IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	DELIVERED ON
14~02~2019	22~02~2019

CORAM :

THE HONOURABLE **MR. JUSTICE N.SATHISH KUMAR**

C.R.P.(NPD).No.675 of 2013 and
M.P.No.1 of 2013

1. Madarsa-E-Rasheedia Committee
   Rep.by its Secretary
   Patel Farooq Sahib, Vellore

2. J.Eajaz Ahmed ... Revision Petitioners/Plaintiffs

Versus

1. The Chief Executive Officer,
   The Tamil Nadu Wakf Board,
   No.1 Jaffar Sarang Street,
   Chennai.

2. The Superintendent of Wakfs
   No.12/6, Gandhi Road,
   Vellore Zone, Vellore.

3. The Muthawalli,
   "Nawab Sabdar Alikhan Tomb"
   Saidapet,
   No.331/179/1, Main Bazaar Road,
   Saidapet, Vellore-12. ... Respondents/Defendants

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Civil Revision Petition filed under Article 227 of Constitution of India r/w Sec.83(9) Wakf Board Act, against the decree and judgment dated 10.08.2012 passed in O.S.No.207/2009 on the file of the Sub-ordinate Judge, Vellore.

For Revision Petitioners .. Mrs. Hema Sampath
Senior Counsel for
M/s A.Ajimath Begum

For Respondents .. Mr.Mohamed Fayas Ali [for R1 & R2]
Mr.V.Ananthanatarajan [for R3]

ORDER

Aggrieved over the Decree and Judgment of the Subordinate Court, Vellore, dismissing the suit in O.S.No.207 of 2009, the present Civil Revision Petiion came to be filed.

2. The brief facts leading to file this Civil Revision Petition is as follows:

2.(a) The suit property originally belongs to one Ismail Hussain @ Maula Baksh Sahib. Prior to that his predecessors in title had been in possession and enjoyment of the same from time immemorial and they had been maintaining the Gori namely "NAWAB SUBDHAR ALIKHAN TOMB". As the said Ismail Hussain @ Maula Baksh Sahib became old and sick, he could not maintain the Gori viz., Nawab Subedhar Alikhan Tomb. The First Plaintiff Madarasa which

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is registered under the Tamil Nadu Societies Registration Act, has taken possession of the above property in the year 1988 in view of the request made by the Ismail Hussain @ Maula Baksh Sahib. The Plaintiff is doing charitable, religious works and also running a school. For the past 21 years the Plaintiff is in possession of the property. While so, the First Defendant issued several notices to the Plaintiff to vacate and handover possession of the property vide letters dated 30.06.2009, 05.08.2009, 17.08.2009 and 14.09.2009. Thereafter, First Defendant in his proceedings No.9170/09/C2/Vir dated 10.11.2009 directs the Plaintiff to vacate the schedule property and deliver vacant possession, which is illegal, null and void. Hence the suit filed for declaring the above proceedings of the First Defendant is null and void.

3. It is the contention of the First Defendant that the suit property is a Notified Public Wakf under Gazette notification No.725/NA/11th Feb.,1959. No statutory suit contemplated u/s.6(1) of the Act 43 of 1995 was filed within one year from the date of Gazette Notification. It is denied that the Plaintiff is in possession and also denied that his predecessor had a title over the property. The Plaintiff is only a trespasser of the suit property. Hence, prayed for dismissal of the suit. The Second Defendant also adopted the Written Statement filed by the First Defendant.

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4.The Third Defendant has also filed a similar Written Statement. The Trial Court viz., the Subordinate Judge happened to be a Wakf Tribunal, dismissed the Suit, against which the present Civil Revision Petition has been filed.

5. Learned counsel for the Revision Petitioner would contend that the notice has not been property given to the Plaintiffs. It is not a formal defect. The Suit ought to have decreed. Hence it is the contention of the learned Senior Counsel that the trial court dismissed the suit which is against law. Further it is the contention of the learned Senior Counsel that the Subordinate Judge exercises Civil Court jurisdiction; the matter would fall only before the Wakf Tribunal. Therefore, the Revision Petitioner has to be given opportunity to file a fresh suit before the Wakf Board. Hence, he submitted to allow the Revision Petition. In support of his contention learned counsel for the Revision Petitioner relied upon the following judgments:

1. *Rahmath Bi and another v. State of Wakf Board* ***[AIR 1982 MADRAS 202]***

2. *Bimal Sahoo, Secretary, Basudebpur Girs' High School and others v. Gouri Rani Pahari and others* ***[AIR 1991 Cal 120]***

3. *Farrukh Mehmood and another v. Maharashtra State Wakh Board and other* ***[2011 (3) MLJ***

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4. *Nirmal Associates v.Maharastra Wakf Board*

[2015 (2) Mh.L.J. 421]

6. Learned counsel for the Respondent would contend that admittedly the suit property is Wakf property which has been notified in the year 1959. No suit filed challenging the above notification within the time and the notice has been properly issued to the Plaintiff for removal from the suit property in many occasions. Therefore, it cannot be contended that there is no notice issued. The very Civil Revision Petition itself is filed against the order of the Tribunal. Now it cannot be contended that the Civil Court has no power to decide the issue. Hence submitted that the order of the Subordinate Judge, Vellore, does not require any interference. Learned counsel for the Respondents 1 and 2 relied upon a Judgment of this Court in *The Muthavalli of Larabsha Dharga v. The Panruti Municipality* ***[2012 (5) CTC 240]*** **.**

7. I have perused the order and the pleadings of the parties. It is the contention of the Plaintiff that the suit property originally belong to one Ismail Hussain @ Maula Baksh Sahib and his predecessors had title over the property and the said Ismail Hussain @ Maula Baksh Sahib maintained the Gori viz., Nawab Subedhar Alikhan Tomb. Thereafter same has been given to the Plaintiff for its maintenance in the year 1988. It is the specific contention of the

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defendants that though the suit property has been notified as Wakf Property in the year 1959 itself, no statutory suit has been filed as against that notification. Once the property has been declared as Wakf under Section 5 of the Wakf Act, 1995, any dispute regarding such notification, suit has to be filed within one year from the date of Gazette Notification as per Section 6 of the Wakf Act. On perusal of records it is clearly shown that no such suit has been filed. Therefore, once it is established by the Defendants that Wakf has been notified and no suit has been filed by the person who was in possession of the property questioning the declaration within the time, any claim by the subsequent persons, in my view, is not sustainable.

8. It is to be noted that the proceedings has been issued against the Plaintiff by the Wakf Board for delivery of possession and removing encroachment. The very plaint itself clearly indicate that there were several notices issued on various dates i.e., 30.06.2009, 05.08.2009, 17.08.2009 and 14.09.2009. Thereafter, the proceedings has been passed on 10.08.2012 for removal of the encroachment of the Wakf property as per Section 54 of the Wakf Act. When the plaint itself clearly indicated that notices have been properly issued and order passed under Section 54 of the Act, now the Revision Petitioner cannot contend that the notice is defective and no notice has been served. Hence I am of the view that absolutely there is no merits in the Revision Petition.

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The Wakf Tribunal/Subordinate Judge has clearly passed the order considering the entire materials. There were many notices sent before passing order under Section 54 of the Wakf Act 1995. Hence the contention of the Revision Petitioner cannot be countenanced in the eye of law. Further, no materials have been produced by the Plaintiff before the trial Court to show that the properties are not Wakf properties.

9. Another contention of the learned counsel for Revision Petitioner that the suit has been filed before the Civil Court and not before the Wakf Tribunal is also cannot be countenanced. The Subordinate Judge is a Wakf Tribunal and the suit has been entertained by that Tribunal and the Revision itself filed against the order of the Tribunal. Therefore, it cannot be contended that the suit has been filed before the wrong forum and not before the Walf Tribunal. Such argument is also farfetched. Hence, I do not find any merits in the Civil Revision Petition. In view of the same, the Civil Revision Petitions is dismissed.

10. In the result, the Civil Revision Petition is dismissed. Consequently, connected M.P.is close. No costs.

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Index:Yes/No
Internet:Yes/No
Speaking order/Non-speaking order
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N. SATHISH KUMAR, J.
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To
The Subordinate Judge, Vellore.

HIGH COURT OF JUDICATURE MADRAS
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Pre-delivery order in:
C.R.P.(NPD)No.675 of 2013

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