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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2022

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.24092 of 2012

and

M.P.No.1 of 2012

H.Ansar

... Petitioner

Vs

1. The Tamil Nadu Wakf Board,
Rep.by its Chief Executive Officer,
No.1, Jaffar Sarang Street,

2. The Superintendent of Wakfs,
Cuddalore Zone/Executive Officer,
Jumma Mosque,
Kallakurichi,
Villupuram District.

3. The Wakf Inspector,
Jumma Mosque,
Kallakurichi,
Villupuram District.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the second respondent dated 27.08.2012 bearing Notice No.GS.172/The.Aa/Va.Ka./Ka.Da/2012 and consequential order dated 28.08.2012 bearing Order No.GS.172/S.A/Va.Ka/Ka.Da/2012 and to quash the same as without jurisdiction and arbitrary with consequential direction to the respondents to restore the Cycle Stand which was functioning under the name and style of Imayam Cycle Stand in Survey No.291/1 in Kallakurichi Taluk, Villupuram District till 07.09.2012, on as it were condition with compensation payable by the third respondent to be determined by this Court. (Prayer amended vide order dated 21.01.2022 made in M.P.No.2 of 2022 in W.P.No.24092 of 2012).



For Petitioner : No Appearance

For Respondents : Mr.V.Lakshminarayanan (for R1)

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ORDER

This writ petition is filed to issue a Writ of Certiorari to call for the records of the second respondent dated 27.08.2012 bearing Notice No.GS.172/The.Aa/Va.Ka./Ka.Da/2012 and consequential order dated 28.08.2012 bearing Order No.GS.172/S.A/Va.Ka/Ka.Da/2012 and to quash the same as without jurisdiction and arbitrary with consequential direction to the respondents to restore the Cycle Stand which was functioning under the name and style of Imayam Cycle Stand comprised in Survey No.291/1, situated at Kallakurichi Taluk, Villupuram District till 07.09.2012, on "as is where is condition" with compensation payable by the third respondent to be determined by this Court.

2. The case of the petitioner is that he is a tenant in respect of the land comprised in Survey No.291/1, situated at Kallakurichi Taluk, Villupuram, wherein he is running a Cycle and Two Wheeler Stand under the name and style of 'Imayam Cycle and Two Wheeler Stand' since 2003. The owner of the said land is Jumma Mosque, Kallakurichi. It has been taken by the petitioner on lease from the then Muthavalli of Jumma Mosque. After change in character of Kallakurichi Town Panchayat as Municipality, renewal application was made for running the said Cycle Stand. However, pending renewal application, the petitioner paid rent regularly to the said Jumma Mosque for the subject premises. While that being so, the second respondent approached the petitioner and demanded rents for the subject premises, failing which to vacate the premises. Further, the second respondent claimed that the said property belonged to the Wakf and caused notice dated 28.08.2012, thereby revoking the lease subsisting with Jumma Mosque for the reason that the petitioner has not sought permission from the Municipal Authorities for running the Cycle Stand and the petitioner has encroached upon 11,500 sq.ft over and above the space which was allotted. The Tamil Nadu Wakf Board alone is vested with the powers in relation to Lease. Further, Section 56 of the Wakf Act, 1995, does not prohibit leases for a period of one year or less, or periodical leases from month to month or year to year. No sanction of the Wakf Board is necessary for grant of such leases. The petitioner is continuing as a Lessee, which it has been extended by the successive Hereditary Muthawalli of Jumma



Mosque. The first respondent alone is clothed with powers to decide the issue in question and the second respondent having stepped into the shoes of the erstwhile Muthavalli, under the assumption of direct management of Jumma Mosque, has no locus standi to revoke the lease which is in currency, in violation of Section 56 of the Wakf Act, 1995.

3. The first respondent filed counter affidavit, from which, it reveals that the the Writ Petition is not maintainable, since the order passed by the second respondent has to be challenged only before the Wakf Tribunal as per the provision under Section 83 of the Wakf Act, 1995. The petitioner is the nephew of the then joint Muthavalli and politically influenced person. In the cycle stand premises, the petitioner is running a Bar permitting public to consume liquor as well as other illegal activities. The joint Muthavallis granted license to the petitioner to run a cycle shop against the provisions of the Wakf Act for an extent of 3500 sq.ft. However, the petitioner had encroached further space of 7500 sq.ft and he is running illegal activities. In fact, the petitioner approached the Town Panchayat concerned for the purpose of licence to run the cycle stand and it was not extended after 2006. Only the permission was granted to the petitioner to run a cycle stand and it is purely licence and not a lease. Therefore, the question of tenancy would not arise.

4. That apart, the first respondent had revised the amounts payable by persons in occupation of Wakf property from 2007 at Rs.30 per sq.ft. Though the Muttawalli should have collected revised amount, it was not done so. Therefore, the petitioner was called upon to pay a sum of Rs.22,38,000/- as advance. The petitioner shall have to pay a sum of Rs.7,50,000/- as monthly occupation charges. Therefore, in the interest of the Wakf, it had been taken under the direct control of the first respondent and decided not to extend the license to the petitioner and it would create several injustice to the Wakf. Therefore, this Court finds no infirmity or illegality in the impugned orders passed by the second respondent.

5. In the result, this Writ Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR



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To

1. The Chief Executive Officer,
The Tamil Nadu Wakf Board,
No.1, Jaffar Sarang Street,
2. The Superintendent of Wakfs,
Cuddalore Zone/Executive Officer,
Jumma Mosque,
Kallakurichi,
Villupuram District.
3. The Wakf Inspector,
Jumma Mosque,
Kallakurichi,
Villupuram District.

+lcc to Mr.V.Raghavachari, Advocate Sr.3868
+lcc to Mr.P.Haribabu, Advocate Sr.4197

W.P.No.24092 of 2012

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srg 01/03/2022