

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.02.2021

Date of Verdict : 11.02.2021

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.No. 4461 of 2015

and

MP.No.1 of 2015

Mohammed Rafi ... Petitioner

Vs.

1. Thiruvengadam

2. The Tamil Nadu Wakf Board,
Rep by Chief Executive Officer,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar, Chennai – 1. ... Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the judgement and decree dated 18.08.2015 made O.S.No.47/10 on the file of Principal Sub Court, Villupuram (Wakf Tribunal) and allow the above revision.

For Petitioner : Mr.N.A.Nissar Ahmed

For Respondents : Mr.V.S.Sivasundaram (for R1)

Mr. V.Raghavachari (for R2)

ORDER

This Civil Revision Petition is directed as against the judgment and decree passed in O.S.No.47 of 2010 dated 18.08.2015 on the file of the Principal Sub Court Villupuram (Wakf Tribunal), thereby, dismissing the suit filed by the petitioner for declaration to declare that the suit property belonged to the Milathe Shareef Wakf, recovery of possession and also for declaration to declare the sale deed executed in favour of the first defendant herein is null and void, with consequential prayed for permanent injunction, in respect of the suit property.

2. The learned counsel for the petitioner submitted that the suit property is a Wakf property by registered Wakf Deed dated 17.06.1938. Once, Wakf created and trustees had been appointed for the Management of Wakf, it cannot be revoked subsequently. While that being so, the learned Wakf Tribunal dismissed the suit only on the ground that the suit property was not registered with the Wakf Board as required under Section 36 (8) of the Wakf Act, 1995. The suit property originally belonged one Allah Pichai. He had formed permanent Wakf by name Milathe Sharref Wakf and

dedicated it in favour of the said Wakf. It was made on 17.06.1938 and also evidenced by a registered Wakf Deed executed by him. The income generated from the Wakf properties are to be utilized towards its beneficiaries. The Wakf must be a permanent one and therefore, it would curtail the powers of the trustees and their descendants from alienation or making any encumbrance over the said Wakf property. The petitioner being a Muthavalli, is interested in the Wakf founded by the said Allah Pitchai.

3. While that being so, one of the trustees alienated one of the suit property to the first defendant by executing the registered sale deed dated 03.02.2010, vide document No.307/2010. It transpires that the first defendant had been taking steps to form a Lay-Out and to sell the suit property in pieces to a number of persons. He further submitted that the “Wakf” defined under Section 3 (r) of the Wakf Act, 1995 and it means the permanent dedication by any person professing Islam of any immovable or movable property for any purpose recognized by the Muslim law as pious, religious or charitable. Section 36 of the Wakf Act, 1995 relates to the registration of the Wakf by the Muthavalli. If the Wakf is not registered as contemplated under Section 36 of the Wakf Act, 1995. there is penalty

under Section 61 of the Wakf Act, 1995. Therefore, mere non registration of Wakf is not the ground for dismissing the suit for declaration. In support of his contentions, he relied upon the judgments reported in 2008 (2) LW 230 (*Tamil Nadu Wakf Board -vs- Hakkim M.Mohamed Moideen & others*), 2002 (1) CTC 561 (*T.N.Wakf Board -vs- Hathija Ammal (dead) by Lrs. And others*, AIR 1986 Kar 12 (*Mohammed Ghouse -vs- Karnataka Board of Wakfs*) and (1999) 6 SCC 343 (*Karnataka Board of Wakf -vs- Anjuman-E-Ismail Madris-un-Niswan*).

4. Per contra, the learned counsel appearing for the second respondent submitted that the petitioner has no locus standi to file the present suit. He had been never a Muthavalli of any Wakf. Therefore, the plaintiff is not the beneficiary under Milathe Shareef. The suit property is purchased by one Mohammed Ibrahim and other. Therefore, the suit itself is bad for non-joinder of necessary parties. He further submitted, that even according to the plaintiff, the suit property is not yet registered as contemplated under Section 36 of the Wakf Act, 1995. Section 36 (8) of the Wakf Act is very clear that in case of Wakfs created before the commencement of this Act, every application for registration shall be made, within three months from

such commencement and in case it was created after such commencement, it is within three months from the date of the creation of the Wakf. Therefore, the suit property has never become a “Wakf property”. In fact, the suit property was sold out by direct legal heirs of Allah Pithcai and his descendants from 1944 till 2010 and it is evident by so many sale deeds dated 01.01.1944 24.10.1959 and 28.03.2003. Without challenging those sale deeds, he cannot challenge the sale deed 03.02.2010 and as such, it is clearly barred by limitation. In support of his contentions, he relied upon the judgments reported in 2015 (4) CTC 34 (*Nagoor Kaniammal -vs- Tenkasi Vangaru Muthu Meeran Sahib Thailka Pallivasal*), and 2008 (5) Mad LJ 807 (*S.A.Rasheed -vs- R.K.Kamalakaran*).

5. Heard the learned counsel for the petitioner as well as the learned counsel appearing for the respondents.

6. The petitioner is the plaintiff and he filed the said suit as against the respondents for declaration to declare that the sale deed dated 03.02.2010 is null and void and also to declare the title of Wakf. The petitioner also prayed for recovery of possession and consequential for

permanent injunction in respect of the suit property. Admittedly, the suit property belonged to one Allah Pitchai. According to the plaintiff, he dedicated the immovable properties in favour of the Wakf for the pious, religious and charitable purposes. On 17.06.1938 till today, those properties were not registered with the “Wakf” as contemplated under Section 36 of the Wakf Act, 1995. Though the petitioner claimed that the entire suit property is dedicated in favour of the Wakf and the petitioner failed to prove the same before the trial Court by producing any piece of evidence.

7. In this regard, the learned counsel for the second respondent relied upon the judgment of this Court reported in 2015 (4) CTC 34 (***Nagoor Kaniammal -vs- Tenkasi Vangaru Muthu Meeran Sahib Thailka Pallivasal***), in which this Court held as follows:-

“Law of Wakf - Dedication of immovable property for Mosque - Mode of dedication – When dedication of property would become Wakf property – Specific declaration by founder is necessary – Founder must divest himself completely from ownership of property – Absence of delivery of possession would not make dedication complete – Mere fact that members

of public offered prayers, does not make it Wakf complete and irrevocable.

Wakf Act, 1995 (43 of 1995), Section 37 & 5 – Register of Wakfs – Publication of list of wakfs – Worshipper filed suit for recovery of possession of Wakf property – Maintainability of suit – Properties dedicated to Wakf should be included in Register of Wakfs – Publication of list of Wakfs is necessary to institute Suit for recovery of possession of Wakf Board – In instant case, Suit Properties have not been included in Register of Wakfs and not published in list – Suit filed by worshipper for recovery of possession of Wakf property is not maintainable.

25. It would not be out of place for this Court to refer to the decision of the Hon'ble Apex Court in Tamil Nadu Wakf Board v. Hathija Ammal (Dead) by Lrs. Etc. [2001 (1) CTC 561] wherein Their Lordships have decided the right of the Wakf Board to institute a suit. In this regard, paragraphs 6 to 8 of the said judgment are usefully re-produced hereunder:—

Para 6: “In the event, any property has been omitted by inadvertence or otherwise, then it is for Wakf Board to take action as provided under Section 27 of the Act. If the Wakf Board has reason to believe that a particular property is a wakf property then it can itself collect information and if

any question arises whether a particular property is a wakf property or not it may, after making such enquiry as it may deem fit decide the question and such decision of the Wakf Board shall be final unless revoked or modified by a Civil Court. Such action has not been taken by the Wakf Board in this case.

Para 7: The High Court is justified in holding that the Wakf Board had no right to institute suit for declaration that any property is a wakf property as the scheme of the Act clearly indicates. The High Court further found that as far as the appellant is concerned with regard to title of any property, it must comply with the requirements of Sections 4, 5 and 6 or 27 of the Act, which means that if any property is not published as wakf property as required under Section 5(2) of the Act or the Board has not invoked the special power under Section 27, the Wakf Board cannot file a suit for declaration and possession and on that basis upheld the order made by the Trial Court as affirmed by the First Appellate Court.

Para 8: Ms. Shobha, learned counsel for the appellant, drew our attention to the decision of this Court in Sayyed Ali v. A.P. Wakf Board, Hyderabad, (1998) 2 SCC 642; to contend that wakf property can never lose its character as wakf property once it is shown that it is a permanent dedication of property and once a wakf, it will always be a

wakf. The point urged in this Case is that the suit property is a wakf property and hence sought for possession. What was pointed out by the Trial Court, the First Appellate Court and the High Court concurrently is that before filing the suit as provided in law, the Wakf Board should have followed the procedure as required under Section 4, 5 and 6 or 27 of the Act. A finding of fact has been recorded by the Trial Court, and affirmed in appeal, is that the suit properties are not included in the notification published under Section 5(2) of the Act and therefore, steps should have been taken as provided under Section 27 of the Act. It is only thereafter a suit for possession could have been filed by the appellant. There is no answer to this finding.”

26. In the above ruling, the Hon'ble Supreme Court has held that the Wakf Board has got no right to institute a suit for declaration that any property is a Wakf property unless the requirements under Sections 4, 5, 6 & 27 of the Act are complied with.

27. In the case on hand, the plaintiffs had not produced the publication of list of Wakf property as contemplated under Section 5 of the Wakf Act nor the Register of Wakfs, which contains particulars of all Wakf properties, all title deeds and documents relating thereto, as provided under Section 37 of the

Wakf Act. The absence of publication of the list of properties under Section 5 and the absence of register under Section 37 of Wakf Act would belie the contention of the plaintiffs that Mohammed Ismail intended to dedicate the 1st schedule property to the plaintiffs' Mosque and divested the title in the said property and deliver the same to the plaintiff's Mosque.

28. In the above factual matrix, the contentions of the learned counsel appearing for the plaintiffs that Mohammed Ismail dedicated suit 1st schedule property to the plaintiffs' Mosque and that the plaintiffs' Mosque has been in possession and enjoyment of the same, cannot be accepted. The plaintiffs had miserably failed to prove that Mohammed Ismail intended to dedicate suit 1st schedule property to the Mosque. In the absence of any proof that there was a dedication of the suit 1st schedule property in favour of the plaintiffs, the claim of the plaintiffs that 1st schedule of the suit property is a 'Wakf' property, cannot be granted.

29. When the Wakf Board itself cannot file a suit for declaration and recovery of possession on a claim that the property is a Wakf property, in view of the judgments cited supra, it is clear that the plaintiffs, who claim to be the worshippers, cannot maintain the suit for declaration and recovery of possession. However, even if evidence of dedication is not available, the property will be deemed to be a Wakf if it had been used as a Wakf property for quite a long time.

8. In the case on hand, admittedly, though the suit property was dedicated by the said Allah Pitchai, no trust was formed and no trust was registered till today. Further, the petitioner/plaintiff also failed to prove that the suit property is being maintained and possessed by the “Wakf”. It is also useful to refer relevant portion of under Section 36 (8) of the Wakf Act, 1995, which reads as follows:-

“36.Registration.

.....

(8)In the case of auqafs created before the commencement of this Act, every application for registration shall be made, within three months from such commencement and in the case of auqafs created after such commencement, within three months from the date of the creation of the waqf.

Provided that where there is no Board at the time of creation of a waqf, such application will be made within three months from the date of establishment of the Board.”

9. Accordingly, the Wakf has to be registered within three months.

Admittedly, no Wakf is registered till today. Therefore nothing warrants

this Court to interfere with the findings of the Court below. Hence, this Court finds no irregularity or infirmity in the order passed by the Court below.

10. In view of the above discussion, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed.

No costs.

11.02.2021

Speaking/Non-speaking order

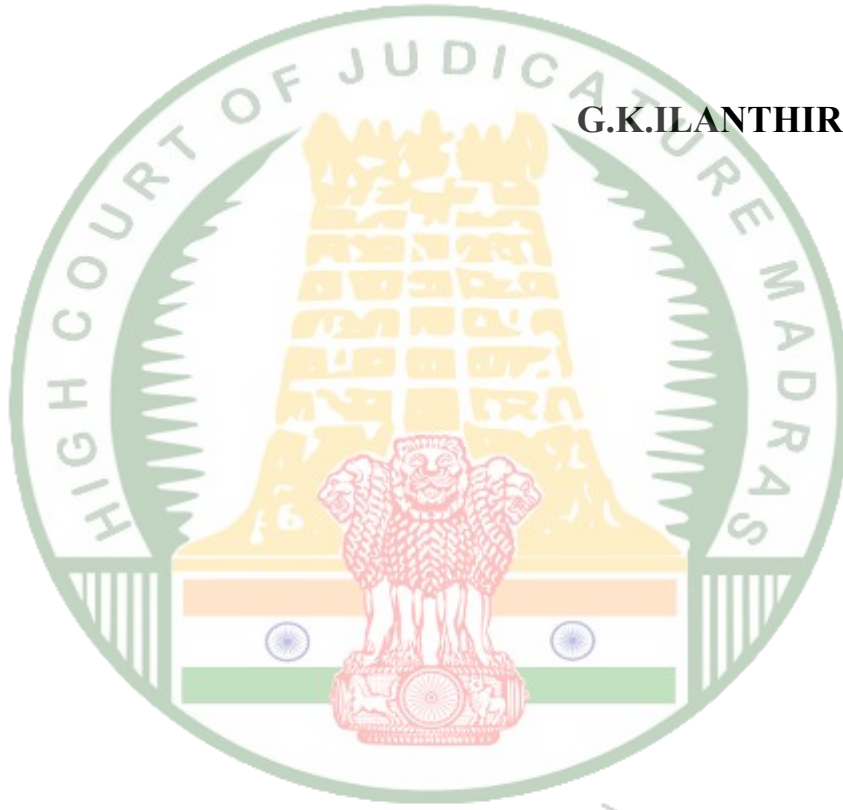
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To

1. The Principal Sub Judge, Villupuram (Wakf Tribunal).
2. The Chief Executive Officer,
The Tamil Nadu Wakf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar, Chennai – 1.



G.K.ILANTHIRAIYAN,J.

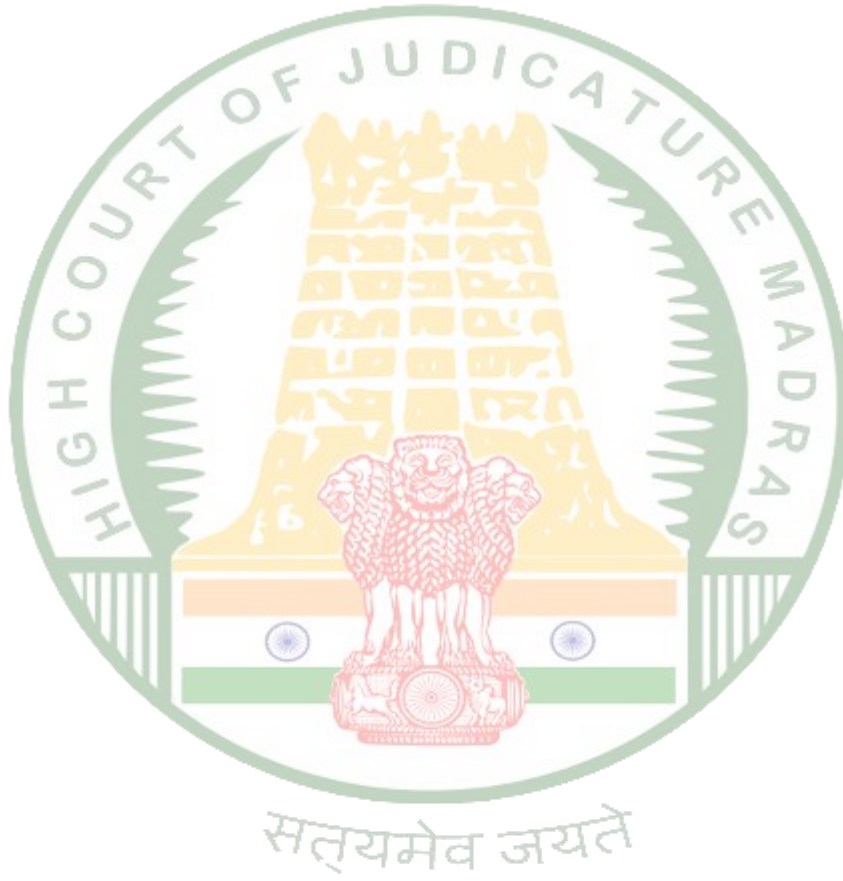
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**order made in
CRP.NPD.No. 4461 of 2015**

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