

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2019

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P.37816 OF 2007

AND

M.P.2 OF 2007

A.Mohamed Sulaiman

... Petitioner

Versus

1. The Chief Executive Officer,
Tamil Nadu Wakf Board,
Chennai-600 020.
2. The Muthavalli,
Allaudeen Meher Bi Shrine and
Burial Ground,
Pudupet, Athur Taluk,
Salem District.
3. The Superintendent of Wakf,
Salem Zone.
4. The Revenue Divisional Officer,
Attur Taluk, Salem District. Respondents

PRAYER:

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to the order of the 1st respondent dated 24.08.2007 made in his Proc.No.4818/E407SLM, and quash the same.

For Petitioner : Mr.Haja Najirudeen,
Senior Counsel for Mr.P.Haribabu

For Respondents : Mr.V.Lakshmi Narayanan
for R1 to R3

Mr.P.Jagadeesan for R2

Mr.T.Sathish,
Addl.Govt.Pleader for R4

O R D E R

This Writ Petition has been filed challenging the order passed by the 1st respondent under Sec.54 of the Waqf Act ordering eviction of the petitioner and to deliver vacant possession of the property in Old T.S.No.541/18A, New T.S.No.103/1, situated at Ward 'C', Block '6' measuring an extent of 9003 sq.ft.

2. Today, when the matter came up for hearing, Mr.Haja Najirudeen, learned senior counsel appearing for the petitioner would contend that, there is a title dispute regarding the above said property and as per the original proforma, the property was not shown in the notification. Subsequently, on 26.06.1992, the Deputy Director of Town Survey has issued a patta in favour of the petitioner, and the petitioner has been in possession and enjoyment of the property for a long time. But, without considering all the above circumstances, and also without even considering the objections raised by the petitioner, the 1st respondent has mechanically passed the impugned order of eviction.

3. Per contra, Mr.V.Lakshmi Narayanan, learned counsel appearing for the respondents 1 and 3 submitted that, the order impugned in the Writ Petition has been passed under Sec.54 of the Waqf Act (hereinafter called as 'Act'). As against that order, only an appeal lies before the Waqf Tribunal under Sec.54 (4) of the Act. Without availing the alternative remedy, the petitioner cannot maintain the Writ Petition. The learned counsel has further submitted that even assuming that, there is a dispute in respect of the title of the property, the petitioner can only file a suit under Sec.6 of the Act to establish his title. The learned counsel has further submitted that, now the waqf register has been amended, the disputed survey number was included as a waqf property, the above amendment was duly gazetted and he has also produced the copy of Gazette notification. सत्यमेव जयते

4. Mr.P.Jagadeesan, learned counsel appearing for the 2nd respondent would submit that, under Sec.41 of the Act, the waqf register has been amended, and the disputed property has been included in the register. A proper notification was also issued to the effect. As on today, the property stands in the name of Waqf. The adangal was also issued in favour of 2nd respondent.

5. I have considered the rival submissions made by learned counsel appearing of the petitioner as well as the learned counsel appearing for the respondents and perused the records carefully.

6. This Writ Petition has been filed challenging the order of eviction passed under Sec.54 of the Waqf Act. Against that order, an appeal is provided before the Waqf Tribunal. Without availing the alternative remedy, the petitioner cannot maintain this Writ Petition. Even assuming that there is a title dispute, the petitioner can only institute a suit before the Tribunal to establish his title under Sec.6 of the Act. Unless the title of the petitioner is declared by the Tribunal, the petitioner cannot claim right over the property based on the order passed by the Town Planning authority. In the above circumstances, challenging the order of eviction, the petitioner cannot maintain a Writ Petition. Hence, the Writ Petition is liable to be dismissed on that ground.

7. At this stage, the learned senior counsel appearing for the petitioner submitted that, the petitioner has been in possession of the property for a long time and till the petitioner approach the concerned authority to redress his grievance, his possession may be protected. Considering the above request, the respondents are directed not to disturb the possession of the petitioner for the period of six weeks from the date of receipt of the copy of this order. In the meantime, it is open to the petitioner to approach the appropriate forum to redress his grievance.

8. With the above observation, the present Writ Petition stand dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rpp

To

1. The Chief Executive Officer,
Tamil Nadu Wakf Board,
Chennai-600 020.
2. The Superintendent of Wakf,
Salem Zone.

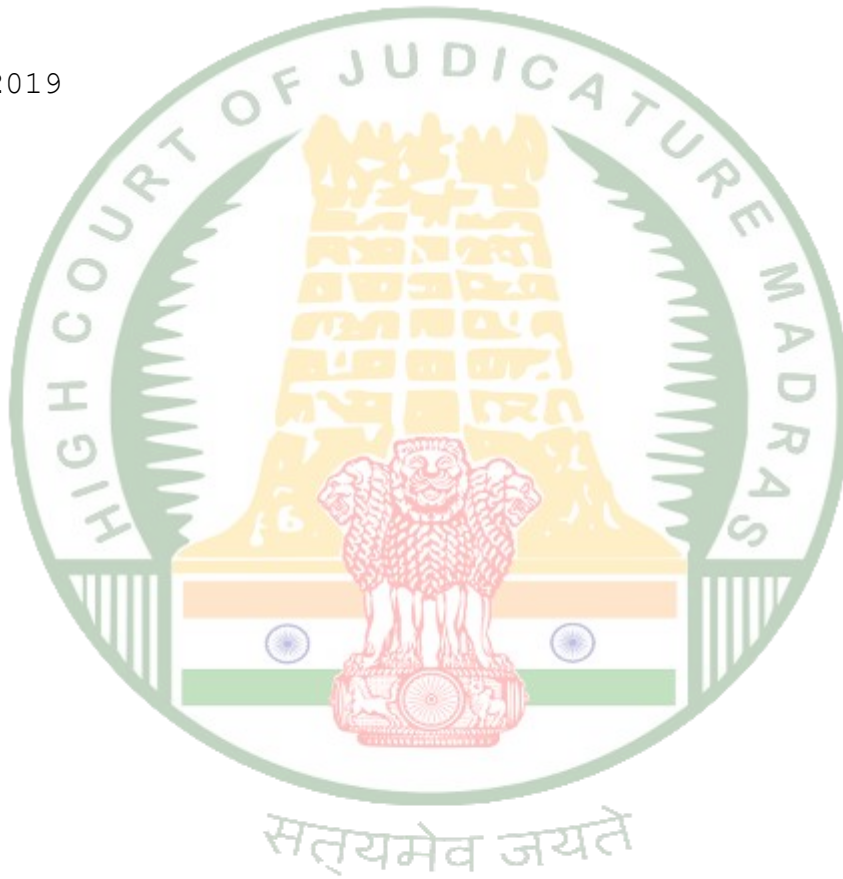
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3. The Revenue Divisional Officer,
Attur Taluk,
Salem District.

+1cc to Mr.P.Haribabu, Advocate, S.R.No.83944
+1cc to Mr.P.Jagadeesan, Advocate, S.R.No.83535
+1cc to Mr.V.Raghavachari, Advocate, S.R.No.83493
+1cc to Government Pleader, in sr.no.84555

W.P.37816 of 2007
and
M.P.2 of 2007

RK (CO)
CS/19/12/2019



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