IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.11.2018

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

WP.No.3920/2017 & WMP.Nos.4011 & 24947/2017

1.M.Arunkumar
2.M.Sumithra .. Petitioners

Versus

1 The Commissioner
Corporation of Chennai
Rippon Buildings,
Chennai 600 003.

2 The Assistant Revenue Officer
Zone-IX, Corporation of Chennai
No.1, Lake Area, 4th Cross Street
Nungambakkam, Chennai - 34.

3 Mrs.Bashira Bi .. Respondents

** R3 impleaded as per theorder of this Court dated 09.06.2017 made in WMP.No.7463/2017.

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus forbearing the respondents from in any manner altering the Property Tax Assessment for the petitioners' property in Old Door No.165, Presently 222 [165/2], Peters Road, Royapettah, Chennai-14.

For Petitioners	:	Mr.A.Ashvathaman
For RR 1 & 2	:	Mr.T.C.Gopalakrishnan
For R3	:	Mr.Ashok Menon

ORDER

By consent, the writ petition is taken up for final disposal and is disposed of by the following order. Mr.T.C.Gopalakrishnan, learned Standing counsel appears on behalf of the respondents 1 and 2 and Mr.Ashok Menon, learned counsel appears on behalf of the 3rd respondent.

2 The petitioners would state that they are the son

and daughter of Thiru R.Mathivanan and according to him, they are the absolute owners of the superstructure bearing Old Door No.165, Present No.222 [165/2], Peters Road, Royapettah, Chennai-14, and the said superstructure has been constructed on the land belonging to the Tamil Nadu Wakf Board. They would further aver that the said superstructure was originally owned by their maternal grandfather, viz., Tr.M.Thambiran and he has executed a Will date d06.09.1993, bequeathing the said property and it is also a registered Will bearing Doc.No.42/1993 registered on the file of the Sub Registrar, Mylapore. Thiru.M.Thambiran breathed his last on 04.12.2000 and the fact of death was also registered with the Corporation of Chennai. It is further stated that their mother, viz., Mrs.Shenbagavalli, is the only daughter and the maternal grandmother, viz., Tmt.Kalyani, also passed away in the year 2008 and therefore, the Will executed by Thambiran came into force and they have become the absolute owners of the said superstructure and that the statutory levies in respect of the said superstructure have been paid without any default.

3 The 1st petitioner was shocked and surprised to receive the proceedings of the 2nd respondent dated 31.01.2017 in Ma.A.9.Va.Th.Tha.Ka.No.R2/0746/2010 wherein he became aware of the fact that the 2nd respondent is taking steps to alter the name in the Property Tax Register and according to him, the 3rd respondent managed to fabricate certain documents to show as if she is the owner of the property. The petitioners, in this regard, have submitted a representation to the 2nd respondent and since it failed to invoke any kind of response, they came forward to file the present writ petition.

4 The writ petition was entertained and notices were ordered.

5 The Assistant Revenue Officer, Zone-IX of the Corporation of Chennai, has filed a counter affidavit stating that the 3rd respondent had applied for name transfer of the property at Old Door No.165, Presently 222 [165/2], Peters Road, Royapettah, Chennai-14, in her name and on scrutinising the relevant records, it was found that the property has been assessed in the name of one Thambiran and therefore, a communication was sent to Kalyani, W/o.Thambiran, to appear for an enquiry in order to clarify the claim of the 3rd respondent. It is further stated that on verification, it was found that Thambiran had filed a civil suit in OS.No.814/2000 against one Kulsum Bi and four others and also the Wakf Board, with regard to the property in question and the said civil suit was dismissed by the City Civil Court, Madras, vide judgment and decree dated 02.12.2003 and it is also averred that there was a dispute between the petitioners and the third party with regard to the title of the land and prayed for dismissal of the writ

petition.

6 The 3rd respondent also filed a counter affidavit with supporting documents and she would aver that she became the sole and absolute owner of the said property admeasuring to an extent of 2890 sq.ft., comprised in Re-Survey No.360, Patta C.A.No.296/2016 issued by the Tahsildar, Mylapore and she acquired the same through an oral Hiba [Gift] dated 23.04.2011 and subsequently, it has been confirmed by her mother Kulsum Bi through an affidavit dated 06.05.2011. The 3rd respondent would further aver that the petitioners did not produce any single document to show that they are the owners of the superstructure and Kulsum Bi, Bi Bi Jan and Habeeb Bi had already filed a suit in OS.No.694/1994 on the file of the Court of II Assistant Judge, City Civil Court, Chennai, for declaration that the appointment of A.Mohammed Ibrahim as Muthavalli in respect of the private property by the Tamil Nadu Wakf Board, is null and void and for a further declaration that they are the lawful descendants of the private property and consequently, for permanent injunction restraining the said Muthavalli from collecting the rent and other profits from the suit property and the said suit was decreed as prayed for on 31.08.1995 by the learned II Assistant Judge, City Civil Court, Chennai and pendency of the said suit, Thambiran had also filed IA.No.14608/1997 to implead him as a party and it was dismissed and the challenge made to the said order of dismissal by filing CRP.No.3395/1998 before this Court, also ended in dismissal and however, liberty was granted to Thambiran to work out his remedy. Thereafter, Thambiran filed a suit in OS.No.814/2000 on the file of the Court of 15th Assistant Judge, City Civil Court, Chennai, for declaration, declaring that the decree passed in OS.No.694/1994, as null and void and pendency of the suit, he died on 04.12.2000, leaving behind his wife Kalyani as the only surviving heir and she filed IA.No.4724/2001 to bring herself as the legal representative and it was also dismissed for default on 02.12.2003 and thereafter, no application has been taken out to restore the said application and therefore, it has become final. The 3rd respondent also denied the truth and validity of the Will said to have been executed by Thambiran and even otherwise, the description of the property given in the said Will does not contain the survey number or the extent of the property and hence, prays for dismissal of the writ petition.

7 The learned counsel for the petitioners would submit that the land on which the superstructure has been put up by their maternal grandfather, viz., Thambiran, to Tamil Nadu Wakf Board and by virtue of the above said Will executed by him and after the demise of their grandmother Kalyani, the petitioners became the absolute owners of the superstructure in question and however, the Property Tax Assessment continues to stand in the

name of their grandfather Thambiran and all of a sudden, on the basis of the untenable claim, the Corporation of Chennai is making attempt to mutate the Property Tax Register in favour of the 3rd respondent and would further urge that since the Tamil Nadu Wakf Board is the owner of the land on which the superstructure stands, he has also filed WMP.No.24847/2017 to implead the Wakf Board as a party respondent and prays for appropriate orders.

8 Per contra, Mr.T.C.Gopalakrishnan, learned Standing counsel appearing for the Corporation of Chennai/respondents 1 and 2 would submit that the Property Tax Assessment continues to stand in the name of Thambiran and also drawn the attention of this Court to the counter affidavit filed on their behalf.

9 Mr.Ashok Menon, learned counsel for the 3rd respondent has invited the attention of this Court to the counter affidavit of the 3rd respondent as well as to the typed set of documents and would submit that in the light of the earlier civil suit proceedings coupled with the fact that the petition for eviction filed against Thambiran under the provisions of the Rent Control Act, came to be ordered and the appeal filed by him also came to dismissed, it cannot be said that Thambiran was the owner of the superstructure and the petitioners admittedly claim ownership and title in respect of the said superstructure through Thambiran only and in the light of the said findings, they have no legs to stand and would further state that as per the oral gift executed by the mother of the 3rd respondent, she became the absolute owner of the land and superstructure and as such, the Corporation authorities may be directed to consider her claim as to the mutation of her name in the Property Tax Assessment.

10 This Court has paid its best attention to the rival submissions and also perused the materials placed before it.

11 A perusal of the materials placed on record in the form of typed set of documents filed by both petitioners and the 3rd respondent would disclose the following fact.

12 Thambiran - the maternal grandfather of the petitioners suffered an order of eviction and he filed an appeal in HRA No.391/1975 against the order of eviction in HRC.No.3842/1970 before the Appellate Authority / learned III Judge, Court of Small Causes, Madras and the said appeal was allowed on 09.09.1976 by holding that the property is the Wakf property and as such, the petition for eviction is not maintainable. Subsequently, a Muthavalli sought to be appointed in respect of the said property and challenging the same, Ghulsum Bi – mother of the 3rd respondent herein along with 2 others, viz., Habeeb Bi and Bi Bi Jan, filed OS.No.10638/1996 for partition and separate

possession of the suit property and the said suit was tried by the Court of XI Assistant Judge, City Civil Court, Chennai. In the said suit, the following issues were framed:-

1 Whether the said properties are the properties of the plaintiffs? ;

2 Whether the plaintiffs are having share in the suit property? ;

3 Whether the suit property belongs to the Tamil Nadu Wakf Board? ;

4 Whether the defendant is to submit the Accounts to the plaintiffs? ;

5 Whether the plaintiffs are entitled to decree as prayed for? ; and

6 To what other reliefs the plaintiffs are entitled to?

13 The said Court has recorded the finding that the constitution of the Wakf as pleaded is not legally recognizable and a categorical finding has been recorded in paragraph 8 of the said judgment that the entire suit property cannot come under the administration of the Wakf and the said issue has been decided against the Tamil Nadu Wakf Board and it is the submission of the learned counsel for the 3rd respondent that no further appeal has been filed challenging the said decree and therefore, it has become final and the maternal grandfather of the petitioners, viz., Thambiran has filed a comprehensive suit in OS.No.814/2000 and the sixth defendant had also filed a written statement refuting the allegation and after framing of the issues, the suit was posted for trial and the plaintiff, viz., Thambiran remained absent and therefore, the said suit came to be dismissed for default vide judgment and decree dated 02.12.2003. After, dismissal of the suit, the wife of Thambiran, viz., Kalyani - maternal grandmother of the petitioners herein, also filed a petition for bringing herself as the legal representative for the purpose of restoring the suit and the said petition also came to be dismissed and the Civil Revision Petition filed challenging the said order, also came to be dismissed for default and in the absence of any further challenge, the dismissal of the suit for default has become final.

14 Subsequently, one of the plaintiffs in the above suit in OS.No.10638/1996 on the file of the Court of the XI Assistant City Civil Judge, made an oral gift [HIBA] in favour of the mother of the 3rd respondent and it was in respect of the land and superstructure bearing Old Door No.165, Peters Road, Royapettah, Chennai-14, comprised in Re-Survey No.360, admeasuring to an extent of 1 ground 490 sq.ft. and it was confirmed in writing by way of affidavit dated 06.05.2011. The 3rd respondent arming with the said documents, had approached the

Corporation of Chennai for mutation of the Property Tax Assessment in her name and upon receipt of the same, notices were issued to the petitioners and on account of the pendency of the writ petition, no progress is taking place.

15 The primordial submission made by the learned counsel for the petitioners is that since the land on which the superstructure stands belong to the Tamil Nadu Wakf Board and that the superstructure has been put up by their maternal grandfather and mutation of the Property Tax cannot be done in favour of the 3rd respondent. However, this Court is of the considered view that the said submission is liable to be rejected for the reason that a competent Civil Forum in the judgment and decree dated 23.12.1997 in OS.No.10638/1996 has categorically given a finding that the property does not belong to the Wakf Board and the said finding has also become final, according to the learned counsel appearing for the 3rd respondent. That apart, the grandfather of the petitioners, viz., Thambiran, also filed a comprehensive suit in OS.No.814/2000 and pending suit, he died and the attempt made by his wife to bring herself as the legal representative, has also ended in failure.

16 Though it is the vehement and forceful submission of the learned counsel for the petitioners that the Tamil Nadu Wakf Board is a proper and necessary party and also took out WMP.No.24947/2017 to implead them as a party, the said petition cannot be entertained in the light of the findings given by the competent Civil Court in OS.No.10638/1996 vide judgment and decree dated 23.12.1997. A faint attempt was also made by the learned counsel for the petitioners by submitting that since the Property Tax Assessment in respect of the superstructure admittedly, stand in the name of their maternal grandfather Thambiran and being their successor in interest, their names should be mutated, in the considered opinion of the Court, it cannot be done in the light of section 106 of the Chennai City Municipal Corporation Act, 1919. A cursory purview of the said provision would indicate that the transfer of property is relatable to the title of the person and in the absence of any tenable documents as to the ownership and title of the maternal grandfather of the petitioners, the said provision will not come to the aid of the writ petitioners.

17 This Court on a careful consideration and appreciation of the entire materials placed on record, is of the considered view that the present writ petition lacks merit and substance and deserves dismissal.

18 Accordingly, the writ petition stands dismissed. In the light of the aforesaid reasons, the miscellaneous petition

for impleadment stands dismissed, so also WMP.No.4011/2017 is also dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

AP

To

1 The Commissioner
Corporation of Chennai
Rippon Buildings,
Chennai 600 003.

2 The Assistant Revenue Officer
Zone-IX, Corporation of Chennai
No.1, Lake Area, 4th Cross Street
Nungambakkam, Chennai - 34.

+1cc to Mr.T.C.Gopalakrishnan, Advocate, S.R.No.82416
+1cc to Mr.Ashok Menon, Advocate, S.R.No.82482

WP.No.3920/2017

SS(CO)
CS/09/01/2019