

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2020

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.R.P(PD).No.4233 of 2019
and
C.M.P.No.27631 of 2019

- 
1. Raja & Sons Partnership Firm,
through its Partner Vasantha
2. Vasantha,
Partner, Raja & Sons Partnership Firm,
3. Ramesh
4. Suresh
Partner, Raja & Sons Partnership Firm.
- ... Petitioner

1. The Tamil Nadu Wakf Board,
rep. by its Chief Executive Officer,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai.
2. The Executive Officer,
Aruppukottai Nallur Mohaideen Andavar,
Jumma Pallivasal, Aruppukottai Town,
Virudhunagar District.

... Respondents

PRAYER : Civil Revision Petition filed under article 227 of Constitution of India praying to set-aside the fair and decreetal order dated 16.12.2019 made in I.A.No.732 of 2019 in O.A.No.378 of 2019 on the file of the Tamil Nadu Waqf Tribunal, Chennai.

For Petitioner : Mr. N.A. Nizzar Ahmed

For respondent : Mrs. Janaba Abithabanu

ORDER

This Civil Revision Petition has been filed against the order passed by the Wakf Tribunal dismissing the petitioners' application seeking permission to provide facilities like paved drive way, canopy, standard office building, standard toilet, standard EB panel room, yard lights, etc.

2. According to the petitioner, he is the lessee under the Waqf Board from 1963 and running a petrol bunk therein. Recently, by an order dated 05.10.2018, the Wakf Board also passed a resolution renewing the lease. Thereafter, the Indian Oil

Corporation, issued a direction to the petitioner to provide additional facilities in the Petrol Bunk, putting up a paved driveway, canopy, etc., and also directed the petitioner to complete the improvement and the facilities within a period of 3 months, failing which action will be initiated as per dealership agreement.

3. In the above circumstances, according to the petitioners, they have approached the second respondent Executive Officer of the Pallivasal seeking permission for providing the above mentioned facilities, that was not considered. Thereafter, the petitioner had approached the Wakf Tribunal seeking for permission, the Tribunal rejected the application on the ground that the petitioners without approaching the Wakf Board seeking permission, has directly approached the Tribunal. As per the Rule 20 of the Wakf Properties Lease Rules 2014, (hereinafter called as "Rules") , the petitioner cannot maintain a petition before the Wakf Tribunal, without approaching the Board. Now, challenging the same, the present revision has been filed.

4. The learned counsel for the petitioner would submit that now, the lease has been renewed in favour of the petitioners and they are the lawful lessees. The petitioners are running a petrol bunk on the license granted by the Indian Oil Corporation. Now, by a letter dated 27.09.2019, the Indian Oil Corporation directed the petitioners to provide certain facilities in the Petrol Bunk, which are mandatory. If the petitioners fail to carry out the improvement, the licence will be cancelled as per the agreement. Eventhough the petitioners approached the second respondent seeking permission, no order has been passed, hence, the petitioners approached the Board seeking permission, that application was also not considered by the Wakf Board. Since the petitioners only want to made some improvement in the Petrol Bunk, Wakf Board is no way going to be prejudice. The learned counsel also submits that the petitioners undertook that at the time of termination or expiry of lease, they will not claim any equity or compensation for the superstructure put up in the lease hold property.

5. Per contra, the learned counsel appearing for the respondents would vehemently submit that very application filed before the Wakf Tribunal itself is not maintainable. As per Rule 20 of the Rules, without approaching the Wakf Board seeking permission, the petitioners cannot directly approached the Tribunal and hence, the petition is not maintainable at all, and the Wakf Tribunal rightly rejected the application and there is no illegality in the order passed by the Wakf Tribunal. The learned counsel further submits that as on date the Wakf Board has not received any application seeking permission from the petitioner and the petitioner cannot bypass the mandatory provisions, seeking permissions, from the Wakf Board. The learned counsel for the respondents further submit that already the Wakf Board filed a petition to vacate the petitioners from the lease hold premises and the same is pending. In the event if the petitioner is permitted to make improvement in the leasehold premises, it will cause serious prejudice to the Wakf Board.

6. I have considered the rival submissions and perused the materials available on records.

7. Admittedly, the petitioners are lessee and the lease has been renewed in the year 2018. Now, it is stated that eviction proceedings has been initiated by the Board against the petitioners, which is pending before the Wakf Tribunal, but so far no order has been passed in the eviction petition. The petitioners, admittedly, running a petrol bunk in the lease hold property. A perusal of the letter sent by the Indian Oil Corporation, dated 27.09.2019, it is seen that the petitioners are directed to carry out some improvement in the Petrol Bunk, which is mandatory in nature, and if the petitioners failed to provide the facilities as directed the Indian Oil Corporation within 3 months, suitable action will be initiated by the Indian Oil Corporation. In the said circumstances, the petitioners approached the second respondent seeking permission, since it was not considered, they have approached the Wakf Tribunal.

Now, the Wakf Board rejected the application on the ground that, the petitioners without approaching the Wakf Tribunal has approached the Wakf Tribunal, and as per Rule 20 of the Wakf Properties Lease Rules, the petitioners cannot maintain a petition before the Wakf Tribunal without approaching the Board.

8. It is the contention of the learned counsel for the petitioners that the Wakf Board has already initiated eviction proceedings against the petitioners, in the above circumstances, even if the petitioners approach the Wakf Board, they may not grant any permission to the petitioners. In the event of the Wakf Board rejecting the petitioners' application, once again they have to approach the Tribunal and it will consume more time, and if the petitioners are not be able to comply with the order issued by the Indian Oil Corporation, within the time fixed by them there is a likelihood of cancellation of their licence.

9. I find some force in the arguments put forth by the learned counsel for the petitioners. It is true that as per Rule 20 of the Rules, the petitioners should approach the Wakf Board seeking permission to make construction or improvement in the leased hold property, now the petitioners and the Board are at logger head, and an eviction petition is also pending against the petitioners. Even if such permission is sought, Board may not grant such permission. Considering the above circumstances, as the petitioners only want to make some improvement, and additional facilities in the lease hold properties, as per the directions issued by the Corporation, and the petitioners have also given undertaking that in the event of eviction petition is allowed, the petitioners will not claim any equity or damages from the Wakf Board, in the interest of justice, I am inclined to allow the revision petition.

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10. Accordingly, the Civil Revision Petition is allowed and the order dated 16.12.2019 passed by the Wakf Tribunal is

set-aside. The petitioners are directed to approach the Wakf Board and file application, seeking permission to make improvement, and further facilities as per the directions issued by the Indian Oil Corporation, within a period of one week from the date of receipt of a copy of this order. On filing such an application, the Wakf Board is directed to consider the same and grant permission to him within a period of three weeks thereafter. The petitioners are also directed to file an undertaking affidavit before the Wakf Board stating that in the event of eviction order passed against the petitioners, they will not claim any equity or damages or compensation for the improvement made by them in the leasehold premises.

सत्यमेव जयते

22.01.2020

Index:Yes/No

Internet:Yes

Speaking/Non-speaking order
mrp

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Note : Issue order copy on 31.01.2020

To

1. The Tamil Nadu Wakf Board,
rep. by its Chief Executive Officer,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai.
2. The Executive Officer,
Aruppukottai Nallur Mohaideen Andavar,
Jumma Pallivasal, Aruppukottai Town,
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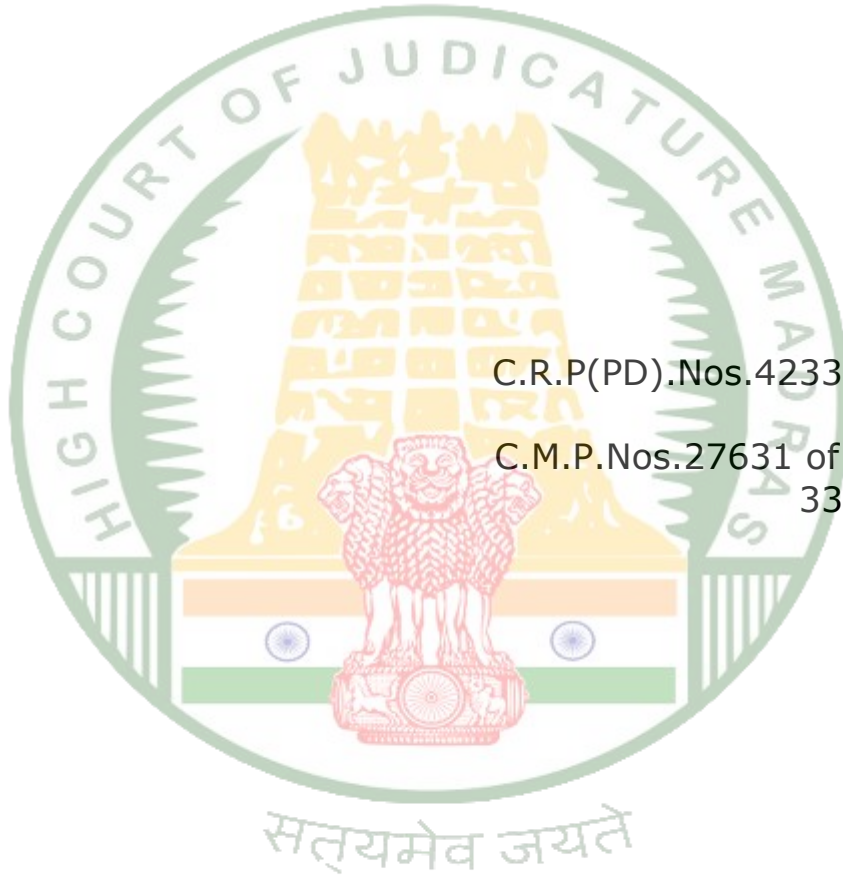


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V.BHARATHIDASAN, J

mrp



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33 of 2020

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