior Counsel, while mutating the entries in favour of respondents 3 and 4, the Tahsildar was expected to issue notice to the appellant viz., Hameedia Jamia Pallivasal and the Wakf Board in whose name, the land was registered. Since no such effort was taken by the Tahsildar before granting patta, the Appellate Authority was right in setting aside the order. The learned Senior Counsel further contended that the learned single Judge ought to have directed the respondents 3 and 4 to approach the Civil Court rather than directing the registered owner of the property to approach the Civil Court for declaration.

6. The learned Senior Counsel for the respondents 3 and 4, while justifying the order passed by the learned single Judge contended that the property, which is the subject matter of the writ petition is situated outside the compound wall of the mosque. According to the learned Senior Counsel, the Wakf Board has no objection in granting patta in favour of the respondents 3 and 4 and their consent made the Tahsildar to issue patta in favour of respondents 3 and 4. The learned Senior Counsel contended that the learned single judge was correct in directing the appellant to approach the Civil Court in view of the order passed by the Tahsildar granting patta to the respondents 3 and 4. It was further contended that the appellant filed a civil suit against a fictitious person and obtained a decree behind the back of those who were in possession and tried to execute the decree. According to the learned Senior Counsel, the husband of the third respondent has been in possession and enjoyment of the land and as such, patta was rightly given to his legal representatives.

7. The learned Standing Counsel for the Wakf Board placed the entire records before us to substantiate his contention that the statutory survey was made by the Assistant Commissioner of Wakf, Madras in 1956. According to the learned Standing Counsel, the land, which is the subject matter of this appeal was part of the land surveyed and notified by the Wakf Board. The Wakf Board published a notification in the Gazette on 4 May, 1959 notifying that the subject property is a Wakf Property. The Tahsildar was therefore not correct in issuing patta to the respondents 3 and 4. The learned Standing Counsel by distinguishing the judgment in Vishwas Footwear Company (cited

supra) submitted that though the law laid down by the Division Bench is unexceptional, the fact remains that the said judgment has no application to the facts of the subject case in view of the fact that the name of the appellant has already been recorded in the revenue register.

Discussion:

8. The State Government by notification in the official Gazette appointed a Commissioner for the purpose of making a survey of the Wakf property. The appointments were made for the purpose of maintaining a list of Wakf property. After conducting the survey, notification of the Wakf property was made in the Gazette.

9. Section 4 of the Waqf Act, 1995 provides for preliminary survey of Wakf. Section 6 provides that in case, there is a dispute regarding the Wakf, the aggrieved is entitled to institute a suit in a Tribunal constituted under the Waqf Act.

10. The file produced by the learned Standing Counsel for the Wakf Board indicates that a detailed survey of the property owned by Hameedia Jamia Pallivasal was conducted by the Assistant Commissioner of Wakf, Madras. The property surveyed by the Commissioner of Wakf includes 2 acres and 7 cents of land situated at Old Survey No.125, Saligramam Village, Egmore - Nungambakkam Taluk. The Survey Report was considered by the Wakf Board and it was forwarded to the Government for publication in the official Gazette. The notification indicating the wakf property was published in the Government Gazette on 4 May, 1959. The copy of the Proforma Report dated 29 May, 1956 and the Gazette publication dated 4 May, 1959 are part of records.

11. The subject land was registered in the name of Hameedia Jamia Pallivasal and Tamil Nadu Wakf Board. The extracts of the revenue documents indicating the ownership and possession of the land by the Hameedia Jamia Pallivasal and the Tamil Nadu Wakf Board are also available on record.

12. The appellant filed a civil suit in O.S.No.932 of 1986 before the City Civil Court, Chennai against Thiru.C.A.Doraimanickam and two others for eviction. The suit was decreed by judgment and decree dated 25 February, 2008. The decree has become final.

13. The third respondent filed a petition before the Tahsildar, Egmore - Nungambakkam Taluk claiming patta in relation to the subject property. She also preferred a petition before the District Collector, Chennai for granting patta. The Assistant Director-cum-Personal Assistant to the District

Collector by letter dated 8 May, 2009 called upon the Chief Executive Officer, Tamilnadu Wakf Board, to furnish its comments as to whether the subject land is part of the land notified as Wakf. The Tamil Nadu Wakf Board, by letter dated 28 May, 2009 informed the Assistant Director that the land claimed by the third respondent is included as a wakf property in the notification published on 4 May, 1959.

14. While so, the respondents 3 and 4 filed an impleading petition in E.P.No.1915 of 2010 in O.S.No.932 of 1986 claiming that they are in possession of the property and as such, they are not liable to be evicted in execution of the decree obtained by the appellant in O.S.No.932 of 1986. The application was dismissed by the Civil Court.

15. The Assistant Director, District Collectorate, Chennai, notwithstanding the reply given by the Tamil Nadu Wakf Board that the subject land is included in the Wakf property notified on 4 May, 1959, by letter dated 14 September, 2009 informed the Tahsildar that the subject land is situated outside the compound wall of the mosque and as such, appropriate orders could be passed for the grant of patta.

16. The jurisdictional authority for the grant of patta is the Tahsildar. The Tahsildar, Egmore - Nungambakkam Taluk without even issuing notice to the appellant or the Tamil Nadu Wakf Board passed an order dated 9 February, 2010 granting patta to the respondents 3 and 4.

17. The appellant filed a statutory appeal under Section 12 of the Tamil Nadu Patta Pass Book Act, 1983. The Revenue Divisional Officer in his capacity as the Appellate Authority issued notice to the respondents 3 and 4 and called upon them to produce documents in support of their claim regarding ownership and possession of the subject land. The Appellate Authority called for a report from the Tahsildar as to how patta was granted to the respondents 3 and 4. The Tahsildar, in his report submitted that notice was affixed on the land and as there was no objection, patta was granted to respondents 3 and 4.

18. Before the Appellate Authority, the respondents 3 and 4 failed to produce even a scrap of paper to show their ownership and possession of the land in question. The Appellate Authority considered the entire documents produced by the appellant and the revenue records and by way of a detailed order set aside the order passed by the Tahsildar.

19. The respondents 3 and 4 challenged the order passed by the Appellate Authority before the writ court. The third respondent in her affidavit filed in support of the writ

petition contended that her husband occupied an extent of 3070 sq.ft. of land in old Survey No.125, No.110, Saligramam Village, Egmore - Nungambakkam, Taluk, in or about 1970. There is no indication anywhere in the affidavit as to how he occupied the property and as to whether he was in legal possession or in adverse possession.

20. The learned single Judge proceeded as if the names of respondents 3 and 4 were registered originally and it was only the appellant, who made a claim for change of patta. The learned single Judge relied on the decision of the Division Bench in Vishwas Footwear Company (cited supra) for relegating the appellant to the Civil Court. The learned single Judge omitted to consider the vital fact that the land was originally registered in the name of the appellant and the Tamil Nadu Wakf Board. In the counter affidavit filed by the appellant before the writ court, it was specifically contended that the subject property was part of the land notified by the Tamil Nadu Wakf Board on 4 May, 1959. In fact, the Proforma report dated 29 May, 1956 and the Gazette notification dated 4 May, 1959 were produced before the writ court to substantiate the contention taken by the appellant that it is a wakf land and it was notified by the statutory authority.

21. The documents available on record very clearly shows that the subject land was surveyed by the Assistant Commissioner of Wakf and it was included in the Proforma report dated 29 May, 1956. The land owned by the appellant including the subject land was notified as a wakf property in the Gazette on 4 May, 1959. The declaration is statutory in nature. In case, there is a dispute with regard to the property notified by the Government under the provisions of the Waqf Act, the remedy is only to raise a dispute before the Tribunal. There should be a declaration made by the Waqf Tribunal on adjudication that the property belongs to the respondents 3 and 4 and it was wrongly recorded as wakf property in the Gazette. Then only, an application would be maintainable before the Tahsildar for mutation of records. In the subject case, no such procedure was adopted by the respondents 3 and 4.

22. The respondents 3 and 4 filed an application for mutation and it was entertained by the Tahsildar notwithstanding the statutory provision contained under Section 6 of the Waqf Act giving authority to the Waqf Tribunal to decide the dispute with regard to wakf property.

23. The appellant has taken up a contention that the husband of the third respondent was employed as a Watchman by Thiru. C.A.Doraimanickam, against whom a suit in O.S.No.932 of 1986 was filed for ejectment.

24. The first defendant in O.S.No.932 of 1986 suffered a decree. When the decree was sought to be executed by the appellant, the respondents 3 and 4 filed a petition under Section 47 of the Code of Civil Procedure. The Civil Court examined the claim made by the respondents 3 and 4 and rejected it on merits.

25. The learned Senior Counsel for the respondents 3 and 4 by placing reliance on the communication sent by the Assistant Director, Collectorate, Chennai to the Tahsildar, Egmore - Nungambakkam Taluk, dated 14 September, 2009 contended that the Wakf Board has admitted that there is no connection between the mosque and the subject land and as such, patta was granted rightly by the Tahsildar. There is absolutely no merit in the said contention. There is no record produced by the respondents 3 and 4 before the writ court to show that such a statement was given by the Wakf Board. When there is a statutory notification issued by the Wakf Board notifying the wakf property, there is no question of giving a clarification by the Wakf Board with regard to the nature and lie of the land. Even if the subject land is outside the compound of the wakf property, still it cannot be said that it is not a wakf property.

26. There was a statutory declaration notifying the wakf property on 4 May, 1959. In view of the Proforma report dated 29 May, 1956 and the Gazette Notification dated 4 May, 1959, the respondents 3 and 4 are not entitled even to maintain an application before the Tahsildar for mutation of records. The Tahsildar committed a jurisdictional error by granting patta in respect of the land covered by the Waqf Act. It is not as if the Tahsildar was not aware of the factual position that the land absolutely belongs to the Wakf Board. The records contained a clear indication that the land is in the ownership and possession of the Tamil Nadu Wakf Board and Hameedia Jamia Pallivasal. Notwithstanding such string of documents, the Tahsildar granted patta to the respondents 3 and 4 and that too without issuing notice to the Tamil Nadu Wakf Board or the appellant.

27. In Vishwas Footwear Company (cited supra), the appellant purchased the land by way of a Sale Deed dated 30 October, 1992. The revenue records were mutated in favour of the appellant therein. Thereafter, a claim was made by a third party on the ground that the property belongs to him. The Tahsildar entertained the said application and cancelled the patta. The Division Bench found that the patta was transferred from the name of the erstwhile land owner to the name of the appellant and that the appellant has been paying kist right from 1992 and as such, the Tahsildar was not correct in cancelling

the patta. It was only in the said circumstances, the Division Bench allowed the appeal and directed the aggrieved to approach the civil court to decide the issue.

28. In case, the ratio in Vishwas Footwear Company (cited supra) is applied to the present case, it is the respondents 3 and 4, who have to approach the civil court and not the appellant. This is so for the reason that the name of the appellant was recorded in the revenue records long back. The correctness of the entry is supported by the Proforma Report dated 29 May, 1956 and the Notification dated 4 May, 1959. On receipt of the application from the respondents 3 and 4 for mutation of records, the Tahsildar ought to have directed them to approach the Civil Court for declaration regarding their right to the property.

29. The learned single Judge instead of directing the respondents 3 and 4 to approach the civil court for declaration, on an incorrect interpretation of the judgment in Vishwas Footwear Company (cited supra) directed the appellant to approach the civil court. It is not as if the land originally registered in the name of the respondents 3 and 4 and a claim was made by the appellant for mutation of records. It is not so. It was only the respondents 3 and 4, who made a claim that the land belongs to them and as such, they should be given patta. In such circumstances, the learned single Judge should have directed the respondents 3 and 4 to obtain a decree of declaration from the civil court.

30. The Appellate Authority considered the claim made by the appellant vis-a-vis the right claimed by the respondents 3 and 4 and rightly decided the issue. The Appellate Authority has given cogent reasons in support of its ultimate finding that the Tahsildar has wrongly recorded the name of the respondents 3 and 4 in the revenue records. The learned single Judge was therefore not correct in upsetting the said finding without any contrary material. We are therefore of the view that the impugned order is liable to be set aside.

31. In the result, the order dated 8 January, 2013 is set aside. The writ petition in W.P.No.28012 of 2011 is dismissed.

32. We direct the Tahsildar, Egmore - Nungambakkam Taluk to restore the original entries in the revenue records pursuant to the order passed by the Appellate Authority dated 28 October, 2011. Such exercise shall be completed within a period of four weeks from the date of receipt of a copy of this judgment.

33. In the up shot, we allow the intra court appeal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-iv)

//True Copy//

Sub Assistant Registrar

svki

To

- 1.The Collector (Incharge)
District Revenue Officer,
The Government of Tamil Nadu,
Chennai District, No.32, Rajaji Salai,
Chennai - 600 001.
- 2.The Thasildar,
Egmore - Nungambakkam Taluk,
Chetpet, Chennai - 600 031.
- 3.The Chief Executive Officer,
The Tamil Nadu Wakf Board,
No.1, Jaffar Sarang Street,
Chennai - 1.

+1cc to Mr.A.AJIMATH BEGUM, Advocate, S.R.No. 1752
+1cc to Mr.V.RAGHAVACHARI, Advocate, S.R.No. 1934
+1cc to the Government Pleader, S.R.No.2754

Judgment in
W.A No.1458 of 2013

RV (CO)
TR (05/02/2018)

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