



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.2058 OF 2022

AND

W.M.P.NO.2209 OF 2022

Rahmathullah

...Petitioner

Vs

1.The Tamil Nadu Waqf Board,
Rep. by its Chief Executive Officer,
No.1 Jaffer Syrang Street,
Mannady, Chennai - 600 001.

2.The Estate Officer,
Tamil Nadu Public Premises (Eviction of Unauthorised
Occupants) Act 1975, Waqf House,
No.1, Jaffer Syrang Street,
Mannady, Chennai - 600 001.

3.The Executive Officer / Superintendent of Waqfs,
Big Asare Sheriff Waqf,
Triplicane,
Chennai.

...Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records pertaining to the notice dated 12.1.2022 in case NO.PP/75/Chen/2021 issued by the 2nd respondent and to quash the same as ultravires, arbitrary and illegal and consequently direct the 3rd respondent not to interfere with the peaceful possession and enjoyment in the property Door No.2/16 Old. Door No.31, Abdul Kareem street, Triplicane, chennai-600 005 comprised in O.S.No.1343, R.S.No.294/1, Bock No.55 in Triplicane Division , Mylapore-Triplicane Taluk.

For Petitioner : M/s.Hema Sampath
Senior Counsel
for M/s.A.Ajimath Begum

For Respondents
1 to 3 : Mr.S.Haja Mohideen Gisthi



ORDER

The Show cause notice issued by the Estate Officer under The Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 in proceedings dated 12.01.2022 is under challenge in the present writ petition.

2. The petitioner states that the subject property is a vacant land and building bearing Door No.2/16 Old. Door No.31, Abdul Kareem Street, Triplicane, Chennai - 600 005 measuring 1990 Square feet or thereabouts originally belonged to one Mohamed Fazhullah Sahib who inherited it from his ancestors. Fazlullah died intestate on 08.02.1973 leaving behind him his wife Jameelunnisa and his children Mohamed Kairullah, Mohamed Niyamathullah, Noorunnisa Begum, Dowlathunnisa, Umrnunissa @ Rahmathunnissa and Mohamed Fasiullah. After the death of Mohamed Fazlullah Sahib all his legal heirs were in joint possession and enjoyment of the schedule property. They have mutated patta in CA.No.197/1994 dated 03/03/1998 and all other revenue records were mutated in the names of original owners, they were paying corporation taxes and other necessary charges to the Government.

3. Mohamed Kairullah, Mohamed Niyamathullah, Noorunnisa Begum, Dowlathunnisa, Umrnunissa @ Rahmathunnissa and Mohamed Fasiullah were in uninterrupted possession and enjoyment of the property. They are executed a mortgage deed dated 15.02.1999 and registered as Document No.183/1999 on the file of Sub Registrar, Triplicane in favour of M/s. Vellalar Co-operative Bank, Mint Street, Chennai - 600 079.

4. The petitioner narrates the entire happenings, execution of documents and facts with reference to the subject property. Those facts narrated deserves no elaborate adjudication in the present writ petition. As the writ petition has been filed challenging the show cause notice issued under the provisions of The Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975. This apart, those facts regarding the subject property cannot be adjudicated in a writ proceedings with reference to the documents and evidences made available and such an enquiry must be conducted by the Competent authority and in the event of any dispute regarding the title or ownership, then the parties are bound to approach the competent Civil Court of Law.

5. The learned senior counsel appearing on behalf of the writ petitioner mainly contended that in order to form an opinion whether a property is waqf property or not. The Waqf Board is competent to conduct an enquiry under Section 40 of the Waqf Act 1945. Instead of conducting an enquiry under Section 40 under the Waqf Act, the Estate Officer, under The Tamil Nadu



Public Premises (Eviction of Unauthorised Occupants) Act, 1975 issued a notice which is improper and untenable.

6. The learned Senior Counsel is of an opinion that once the details regarding the subject property are elaborated and even in respect of any ambiguity, the enquiry must be conducted only by the Waqf Board under Section 40 and therefore the determination under Section 40 is necessary for all further proceedings and in this regard Waqf Board is the Competent authority to proceed further.

7. The learned senior Counsel made arguments with reference to the details of the subject property and the manner in which the petitioner acquired the property. However, this Court cannot conduct such a roving enquiry with reference to the subject property as it requires scrutinization of original documents and evidences. The fact remains that the show cause notice issued under Section 4 (1) of The Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 is under challenge.

8. No Writ against a show cause notice needs to be entertained in a routine manner. A Writ against show cause notice may be entertained on certain limited grounds. If such notices are issued by the incompetent authority having no jurisdiction or an allegation of malafides are raised. Even in case of raising allegations of malafides, the authorities against whom such allegations are raised must be impleaded as a party respondent in his personal capacity in the writ proceedings. In all other circumstances the person who received the show cause notice is expected to respond to the notice by submitting their explanations / objections along with the documents if any enabling the authority to conduct the enquiry to form an opinion and pass appropriate orders.

9. Intermittent interference by the High Courts is not preferable in all circumstances. Only on exceptional circumstances where there is a gross injustice or the likelihood of loss or damage which cannot be rectified, then alone the High Court will entertain a writ petition and in other circumstances, the parties are expected to participate in the enquiry and redress their grievance by defending their case in the manner known to law.

10. The petitioner has narrated the history of subject property and enclosed copies of the settlement deeds and other related documents and all those documents require an effective adjudication with reference to the connected facts and circumstances. Thus, the competent authority in the present case has to conduct an enquiry and if at all a decision must be taken by the Waqf Board under Section 40 such decision may be also



taken by the Estate Officer after conducting an enquiry. At the outset all such decisions are to be taken by the respondents only after considering the case on merits and forming an opinion on the issues raised between the parties.

WEB COPY

11. The learned senior counsel brought to the notice of this Court that the petitioners have already submitted an explanation. However, the petitioners are at liberty to submit further explanations / objections if any along with the documents enabling the authorities to consider the case of the petitioners on merits. The respondents are directed to conduct an enquiry by following the procedures as contemplated and by providing an opportunity to the petitioners and thereafter decide the issues on merits and in accordance with law as expeditiously as possible. However, the relief as such sought for in the present writ petition cannot be granted.

12. With these observations, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

nti/Kst

To

1.The Chief Executive Officer,
The Tamil Nadu Waqf Board,
No.1 Jaffer Syrang Street,
Mannady, Chennai - 600 001.

2.The Estate Officer,
Tamil Nadu Public Premises (Eviction of Unauthorised
Occupants) Act 1975, Waqf House,
No.1, Jaffer Syrang Street,
Mannady, Chennai - 600 001.

3.The Executive Officer / Superintendent of Waqfs,
Big Asare Sheriff Waqf,
Triplicane, Chennai.

W.P.No.2058 of 2022

RJ(CO)
RVM(25/02/2022)