

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2020

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.29317 of 2019

and

W.M.P.No.29121 & 29122 of 2019

S.Jawahar Ali,
S/o Sheik Abdul Khader
Treasurer, Butt Road,
Jumma Masjid Committee,
5/64, Butt Road, St.Thomas Mount,
Chennai - 16.Petitioner

Vs.

- 1.The District Collector cum District Magistrate,
Kancheepuram District,
Collectorate Office,
Kancheepuram.
2. The Chief Executive Officer,
The Tamil Nadu wakf Board,
No.1, Jaffersyrang Street,
Vallal Seethakathi Nagar,
Chennai - 1.
3. Mouseek Beevi,
W/o Sadakathullah,
C/o Feroze Banu
4. K.A.Shabudeen,
S/o Adimaikutty Rowther,
President, Butt Roadk Jumma Masjid,
5/64, Butt Road, St.Thomas Mount,
Chennai - 16.
5. P.Kuthbudeen,
S/o Thurabudeen,
Bismillah Biryani Shop,
5/64, Butt Road, Jumma Masjid,
St.Thomas Mount,
Chennai - 16.Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for records of the 1st respondent dated 09.07.2019 in Na.Ka.3226/2019/M.1 and 2nd respondent dated 20.09.2019 in Rc.No.3443/13/B4/KPM and quash the same.

For Petitioner : Mr.N.A.Nissar Ahmed

For Respondents: Mr.D.Suriyanarayanan,
Additional Government Pleader for R1

Mr.V.Lakshminarayanan for R2

Mr.R.Balachanderan for R3

Dr.S.Seethalakshmi for R4 & R5.

O R D E R

This writ petition is filed challenging the order of the 1st respondent dated 09.07.2019 and the notice issued by the 2nd respondent dated 20.09.2019.

2. The petitioner is the Treasurer of Jumma Masjid Committee. It is stated that the 5th respondent is a tenant in respect of the Wakf property bearing Door No.5/64, Jumma Masjid Complex, Bazaar Road, St.Thomas Mount, Butt Road, Chennai - 600 016. It is further stated that the 3rd respondent was set up as if he is a tenant in respect of the very same property by the Ex-Secretary by creating false documents and that the 3rd respondent had made a false complaint/claim before the 1st respondent on 11.10.2017 as if he was evicted from the said property illegally. It is further seen that based on the said complaint, the 1st respondent passed an order on 09.07.2019 holding that the tenancy right over the said property does not lie in the name of the 5th respondent or any other person and therefore, the Wakf Board should enquire into the matter and decide such tenancy right. Consequent upon such order of the 1st respondent, the Wakf Board issued a notice dated 20.09.2019 for conducting an enquiry. Challenging the proceedings of the 1st respondent and the notice of the 2nd respondent, the present writ petition is filed by the Wakf.

3. The main contention raised in this writ petition is that the 1st respondent is not having jurisdiction to enquire into the matter dealing with Wakf property as there is a clear bar under the Wakf Act.

4. Perusal of the order passed by the 1st respondent would

clearly indicate that he has gone into the question of the tenancy right over the subject matter property and had made some observations and findings, which in my considered view is outside his purview and jurisdiction. No doubt, the said order came to be passed in pursuant to the direction issued by this Court in the earlier writ petition filed by the 3rd respondent seeking for disposal of his representation before the 1st respondent. This Court has only directed the 1st respondent to consider the representation and pass orders on merits and in accordance with law. Therefore, if law does not permit the 1st respondent to go into the issue, he could have very well passed an order directing the parties to approach the competent authority and redress their grievance. Instead the 1st respondent himself has chosen to probe into the tenancy right over the Wakf property and given some findings. Therefore, such order of the 1st respondent cannot be sustained.

5. In any event, in the counter filed by the 1st respondent, it is stated that the rights and title of the property was not questioned in the order and only the tenancy right of the property was enquired and since the Tamilnadu Wakf Board is the authority to decide and solve the issue, a direction was given to the Tamil Nad Wakf Board to decide the fate of the Tenancy Agreement.

6. Going by the stand now taken by the 1st respondent in the counter affidavit and in view of the observations made by this Court supra on the jurisdiction of the 1st respondent over the Wakf property, I find that the 2nd respondent Wakf Board is the competent Forum to consider and decide the dispute between the parties in respect of the tenancy right over the subject matter property, after hearing all the concerned parties. It appears that only to decide such issue, notice was issued on 20.09.2019. Therefore, the Wakf Board can proceed with the enquiry and decide the matter on merits and in accordance with law, after hearing all the parties. Any of the observations made by the 1st respondent in his order dated 09.07.2019 shall not influence the mind of the 2nd respondent and stand in the way of the 2nd respondent in deciding the matter independently on merits and in accordance with law.

7. With the above observation, the Writ Petition is disposed of. The observations and findings rendered by the 1st respondent in the impugned order are set aside only on the ground of jurisdiction, however, without expressing any view on the merits

of the claim made by both parties. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

vsi

To

- 1.The District Collector cum District Magistrate,
Kancheepuram District, Collectorate Office,
Kancheepuram.
2. The Chief Executive Officer,
The Tamil Nadu wakf Board,
No.1, Jaffersyrang Street, Vallal Seethakathi Nagar,
Chennai - 1.

+1cc to M/s.N.A.Nissar Ahmed, Advocate, Sr.No.19812
+1cc to M/s.V.Raghavachari, Advocate, Sr.No.19712
+1cc to Government Pleader, Sr.No. 20229
+1cc to Dr.Seethalakshmi, Advocate, Sr.No.19687

W.P.No.29317 of 2019

KJ (CO)
GS (22/05/2020)

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