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W.P. No.27591 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2022

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P. No.27591 of 2022

and

W.M.P.Nos.26851 and 26852 of 2022

A.Abul Hasan

... Petitioner

Vs.

1. The Chief Executive Officer / Estate Officer,
Tamil Nadu Waqf Board,
No.1, Jaffar Surang Street,
Vallal Seethakadhi Nagar,
Mannady, Chennai – 600 001.

2. The Superintendent of Waqf,
O/o.The Superintendent of Waqf,
Cuddalore Zone,
Sankarapuram Road,
Panruti – 607 106,
Cuddalore District.

3. The Sub Registrar,
O/o.Sub Registrar,
Virudhachalam,
Cuddalore District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records relating to the impugned order issued by the first respondent in RC.No.786/2022/B6/Cudd dated 03.01.2022 and to quash the same in so far as inclusion of land belong to the petitioner in S.No.193/1, 194/2A and 201/4 Virudhachalam Taluk in



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the list annexed to the impugned order is concerned.

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For Petitioner : Mr.G.Sanakran

For R1 and R2 : Mr.C.Shankar

For R3 : Mr.G.Krishna Raja
Additional Government Pleader

ORDER

This writ petition is filed seeking issuance of a writ of Certiorari to quash the impugned order issued by the first respondent in RC.No.786/2022/B6/Cudd dated 03.01.2022, in so far as inclusion of petitioner's land in S.No.193/1, 194/2A and 201/4 Virudhachalam Taluk in the list annexed to the impugned order is concerned.

2. The case of the petitioner is that the property in S.Nos.193/1, 194/2, 201/4 along with larger extent of land of an extent of 3.46 acres, 1.63 acres and 1.13 acres respectively situated in Virudhachalam Taluk have been purchased by petitioner's father namely Abdul Gaffoor Sahib. After his demise, petitioner inherited the above said properties by virtue of Partition Deed dated 02.05.1989. Thereafter, one Virudhachalam Jumma Pallivasal claimed right over the subject property and filed a suit along with Tamil



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Nadu State Waqf Board against the petitioner and others in O.S.No.949 of 1971 seeking for declaration of title and for recovery of possession, which was dismissed vide order dated 18.04.1973 by the District Munsif Court Virudhachalam based on a compromise deed entered between the parties. Subsequently, the Secretary of Tamil Nadu Waqf Board vide letter dated 28.01.1974 declared that the Waqf Board has no claim over the above said property. Further the Tamil Nadu Wakf Board represented by its Secretary filed another O.S.No.1257 of 1979 seeking for declaration and injunction in respect of the subject property which was also dismissed by the above said Court vide order dated 02.03.1983. Against which, the Tamil Nadu Waqf Board preferred an appeal in C.M.A.No.5 of 1984, before the Sub Court, Virudhachalam which was also dismissed vide judgment dated 16.02.1985 confirming the above said orders dated 18.04.1973 and 02.03.1983. That being so, the first respondent has addressed a letter dated 03.01.2022 to various Sub Registrar Office, Cuddalore Zone stating that the above said properties belongs to Waqf Board along with a direction not to register any document belonging to Waqf Board u/s 22 A of the Registration Act, 1908. Challenging the same, the present writ petition has been filed seeking the aforesaid relief.



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3. Learned counsel appearing for the petitioner submits that though the suits filed by the Waqf Board has dismissed by the Civil Court vide orders dated 18.04.1973 and 02.03.1983 as confirmed in the judgment passed in C.M.A.No.5 of 1984 dated 16.02.1985, invocation of powers u/s 22A of the Registration Act, 1908 is not proper and the impugned proceedings dated 03.01.2022 is wholly misconceived. More so, the Tamil Nadu Waqf Board vide letter dated 28.01.1974 has already given a declaration stating that they have no claim over the above said properties and, therefore the impugned order needs interference of this Court and is liable to be quashed.

4. Learned counsel appearing for respondents 1 and 2 submitted that the Tamil Nadu Waqf Board has already compromised the issue before the District Munsif, Virudhachalam. Hence this writ petition is not maintainable. Further, the Tamil Nadu Waqf Board has passed a Special Resolution on 29.09.2022 to constitute Legal Forum of four members to resolve the dispute in the Waqf properties which is already sold as per provisions of Waqf Act 1995 through Court of law. Hence the petitioner may be directed to approach to the legal forum to redress his grievance.

5. Heard learned counsel appearing on either side and perused the



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materials placed before this Court.

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6. Admittedly, the Waqf Board filed a suit in O.S.No.949 of 1971 before the District Munsif Court, Virudhachalam seeking for declaration against the petitioner father and the said suit was dismissed vide order dated 18.04.1973 based on the compromise deed entered between the parties. Subsequently, another suit in O.S.No.1257 of 1979 came to be filed in respect of above said properties impleading petitioner's father, brother and the petitioner as party defendant on the file of District Munsif Court, Virudhachalam and the same was also dismissed vide order dated 02.03.1983. Aggrieved over the same, the Waqf Board preferred an appeal in C.M.A.No.5 of 1984 on the file of Sub Court, Virudhachalam which was also dismissed on 16.02.1985, confirming the orders passed in the above said suits. More so, it is also evident from the declaration dated 28.01.1974 issued by the Secretary of Waqf Board that they have no claim over the subject properties. Such being the undisputed position, the impugned order issued by the first respondent to the sub registrar prohibiting the registration of petitioner's properties is not sustainable.

7. For the reasons aforesaid, this Writ Petition is allowed. The



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impugned order is set aside in so far as S.Nos.193/1, 194/2, 201/4 to an extent of 3.46 acres, 1.63 acres and 1.13 acres respectively are concerned.

There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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RAP

Index : Yes / No

Speaking order : Yes / No

To

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M.DHANDAPANI, J.

RAP

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