

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(P.D).No.2373 of 2017
and C.M.P.Nos.11186 to 11188 of 2017

Liyakat Ali Khan

...Petitioner

Vs.

1.Mr.Anwar Ali
Wakf Board Inspector
Madarasa Mosque Complex
Mohamed Ali Club Road
Dharmapuri Town
Dharmapuri District.
2.Sunnath Jamath Jamiya Majeeth
Rep.by its Muthavalli
Mr.P.M.Dowlath Badsha
Mulluvadi Pennagaram Taluk
Dharmapuri District.

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 30.06.2017 in I.A.No.219 of 2016 in O.S.No.34 of 2016 on the file of the District Munsif cum Judicial Magistrate Court, Pennagaram.

For Petitioner : Mr.Haja Naziruddin
Senior Counsel
for Mr.R.Tholgappian

For Respondents : No appearance for R1
Mr.Abdul Vehab for R2

ORDER

The Civil Revision Petition has been filed to set aside the fair and decretal order passed in I.A.No.219 of 2016 in O.S.No.34 of 2016 on the file of the District Munsif cum Judicial Magistrate Court, Pennagaram, thereby dismissed the suit as there is a bar to try the suit by the Civil Court.

2.The petitioner is the plaintiff and the respondent is the defendant. The petitioner filed the suit for injunction restraining the respondent from evicting the petitioner except due process of law. While pending the suit, the respondent filed a petition in I.A.No.219 of 2016 to dismiss the suit, as it is not maintainable before the Civil Court, since there is a bar under Section 85 of the Wakf Act, to try the suit before the Civil Court. The same was allowed and aggrieved by the same, the petitioner filed the present Civil Revision Petition.

3.The learned counsel for the petitioner submitted that the suit is for permanent injunction in order to protect the interests and possession of the petitioner and the question of issuance of notice under Section 80 of the

Wakf Act, 1995 does not arise. He further submit that in respect of the jurisdiction of the Civil Court already law laid down in the case of **Ramesh Gobindram (dead) through LR's Vs. Sugra Humayun Mirza Wakf** [2010 6 MLJ 527]. Relevant paragraphs are given below:-

"18. Section 47 of the Act requires the accounts of the wakfs to be audited whereas Section 48 empowers the Board to examine the audit report, and to call for an explanation of any person in regard to any matter and pass such orders as it may think fit including an order for recovery of the amount certified by the auditor under Section 47(2) of the Act. The mutawalli or any other person aggrieved by any such direction has the right to appeal to the Tribunal under Section 48. Similar provisions giving powers to the Wakf Board to pass orders in respect of matters stipulated therein are found in Sections 51, 54, 61, 64, 67, 72 and 73 of the Act. Suffice it to say that there are a host of questions and matters that have to be determined by the Tribunal under the Act, in relation to the wakf or wakf property or other matters. Section 85 of the Act clearly bars jurisdiction of the Civil Courts to entertain any suit or proceedings in relation to orders passed by or proceedings that may be commenced before the Tribunal. It follows that although

Section 85 is wider than what is contained in Sections 6 and 7 of the Act, the exclusion of jurisdiction of Civil Courts even under Section 85 is not absolute. It is limited only to matters that are required by the Act to be determined by a Tribunal. So long as the dispute or question raised before the Civil Court does not fall within four corners of the powers vested in the Tribunal, the jurisdiction of the former to entertain a suit or proceedings in relation to any such question cannot be said to be barred.

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22.In the cases at hand, the Act does not provide for any proceedings before the Tribunal for determination of a dispute concerning the eviction of a tenant in occupation of a wakf property or the rights and obligations of the lessor and the lessees of such property. A suit seeking eviction of the tenants from what is admittedly wakf property could, therefore be filed only before the Civil Court and not before the Tribunal. The contrary view expressed by the Tribunal and the High Court of Andhra Pradesh is not, therefore, legally sound. So also the view taken by the High Courts of Rajasthan, Madhya Pradesh, Kerala and Punjab and Haryana in

the decisions referred to earlier do not declare the law correctly and shall to the extent they run counter to what we have said herein above stand overruled. The view taken by the High Courts of Allahabad, Karnataka, Madras and Bombay is, however, affirmed."

4.Per contra, the learned counsel for the 2nd respondent submitted that the Wakf tribunal only has got jurisdiction to try any dispute, question or other matter relating to any wakf, wakf property or other matter which is required by or under this Act. He further submitted that under Section 85 of the Wakf Act, made it clear that there was a bar to entertain the suit by the Civil Court. In support of his contention, he relied upon the following Judgments,

(i) in the case of ***S.Neelavathi and others Vs. S.Dilshad and others [2014 (3) CTC 657]*** सत्यमेव जयते

(ii) in the case of ***Dr.Abdul Rahman Vs. Mohamed Syed [2016 (5) CTC 209]*** WEB COPY

(iii) in the case of ***The Secretary Vs. Kancheepuram Oili Mohamed-Pettai Labbai Jumma Masjid [2010(4) CTC 516]***.

5.Heard the learned counsel for the petitioner and the learned counsel for the 2nd respondent and also perused the materials available on record.

6.The only point for consideration in this Civil Revision Petition is that whether the Civil Court has got jurisdiction to try the present suit ?

7.The present suit is filed by the petitioner for bare injunction, restraining the respondent evicting the petitioner, except due process of law. The petitioner as well as the respondent admitted that the suit property belongs to the Wakf Board. When it being so, it is relevant to extract the provision under Section 3(e) (ee) of the Wakf Act,

"3.Definitions - In this Act, unless the context otherwise requires,

(a).....

(b).....

.....

.....

[(ee) "encroacher" means any person or institution, public or private, occupying waqf property, in whole or part, without the authority of law and includes a person whose tenancy, lease or licence has expired or has been terminated by mutavalli or the Board;]"

8. Accordingly, the petitioner is being the lessee and his lease has already got expired and as such termed as "encroacher". Therefore, the petitioner filed a suit for injunction restraining the respondent evicting the petitioner, except due process of law.

9. In this regard, the learned counsel for the 2nd respondent relied upon the Judgment reported in the case of **Dr. Abdul Rahman Vs. Mohamed Syed [2016 (5) CTC 209]** and relevant portion is extracted hereunder:-

"8. Section 85 bars the jurisdiction of the Civil Courts, Revenue Court and other Authorities in respect of any dispute, question or other matter relating to any Wakf or Wakf property, which is required to be determined by a Tribunal. Section 85 is reproduced hereunder:-

"85. Bar of jurisdiction of Civil Courts:- No suit or other legal proceedings shall lie in any [Civil Court and any other Authority] in respect of any dispute, question or other matter relating to any Wakf, Wakf property or other matter which is required by or under this Act to be determined by a Tribunal."

A conjoint reading of Sections 83 & 85 will make it clear

that any dispute regarding a Wakf property has to be determined by the Wakf Tribunal and the jurisdiction of Civil Court, Revenue Court and other Authorities in respect of the said dispute is barred by Section 85 of the Wakf Act, 1995.

9.It is not in dispute that a Tribunal has been constituted and it has jurisdiction over the matter in issue. As such, this Court does have no hesitation in coming to the conclusion that the Suit filed by the Respondent herein in the Civil Court is one barred by Section 85 of the Wakf Act, 1995 and accordingly, it falls under the mischief of Order 7, Rule 11(d) of CPC. The learned Trial Judge, without adverting to the said provisions of law and without properly considering the issue raised in the Application, simply came to the conclusion that the question of jurisdiction was a mixed question of law and fact and it can be decided only after evidence, both oral and documentary, could be adduced. The said finding of the Trial Court is quite infirm, erroneous and discrepant, which requires interference by this Court in this Revision. For all the reasons stated above, this Court comes to the conclusion that the Revision is bound to be allowed and the impugned order of the Trial Court deserves to be set aside."

10. Accordingly, the Section 85 of the Wakf Act bars the jurisdiction of the Civil Court in respect of any dispute relating to the Wakf property, which is required to be determined by the tribunal. In the case on hand, admittedly, the suit property is Wakf property. Now, it is relevant to extract the contents of the case ***S.Neelavathi and others Vs. S.Dilshad and others [2014 (3) CTC 657]***:-

"17. According to the Plaintiffs, the mosque is situated in 5 grounds. Therefore, out of 95 grounds, 5 grounds alone is Wakf property. Now, the dispute is only in respect of remaining 90 grounds. Therefore, there is no need to approach the Wakf Tribunal. But, according to the Judgment passed in A.S.No.21 of 1964, the remaining area, which was dedicated for the maintenance of the mosque, was declared as Wakf Alal Aulad. Therefore, the remaining 90 grounds, which was declared as Wakf Alal Aulad, is also a wakf property. No further Appeal has been filed as against the said Judgment made in A.S.No.21 of 1964. Therefore, the finding rendered in A.S.No.21 of 1964 that the Suit property measuring to an extent of 90 grounds is Wakf Alal Aulad reached finality. The word 'Wakf Alal Aulad'

have been added in the definition of the Wakf Act, 1995 under Section 3(r)(iii). Hence, even for filing the Suit in respect of property of Wakf Alal Aulad, the Wakf Tribunal will alone have a jurisdiction since it is a Wakf property. In this regard, a reference could be placed in the Judgment relied upon by the learned Counsel appearing for the 4th Defendant/Wakf Board reported in **Board of Wakf, West Bengal and another vs. Anis Fatma Begum and another**, 2011 (1) CTC 636 : 2010 (14) SCC 588, Para 7 of the said Judgment, it has been held as follows:

"7.The dispute in the present case relates to a Wakf. In our opinion, all matters pertaining to Wakfs should be filed in the first instance before the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995 and should not be entertained by the Civil Court or by the High Court straightaway under Article 226 of the Constitution of India. It may be mentioned that the Wakf Act, 1995 is a recent parliamentary statute which has constituted a Special Tribunal for deciding disputes relating to Wakfs. The obvious purpose of constituting such a Tribunal was that a lot of cases relating to wakfs were being filed in the Courts in India and they were occupying a lot of time of all the Courts in the country

which resulted in increase in pendency of cases in the Courts. Hence, a Special Tribunal has been constituted for deciding such matters."

Thus all the matters pertaining to Wakf has to be filed only before the Wakf Tribunal and not before the Civil Court or before this Court straightaway."

11.The Hon'ble Supreme Court of India has held that the purpose of constituting the Wakf tribunal was that lot of cases relating to Wakf were being filed in the Courts in India and they were occupying a lot of time of all the Courts in the country, which resulted, increase in pendency of the cases. Therefore, a Special tribunal has been constituted for deciding such matters. The Judgment cited by the learned counsel for the petitioner in the case of **Ramesh Gobindram (dead) through LR's Vs. Sugra Humayun Mirza Wakf [2010 6 MLJ 527]**, is not helpful to the case on hand.

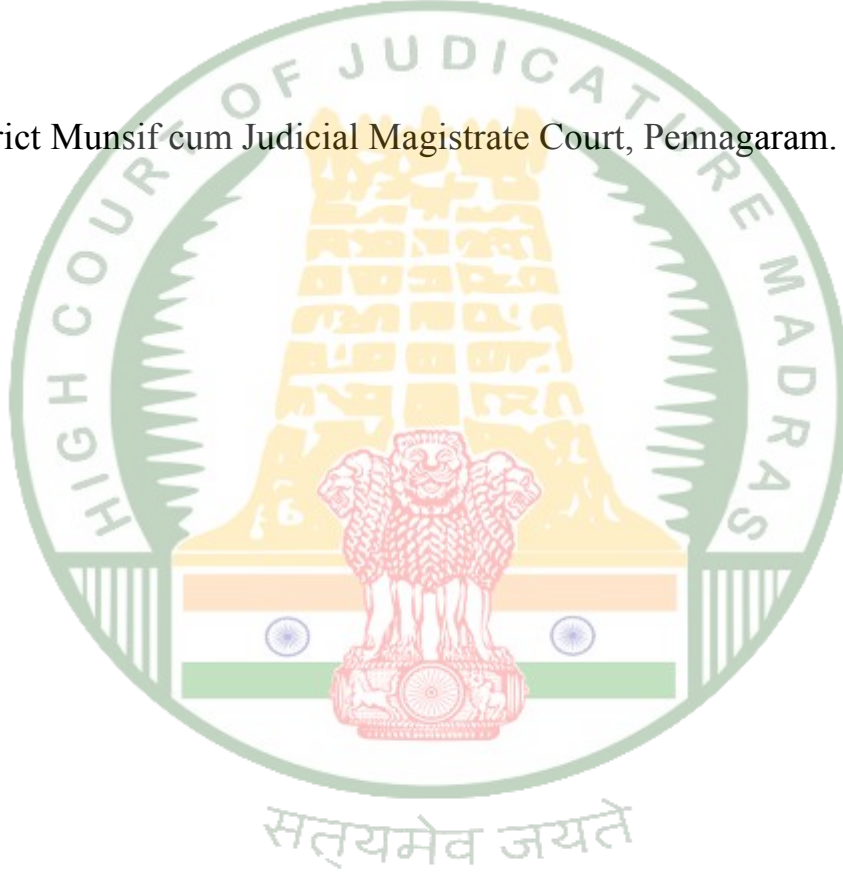
12.In view of the above discussion, this Court finds no infirmity or irregularity in the order dated 30.06.2017 in I.A.No.219 of 2016 in O.S.No.34 of 2016 on the file of the District Munsif cum Judicial Magistrate Court, Pennagaram.

13.Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently connected miscellaneous petitions are closed.

25.02.2021

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No
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To
The District Munsif cum Judicial Magistrate Court, Pennagaram.



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