

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 09.08.2019
CORAM
THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.12379 of 2016
and W.M.P.No.10713 of 2016

K.S.Abuthaheer

...Petitioner

Vs

1. The Chief Executive Officer,
The Tamil Nadu Wakf Board,
No.1, Jaffar Sirang Street,
Vallal Seethakaathi nagar,
Chennai 600 001.
2. Jumma Pallivasal Thirumazhisai,
Rep. by its President,
Thirumazhisai,
Chennai 600 124.

...Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, directing the 1st respondent herein to cancel the registration of Wakf Document in respect of property of an extent of 396 Sq.ft. (18 x 22) in Survey No.215/15 at Thirumazhisai Village which was purchased by my father by the sale deed dated 17.06.1956 under document No.1022 of 1956 registered in the office of the Sub-Registrar, Poonamallee.

For Petitioner : Mr.AL.Ganthimathi
For Respondents : Ms.Abitha Banu, for R1
Mr.L.Gavaskar,
for M/s.N.Rabiya, for R2

ORDER

This Writ Petition has been filed for issuance of a Writ of Mandamus, directing the first respondent to cancel the registration of Wakf Document in respect of property of an extent of 396 Sq.ft. in Survey No.215/15 at Thirumazhisai Village.

2. Heard the learned counsels appearing on either side and perused the materials available on record.

3. According to the petitioner, he is the absolute owner of the property of an extent of 396 sq.ft. in Thirumazhisai

Village, Chennai. However, the first respondent has wrongly included the property as wakf property in the notification issued under Section 36 of the Wakf Act.

4. The learned Standing Counsel for the first respondent would submit that the petitioner had already filed a suit before the District Munsif Court, Poonamalle seeking permanent injunction against the respondents and after withdrawing the suit, the present Writ Petition has been filed.

5. The learned counsel for the second respondent by relying upon the decision of the Division Bench of this Court reported in 2005 1 LW 676 (I.Salam Khan vs. the Tamil Nadu Wakf Board) would argue that the present Writ Petition cannot be entertained as the remedy of the petitioner is before the Wakf Tribunal. The relevant portion of the said decision reads as under:

"Under Section 83 (5) of the Wakf Act, 1995 the Tribunal has all powers of the Civil Court under the Code of Civil Procedure, and hence it has also powers under Order 39 Rules 1, 2 and 2A of the Code of Civil Procedure to grant temporary injunctions and enforce such injunctions. Hence, a full-fledged remedy is available to any party if there is any dispute, question or other matter relating to a wakf or wakf property."

6. In the light of the above decision of the Division Bench of this Court, the Writ Petition is liable to be dismissed. Accordingly, the Writ Petition is dismissed as not maintainable granting liberty to the petitioner to work out his remedy before the competent Forum. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

सत्यमेव जयते Assistant Registrar

True Copy

Sub-Assistant Registrar

pvs

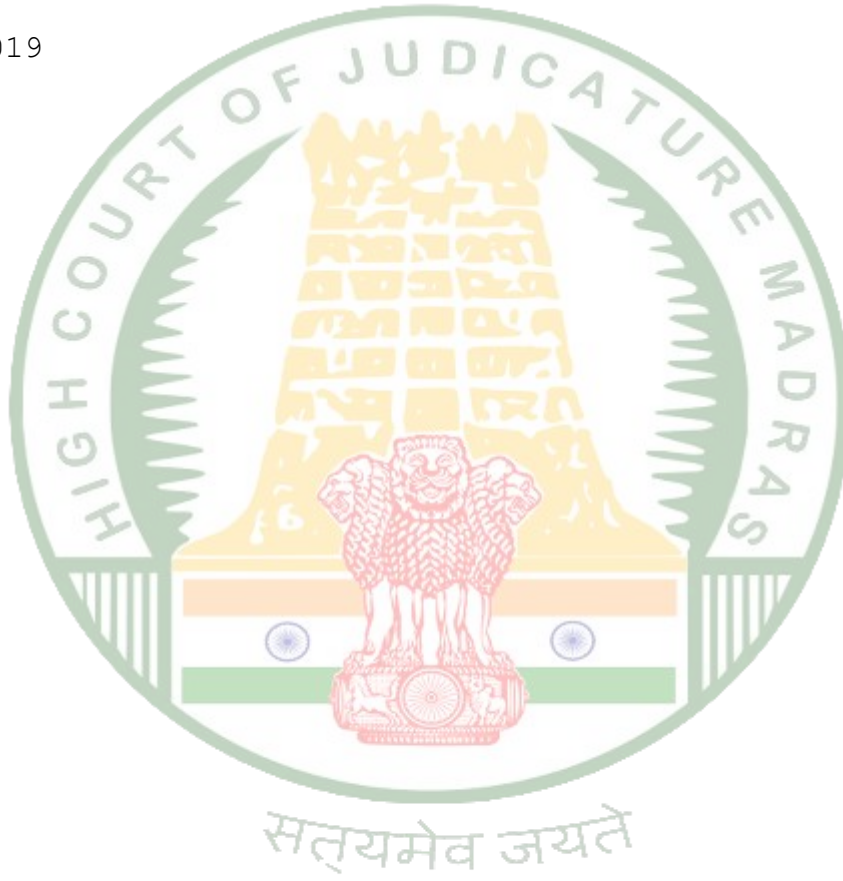
To

The Chief Executive Officer,
The Tamil Nadu Wakf Board,
No.1, Jaffar Sirang Street,
Vallal Seethakaathi nagar,
Chennai 600 001.

+1 cc to M/s.Abitha Banu Advocate sr69259
+1 cc to M/s.AL.Gandhimathi Advocate sr68743
+2 ccs to M/s.N.Rabiya Advocate sr68282

W.P.No.12379 of 2016

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