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C.R.P.No.1437 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2022

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.No.1437 of 2008
and M.P.No.1 of 2008

Adam Sait and Abdullah Sait Maternity
Hospital Charity Wakf
represented by its Mutawalli
Southwick,
Conoor Road,
Ootacamund

.. Petitioner

Vs.

1. V.Chelladurai
2. Janakiammal (died)
3. K.S.Arumugham (died)
4. Kamalam
5. R.Velu (died)
6. M.Ramasamy (died)
7. S.Velayudham
8. Sarfudeen (died)
9. The Chief Executive Officer,
Tamil Nadu Wakf Board, Chennai.
10. The Superintendent of Wakfs,
Coimbatore.
11. Somasundaram
12. Ganeshan
13. Seethalakshmi



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14. Sundar Rajan

15. Priya

(RR11 to 15 brought on record as LR's of the deceased R2 viz., Janakiammal vide Court order dated 25.10.2018 made in M.Ps 1 to 9 of 2014 in C.R.P.1437 of 2008)

16. Krishnamoorthy

17. V.Krishnakumar

(RR16 and 17 brought on record as LR's of the deceased R5 viz., R.Velu vide Court order dated 25.10.2018 made in M.Ps 1 to 9 of 2014 in C.R.P.1437 of 2008)

18. Meharunisha

19. Palkis

20. Ameer abbas

(RR18 to 20 brought on record as LR's of the deceased R8 viz., Sharbudheen vide Court order dated 25.10.2018 made in M.Ps 1 to 9 of 2014 in C.R.P.1437 of 2008)

21. Bhuvaneshwari @ Rani

22. Nirmala

23. Rani

24. Yogesh

(Respondents 21 to 23 brought on record as LR's of the deceased R-3 viz K.S.Arumugham in CMP No.1872, 1873, 1875 and 1876 of 2021 and Respondent 24 brought on record as LR's of the deceased R-6 viz M.Ramasamy made in C.M.P.No.1656 and 1657 of 2021 in C.R.P.No.1437 of 2008 vide Court order dated 12.04.2022)

.. Respondents



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Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India as against the order and decreetal order in O.S.No.53 of 2004, on the file of the Wakf tribunal cum Sub-Court, Udagamandalam and dated 09.01.2008.

For Petitioner : Mr.Aravind Wadhwani
for Mr.V.Lakshminarayanan

For Respondents
R1, R4, R7, R21
R22, R24 : No appearance

R12, R13, R14, R16
R18 and R20 : No appearance
Notice served

R2, R3, R5, R6
and R8 : Died (steps taken)
R9 and R10 : Mr.Mohammed Fayaz Ali
R11, R15, R17 and R23 : Not ready in notice

ORDER

This Civil Revision Petition has been filed as against the order and decreetal order in O.S.No.53 of 2004, on the file of the Wakf tribunal cum Sub-Court, Udagamandalam, dated 09.01.2008, thereby directed to decree the suit as prayed for.

2. The respondents 1 to 8 herein are the plaintiffs in the suit filed by them in O.S.No.53 of 2004 for declaration and consequential injunction in respect of the suit properties.



3. The case of the plaintiffs is that they had encroached into the suit property which is Government Poromboke, as landless labourers in or about the years 1976. They have been paying B Memo charges to the Tamil Nadu Government and their encroachment has been recognized and the Government has promised to consider their request for issuance of patta. While being so, the petitioner herein informed to the plaintiffs that the suit property belong to the Wakf and also asked them to vacate the premises. Therefore, the plaintiffs issued notice dated 23.01.2003 to the petitioner herein and the same was duly received by them. Thereafter, the first defendant in the suit issued notice dated 20.06.2003 to all the plaintiffs and others, thereby called upon them to submit their explanation as to why they should not be evicted from the suit property under Section 54(1) of the Wakf Act. All the plaintiffs submitted their explanations and also raised their protest as against the said notice. The plaintiffs also appeared before the first defendant, on 10.02.2004. Thereafter, on 19.04.2004 an order was passed to evict the plaintiffs, within a period of 15 days from the date of receipt of the order. The further case of the plaintiffs is that the suit property does not belong to the Wakf and the defendants have no right over the property to issue notice or to pass any orders. The plaintiffs are in continuance and long possession of the suit property for a period of 26 years and the suit property is Government Poromboke and they are paying B Memo



charges. Therefore, they filed a suit for declaration in respect of the suit property and also for a consequential injunction.

4. Resisting the same, the defendants filed their written statement stating that the suit property belong to the third defendant Wakf and it is notified Wakf property coming under the control and superintendence of the first defendant. Therefore, the question of paying any B Memo charges in respect of the Wakf property to the Government, recognizing the alleged encroachment on the side of the plaintiffs does not arise. They have no semblance of right over the property, since it belong to the Wakf and their claim is nothing but mala fide and an illegal one. The defendants are taking necessary action as contemplated under the Wakf Act for eviction of encroachers like plaintiffs. Even after passing the order of eviction, the plaintiffs, without challenging the said order simply filed a suit for declaration and injunction. Therefore, the suit itself is not maintainable. Further, it is a Wakf property and as such they ought to have issued notice under Section 89 of Wakf Act.

5. On the side of the plaintiffs, they had examined P.W.1 and marked Exs.P1 to 6. On the side of the defendants they had examined D.W.1 to 3 and marked Exs.D1 to 7. The Court had marked Exs.C1 to 3. Considering the oral



and documentary evidences, the Trial Court allowed the suit as prayed for.

Aggrieved by the same, this present Civil Revision Petition.

6. The learned counsel for the petitioner would submit that the suit property is a Wakf property. Therefore, the statutory notice is mandatory as contemplated under Section 89 of Wakf Act. Admittedly, the plaintiffs failed to issue any notice to maintain the suit. When the Wakf passed an order of eviction, without challenging the order, the plaintiffs simply filed a suit for declaration and injunction. All the plaintiffs were duly served with the notice as contemplated under Section 54 of the Wakf Act and an order was passed under Section 55 of the Wakf Act. The order was duly served to the plaintiffs. The B Memo produced by the plaintiffs are subsequent to the notice issued under Section 54 of Wakf Act. Therefore, they are the encroachers of the property belong to Wakf. The Tahsildar was examined as D.W.2 and he categorically mentioned that the suit property belong to Wakf and they are maintaining the suit property. Without considering the above, the Court below mechanically allowed the suit as prayed for.

7. Heard, Mr.Aravind Wadhwani, learned counsel appearing for the petitioner and the learned counsel for the respondents 9 and 10, who are sailing



with the petitioner herein. Though notice was served on other respondents and their name has been printed, no one appeared on behalf of other respondents in person or through pleader.

8. The third defendant filed this Civil Revision Petition as against the order and decreetal order in O.S.No.53 of 2004, on the file of the Wakf tribunal cum Sub-Court, Udagamandalam, dated 09.01.2008. The plaintiffs filed a suit for declaration and injunction in respect of the suit property. According to them, the suit property belong to Government Poromboke and they are the encroacher of the same and they are in possession and enjoyment of the same by paying B Memo charges. Admittedly, they were issued notice under Section 54 of the Wakf Act for removal of encroachment from the property. After receipt of those notices, the plaintiffs had appeared before the 9th respondent/first defendant for enquiry. They also submitted their explanation along with records. After hearing them, the first defendant passed an order of eviction dated 19.04.2004. All the eviction orders were duly received by the plaintiffs on 22.04.2004 in Proceedings No. Rc.8229/E-3/03. All the plaintiffs, without even challenging the said order in the manner known to law, simply filed a suit for declaration and injunction, on the strength of the B Memo issued by the Government that too after issuance of notice by the third defendant, dated 20.06.2003 and order



passed by the first defendant dated 19.04.2004.

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9. The third plaintiff was examined as P.W.1 on behalf of all the plaintiffs. He categorically stated that they have been paying B Memo charges to the Tamil Nadu Government and their encroachment has been recognized by the Government and the Government has promised to consider their request for patta. The suit properties are not belonging to Wakf. Therefore, they should not be evicted under the Wakf Act. He also admitted that all the plaintiffs have received notices issued under Section 54(1) of the Wakf Act from the file of the petitioner herein. Thereafter, they also submitted their explanations and protested the notice issued under Section 54(1) of the Wakf Act before the first defendant. During the enquiry, through P.W.1, they also marked house tax receipts and charges paid under B Memo.

10. A perusal of the house tax receipts which was marked as Ex.A5 revealed that those documents are pertaining from the year 2003. B Memo charges paid only from the year 2003, i.e., after issuance of notice under Section 54(1) of the Wakf Act and after the order passed by the first defendant dated 19.04.2004. In cross examination of P.W.1, he also admitted that he do not know whether the suit property belong to the Government or not. In order to



prove that the suit property belong to Wakf, the defendants had examined R.W.2, the Tahsildar. He deposed that the plaintiffs are encroachers in respect of the suit property. The suit property does not belong to the Government of Tamil Nadu. All the properties belong to Wakf. He also stated that the plaintiffs are not in possession and enjoyment of the property for the past 26 years. They are encroachers. The Chitta of the suit property was marked as Ex.B5. The Re-settlement register was marked as Ex.B6. The Adangal extract of the suit property was marked as Ex.B7. All the documents clearly shows that the property belong to Wakf Board and all the properties are maintained by the Wakf. The Tahsildar also received request from the Wakf to remove the encroachment. Therefore, the plaintiffs have no right over the property. Unfortunately, the Trial Court found that the Wakf property is situated in S.No.B 46/5/1, whereas the plaintiffs had constructed their house in the Government Poromboke land.

11. The Court below also relied upon the B Memo charges which were paid after the receipt of the notice under Section 54(1) of the Wakf Act. In fact, the plaintiffs filed a suit only as against the Wakf and the revenue officials were not party to the suit. When the plaintiffs filed a suit as against the Wakf board, it is mandatory that they shall issue notice under Section 89 of the Wakf Act,



1995. The provisions under Section 89 of the Wakf Act, 1995 is extracted

hereunder,

“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, 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”.

12. In this regard, the learned counsel for the petitioner also relied upon the Judgment of this Court reported in **2002 5 CTC 94** in the case of **M.S.Abdul Hameed Vs. S.M.Sheik Mohammed and 4 others**, wherein it has held as follows:-

“19. No doubt, Section 89 is mandatory and in the negative form as it comes to be revealed from the language of Section which reads: "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 any rules made thereunder, until their 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, 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". The tenor and temper of the language employed in the Section leaves no room for any mis-interpretation to the effect of dispensing with the notice under Section 89 and therefore so far as the warranting Section 89 is concerned, the only conclusion that the Court could arrive at is that no suit shall lie without compliance of Section 89 and in fact such a suit, as it has been instituted in the form of Wakf O.P., should not have been entertained and taken on file by the Tribunal.



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20. It cannot also be argued that Section 89 applies not to the Tribunal but only to the Civil Court wherein suits are instituted since Section 83 which deals with Constitution of Tribunals etc. is specific. In Sub-Section 5 of Section 83 it is laid down: " The Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, or executing a decree or order". The language of the above section is plain and simple and it does not need any explanation at all so as to arrive at a different conclusion from what is meant by the language of the section and therefore there is no room to arrive at the conclusion that the mandatory provision of law under Section 89 of the Wakf Act would apply only to Civil Courts and not to the Tribunals.

13. Thus, it is clear that the language employed in the Section leaves no room for any mis-interpretation to the effect of dispensing with the notice under Section 89 of the Wakf Act. Therefore, it is mandatory to issue notice before initiation of suit. Admittedly, in the case on hand, no notice was served to the defendants. Therefore, the suit itself is not maintainable and liable to be dismissed. The provisions under 89 of Wakf Act is analogous to Section 80 of CPC and it prohibits the filing of any suit against the Wakf Board in respect any Act purporting to be done by it in pursuance of the Act or the Rules framed thereunder unless, the proper notice is served on the Wakf Board before filing of the suit. Therefore, the suit itself is not maintainable and it is liable to be rejected.



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14. That apart, as stated supra, the plaintiffs failed to prove their case and the Judgment and Decree passed by the Trial Court is liable to be set aside.

Accordingly, the Judgment and Decree passed in O.S.No.53 of 2004 dated 09.01.2008, on the file of the Wakf tribunal cum Sub-Court, Udagamandalam, is hereby set aside and the suit filed by the plaintiffs in O.S.No.53 of 2004 is dismissed.

15. Accordingly, this Civil Revision Petition is allowed. Consequently connected miscellaneous petition is closed. No costs.

22.12.2022

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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G.K.ILANTHIRAIYAN,J.

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To

The Wakf tribunal cum Sub-Court, Udagamandalam.

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