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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.03.2021

PRONOUNCED ON : 02.06.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.6774 of 2017
and W.M.P.No.7342 of 2017

Dr.B.K.Mohideen

.. Petitioner

vs

1. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai - 600 003.

2. The Assistant Revenue Officer,
Zonal Office IX,
Corporation of Chennai,
No.1, Lake Area, 4th Cross Street,
Nungambakkam, Chennai - 600 034.

3. Nasreen Mohideen

4. Lubna Syed

5. E.Daulath Banu

6. Sana Wasif (Minor)

7. Matheen Wasif (Minor)

(Respondents 6 & 7 by mother and Natural
guardian E.Daulath Banu Respondent No.5)

.. Respondents

Prayer:

Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus, directing the official respondents 1 to 2 to obtain necessary report from the Wakf Board or Wakf Inspector of the concerned area and take a reasoned decision with respect to the claim of the petitioner as per the directions of this Court in W.P.No.7257 of 2016 dated 17.03.2016 and communicate the same to the petitioner in respect of premises bearing old No.24, New Door No.12 Kareem Subedhar Street, Royapettah, Chennai - 600 014.



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For Petitioner : Mr.V.Parthiban
For Respondents : M/s.Karthika Ashok,
Senior Standing Counsel
for R1 and R2
Mr.R.Dinesh for R3 to R5

O R D E R

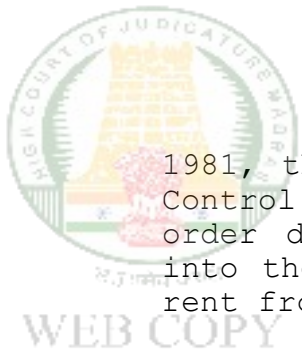
Heard the learned counsel for the petitioner, the learned Senior Standing Counsel for the first and second respondents and the learned counsel for the third to fifth respondents.

2. The present Writ Petition has been filed to direct the first and second respondents to obtain necessary report from the Wakf Board or Wakf Inspector of the concerned area and take a reasoned decision with respect to the claim of the petitioner as per the directions of this court in W.P.No.7257 of 2016 dated 17.03.2016 and communicate the same to the petitioner in respect of the premises bearing old No.24, New Door No.12, Kareem Subedhar Street, Royapettah, Chennai - 600 014.

3.The litigation in the present Writ Petition has had a checkered history. It commences from the year 1958 onwards. The property in question, which concerns the present Writ Petition was originally a Wakf property. The petitioner's husband namely late K.K.Mohideen and his younger brother namely K.M.Mohideen were its tenants.

4.It is submitted that against the petitioner's husband and his brother M/s.Hajee S.M.Sherfuddin Wakf Estate had filed ejectment suit in O.S.No.1989 of 1958. The dispute between the said Hajee S.M.Sherfuddin Wakf Estate and the petitioner's husband and his brother was compromised, As a result, a sale deed for property was to be executed in their name. It is submitted that for reasons best known to the two brothers late i.e. K.K.Mohideen and late K.M.Mohideen, the sale deed was executed in name of the late i.e., petitioner's brother-in-law K.M.Mohideen. However, all revenue notices such as demand notice from the Corporation of Chennai towards payment of property tax, water charges, sewerage tax were issued under the provisions of the Chennai City Municipal Corporation Act, 1919 in the name of K.K.Mohideen.

5.The petitioner who is aged about 83 years at the time of filing of the Writ Petition was residing in the first floor of the property and was purportedly running a clinic in the ground floor. It appears that she was earlier paying the rent to her husband K.K.Mohideen and that dispute arose between the petitioner and her husband. It is submitted that in the year



1981, the petitioner filed H.R.C.No.454 of 1981 before the Rent Control Court to deposit the rents into the Court and by an order dated 08.04.1981, the Court ordered to deposit the rent into the Court. Therefore, the petitioner continued to pay the rent from April 1981 till December 1994 without fail.

6.It is the case of the petitioner that her husband K.K.Mohideen had late gifted the property to the petitioner by an oral deed. However, there are no evidences to substantiate the same. It appears that the petitioner's brother-in-law K.M.Mohideen threatened the petitioner to evict from the premise.

7.Under the circumstances, the petitioner filed O.S.No.7280 of 1995 before the City Civil Court, Chennai against her husband namely K.K.Mohideen and her brother-in-law K.M.Mohideen, for a permanent injunction from evicting the petitioner. However, the said suit was dismissed by a Judgment and Decree dated 31.03.2000. Against the said Judgment and Decree dated 31.03.2000 dismissing the suit, the petitioner filed A.S.No.18 of 2001 before the V Additional City Civil Court, Chennai and also obtained an interim injunction on 02.01.2001 in C.M.P.No.121 of 2001 in A.S.No.18 of 2001. Eventually, by an order dated 29.04.2003, the V Additional City Civil Court, Chennai has dismissed the A.S.No.18 of 2001.

8.Against the said Judgment and Decree dismissing the A.S., Second Appeal in S.A.No.1392 of 2004 was filed. During the interregnum, the petitioner's husband K.K.Mohideen died on 28.10.2005 leaving behind the petitioner as legal heir. The petitioner's brother-in-law also died leaving behind the third to seventh respondents herein as his legal representatives. It is noticed that the S.A.No.1392 of 2004 was disposed of by an order dated 18.12.2018 of this Court as the legal representatives of the deceased petitioner's brother-in-law K.M.Mohideen had filed R.C.O.P.No.1566 of 2016 before the X Small Causes Court for evicting the petitioner from the disputed property. However, no steps have been taken to implead them as respondents in the proceedings of the Second Appeal.

9.Mean time, the second respondent issued a notice dated 07.01.2016 to the said deceased K.M.Mohideen pursuant to an application dated 12.03.2015 filed for transferring names to the third and fourth respondents and one K.A.M.Wasip who are the legal representatives of the deceased K.M.Mohideen in the Corporation Revenue Record. In the said letter, it was stated that the second respondent found that "This Property under Litigation Appeal with the Hon'ble High Court. Hence, this property cannot be Bought or Sold" and therefore, requested to furnish the order of this Court, failing which, it will be treated as no case before this Court.

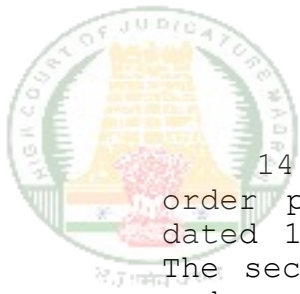


10.The Said notice was received by the petitioner and therefore she filed W.P.No.7257 of 2016 before the Court on the ground that she is the physical possession of the said property and the second respondent was intending to mutate the property tax assessment standing in the name of her late husband to the third and fourth respondents and one K.A.M.Wasip who are the legal representatives of the deceased K.M.Mohideen. By an order dated 17.03.2016, this had Court directed the second respondent to issue notice to the petitioner, legal representatives of the deceased K.M.Mohideen and Wakf Board or Wakf Inspector of the concerned area for hearing and to take a reasoned decision on merits, within a period of three months from the date of the receipt of the order.

11.Pursuant to the disposal of W.P.No.7257 of 2016 by the order dated 17.03.2016, the petitioner communicated the same to the second respondent and filed a copy of the said order vide the communication dated 27.04.2016. It appears that after the order of this Court dated 17.03.2016 was communicated, the second respondent has called upon the petitioner to produce documentary evidence to substantiate her case before the second respondent. By a communication dated 23.08.2016, the petitioner produced the evidence and her submission before the second respondent and requested to include her name in the property tax assessment in respect of the property in question.

12.In response to the communication dated 23.08.2016 of the petitioner, the second respondent called upon the Wakf Board to furnish the report as per the order dated 17.03.2016 of this Court in W.P.No.7257 of 2016 and communicated the same to the petitioner vide communication dated 17.11.2016. However, it is the case of the petitioner that the second respondent had not obtained any report from the Wakf Board / Wakf Inspector from the concerned area.

13.It appears that as on date, the said R.C.O.P.No.1566 of 2016 filed by the legal heirs of the deceased K.M.Mohideen for evicting the petitioner from the premise, is pending. It is noticed that though the petitioner had agreed to pay the property tax remittances for the first half 2016-2017 and second half of 2016-2017, second respondent has refused to accept the same. It is submitted that the assessment for the property has already been mutated in favour of the third and fourth respondents and one K.A.M.Wasip (since deceased). It is under these circumstances, the present Writ Petition has been filed on ground that the second respondent acted beyond his powers in view of the directions of this Court given vide order dated 17.03.2016 in W.P.No.7257 of 2016.



14. Since assessment for the property is contrary to the order passed by this Court in W.P.No.7257 of 2016 vide order dated 17.03.2016, I am inclined to dispose this writ Petition. The second respondent is therefore directed to pass appropriate orders in compliance of the directions of this Court in W.P.No.7257 of 2016 vide order dated 17.03.2016, within a period of eight weeks from the date of receipt of a copy of this order. Needless to state, before passing such order, the petitioner and contesting respondent shall be heard.

15. Accordingly, this Writ Petition is disposed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

JAS

To

1. The Commissioner,
Corporation of Chennai,
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Chennai - 600 003.
2. The Assistant Revenue Officer,
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W.P.No.6774 of 2017 and
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RK(CO)
BE(16/07/2021)