

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.07.2019

CORAM

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.Nos.17168 to 17170 of 2008
and MP.Nos.1 & 2 of 2008

Ameenuddin Abul Hasan ..Petitioner in all the Writ Petitions

Vs

1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of Backward & Most Backward Classes,
Fort St. George,
Chennai 600 009.

2.The Tamil Nadu Wakf Board,
Rep. by its Chief Executive Officer,
No.1, Jaffar Sarang Street,
S.K.Nagar,
Chennai 600 001.

..Respondents in all the Writ Petitions

Prayer in W.P.No.17168 of 2008:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records ending with the Notification No.20-A dated 20.05.1959 issued in Supplement to Part II of the Fort St. George Gazette issued by the 1st respondent insofar as notifying the Tulukan Chatram Charities, Naravarikuppam, Red Hills, then Saidapet Taluk, now Ambattur Taluk, Thiruvallur District is concerned and quash the same.

Prayer in W.P.No.17169 of 2008:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Declaration, declaring that the properties mentioned in the Will dated 22.05.1866 are not wakf properties.

Prayer in W.P.No.17170 of 2008:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, directing the second respondent to delete the properties of the Will dated 22.05.1866 executed by late Salarool Mulk Moohtashimmod Dowlah from the list of properties mentioned in the Proforma of Thulukan Chatram Charities, Naravarikuppam, Red Hills, then Saidapet Taluk now Ambattur Taluk, Thiruvallur District maintained by the second respondent.

For Petitioner : Mr.K.Ilias Ali
(in all the Writ Petitions)

For Respondents : Mr.D.Suryanarayanan, AGP, for R1
(in all the Writ Petitions) Mr.V.Raghavachari, for R2

- - - -

COMMON ORDER

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

2. a) W.P.No.17168 of 2008 has been filed for issuance of a Writ of Certiorari to call for the records ending with the Notification No.20-A dated 20.05.1959 issued in Supplement to Part II of the Fort St. George Gazette by the 1st respondent insofar as notifying the Tulukan Chatram Charities, Naravarikuppam, Red Hills, then Saidapet Taluk, now Ambattur Taluk, Thiruvallur District is concerned and quash the same.

b) W.P.No.17169 of 2008 has been filed for issuance of a Writ of Declaration to declare the properties mentioned in the Will dated 22.05.1866 are not wakf properties.

c) W.P.No.17170 of 2008 has been filed for issuance of a Writ of Mandamus to direct the second respondent to delete the properties of the Will dated 22.05.1866 executed by late Salarool Mulk Moohtashimod Dowlah from the list of properties mentioned in the Proforma of Thulukan Chatram Charities, Naravarikuppam, Red Hills, then Saidapet Taluk now Ambattur Taluk, Thiruvallur District maintained by the second respondent.

3. The learned counsel for the petitioner would submit that the great grand father of the petitioner, viz., Salarool Mulk Moohtashimod Dowlah executed a Will dated 22.05.1866 in Persian language, which was probated by this Court in Probate No.3 of 1881 on 06.09.1881.

4. According to the learned counsel for the petitioner, the executor was not the owner of the property and admittedly, it was purchased in his name. It is further contended that there was no permanent dedication for religious or pious purpose and hence the property in dispute would not come under Section 3 of the Wakf Act. Hence, the petitioner is entitled to succeed in these Writ Petitions. The learned counsel also relied on the following decisions in support of his arguments:

- i) 2007 (1) CTC 694 SC 694 (Mohammed Khasim vs. Mohammed Dastagir)
- ii) AIR 1982 Karnataka 309 (The Karnataka State Board of Wakfs vs. Mohamed Nazeer Ahmed)
- iii) AIR 1963 SC page 985 (Zawab Jain Yar Jung vs. Director of Endowments)
- iv) AIR 1940 Calcutta 417 (Mahammad Ali vs. Dinesh Chandra Roy Choudhary)
- v) AIR 1965 SC 1722 (Fazlul Rabbi Pradhan vs. State of West Bengal)
- vi) AIR (29) 1942 Bombay 155 (Ismail Haji Arat vs. Umar Abdulla)
- vii) AIR 1940 Calcutta 501 (Syed Mohinuddin Ahmed vs. Sofia Khatun)

5. Per contra, the learned Standing Counsel appearing for the second respondent would submit that the impugned notification was issued in the year 1959 and these Writ Petitions have been filed after a lapse of 50 years. It is further contended that the disputed questions of facts have to be decided on appreciation of evidence before the competent Forum and hence, the Writ Petitions are not maintainable.

6. The learned Standing Counsel appearing for the second respondent would further submit that the notification issued by the second respondent could be challenged by the petitioner within a period of one year as per Section 6 of the Act. It is also submitted that the grand father and father of the petitioner are Muthavallis.

7. In the case on hand, according to the petitioner, there was no permanent dedication of the property in question for pious or religious performance. However, it is an admitted fact that the notification was issued in the year 1959 and these Writ Petitions have been filed after lapse of 50 years. It is also not disputed that the father of the petitioner and his forefathers acted as Muthavallis of the mosque accepting the Will. Therefore, the petitioner has no right to challenge the same after lapse of five decades.

8. In the light of the above facts, the decisions relied upon by the learned counsel for the petitioner are distinguishable on facts and hence they are not helpful to the petitioner.

9. I find no merit in these Writ Petitions and they are accordingly dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

pvs

To

1.Secretary,
The State of Tamil Nadu,
Department of Backward & Most Backward Classes,
Fort St. George,
Chennai 600 009.

2.Chief Executive Officer,
The Tamil Nadu Wakf Board,
No.1, Jaffar Saran Street,
S.K.Nagar,
Chennai 600 001.

+1 cc to M/s.K.Ilias Ali, Advocate, S.R.No.63175

+1 cc to Mr.V.Raghavachari, Advocate, S.R.No.62703

+1 cc to the Government Pleader, S.R.No.63348

SS(CO)
SSM(09/09/2019)

W.P.Nos.17168
to 17170 of 2008

WEB COPY