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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.13704 of 2021

and

W.M.P.Nos.14541 & 14543 of 2021

S.Ayubkhan,
S/o.Sattar Khan

.. Petitioner

-vs-

1.The Chairman,
Tamil Nadu Wakf Board,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai-600 001.

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

3.The Superintendent of Wakfs,
Tamil Nadu Wakf Board,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai-600 001.

4.Nawab. Fazilathunnisa Begum
Sahib's Mosque and Endowments,
Rep., by its Muthavalli,
No.419, Anna Salai,
Nandanam, Chennai-600 035.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus forbearing the respondents from in any manner proceeding or acting in furtherance to the notice dated 07.06.2021 issued by the 2nd respondent vide Na.Ka.No.13499/06/AA6/Chennai, in pursuance to the resolution passed by the 1st respondent in Item No.8 of 2021, vide Na.Ka.No.13499/2006/Aa6/Chennai, dated 18.02.2021 and thereby further preventing the petitioner herein, his men, agents or any other subordinates from their ingress or egress to



the petition property or in any manner disturbing the peaceful possession and enjoyment of the petition property except by following the principles of natural justice and the due procedure as envisaged under Sections 54 and 56 of the Wakf Act and Rule 24(2) of the Wakf Properties (Amended) Lease Rules, 2020.

For Petitioner : Mr.R.Abdul Mubeen

For R4 : Mr.N.A.Nissar Ahmed

For RR1 to 3 : No appearance

ORDER

The Writ on hand is filed for issuance of Writ of Mandamus to forbear the respondents from in any manner proceeding or acting in furtherance to the notice dated 07.06.2021 issued by the 2nd respondent vide Na.Ka.No.13499/06/AA6/Chennai, in pursuance to the resolution passed by the 1st respondent in Item No.8 of 2021, vide Na.Ka.No.13499/2006/Aa6/Chennai, dated 18.02.2021 and thereby further preventing the petitioner herein, his men, agents or any other subordinates from their ingress or egress to the petition property or in any manner disturbing the peaceful possession and enjoyment of the petition property except by following the principles of natural justice and the due procedure as envisaged under Sections 54 and 56 of the Wakf Act, 1995 and Rule 24(2) of the Wakf Properties (Amended) Lease Rules, 2020.

2.The petitioner states that originally his father Mr.A.Sattar Khan (deceased) obtained the lease of the wakf land belonging to the fourth respondent for a period of 25 years from 19.07.1971 to 18.07.1996 by virtue of a registered deed of lease dated 28.02.1972, which was registered as Document No.828 of 1972 in respect of the property situate at Plot No.4B, Door No.471, Anna Salai, Chennai-600 035. The deceased father of the petitioner constructed a superstructure and thereafter, he died on 28.04.1992 leaving behind the petitioner and other legal heirs to succeed the lease hold rights of the wakf property. Subsequent to the death of the original lessee, that is, the father of the petitioner, the surviving legal heirs had entered into a family arrangement on 07.10.1999 and accordingly, the petitioner was allotted the lease hold rights of the subject wakf property.

3.The fourth respondent was requested to transfer the lease hold rights of the subject mentioned property in favour of the petitioner as per the terms and conditions stipulated in the scheme Decree in O.S.No.63 of 1940. Finally, the lease was



granted in favour of the petitioner during the year 1999 and the petitioner was continuing in the subject property. The petitioner, relying on the lease originally granted in favour of his father, reiterated that he cannot be evicted.

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4.The learned counsel for the petitioner contended that the second respondent/Chief Executive Officer, Tamil Nadu Wakf Board has no authority to issue the impugned order dated 07.06.2021. It is contended that the petitioner's father was the original lessee and subsequently, the lease rights were transferred in favour of the petitioner in the year 1999 and therefore, the procedures contemplated under the provisions of the Wakf Act have not been followed.

5.The learned counsel for the petitioner reiterated that no opportunity was given to the petitioner and therefore, the order impugned is in violation of the principles of natural justice. The second respondent has no authority to issue any such order of eviction, as the petitioner was holding a valid lease and therefore, the writ petition is to be allowed.

6.It is contended that the second respondent, if at all having any grievance, has to approach the Wakf Tribunal for passing any such order of eviction against the petitioner.

7.The learned counsel for the fourth respondent objected the said contentions by stating that grant of lease for 50 years initially itself is a void agreement and accordingly, the Wakf Board cancelled the deed by declaring the said lease deed as null and void under the provisions of the Wakf Act. The said order of Wakf Board declaring the lease as null and void has not been challenged so far by the petitioner.

8.The learned counsel for the fourth respondent reiterated that the impugned order is a consequential order passed pursuant to the resolution passed by the Wakf Board in accordance with the provisions of the Wakf Act. When there is illegality on the face of it, the Wakf Board is competent to declare any such document as null and void, as the lease granted in favour of the deceased father of the petitioner for fifty years cannot be sustained, nor be continued.

9.It is further contended that if at all the petitioner is having any other grievance with reference to the claim set out in the present writ petition, he has to approach the Wakf Tribunal under Section 83 of the Wakf Act.

10.This Court is of the considered opinion that the cause arose for the purpose of dispute is the lease granted in favour of the deceased father of the petitioner for fifty years. The said lease granted for fifty years was declared as null and void



by the Wakf Board, which was not challenged by the petitioner. Therefore, an adjudication of disputed facts is required and if at all the petitioner, having any other grievance, is bound to approach the Tribunal for adjudication of these disputed facts. The terms and conditions of the lease as well as the declaration of lease as null and void by the Wakf Board cannot be adjudicated in a writ proceedings under Article 226 of the Constitution of India. The order impugned passed by the second respondent is a consequential order passed pursuant to the resolution passed by the first respondent on 18.02.2021. Therefore, the lease rights which are now being claimed by the petitioner cannot be adjudicated, nor any such relief can be granted.

11.This apart, the wakf properties are to be dealt with in accordance with law and the authorities competent are bound to maintain the wakf properties for the purpose mentioned and for the welfare of the Muslim Community. Various objects are prescribed and the properties are to be maintained strictly for the purpose for which Wakf is created. In the event of any deviation, maladministration, illegality, irregularity or granting lease in violation of the provisions of the Wakf Act, the authorities competent under the Wakf Act are bound to initiate appropriate action against all concerned and protect the interest of the Wakf properties. This being the spirit of the Wakf Act, the authorities are expected to act strictly for the purpose of restoring the wakf properties, which all are in the hands of the persons, who all are otherwise not entitled to possess the said properties. Inaction in this regard, is a religious sin committed by the authorities competent and therefore, actions are certainly imminent in respect of all the wakf properties across the State and outside the State.

12.The petitioner has admitted the fact that a valuable property measuring to an extent of 2880 sq.ft. in the prime locality in Chennai City more specifically at Nandanam is leased out for the rental amount of Rs.1000/- (Rupees One Thousand only) per month. The very fixation of rent would reveal that the authorities have failed in their duties to protect the wakf properties. The rent fixed is not only improper, but shows the manner in which the wakf properties are dealt with by the authorities and therefore, strict actions are to be initiated and further, the actions are to be initiated against the persons, who all are responsible and accountable for fixing such a meagre rent of Rs.1000/- (Rupees One Thousand only) for a valuable property situate in the prime location at Nandanam, Chennai measuring 2880 sq.ft.

13.In view of the facts and circumstances, the petitioner is at liberty to go before the Tribunal for adjudication of



disputed issues. However, the writ petition is not entertainable, as such disputed issues cannot be adjudicated effectively in a writ proceedings. Consequently, the writ petition stands dismissed. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

abr

To

- 1.The Chairman,
Tamil Nadu Wakf Board,
No.1, Jaffar Syrang Street,
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Chennai-600 001.
- 2.The Chief Executive Officer,
Tamil Nadu Wakf Board,
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- 3.The Superintendent of Wakfs,
Tamil Nadu Wakf Board,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai-600 001.

+1CC to M/s.R.Abdul Mubeen, Advocate SR.No.36089
+1CC to M/s.N.A.Nissar Ahmed, Advocate Sr.No.36456

W.P.No.13704 of 2021

GJ (CO)
B.VC (18/08/2021)