

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P (NPD).No.1636 of 2017

and

C.M.P.No.7729 of 2017

Abdul Saleem

... Petitioner/Appellant

Versus

1.The Mutawalli

Asharad Syed Badusha,
Brukanuthin Avulia Durga,
Thirukkalacheri - 609 312.

2.The Tamil Nadu Wakf Board,

Represented by Chief Executive Officer,
No.1, Jaffar sprang street,
Vallal Sethakadi Nagar,
Chennai - 600 001.

... Respondents

[R2 impleaded vide order of
Court dated 19.11.2020
made in C.M.P.No.5355/2018 in
C.R.P. (NPD).No.1636/2017]

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the judgment and decree dated 08.03.2017 passed in A.S.No.29 of 2016 on the file of learned District Judge, Nagapattinam, which confirmed the order dated 19.10.2016 passed in PP/11/TNJ/2016 on the file of the Estate Officer and the CEO of Tamil Nadu Wakf Board at Madras.

For Petitioner : Mr.R.Ragavendran
For R1 : Mr.N.A.Nissar Ahmed
For R2 : Mr.V.Lakshminarayanan

ORDER

The Civil Revision Petition is directed as against the judgment and decree dated 08.03.2017 passed in A.S. No. 29 of 2016 on the file of the learned District Judge, Nagapattinam, confirming the order dated 19.10.2016 passed in PP/11/TNJ/2016 by the Estate Officer/Chief Executive Officer of the Tamil Nadu Wakf Board at Madras, thereby directed the appellant to vacate the suit schedule property and ordered for his eviction.

2.The petitioner is the respondent in the proceedings in Case No. PP/11/TNJ/2016 initiated by the first respondent herein before the Estate Officer under the Tamil Nadu Public Premises (Eviction and Unauthorised Occupants) Act, 1975. The learned Estate Officer ordered for eviction of the petitioner and aggrieved by the same, he filed the appeal suit and the same was also dismissed and confirmed the order passed by the Estate Officer. Hence, the present Civil Revision Petition is filed.

3.The learned counsel for the petitioner would submit that the earlier proceedings under the Wakf Act and the Civil Suit attained finality against the first respondent herein and as such the present impugned proceedings initiated before the Estate Officer, is hit by the principles of res-judicata. In fact, as against the proceedings, initiated under the Wakf Act, this Court in CRP.No.2188 of 2005 passed an order dated 30.07.2010 holding that if there is any dispute between the Wakf being the land-lord and the agricultural tenant, then the dispute has to be decided under the Tamil Nadu Public Trust (Regulation of Administration of Agricultural Lands), Act, 1961 and the Wakf Tribunal constituted under Section 8 of the Wakf Act, would have no jurisdiction at all. Aggrieved by the order passed in the Civil Revision Petition, the first respondent filed a Special Leave Petition in SLP. No.32441 of 2010 before the Hon'ble Supreme Court of India and the same was also dismissed by an order dated 21.01.2014. Thereafter, the respondent herein initiated proceedings under the Tamil Nadu Public Premises (Eviction and Unauthorised Occupants) Act, 1975, which is not permissible under law. When this Court specifically held that if at all any action has to be taken against the petitioner, it has to be initiated only under the Tamil Nadu Public Trust (Regulation and Administration of Agricultural lands), 1961. As such, the Estate Officer has no power to pass any order. The Appellate Court erroneously decided the title of the suit property in favour of the Wakf in the petition filed under Tamil Nadu Public Premises (Eviction and Unauthorised Occupants) Act, 1975 without considering the averments of the petitioner.

4.Per contra the learned counsel for the first respondent would submit that the suit property is a public premises, which is coming within the purview of Section 2(e) of the Tamil Nadu Public Premises (Eviction and Unauthorised Occupants) Act, 1975 as amended (33) of 2010. The schedule property belongs to the Wakf and the petitioner is an unauthorized occupant of the premises. There is no agreement for lease between the Wakf and the petitioner herein. The petitioner never paid any rent to the first respondent and he is in arrears of huge amount of rent. In fact, the Hon'ble Supreme Court of India, specifically recorded

that the petitioner undertakes to pay the arrears of rent within a period of 6 weeks to the first respondent, by an order dated 21.01.2014. Whereas on 26.02.2014, the petitioner herein sent a Demand Draft for a sum of Rs.36,000/- that too, for only for a period of 3 years, drawn in the name of the Chairman of Tamil Nadu Wakf Board, Chennai, and therefore it was returned, by a letter dated 07.08.2014, thereby, directing the petitioner to comply with the order passed by the Hon'ble Supreme Court of India, by paying the entire arrears of rent to the Wakf Board not in the name of the Chairman. Thereafter, the petitioner failed to pay any rent even till today. Therefore, the first respondent filed a petition for eviction under Section 4, 5 and 7 of the Tamil Nadu Public Premises (Eviction and Unauthorised Occupants) Act, 1975.

5.The learned counsel for the second respondent submitted that the eviction petition can be filed under the Tamil Nadu Public Premises (Eviction and Unauthorised Occupants) Act, 1975, since the petitioner is an unauthorised occupants and he is an encroacher. While dismissing the CRP. (NPD) No. 2188 of 2005, by an order dated 30.07.2010, Tamil Nadu Public Premises (Eviction and Unauthorised Occupants) Act, 1975, was not in force and it came into force only on 10.11.2010. On the date of passing the order in CRP.No. 2188 of 2005 dated 30.07.2010, the Wakf property was not included under the Tamil Nadu Public Premises (Eviction and Unauthorised Occupants) Act, 1975. The Wakf property came to be included in the Act, only on 10.11.2010, therefore, for eviction of unauthorised occupants, the Tamil Nadu Public Premises (Eviction and Unauthorised Occupants) Act, 1975 is very much applicable and accordingly the first respondent filed a petition before the Estate Officer and the same was allowed.

6.Heard the counsel for the petitioner and the counsel appearing for the respondents and perused the materials available on record.

7.The first respondent is a Muthavalli of Asharad Syed Badusha, Brukanuthin Avulia Dargah in Thirukkallacheri. This Dargah is under the control of the Tamil Nadu Wakf. Admittedly, the suit property belongs to the Wakf. According to the first respondent, there is no agreement for lease executed in favour of the petitioner herein. Further, it is alleged that the petitioner is in arrears of huge amount of rent and without even paying rent for the property, the property has been occupied by the petitioner. The suit property is an agricultural land, the first respondent filed an application under the Tamil Nadu Public Trust (Regulation and Administration of Agricultural lands), 1961, to evict the petitioner and the same was subsequently, withdrawn. Thereafter, the present petition has

been filed under the Tamil Nadu Public Premises (Eviction and Unauthorised Occupants) Act, 1975, to evict the petitioner herein.

8.The petitioner resisted the petition on the ground that the father of the petitioner directly obtained the suit properties for lease, from the Wakf and he paid sufficient rents and after his demise, the petitioner is being a cultivating tenant of the suit property. The first respondent already filed a petition for eviction before the Wakf Tribunal and the same was allowed by an order dated 22.07.2005. Aggrieved by the same, the petitioner preferred the CRP.No.2188 of 2010 and the same was also allowed. Now, the points for consideration is that:-

a)Whether the Tamil Nadu Public Premises (Eviction and Unauthorised Occupants) Act, 1975 applies to the case on hand?

b)Whether the petitioner is liable to be evicted from the suit schedule property?

9.As per Tamil Nadu Act 1 of 1976, The Tamil Nadu Public Premises (Eviction and Unauthorized Occupants) Act, 1975 was enacted for the purpose of eviction of unauthorized occupants of public premises and the same came into force from 10.01.1976. The Wakf properties situated in the State of Tamil Nadu and registered with the Tamil Nadu Wakf Board are brought under the provision of the Tamil Nadu Wakf Act as amended in the Tamil Nadu Amendment Act (33) of 2010. The said amendment came into force from 07.01.2011. As per Section 2(e) of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 (Tamil Nads Act 1 of 1976) the property of the Wakf was also included under the public premises. It is relevant to extract the Section 2(e) of the Act hereunder:-

"2(e) "public premises" means any premises belonging to or taken on lease or requisitioned by, or on behalf of, the Government, and includes -

(1) any premises belonging to, or taken on lease by, or on behalf of -

i) any company as defined in section 3 of the Companies Act, 1956 (Central Act 1 of 1956) in which not less than fifty-one per cent of the paid-up share capital is held by the Government; and

ii) any corporation (not being a company as defined in section 3 of the Companies Act 1956 (Central Act 1 of 1956) or a local authority) established by or under any law

and owned or controlled by the Government;

(2) any premises belonging to or vested in, a local authority or any Board constituted under any law;

(3) any premises belonging to a Wakf, registered with the Tamil Nadu Wakf Board."

10. Therefore, the suit properties coming under the purview of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 and it can be invoked in this case by initiating proceedings before the Estate Officer, who can try this case under the said Act.

11. Further, the learned counsel for the respondent would submit that the suit properties are coming within the purview of the term "any land" and the provisions do not specifically exclude the agricultural land under the cultivating tenant. The Section 2(d) of the Act, defines the 'premises' as follows:-

"2(d) "premises" means any land or any building or hut or part of a building or hut and includes,-

(i) gardens, grounds and outhouses, if any, appertaining to such building or hut or part of a building or hut; and

(ii) any fittings affixed to such building or hut or part of a building or hut for the more beneficial enjoyment thereof;"

12. In this regard, the learned counsel for the respondent relied upon the Judgment of the Hon'ble Supreme Court of India, in the case of *Hari Singh & others Vs. The Military Estate Officer, Delhi Circle, Delhi Cantt. & others* reported in AIR 1972 SC 2205, in which, it is held that :-

"5. In the appeal filed by Hari Singh and others two contentions were raised in the High Court. First, it was said that the word 'premises' did not apply to agricultural land. Secondly, it was said that the legislation on agricultural land was within the exclusive legislative field of the State and, therefore, the Central Act was unconstitutional. The High Court rejected both the contentions.

23. It was contended that the word 'premises' in the Act would not apply to agricultural land.

The word 'premises' is defined to mean any land. Any land will include agricultural land. There is nothing in the Act to exclude the applicability of the Act to agricultural land. Reference was made to Sections 42 and 43 of the Punjab Tenancy Act, 1887. Section 42 of the 1887 Act speaks of restriction on ejectment. Section 43 provides for application to the Revenue Officer for ejectment. It was said on behalf of the appellants that Article 14 of the Constitution was offended because of the procedure under the Punjab Tenancy Act, 1887 being available. There is no substance in that contention. Section 15 of the 1971 Act provides only one procedure for ejectment of persons in unauthorized occupation of public premises."

13. Thus, it is a settled position of law that "any land" will include the agricultural land and the land under cultivating tenant also comes within the purview of the term "premises" as per Section 2(d) of the Tamil Nadu Public Premises (Eviction of unauthorized Occupants) Act, 1975.

14. On 12.01.2016 a notice was issued by the first respondent, thereby calling upon the petitioner to pay the arrears of rent for the suit property. Even then, the petitioner did not comply the same and as such, the lease registered in favour of the petitioner was terminated and determined. Thereafter, the first respondent called upon him, to vacate and hand over the vacant possession and to pay the rent. On receipt of the same, the petitioner issued a reply notice stating that the demand of rent is nothing but a threat by coercion and called upon the first respondent to stop illegal action of eviction of cultivating tenant from the schedule property. Therefore, it is clear that the petitioner is in huge arrears of rent and he did not pay the same. In fact, when the first respondent filed an SLP.No.32441 of 2010 as against the order passed in CRP.No.2188 of 2005, before the Hon'ble Supreme Court of India, in the order of the Hon'ble Supreme Court of India observed that the petitioner undertook to pay the arrears of rent to the respondents and directed him to pay it within a period of six weeks, by an order dated 21.01.2014.

15. The petitioner had sent a Demand Draft for a sum of Rs.36,000/- that too, in the name of the Chairman of Tamil Nadu Wakf Board. It was returned by letter dated 07.08.2014 and directed the petitioner to pay the entire arrears of rent to the Wakf. Thereafter, the petitioner did not make any payment to the respondents herein. Therefore, the Court below has rightly dismissed the appeal filed by the petitioner as against the

order of eviction. This Court finds that there is no irregularity or infirmity on the order passed by the Court below.

16. Accordingly, the Civil Revision Petition is dismissed by confirming the order passed by the Estate Officer. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The District Judge,
Nagapattinam.

2.The Estate Officer,
Tamil Nadu Wakf Board at Madras.

3.The CEO of Tamil Nadu Wakf Board at Madras.

4.The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.V.Lakshminarayanan, Advocate SR.NO..17276

+1cc to Mr.N.A.Nissar Ahmed, Advocate SR.NO..17111

+1cc to M/s.R.Murali, Advocate SR.NO..17082

AKM/30.04.21/7P- 8C/

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