

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.4.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.11714 of 2019
and
W.M.P.No.11936 of 2019

Babu Basha

... Petitioner

Versus

1. The Member Secretary,
Chennai Metropolitan Development
Authority,
1, Gandhi Irwin Road, Egmore,
Chennai.
2. The Zonal Officer,
Greater Corporation of Chennai,
Corporation Zonal Office 116,
Dr.Besant Road, Triplicane,
Chennai 600 005.
3. The Tamil Nadu Wakf Board,
rep. by its Chief Executive Officer,
No.1, Jaffer Syrang Street,
Vallal Seethikathi Nagar,
Chennai 600 001.
4. Managing Muthawalli of Hazrath Neelam,
Basha Darga & Masjid (Waqf),
Dr.Besant Road, Ice House, Triplicane,
Chennai 600 005.
5. Arif Ahamed
6. Akbar Basha
7. Ghouse Basha

.... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus forbearing the respondents 4 to 7 or any other person who are in occupation of the Wakf property from proceeding with any further

construction in the premises belonging to the Hazrath Neelam Basha Darga (WAQF) bearing door No.53/2, Neelam Basha Darga, Dr.Besant Road, Triplicane, Chennai 600 005, till the disposal of the writ petition.

For petitioner : Mr.M.J.Jaseem Mohamed

For R1 : Mr.P.S.Ganesh

For R2 : Dr.C.Ravichandran

For R3 : Mr.Mohammed Fayaz Ali

ORDER

(Order of the court was made by Dr.VINEET KOTHARI, J.)

Petitioner, Babu Basha has filed the present writ petition in this court with the prayer that Respondents, including the CMDA, Secretary, Greater Corporation of Chennai, Tamil Nadu Wakf Board, etc. may be directed to restrain the private respondents Mr.Arif Ahamed, Mr.Akbar Basha and Mr.Ghouse Basha from encroaching the property situated at Door No.53/2, Neelam Basha Darga, Dr.Besant Nagar, Triplicane, Chennai, which belongs to Hazrath Neelam Basha Darga (WAQF) and from raising any construction on the said property.

2. Learned Counsel for the respondents are also available in the court though the matter has come up only for admission today.

3. On perusal of the provisions of the Waqf Act, 1995, it is clear that Section 83 of the said Act provide for a Wakf Tribunal to be constituted by the State Government, which can deal with and determine any dispute, question or other matter relating to a Waqf or Waqf property, including eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property. Sub-section (2) of Section 83 provides that any Muthawalli or any person interested in a Waqf or any other person aggrieved by an order made under the Act or rules made thereunder, may make an application within the time specified in the Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for determination of any dispute, question or other matter relating to the Waqf. Section 85 of the Waqf Act bars the jurisdiction of any Civil Court, Revenue Court or any other Authority to deal with such Waqf or Waqf property. Waqf Tribunal so constituted is said to be working in the State of Tamil Nadu.

4. The Waqf Tribunal constituted under Section 83 of the Act shall be deemed to be a Civil Court and shall have the same powers as may be exercised by a Civil Court, as prescribed under Sub-section (5) of Section 83 of the Act, while trying a suit or executing a decree or order.

5. Thus we find that the complainant/petitioner has an effective alternative remedy available to him to approach the Waqf Tribunal in the present matter relating to the Waqf property.

6. Therefore, we dispose of the present writ petition with a liberty and direction to the petitioner to approach the said Waqf Tribunal for redressal of his grievance and in case the petitioner moves the said Tribunal, we direct that the Waqf Tribunal shall decide the case on merits and in accordance with law including the prayer for interim relief, if any made by the petitioner before it, exercising its powers as a Civil Court.

7. Accordingly, the present writ petition is disposed of. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssk.

To:

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Dr.Besant Road, Ice House, Triplicane,
Chennai 600 005.

+1cc to Mr.J.Jaseem Mohamed, Advocate Sr.39524
+1cc to Mr.P.S.Ganesh, Advocate Sr.39826
+1cc to Dr.C.Ravichandran, Advocate Sr.40010

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kk[co]
srg 20/06/2019



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