

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

DATED : 18.02.2020

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P.No.21894 of 2016
and W.M.P.Nos.18737 of 2016,
7791, 13087 & 3245 of 2018

K.S.Abuthaheer

...

Petitioner

versus

- 1.The Chief Executive Officer,
The Tamil Nadu Wakf Board,
No.1, Jaffar Sirang Street,
Vallal Seethakaathi Nagar,
Chennai - 600 001.
- 2.Jumma Pallivasal Thirumazhisai,
Rep. by its President,
Thirumazhisai,
Chennai - 600 124.
- 3.Chennai Metropolitan Development Authority,
Rep. by its Member Secretary,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.
- 4.The Executive Officer,
Office of the Thirumazhisai,
Town Panchayat,
Thirumazhisai,
Chennai - 600 124.
- 5.The Government of Tamil Nadu,
Rep. by its Secretary,
Housing and Urban Development Department,
Fort St.George, Secretariat,
Chennai - 600 009.

...

Respondents

[R-5 impleaded as per order dated 22.08.2019
in W.M.P.No.24438 of 2019 in W.P.No.21894 of 2016]

Prayer: Writ Petition filed under Article 226 of the
Constitution of India, praying to issue a Writ of Mandamus,
directing the fourth respondent to remove the illegal and
unauthorised construction being carried on by the second

respondent in accordance with the Tamil Nadu Panchayat Building Rules, 1977 and in term of proceedings Na.Ka.No.42/2016/A1 dated 27.04.2016 in the light of the representation dated 11.04.2016.

For Petitioner : Mr.M.Raja Sekhar
For Respondent No.1 : Mr.V.Raghavachari
For Respondent No.2 : M/s.N.Rabiya
For Respondent No.3 : Mr.A.S.Ganesh
For Respondent Nos.4 & 5: Mr.K.S.Suresh
Government Advocate

* * * * *

O R D E R

[Order of this Court was made by R.SUBBIAH,J.]

The petitioner has come up with the present Writ Petition for issuance of a Writ of Mandamus to direct the fourth respondent to remove the illegal and unauthorised construction being carried on by the second respondent, in accordance with the Tamil Nadu Panchayat Building Rules, 1977 and proceedings in Na.Ka.No.42/2016/A1 dated 27.04.2016 in the light of the representation dated 11.04.2016.

2. It is the case of the petitioner that the property measuring an extent of 396 sq.ft. (18x22) in Thirumazhisai Village, was purchased by his father, namely, K.K.Sheik Ismail Ravuthar, in Survey No.215/15, at Thirumazhisai Village along with various extents, by way of 3 registered Sale Deeds. Subsequently, by way of registered Will dated 14.12.1978, the petitioner's father settled the properties under Document No.64 of 1978 and Document No.1125 of 1954 in favour of the Jumma Masjid, Thirumazhisai, Thiruvallur District. Thereafter, his father died on 12.11.1984. After the death of petitioner's father, the said two properties, which have been under the Will to the Wakf, had been taken possession by the Wakf. However, the property measuring an extent of 396 sq.ft., which was purchased by the petitioner's father under Document No.1022 of 1956 dated 17.06.1956, remained in petitioner's possession and the same has not been given to the Wakf.

3. Now, the second respondent-Mosque, represented by its President has started putting up construction in the property, which was not bequeathed to the second respondent by petitioner's father in the above said Will. While so, on 11.04.2016 and 16.04.2016, the petitioner had given

representations to the respondents 3 and 4 and sought for an information under the Right to Information Act, seeking for the details of Planning Permission granted to the second respondent. The fourth respondent, by his communication dated 27.04.2016, issued notice to the second respondent directing them not to put up any construction. However, inspite of the communication, the second respondent is continuing with the illegal construction.

4. Hence, the second respondent has filed a Suit in O.S.No.154 of 2015 before the Subordinate Court, Thiruvallur, with a prayer not to interfere with the peaceful possession of the property situated in Survey No.215/15, New No.436/2, Thirumazhisai Village. Since the second respondent has been putting up construction in the property, the petitioner has filed a Writ Petition before this Court in W.P.No.12379 of 2016 to cancel the registration of Wakf document in respect of the property to an extent of 396 sq.ft. in Survey No.215/15 at Thirumazhisai Village, Poonamallee Taluk, Thiruvallur District. The fourth respondent has also issued a show cause notice on 27.04.2016. Since no effective steps were taken by the fourth respondent, the petitioner is before this Court with the present Writ Petition.

5. Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents 4 and 5 and the learned counsels appearing for the respondents 1 to 3 and also perused the materials available on record.

6. Today, when the matter is taken up for consideration, the learned Government Advocate appearing on behalf of the respondents 4 and 5 submitted that the petitioner has filed an application before the fourth respondent, seeking for the details of Planning Permission and the same was forwarded to the third respondent and the third respondent has rejected the same. Aggrieved by the same, the petitioner has filed an appeal before the Government. The Order of rejection was set aside by the Government and the matter was remitted back to the fourth respondent, for approval and plan. Thus, the learned Government Advocate submitted that now nothing survives for further adjudication in the writ petition.

7. However, the learned counsel appearing on behalf of the petitioner submitted that, as on date, the building is without any approval and thus, he insisted to issue a Mandamus to remove the illegal and unauthorised construction put up by the second respondent.

8. Be that as it may. The fact remains that, as on date, the plan is pending before the fourth respondent. When a decision is pending before the fourth respondent, at this

juncture, this Court is not inclined to issue any Mandamus to remove the unauthorised construction. However, we are of the opinion that it would be appropriate to direct the fourth respondent to take a decision and plan submitted by the second respondent, with an earliest possible time. Accordingly, the fourth respondent is directed to take a decision with regard to the approval of the said plan submitted by the second respondent, preferably within a period of four weeks from the date of receipt of a copy of this order.

9. With the above observations and direction, the Writ Petition is disposed of. Consequently, Impleading Petition is dismissed and connected Miscellaneous Petitions are closed. However, there is no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

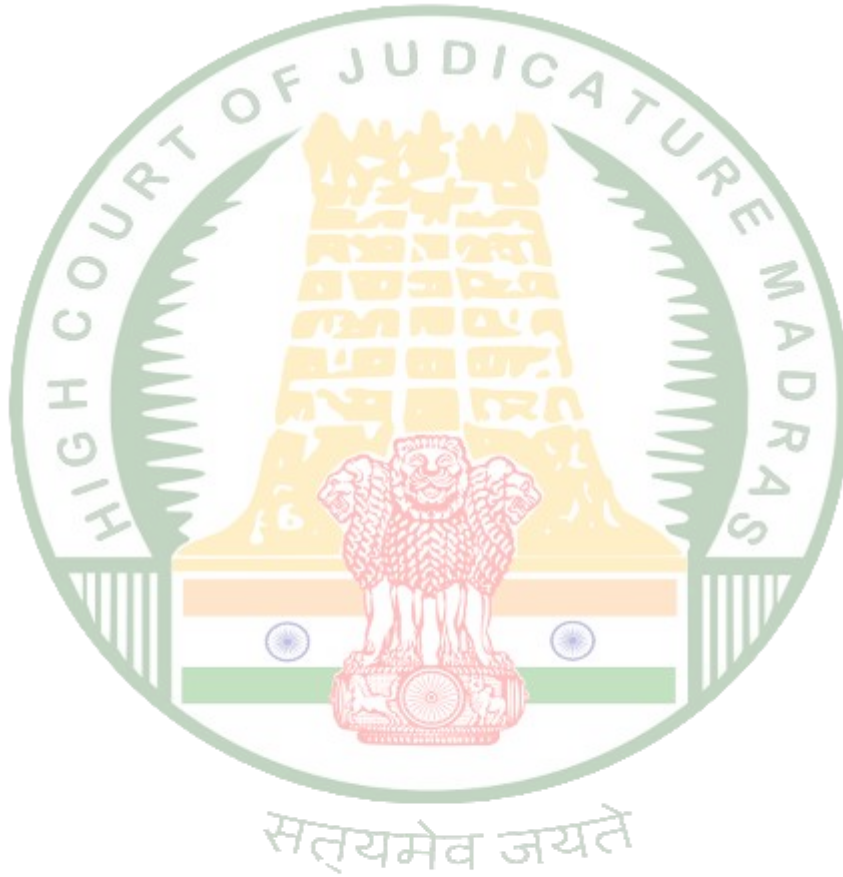
sri
To

- 1.The Chief Executive Officer,
The Tamil Nadu Wakf Board,
No.1, Jaffar Sirang Street,
Vallal Seethakaathi Nagar,
Chennai - 600 001.
- 2.The President,
Jumma Pallivasal Thirumazhisai,
Thirumazhisai,
Chennai - 600 124.
- 3.The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.
- 4.The Executive Officer,
Office of the Thirumazhisai,
Town Panchayat,
Thirumazhisai,
Chennai - 600 124.
- 5.The Secretary
Government of Tamil Nadu,
Housing and Urban Development Department,
Fort St.George, Secretariat,
Chennai - 600 009.

+1cc to Mr.N.Rabiya, Advocate SR.1980
+1cc to Mr.M.Rajasekhar, Advocate SR.13709
+1cc to Mr.V.Raghavachari, Advocate SR.13510
+1cc to the Government Pleader SR.14646

W.P.No.21894 of 2016
and W.M.P.Nos.18737 of 2016,
7791, 13087 & 3245 of 2018

SR(CO)
CB(09/03/2020)



WEB COPY