



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2021

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.NO.2129 OF 2021

AND

C.M.P. NOS.13453 AND 13454 OF 2021

S.Ayubkhan

.. Appellant

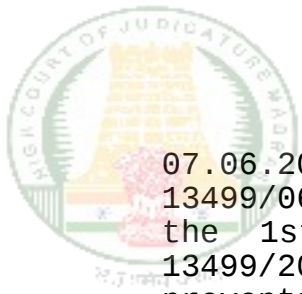
Vs.

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
Represented by its Muthavalli
No.419, Anna Salai
Nandanam, Chennai - 600 035.

.. Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent against the order dated 27.07.2021 made in W.P.No.13704 of 2021.

Prayer in W.P.No.13704 of 2021: 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 and 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 Appellant : Mr.R.Abdul Mubeen

For Respondents : Mr.N.A.Nissar Ahmed for R4

R1 to R3 : Served - No Appearance

JUDGMENT

PUSHPA SATHYANARAYANA, J.

The lessee of the fourth respondent Wakf has preferred the above appeal against the order dated 27.07.2021 made in W.P.No.13704 of 2021.

2. The short facts leading to filing of the writ appeal are that the father of the appellant one A.Sattar Khan, obtained lease of the Wakf land belonging to the fourth respondent for 25 years from 19.07.1971 to 18.07.1996, by virtue of a registered Lease Deed. The lessee had also put up a superstructure. After the demise of appellant's father, in a family arrangement, the leasehold rights of the Wakf property was given to the appellant. The Wakf was managed as per the Scheme Decree in O.S. No.63 of 1940. After getting the leasehold rights in a family arrangement, the appellant applied for extension of lease for 50 years, which was also granted by the fourth respondent herein from 01.01.1997 to 31.12.2046 by a registered Lease Deed dated 18.11.1999.

3. While so, after the amendment in the Wakf Act, the lease period of any Wakf property, should not exceed more than 30 years. As per the amended Act, the lease granted in favour of the appellant, would expire automatically on 31.12.2026. Hence, a notice dated 19.06.2021 was pasted on the wakf property stating that, as per the resolution, the lease in favour of the appellant has been cancelled. According to the appellant, the said act of the respondents is illegal and is violative of Section 54 of the Wakf Act, 1995 and Rule 24(2) of Wakf Properties (Amended) Lease Rules, 2020.



4. Aggrieved by the above notice, the petitioner had filed a writ petition, the prayer of which is as follows:

" 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."

5. The writ court, has passed an order holding that the appellant has not challenged the cancellation of 50 years lease and that any dispute or grievance, an alternate remedy is available before the Wakf Tribunal. As the terms and conditions of the lease or even the declaration of the lease, as null and void, are all question of facts, cannot be gone into under Article 226 of the Constitution of India, the writ petition was dismissed.

6. Aggrieved by the order of dismissal, the appellant has preferred the above appeal.

7. The prayer in the writ petition was one for a mandamus forbearing the respondent from in any manner proceeding or acting in furtherance to the notice dated 07.06.2021. The Chief Executive Officer of the Tamil Nadu Wakf Board, in Proceedings Na.Ka. No.13449/06/B6 Chennai dated 07.06.2021 has stated that the lease in favour of the appellant is void and therefore, the same is cancelled and called upon the appellant to surrender possession of the property in his possession.

8. The above said proceedings was based on the resolution of the Tamil Nadu Wakf Board dated 18.02.2021. It is argued by the learned counsel for the appellant that the above said Notice was not served on him and it was only pasted on the premises. But the copy of the proceedings dated 07.06.2021 has been marked to the writ petitioner through the Wakf Inspector.



9. Be that as it may, once the appellant/writ petitioner had knowledge about such resolution and the eviction notice, without challenging the same, he has moved this court simply seeking a mandamus to forebear the respondents from proceeding in furtherance to the above proceedings, which itself is not maintainable. Once the lease is cancelled and if the same is not challenged, the appellant is not entitled for the relief, he is seeking for. Besides, the remedy that is available to the appellant is only before the Wakf Tribunal as the fact of the original lease and the subsequent extension, which were based on the Scheme Decree, are all to be gone into only by the Tribunal.

10. In the above circumstances, considering the fact that the appellant has been in possession of the property from 1971 from the days of his father, it would be appropriate to give him an opportunity to go before the Wakf Tribunal and challenge the said notice within a period of four weeks from today. Upon such challenge is being made, the Tribunal is directed to dispose of the same, within a period of four weeks after affording him an opportunity of personal hearing and allowing them to mark the relevant documents before the Tribunal, in accordance with law.

11. With the above direction, the writ appeal is disposed of. However, there is no order as to costs. Consequently, the connected civil miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

Asr

To

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
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Chennai - 600 001.



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

+1cc to Mr.C.Shankar, Advocate, S.R.No.46302
+1cc to Mr.R.Abdul Mubeen, Advocate, S.R.No.46293
+1cc to Mr.N.A.Nissar Ahmed, Advocate, S.R.No.46737

W.A.No.2129 of 2021 and
C.M.P. Nos.13453 and 13454 of 2021

LN(CO)
RLP(06/10/2021)