



W.P.No.21638 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2022

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.21638 of 2019

Mohamed Shahid

.. Petitioner

Vs

1.The Executive Officer,
Town Panchayat Office,
Double Street,
Kattumannarkoil,
Cuddalore District.

2.The Executive Officer/
Superintendent of Wakf Board,
Cuddalore Zone,
Tamilnadu Wakf Board,
512, Gandhi Road,
Panruti, Cuddalore District.

3.S.M.Kulzar Begam

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the first respondent to remove illegal construction put by the third respondent in the



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land comprised of S.No.103/1,2,3 situated at No.210, Chidambbaram Main Road, Ramzon Thaikal, Udaiyarkudi, Kattumannarkoil, Cuddalore owned by the Ramzon Taikal Pallivasal.

For the Petitioner : Mr.S.Kumaradevan

For the Respondents : Mrs.R.Anitha
Special Government Pleader
for respondent No.1

: Mr.V.Raghavachari
for respondent No.2

: Mr.K.Kaviyarasu
for respondent No.3

ORDER

(Order of the court was made by the Hon'ble Acting Chief Justice)

Mr.Mohamed Shahid, son of Issac Mohamed, a resident of No.23, Ramazon Thaikal, Udayarkudi, Kattumannarkoil, Cuddalore District, has filed this writ petition for issuance of a writ of mandamus directing the first respondent to remove the illegal construction put up by the third respondent in the land comprised in Survey No.103/1, 2 and 3 situated at No.210, Chidambaram Main



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Road, Ramzon Taikal, Udaiyarkudi, Kattumannerkoil, Cuddalore
owned by Ramzon Taikal Pallivasal.

2. It is the case of the petitioner that the land measuring about 9.60 acres comprised in Survey Nos.103/1, 2 and 3 belongs to Ramzon Taikal Pallivasal. It is stated that some of the persons, including the third respondent, are in occupation of certain portion of the said land and have constructed houses and are residing there. It is alleged that the third respondent has constructed a three-storied building without obtaining approval from the first respondent and also without obtaining no objection from the second respondent. On 7.6.2017, the petitioner submitted a representation to the first respondent to take appropriate action as required under the Panchayat Rules against the illegal construction put up by the third respondent. Though certain communications were addressed by the first respondent to the third respondent directing her to produce the planning approval etc., no action was taken by the first respondent against the third respondent till date for the simple reason that she was a Councilor of Kattumannarkoil Town



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Panchayat. It is stated that, on 22.6.2019, the petitioner submitted another representation to the first respondent to take appropriate action against the illegal construction put up by the third respondent. Despite receipt of the said representation, no action was taken till date. Hence, the petitioner has filed the present writ petition.

3. Learned counsel for the petitioner, drawing our attention to paragraph 5 of the affidavit filed in support of the writ petition, submitted that the third respondent, without obtaining permission and approval from the first respondent and no objection from the second respondent Wakf Board, has put up three-storied building in S.Nos.103/1, 2, 3. Since the occupation and construction made by the third respondent in the land in question is illegal, the same has to be removed.

4. Drawing our attention to paragraph 7 of the counter-affidavit filed by the first respondent, learned Special Government Pleader appearing for the first respondent submitted that the



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Executive Officer/Superintendent of Wakf Board, Udayarkudi, vide letter dated 22.7.2019, requested the first respondent to take appropriate action against the third respondent for the illegal construction of building in the land belonging to the Wakf Board. He submits that on receipt of the said request from the Executive Officer/Superintendent of Wakf Board, Udayarkudi, the first respondent sent a reply dated 29.6.2019 stating that the building has been constructed in the land belonging to the Wakf Board and hence the concerned authority to evict the building is the Wakf Board and not the Town Panchayat.

5. Learned counsel appearing for the second respondent Wakf Board submitted that the third respondent is an encroacher of the Wakf property and she has constructed three-storied building in the land covered in S.Nos.103/1, 2 and 3 without obtaining proper approval from the first respondent.

6. Taking us through Section 2(e)(3) of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 [for



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brevity, "*the said Act*"], learned counsel for the second respondent submitted that any unauthorised occupation of the premises belonging to a Wakf, which is registered with the Tamil Nadu Wakf Board, can be evicted as per Sections 4, 5, 7 and 8 of the said Act.

7. For proper appreciation, Section 2 of the said Act is extracted hereunder:

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

...

(e) "public premises" means any premises belonging to or take on lease or requisitioned by, or on behalf of, the Government, and includes -

(1) and (2) ...

(3) any premises belonging to a wakf, registered with the Tamil Nadu Wakf Board."

8. Drawing our attention to G.O.Ms.No.107, Backward Classes, Most Backward Classes and Minorities Welfare (T1) Department, dated 20.12.2007, learned counsel for the second respondent



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further submitted that in order to remove the unauthorised occupants in Wakf lands, the Chief Executive Officer, Tamil Nadu Wakf Board has been appointed as Estate Officer as per Section 3 of the said Act and the Estate Officer is the authority having power to remove the unauthorised occupants in the Wakf land.

9. At this juncture, learned counsel appearing for the third respondent submitted that till date no notice was served on the third respondent and assuming that the third respondent occupied the Wakf land and constructed a house, the Wakf Board has power to regularize the building put up by the third respondent. The submission made by learned counsel for the third respondent cannot be countenanced for the reason that the third respondent has failed to prove her title on the land in question and thereby she is only an encroacher of the land belonging to the Wakf Board.

10. Considering the submissions made by learned counsel for the parties and also the fact that the third respondent encroached and occupied the Wakf land in Survey Nos.103/1, 2 and 3 and put



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up construction on it, without approval from the first respondent and also no objection from the second respondent Wakf Board, we hereby direct the Chief Executive Officer, Tamil Nadu Wakf Board, who is the Estate Officer as per the government order, supra, to remove the illegal construction put up by the third respondent and evict the unauthorised occupation made by the third respondent in the Wakf land, after following the procedure contemplated under Section 4 of the said Act, within a period of twelve weeks from the date of receipt of a copy of this order.

11. With the above direction, the writ petition is disposed of.
There will be no order as to costs.

(T.R., ACJ.) (D.K.K., J.)
07.11.2022

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