

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON	29.09.2021
DELIVERED ON	29.10.2021

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CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI
C.R.P. (MD) .Nos.1390 to 1392, 1394 & 1395 of 2021
and
C.M.P. (MD) Nos. 7870 to 7872, 7874 and 7876 of 2021

A.Jalaludeen ...Petitioner/1st Respondent in
C.R.P. (MD) No.1390 of 2021

Abdul Muthaleef ...Petitioner/1st Respondent in
C.R.P. (MD) No.1391 of 2021

M.A.Beer Mohammed ...Petitioner/1st Respondent in
C.R.P. (MD) No.1392 of 2021

A.Zaheer Hussain ...Petitioner/1st Respondent in
C.R.P. (MD) No.1394 of 2021

P.Abdul Jabbar ...Petitioner/1st Respondent in
C.R.P. (MD) No.1395 of 2021

Vs.

1.M/s.Jumma Periya Pallivasal Waqf
(G.S.No.236/Madurai)
Rep. By President.

Haji.A.Abdul Rahman ...1st Respondent/Petitioner in all CRPs.

2.The Tamil Nadu Waqf Board,
Rep. By its Chief Executive officer,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai 600 001. ...2nd Respondent/2nd Respondent in all CRPs.

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of Constitution of India, to set aside the Fair and Decreetal order, dated 30.07.2021 in O.A.Nos.108, 109, 111, 115 & 116 of 2018 on the file of the Tamil Nadu Waqf Tribunal at Chennai.

In All CRPs

For Petitioners	: Mr.R.Suriyanarayanan
For 1 st Respondent	: Mr.M.Mohammed Riyaz
For 2 nd Respondent	: Mr.S.A.Ajmal Khan,
	Standing Counsel

**COMMON ORDER**

These Civil Revision Petitions have been filed to set aside the Fair and Decreetal order, dated 30.07.2021 in O.A.Nos.108, 109, 111, 115 & 116 of 2018 passed by the Tamil Nadu Waqf Tribunal at Chennai.

2. Heard on either side. Perused the material documents available on record.

3. The revision petitioners herein are tenants and the 1st respondent herein is landlord in O.A.Nos.108, 109, 111, 115 & 116 of 2018.

4(i). The case of the 1st respondent herein/petitioner is that the revisions petitioners herein are tenants in respect of the petition mentioned properties which belongs to the Jumma Periya Pallivasal Waqf, Batlagundu Town, Nilakottai Taluk, Dindigul District in which they were carrying business for the past few years. An earlier, eviction proceedings were initiated against the revision petitioners herein ended in an amicable settlement. Thereafter, rent was not enhanced for the years 2011 - 2016 as it was usually being done once in three years. When the 1st respondent demanded to enhance the rent with effect from April 2017 and also requested the revision petitioners to enter into a fresh agreement, they refused and challenged the authority of the 1st respondent herein and defaulted to pay the monthly rent. The lease agreement expired on 31.03.2017 and the revision petitioners are only an encroacher of the tenement thereafter.

4(ii). After issuance of the notice of termination, the revision petitioners with malafide intention have filed a petition seeking permission to deposit the rent into Court. The revision petitioners herein alleged that there was a rival claim by one Mr.A.Naser Mohammed and hence they were unable to pay the rents. The said allegations are only a concocted story. Having attorned the tenancy in favour of the 1st respondent hand having paid the monthly rents upto March 2017, the revision petitioners have failed to renew the lease agreement and hence they are estopped from denying the title of the 1st respondent herein or allege rival claim in respect of the demised shop.

4(iii). The revision petitioners are liable to pay the enhanced rent from April 2017 to July 2017 and the tenancy was also terminated by the 1st respondent herein through his notice, dated 01.08.2017 calling upon the revision petitioners to deliver possession.

5. The revisions petitioners/1st respondent have stated that the 1st respondent is not the recognized President of the Waqf in question and according to the writ proceedings ordered by the

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Madurai Bench of Madras High Court and the SLP No.21833 of 2016 on the file of the Hon'ble Supreme Court election for the administration of the Waqf in question has not taken place till date. Hence the 1st respondent has no locus standi to file this application. The revision petitioners are tenants in respect of the petition mentioned shops belonging to the Waqf and they have paid the monthly rent till March 2017. One Mr.A.Naser Mohammed claimed himself to be elected as President of the administrative committee sent a notice dated 10.05.2017 claiming rent. But the election of both Abdul Rahman and A.Naser Mohamed has not been recognized by the Tamilnadu Waqf Board. Since there was rival claim as stated supra, this respondent filed an application to deposit the rent into court and has deposited the rent from April 2017 till date.

6.The 2nd respondent/2nd respondent has filed its counter and stated that the Waqf in question is under the supervision and control of the Tamilnadu Waqf Board under Section 32(1) of the Waqf Act, 1995. On 27.02.2019, the 1st respondent herein has been appointed as President of the said Waqf.

7.The first issue is whether the 1st respondent/petitioner has power to file O.A., to evict the Revision petitioners?

8.The Wakf Board its counter admitted that the capacity of the 1st respondent/petitioner. The 2nd respondent/wakf board is having paramount authority to decide about the supervision of wakf property.

9.On 24.02.2011, the 1st respondent herein/petitioner has been appointed as President of Adhoc Committee and he was confirmed to function as President. There were various legal proceedings were initiated, but, the 1st respondent/petitioner is continued to function as Muthavalli of the Waqf as per the order passed by this Court.

10.By order of this Court in W.A.(MD)934 of 2012 in W.P.(MD) No.22895 of 2015, observed that the election shall be conducted by an Advocate Commissioner appointed and till such time the 1st respondent/petitioner shall continue to function as the President of the Committee.

11.The Hon'ble Supreme Court has issued direction in SLP No.21833 of 2016. As per the directions, on 02.09.2016, election was conducted and the 1st respondent/petitioner was elected as President. Waqf board also approved the Presidentship of the 1st respondent/petitioner.

12.The 2nd respondent/Waqf board has given a clarification on 09.08.2017 under RTI Act. Pending disposal of various litigation, the 1st respondent/petitioner is holding the post of the President of



the Jumma Periya Pallivasal.

13. On 04.01.2018, Waqf Board by its letter confirmed the Presidentship of the 1st respondent/petitioner.

14. The revision petitioners/tenants have admitted that the property belonged to Jumma Periya Pallivasal. The 1st respondent/petitioner proved that he is holding the post of President and also confirmed by Waqf board.

15. When deciding a question in an eviction proceedings, this Court observed the order of this Court, dated 19.8.2013, in S.A. (MD) No.333 of 2013, is as follows:

....

"24. A close reading of the dictum given by the Hon'ble Apex Court, it is made clear that a Muthavalli can very well institute a Suit so as to protect interest of Wakf of its properties.

25. In (2008) 8 MLJ 365 (Bibijan and 49 others Vs. Anwarsha Idgah & Mosque Avuila Durgah, Panruti and 70 others), this Court has dealt with similar question and ultimately found that even worshippers can file a suit to protect wakf property or property of other religious institutions. They are entitled to maintain a suit for preserving trust property or restoring the property to the trust.

26. From the conjoint reading of the decision referred to supra, it is made clear that the plaintiffs are having locus standi to institute the present Suit for the reliefs sought for therein. In the plaint it has been clearly averred to the effect that the suit property has been leased out to the first defendant on a monthly rental of Rs.600/-. But the first defendant has sub-leased some portion of the suit property in favour of the defendants 2 to 5 and thereby getting more income. The sub-lease put forth in the plaint has not been denied in the written statement filed on the side of the defendants. Therefore, it is quite clear that the first defendant is getting unjust enrichment by utilising the suit property."

16. The next issue is whether Wakf Tribunal has jurisdiction in the eviction proceedings.

17. The Judgment reported in **2011(1) CTC 636**, in the case of **Board of Wakf, West Bengal and another Vs. Anis Fatma Begum & another**, held as follows:

"Thus, the Wakf Tribunal can decide all disputes, questions or other matters relating to a



Wakf or Wakf property. The words "any dispute, question or other matters relating to Wakf or Wakf property" are, in our opinion, words of very wide connotation. Any dispute, question or other matters whatsoever and in whatever manner which arises relating to a Wakf or Wakf property can be decided by the Wakf Tribunal. The word 'Wakf' has been defined in Section 3(r) of the Wakf Act, 1995 and hence once the property is found to be a Wakf property as defined in Section 3(r), then any dispute, question or other matter relating to it should be agitated before the Wakf Tribunal. "

From the above, the Wakf Tribunal has jurisdiction.

18. The third issue is whether 15 days notice is sufficient for eviction of a tenant from a Wakf Property?

19. As per Rule 23(1)(ii) the Wakf Properties Lease Rules, 2014, the 1st respondent/petitioner has to issue 30 days notice to evict a tenant from the Wakf property.

20. But, the revision petitioners have raised the ground only in this revision. He has not raised any objection in his counter regarding the eviction notice.

21. The ingredients of **Rule 23(2)(iv) of Wakf Properties Lease Rules, 2014**, is extracted hereunder:

"23(2)(iv). Default:

2. Upon the occurrence of one or more more of the events referred to in sub-rule, (1) the lessor may, at its option.

(iv) terminate the lease by giving [three notices one after another with a gap of one month] and the lessee shall pay to the lessor lease rent for the unexpired portion of the term had it not been terminated".

It is only a Rule and also it is an option of the land lord.

22. As per Judgment reported in **2011 (3) CTC Page 31**, in the case of **Aravindharaj Adhithan Vs. R. Perumal**, the said defect is cured since the petition for eviction was filed after 36 days and this Court has held as follows:

"Transfer of Property Act, 1882 (4 of 1882),
Section 106:-

Termination of Tenancy - Termination Notice
issued to vacate premises within 10 days - Suit



filed long after statutory period of 15 days - Even if Notice was treated as defective, it got cured by filing of Suit after 15 days statutory period - Concurrent finding as to eviction, upheld".

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23.The above said dictum passed by this Court is squarely applicable to the case on hand and this Court decides that there is no defect whatsoever in the said termination notice.

24.The tenant has to vacate the premises after expiry of period under terminate notice.

25.Therefore, the Tamil Nadu Wakf Tribunal has rightly decided the issues and passed an order, dated 30.07.2021 in O.A.Nos.108, 109, 111, 115 & 116 of 2018. This Court has no valid reason to interfere with the orders.

26.Finally, these Civil Revision Petitions are dismissed by confirming the fair and decreetal order, dated 30.07.2021 in O.A.Nos.108, 109, 111, 115 & 116 of 2018 passed by the Tamil Nadu Waqf Tribunal at Chennai. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Cs-II)

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Sub Assistant Registrar(CS)

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Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Tamil Nadu Waqf Tribunal, Chennai.

+10 CC to M/s.M.MOHAMMED RIYAZ, Advocate (SR-33304[F] dated 29/10/2021)

+1 CC to M/s.R.SURIYANARAYANAN, Advocate (SR-33332[F] dated 01/11/2021)

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