



C.R.P.(NPD)No.510 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.510 of 2009

G.Velu

.. Petitioner

Vs.

1.Rajendran

2.The Superintendent of Wakfs
Cuddalore District at Panruti
having his Office at premises of
Hazrat Noor Mohameed Sha Avulla Dargah
at Gandhi Road, Panrutti
Panruti Taluk.

.. Respondents

PRAYER: Civil Revision Petition filed under Section 83(9) of the Wakf Act, against the judgment and decree dated 28.11.2008 made in O.S.No.66 of 2001 on the file of the Principal Sub Court, Cuddalore.

For Petitioner : Mr.R.Sunilkumar

For R1 : Mr.K.A.Ravindran

For R2 : Mr.S.Haja Mohideen Gisthi



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ORDER

Civil Revision Petition is filed against the judgment and decree dated 28.11.2008 made in O.S.No.66 of 2001 on the file of the Principal Sub Court, Cuddalore.

2.The petitioner is 1st defendant, 1st respondent is plaintiff and 2nd respondent is the 2nd defendant in O.S.No.66 of 2001 on the file of the Principal Sub Court (Wakf Tribunal), Cuddalore. The said suit was filed by the 1st respondent for permanent injunction restraining the petitioner and 2nd respondent from interfering with his peaceful possession and enjoyment of the suit property as a lawful tenant.

3.According to the 1st respondent, he was inducted as tenant. The suit property was a shop building belonging to Hazarat Noor Mohammed Sha Avulla Dargah, Panrutti, Panrutti Taluk. The said Dargah was originally maintained by the Executive Committee of five members appointed in pursuant to the terms of scheme decree dated 07.05.1984



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passed in O.S.No.200 of 1981 on the file of the Sub Court, Cuddalore.

The 1st respondent was inducted as tenant in the suit property with effect from 01.02.1999 by the Managing Committee of the Hazarat Noor Mohammed Sha Avulla Dargah, for 11 months on a monthly rent of Rs.500/-. The 1st respondent paid a sum of Rs.1,500/- as an advance. The tenancy was for 11 months and terms of tenancy was reduced to in writing by original agreement dated 25.02.1999. The 1st respondent is carrying on grocery business and is running telephone and xerox shops in the suit premises. While so, the Tamil Nadu Wakf Board appointed a new Committee consisting of five members to manage the affairs of Dargah namely, 1.A.Rashid Khan, 2.Noorjahan, 3.Syed Khadar, 4.Sawkat Ali and 5.Abaidur Rahman. One of the erstwhile Committee members challenged the said appointment by filing W.P.No.185 of 2000 and this Court granted an order of stay of functioning of the new Committee in W.M.P.No.296 of 2000. In view of the stay granted by this Court, the Wakf Board appointed 2nd respondent herein as Executive Officer of the said Dargah. Subsequently, in W.M.P.No.6027 of 2000, this



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Court by the order dated 30.03.2000 partly vacated the order of stay with regard to two Committee members namely, A.Rashid Khan and S.Noorjahan and directed the 2nd respondent to hand over the charge to the said two Committee members. The 2nd respondent did not hand over the charge to the two Committee members. Contempt Petition was filed against the 2nd respondent. The 2nd respondent filed affidavit before this Court stating that he handed over the charge to the two Committee members on 06.05.2000 itself, as ordered by the Wakf Board. While so, the 2nd respondent alleged to have entered into a rental agreement with the petitioner on 19.01.2001. The petitioner and 2nd respondent in the 4th week of March 2001 threatened the 1st respondent to dispossess him from the suit premises under the guise of alleged rental agreement dated 19.01.2001 entered into between the petitioner and 2nd respondent. The said agreement is illegal and void on the date of execution of rental agreement. The 2nd respondent has no power to let out the suit premises to the petitioner as he handed over the charge to the two new Committee members on 06.05.2000 itself and petitioner has no right to claim to be



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the tenant of suit premises. In such circumstances, the 1st respondent filed suit for the relief sought for above.

4.The petitioner filed written statement contending that suit is not maintainable as the 1st respondent did not issue mandatory notice as per Section 89 of the Tamil Nadu Wakf Act, 1995 (hereinafter called as “the Act”). The 1st respondent also failed to comply with the provisions of Section 90 of the Act. The petitioner was inducted as tenant for three years with effect from 19.01.2001 by registered rental agreement dated 19.01.2001. The monthly rent is Rs.1,250/-. He paid a sum of Rs.75,000/- as advance and Rs.50,000/- as donation. The 1st respondent was not recognised as tenant by the Wakf Board. Originally, one Jani Abdul Rahman was tenant to the entire building of the suit property. He died in the year 1995. The tenancy of the petitioner was approved by the Wakf Board, the 1st respondent is in illegal occupation and he is only an encroacher. The 1st respondent has not approached the Court with clean hands and prayed for dismissal of the suit.



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5.The 2nd respondent herein remained exparte before the trial Court. Based on the pleadings, the trial Court framed necessary issues. Before the trial Court, both the petitioner and 1st respondent did not let in any oral evidence. The 1st respondent marked 63 documents as Exs.A1 to A63. The petitioner marked 4 documents as Exs.B1 to B4.

6.The trial Court considering the pleadings, oral and documentary evidence, held that for the relief sought for by the 1st respondent, notice under Section 89 of the Act is not necessary, the 1st respondent is entitled to be protected until he is evicted under due process of law and permanent injunction was granted to that effect that his possession cannot be interfered with, based on the proceedings No.13890/90/Cud/E.3 dated 07.03.2002 and decreed the suit as prayed for by the 1st respondent.

7.Against the said judgment and decree dated 28.11.2008 made in O.S.No.66 of 2001, the petitioner has come out with the present Civil Revision Petition.

8.The learned counsel appearing for the petitioner contended that



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the learned Judge erred in holding that notice under Section 89 of the Act is not necessary as 1st respondent is not challenging any proceedings of the Wakf Board. The learned Judge erred in holding that notice under Section 89 of the Act is not mandatory as there is no provision in the Tamil Nadu Wakf Act to dispense with said notice as provided in similar provisions of Section 80 of C.P.C. An obligation is cast upon the Court under Section 89 of the Act to dismiss the suit for not complying the statutory provision. The trial Court failed to note that the Wakf Board after enquiry passed a resolution recognising the petitioner as a tenant in the proceedings in R.C.No.13890/90/B4, dated 23.10.2000. The learned Judge failed to note that rental agreement in respect of the suit property was registered as document No.11 at the Office of the Sub-Registrar, Panrutti, dated 19.01.2001 and in pursuant to the said agreement, the petitioner paid a sum of Rs.1,25,000/- by way of Demand Draft towards advance and donation to the Board and prayed for allowing the Civil Revision Petition.

9.The learned counsel appearing for the 1st respondent contended



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that 1st respondent was inducted as tenant on 01.02.1999 for 11 months.

The 1st respondent is a lawful tenant and without evicting the 1st respondent by due process of law, the Wakf Board has no authority to evict the 1st respondent. The learned counsel made submissions in support of the judgment passed by the Trial Court and prayed for dismissal of the Civil Revision Petition.

10.The learned counsel appearing for the 2nd respondent made submissions in support of the judgment of the trial Court and prayed for dismissal of the Civil Revision Petition.

11.Heard the learned counsel appearing for the petitioner as well as the learned counsel for the 1st respondent, who are appearing physically before this Court and the learned counsel appearing for the 2nd respondent through Video-conferencing/Hybrid mode and perused the entire materials on record.

12.From the materials on record, it is seen that 1st respondent has



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filed suit for permanent injunction restraining the petitioner and 2nd respondent from interfering with his peaceful possession and enjoyment of the suit property as lawful tenant. It is the case of the petitioner before the trial Court as well as this Court in the Civil Revision Petition that suit filed by the 1st respondent is not maintainable as he failed to comply with the mandatory provisions of the Tamil Nadu Wakf Act, 1995. The learned Judge considering the averments made in the plaint and nature of relief sought for by the 1st respondent, held that non-issuance of notice under Section 89 of the Act is not fatal to the suit and suit is maintainable as the 1st respondent has not challenged any proceedings of the Wakf Board. In order to consider above rival contentions, Sections 89 and 90 of the Tamil Nadu Wakf Act, 1995 are extracted hereunder:

Sections 89 and 90 of the Tamil Nadu Wakf Act, 1995:

89. Notice of suits by parties against Board.—No suit shall be instituted against the Board in respect of any act purporting to be done by it in pursuance of this Act or of any rules made thereunder, until the expiration of two months next after notice in writing has been delivered to, or left at, the office of the Board, stating the cause of action, the name,



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description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

90. Notice of suits, etc., by courts.—(1) In every suit or proceeding relating to a title to or possession of a wakf property or the right of a mutawalli or beneficiary, the Court or Tribunal shall issue notice to the Board at the cost of the party instituting such suit or proceeding.

(2) Whenever any wakf property is notified for sale in execution of a decree of a Civil Court or for the recovery of any revenue, cess, rates or taxes due to the Government or any local authority, notice shall be given to the Board by the Court, Collector or other person under whose order the sale is notified.

(3) In the absence of a notice under sub-section (1), any decree or order passed in the suit or proceeding shall be declared void, if the Board, within one month of its coming to know of such suit or proceeding, applies to the Court in this behalf.

(4) In the absence of a notice under sub-section (2), the sale shall be declared void, if the Board, within one month of its coming to know of the sale, applies in this



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behalf to the Court or other authority under whose order the sale was held.”

13.A reading of Section 89 of the Act shows that a party, who instituted a suit against the Wakf Board in respect of any act done, in pursuance of the Act or any Rules made thereunder, must deliver a notice or leave it in the Office of the Board mentioning cause of action, name, description, place of residence of plaintiff and relief, which he claims. In the plaint, a statement must be made whether such a notice is delivered or not. It is clear from Section 89 of the Act that no suit shall be instituted without issuing notice to the Board, when any act is done by the Board under the provisions of the Tamil Nadu Wakf Act or Rules made thereunder. Only after two months of said notice, a suit can be instituted. In the present case, 1st respondent has not challenged any act of the Wakf Board done under the provisions of Act or Rules. The 1st respondent has sought for permanent injunction restraining the petitioner and 2nd respondent from interfering with his peaceful possession and enjoyment of the suit premises. The 1st respondent has stated that when a new



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Committee was appointed by the Board, the same was challenged by filing W.P.No.185 of 2000 by one of the erstwhile Committee members. This Court initially granted interim stay of appointment of new five members Committee in W.M.P.No.296 of 2000. Subsequently, in W.M.P.No.6027 of 2000, this Court by the order dated 30.03.2000 partly vacated the order of stay granted in respect of two Committee members namely, A.Rashid Khan and S.Noorjahan. This Court also directed the 2nd respondent to hand over the charge of management of Dargah to the said two Committee members. In the Contempt Petition initiated, the 2nd respondent filed an affidavit stating that he had already handed over the charge to the two new Committee members on 06.05.2000 itself. After filing a sworn affidavit before this Court that he has already handed over the charge to the two members Committee on 06.05.2000, the 2nd respondent without any authority entered into a rental agreement on 19.01.2001 with the petitioner. Further, the 1st respondent has marked the notice issued by the Wakf Board dated 07.03.2002 as Ex.A63, wherein the Wakf Board has directed the 1st respondent to remove the



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encroachment and hand over the vacant possession. From the materials on record and submissions of Mr.S.Haja Mohideen Gisthi, the learned counsel appearing for 2nd respondent, it is seen that the Wakf Board has not initiated further proceedings to evict the 1st respondent from the suit premises. The learned Judge considering the above materials, rightly held that notice under Section 89 of the Act is not necessary.

14.As far as Section 90 of the Act is concerned, in every suit or proceedings related to title or possession of Wakf property or the right of a mutawalli or beneficiary, the Court or the Tribunal shall issue notice to the Board at the cost of the party instituting the suit. Notice under Section 90 of the Act has to be issued by the Court or Tribunal and not by the plaintiff, even though plaintiff has to bear the cost of such notice.

15.Considering the materials on record, it is clear that notice under Sections 89 and 90 of the Act is not necessary and the trial Court after



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properly appreciating the scope of Section 89 of the Act, by giving valid reason, decreed the suit as prayed for by the 1st respondent. The trial Court has granted permanent injunction in favour of 1st respondent and held that his possession is protected until he is evicted under due process of law. There is no error in the judgement of the trial Court warranting interference by this Court.

16.For the above reasons, the Civil Revision Petition stands dismissed. No costs.

26.11.2021

Index : Yes/No

Internet: Yes/No

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To

The Principal Subordinate Judge
Cuddalore.

V.M.VELUMANI,J.

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