

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13..02..2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition No.4012 of 2019
and
C.M.P.No.26370 of 2019

Riyaz Basha

.. Petitioner

-Versus-

1.Almadharsha dul Moohamadiya Ahzar Gana Wakf,
Rep. by its Hereditary Muthawalli,
S.Shahabudeen,
No.70-A, General Bazaar,
Anna Nagar, Main Road,
Thennur, Tiruchi-17.

2.Tamil Nadu Wakf Board,
Rep. by its Chief Executive Officer,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai 600 001.

3.The Wakf Supervisor,
The Central Circle,
Tamil Nadu Wakf Board,
Wakf Supervisor's Office,
Killathar Street,
Tiruchi.

... Respondents

Petition filed under Article 227 of the Constitution of India, praying to set aside the docket order dated 12.07.2019 made in I.A.No.284 of 2019 in O.A.S.No.84 of 2019 by the Tamil Nadu Wakf Tribunal, Chennai.

For Petitioner

: Mr.K.Sasindran

For Respondent(s)

: Mr.N.A.Nissar Ahmed for R1

Mrs.Abitha Banu for R2

No appearance for R3

ORDER

This civil revision petition has been filed as against the order in not extending the interim order granted earlier by the Wakf Tribunal, Chennai.

2. The petitioner herein filed an original application in O.A.84 of 2019 before the Wakf Tribunal, Chennai, seeking a decree of declaration, declaring that the order of eviction dated 22.11.2016 passed in R.C.O.P.No.39 of 2019 on the file of the III Additional District Munsif, Tiruchirappalli, in respect of the demised property belonging to the Wakf Board, is without jurisdiction and therefore, the same is not legally sustainable and executable; and permanent injunction restraining from getting executed the decree passed in the rent control proceedings in R.C.O.P.No.39 of 2019 dated 22.11.2016. Pending above Original Application, he had filed an application seeking to stay the execution proceedings in E.P.No.172 of 2017 in R.C.O.P.No.2015. Earlier, the Wakf Tribunal, granted an interim order for a limited period and thereafter, the same was not extended further. Aggrieved by the same, the present revision petition has been filed.

3. The learned counsel appearing for the 1st respondent would submit that the Original Application itself is not maintainable before the Wakf Tribunal and the Wakf Tribunal has no jurisdiction to set aside the judicial order passed by the Rent Controller. Further, according to the learned counsel, the application filed by the 1st respondent under Order VII, Rule 11 of CPC seeking to reject the plaint in O.A.No.84 of 2019 has been pending. Without deciding the application for rejection of plaint, interim order granted by the Wakf Tribunal should not be allowed to be extended.

4. The learned standing counsel for the 2nd respondent Wakf Board would also submit that the Original Application itself is not maintainable in law and therefore, the Wakf Tribunal was not inclined to extend the interim order.

5. Per contra, the learned counsel appearing for the petitioner would contend that the petitioner had deposited the entire arrears of rent amount and the respondents are seriously pressing for delivery of possession and pending Original Application, if the decree is executed, the Original Application would become infructuous. Therefore, the learned counsel urged this court to stay the execution proceedings.

6. I have considered the rival submissions carefully.

7. Original Application has been filed seeking to set aside the order of eviction passed by the learned Rent Controller. The core issue is as to whether the Original Application is maintainable or not. The 1st respondent has filed an interlocutory application seeking to reject the Original Application on the ground that the same is not maintainable and the same has been pending. In the above circumstances, this court is of the view that the application for rejection of plaint should necessarily be directed to be disposed of at the earliest.

8. Accordingly, the Wakf Tribunal, Chennai, is directed to take up the I.A.No.410 of 2019 in O.A.No.84 of 2019 for hearing and dispose of the same within a period of four weeks from the date of receipt of a copy of this order after hearing both parties. Thereafter the Wakf Tribunal is directed to take up the application filed by the petitioner seeking stay of the execution proceedings subject to the result of the order to be passed in the application for rejection of plaint and decide the same in accordance with law within a period of two weeks thereafter. Since the Execution Proceedings for delivery of possession is pending, until the disposal of the application for rejection of plaint by the Wakf Tribunal, preferably within the time frame fixed by this court, the Executing Court should not proceed with the execution proceedings. In the event of application for rejection of plaint is allowed, then, it is open to the 1st respondent to request the executing court to proceed with the execution proceedings. This civil revision petition is disposed of accordingly with the above directions. No costs. Consequently, connected CMP is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmk
To

1.The Tamil Nadu Wakf Tribunal, Chennai.

+1cc to Mr.K.Sasindran, Advocate SR.12477
+1cc to Mr.N.A.Nissar Ahmed, Advocate SR.12344
+1cc to M/s.Abitha Banu, Advocate SR.12107

C.R.P.No.4012 of 2019

AD (CO)
CB(19/02/2020)