

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/11/2019

C O R A M

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

a n d

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal No.3786 of 2019
a n d
C.M.P.No.23927 of 2019

The Madras Silks India Pvt Ltd
rep. By its Director and Authorised Signatory
Mr.P.A.Ravindran
No.67 Usman Road
T. Nagar
Chennai 600 017.Appellant /Petitioner

Vs

1. The State of Tamil Nadu
rep. By its Secretary to Government
Backward Class Department
Fort St. George
Chennai 600 009.
2. The District Revenue Officer
Chief Executive Officer
Tamil Nadu Wakf Board
Chennai 600 001.
3. Mr.Zakir Hussain
President
Masjide-e-Ahamedsha Sha Mosque &
Bademakhan
Nethaji Salai
Tiruvallur 602 001.Respondents

Prayer : Appeal filed under Clause 15 of the Letter Patent against the order dated 25/6/2019 made in W.P.No.5403 of 2019.

Prayer in WP.No.5403 of 2019 : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the

order passed by the Second Respondent in his Proc.No.8051/17/C2/TV LR dated 13.02.2019 and quash the same and to direct the Second Respondent to conduct the enquiry by giving proper opportunity to the Petitioner.

For appellant ... Mr.A.S.Mujibur Rahman

For respondents ... Mr.V.Anandamurthy
Additional Government Pleader
for R.1.

Mr.V.Lakshmi Narayanan
for R.2.

J U D G M E N T

(Judgment of the Court was made by the Hon'ble Chief Justice)

Having heard learned counsel for the parties, we find that there is a total non-consideration of relevant material, viz., judgment and decree of the Civil Court in Original Suit No.251 of 1973, decided on 30/8/1980. Learned counsel for the second respondent could not dispute this position and, therefore, learned counsel on either side for the State; learned counsel second respondent and learned counsel for the appellant agree that the matter may be disposed of at this stage itself.

2. Respondent No.3 had not been served before the learned Single Judge, when the writ petition came to be dismissed at the admission stage itself. We do not find it necessary to issue notice to the third respondent at this stage, keeping in view the nature of the order that is proposed to be passed.

3. On the facts as brought on record, the claim of the appellant is that the appellant is under lawful possession of the property in dispute, which, according to the appellant, is not part of the wakf property in respect whereof the second respondent had issued notices and has treated the appellant to be an encroacher thereon.

4. Learned counsel contends that in view of the evidence that was brought on record, including the judgment and decree of the Civil Court in the suit referred to herein above as well as the order of the District Revenue Officer, there was no occasion for the Chief Executive Officer to have proceeded in the matter, in terms of Section 54 (1) of the Waqf Act, 1995.

5. Learned counsel for the second respondent however contends that the proceedings were within the jurisdiction of

the authority and, therefore, notices which had been issued were based on material available before the Chief Executive Officer, including a declaration by the Wakf Board that the property was a Wakf property.

6. Having considered the submissions raised, we find that there is a non-consideration and appreciation of the impact of the judgment and decree of the Civil Court in the suit referred to herein above and non-consideration of the relevant material renders the order passed by the Chief Executive Officer, on 13/2/2019, invalid for the aforesaid reason.

7. Learned counsel for the parties, therefore, agree that the matter can be heard again and decided by the said authority keeping in view the objections raised by the appellant.

8. Learned Single Judge does not appear to have adverted to this issue and has dismissed the writ petition. We, for this aforesaid reason, allow this appeal, set aside the impugned judgment of the learned Single Judge made in W.P.No.5403 of 2019 and the order passed by the Chief Executive Officer on 13/2/2019 and direct him to pass orders, after consideration of the entire material on record and after putting the third respondent to notice, as expeditiously as possible. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government
State of Tamil Nadu
Backward Class Department
Fort St. George
Chennai 600 009.
2. The District Revenue Officer
Chief Executive Officer
Tamil Nadu Wakf Board, Chennai 600 001.

+1 cc to M/s.M.Md.Ibrahim Ali, Advocate Sr.No. 97975

+1 cc to The Government Pleader Sr.No. 98456

AKM/16.12.19/3P-5C /

Judgment made in
W.A.No.3786 of 2019