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C.R.P.(NPD).Nos.2804 & 2805 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P.(NPD).Nos.2804 and 2805 of 2017

and

C.M.P.No.13274 of 2017

1.Mr.MahboobBasha

2.Mr.Niyamathullah

3.Mr.Rahimanullah

4.Mr.Rahimullah

5.Mr.Ghayazullah

... Petitioners in both CRPs

vs.

1.Butt Road Jumma Masjid Committee represented by
Its Secretary, HasanAmbalam
Butt Road, St.Thomas Mount,
Chennai-600 016.

2.C.A.Rajadurai

3.The Junior Engineer,
Tamil Nadu Electricity Board,
Alandur, St.Thomas Mount,
Chennai-600 016.

4.The Chief Executive Officer,
Tamil Nadu Wakf Board,
Chennai-600 001.

... Respondents in both CRPs



C.R.P.(NPD).Nos.2804 & 2805 of 2017

Prayer in C.R.P.No.2804 of 2017:

Civil Revision Petition filed under Article 227 of the Constitution of India, against the petition and order of return of the learned Additional Subordinate Judge at Chengalpet in E.A.S.R.No.3832 of 2017 in E.A.No.113 of 2017 in E.P.No.25 of 2016 in Wakf O.S.No.163 of 1999 dated 12.07.2017.'

Prayer in C.R.P.No.2805 of 2017:

Civil Revision Petition filed under Article 227 of the Constitution of India, against the petition and order of return of the learned Additional Subordinate Judge at Chengalpet in E.A.S.R.No.3833 of 2017 in E.A.No.113 of 2017 in E.P.No.25 of 2016 in Wakf O.S.No.163 of 1999 dated 12.07.2017.'

For Petitioners in both CRPs	:	M/s.McGan Law Firm
For R4 in both CRPs	:	Mr.V.Lakshmi Narayanan
For R1 in both CRPs	:	Mr.S.A.Raja

COMMON ORDER

Both the Civil Revision Petitions had come up on earlier occasions and the learned counsel for the revision petitioners had complained that the learned Principal Sub Judge at Chengalpattu had granted delivery of possession of a particular property in the teeth of an order of stay granted by my learned predecessor, dated 10.08.2017 in the present revision petitions.



2. Even before entering into a discussion and appreciation of the facts, it would only be appropriate to extract the order passed by my learned predecessor on 10.08.2017.

“5.Considering the peculiar circumstance of the case, the following directions are issued:-

(a) an order of interim injunction is granted; (b) the learned Additional Subordinate Judge, Chengalpet is directed not to terminate the E.A. Pending disposal of the C.R.P.; and (c)possession of the building shall be under the control of the Execution Court and nobody, either the petitioner or the respondent shall be permitted to enter or have possession of the building in dispute in the Execution Petition.”

3. These Civil Revision Petitions have been pending from the year 2017.

This Court, when presented with such a complaint had directed a report to be forwarded by the Principal Sub Court at Chengalpet, giving the sequence of events as to what had happened, particularly, since it is complained that inspite of the order which had been extracted above, delivery had been ordered and possession also handed over.

4. A report has been received from the Additional Sub Court at Chengalpet who it is presumed holds full additional charge of the Principal Sub Court at Chengalpet. The said report is dated 08.04.2022 bearing D.No.504/2022.



5. The facts of the case have been narrated in the report in accordance with the records and it is seen that the learned Sub Judge, Chengalpet who had forwarded the report, had taken charge of the said Court only on 14.06.2019 that is, far later than the order of this Court extracted above.

6. It had been stated in the report that originally O.S.No.163 of 1999 had been filed by the first respondent herein, Butt Road Jumma Masjid Committee represented by its Secretary against the second respondent herein C.A.Rajadurai, seeking a direction to vacate and hand over possession. The property which was the subject matter, was a shop and it is contended by the learned counsel for the revision petitioners that the property which is the subject matter of the revision petitions, is different from the property which was the subject matter of the said suit.

7. Be that as it may, the suit proceeded in its normal manner and finally an order to vacate and hand over possession was directed against the second respondent C.A.Rajadurai. Thereafter, the first respondent/Jumma Masjid had filed E.P.No.25 of 2016 based on the Judgment and decree dated 31.03.2015 passed by the learned Principal Sub Judge at Chengalpet/Wakf Tribunal. The



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delivery was ordered on 21.09.2016. Thereafter, C.A.Rajadurai filed C.R.P.(NPD) No.3497 of 2016 and this Court had initially granted an order of interim stay of execution of the decree, but however, by final order dated 24.10.2016, delivery of possession was confirmed and six months' time was granted to vacate and hand over vacant possession.

8. It is the contention of the learned counsel who appears for the first respondent/Jumma Mazjid that the second respondent C.A.Rajadurai did not vacate and hand over possession within the said period of six months. In the meanwhile, the present revision petitioners had filed an application, under Section 47 of the Code of Civil Procedure which was initially returned on 24.04.2017. They preferred C.R.P.(NPD).No.1745 of 2017 and by order dated 23.06.2017 that particular application was directed to be numbered and heard. It was numbered as E.A.No.113 of 2017. That was an application under Section 47 of the Code of Civil Procedure. It must be mentioned that the petitioners therein/petitioners herein were not parties in O.S.No.163 of 1999.

9. It is contended by the learned counsel for the respondents herein that Section 47 of the Code of Civil Procedure would be applicable in a situation



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only where further issues are raised between the parties in a lis and not by a third party.

10. However, E.A.No.113 of 2017 was taken on file. In the meanwhile, on 12.07.2017 an order was passed by the Principal Sub Court at Chengalpet/Wakf Tribunal that on 11.07.2017, possession had been taken through the Court Bailiff and delivery had been handed over and therefore, on 12.07.2017, delivery was recorded. E.P.No.25 of 2016 was terminated. This left enquiry in E.A.No.113 of 2017 to be conducted. To reiterate that was an application filed under Section 47 of the Code of Civil Procedure.

11. I am informed today that E.A.No.113 of 2017 had also been subsequently dismissed on 19.11.2021.

12. On 12.07.2017, when the Court had recorded delivery and the fact of taking over of possession, two applications were filed by the present revision petitioners. They sought the reliefs of not to record delivery and to order re-delivery. Both the applications were returned by the Principal Sub Court, Chengalpet. Questioning such return, the present revision petitions have been filed.



13. Even though it is contended by the learned counsel for the revision petitioners that it had been brought to the notice of my learned predecessor when these revision petitions was moved on 12.08.2017, that delivery had already been recorded, still, in the aforementioned order which had been extracted above, that fact is not reflected. The learned Judge had proceeded on the basis that delivery had not been recorded and that the E.P was still pending. However, complaining that the delivery had been recorded in the teeth of aforementioned order, arguments were advanced in the present revision petitions which necessitated me to call for a report.

14. The report has clarified the fact that the delivery was recorded on 12.07.2017. The aforementioned order of my learned predecessor was passed on 10.08.2017, that is, after the delivery had been recorded and after the E.P had been closed. Therefore, the order of my learned predecessor that the Court should take control of the possession, can never be put into effect. As on date, no petitions are pending before the Trial Court.

15. The petition under Section 47 of the Code of Civil Procedure in E.A.No.113 of 2017 had been dismissed on 19.11.2021 and it is fairly



conceded by the learned counsel for the revision petitioners that no further steps had been taken and no appeal had been preferred and no revision petition had also been preferred questioning such dismissal.

16. These two Civil Revision Petitions have therefore become otiose and no orders are required to be passed, since the un-numbered petitions do not any longer survive or necessitate further adjudication.

17. It is further contended by the learned counsel for the revision petitioners that fraud had been played and that the property which is the subject matter of O.S.No.163 of 1999, actually belongs to the revision petitioners and the Jumma Mazjid had filed the Civil Suit, making only C.A.Rajadurai, the tenant as a party. It is contended that this Court should re-examine the entire issue.

18. My attention is however brought to the fact that the claim of the present revision petitioners had been finally adjudicated by this Court in S.A.No.1080 of 2001, which emanated from O.S.No.3306 of 1993. These facts have not been stated by the revision petitioners herein. These facts are stated by



the first respondent, who had filed two applications to vacate the order of interim stay.

19. A copy of the affidavit filed in support of the said petitions had been forwarded to this Court for reference and I would retain the office copy in the Court bundle. The order in the Second Appeal had been extracted in the affidavit and I would also extract the same.

“8.As of now, there is no dispute before this Court that the suit site absolutely belongs to the plaintiff Mosque. It is not in dispute that the first defendant was previously Muthavalli of the plaintiff Mosque. It is also not in dispute that as per the order of the Tamil Nadu Wakf Board, by its proceedings in Rc.743/C1/92/CGT dated 16.11.1992 [Exhibit A.1], the first defendant was removed from Muthavalliship. A reading of the said order would go to show that he was so removed from Muthavalliship on certain charges. One of the charge is that treating the suit property namely the property comprised in T.S.No.1826 and the house bearing Door No.5/62 (the suit property herein) as his own property, the first defendant had executed a hibba in favour of his own namely the second defendant on 25.08.1986. It is further stated that subsequently, it was rectified by the first defendant by executing another document dated 01.03.1992 wherein, the first defendant has stated that the suit site belongs to the plaintiff Mosque whereas, the superstructure belongs to him and the same was conveyed to the second defendant. On this charge and another charges, the first defendant was removed from Muthavalliship.”



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20. It is also stated that questioning this particular order, the revision petitioners had filed a further appeal to the Hon'ble Supreme Court, and the Apex Court had dismissed their claim, by order dated 08.05.2012 in SLP Civil No.8929 of 2012.

21. It had been stated that Habibullah, the father of the revision petitioners had attempted to convert the Wakf property to himself and it is claimed that he was only a Muthavalli and that the Legal Representatives of a Muthavalli cannot claim any right or title over the Wakf property in their individual capacity. The Wakf remains a Wakf. It had been dedicated as a Wakf and such dedication shall remain and should be under the control of the Wakf Board. It cannot be converted as a private property by any body, much less the Muthavalli or by his legal representatives. Such a stand taken by the revision petitioner cannot be encouraged and cannot be accepted by a Court of Law.

22. It is also contended that the property which the revision petitioners now claim is in Survey No.1826. It is seen that Survey Nos.1825, 1826 and 1827 belong to the first respondent/Mosque and it was gifted in the year 1905 by a registered Gift Settlement by Sheik Davood who is the forefather of the



present revision petitioners.

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23. The revision petitioners must rest their case in peace. Their forefather had created a Wakf dedicating his property. They must abide by such a decision taken by him, rather than disputing and re-claiming and attempting to re-claim the property as their own and as their own private property. It cannot be done and it should not be encouraged to be done and it should be prevented. It is also seen that even in the year 1911, the property in the said Survey Numbers were declared to be the property of the first respondent/Mosque.

24. It is also seen that on 12.01.2015, the Tahsildar at Alandur had also filed such a report before the District Collector affirming that fact. It is stated that Patta had been issued in favour of the Mosque.

25. In view of all these facts, it is clear that the revision petitioners have indulged in a litigation, to only protract the finality of another litigation which had commenced in the year 1999 in O.S.No.163 of 1999. They had filed an application under Section 47 of the Code of Civil Procedure and such application in E.A.No.113 of 2017 had ended in dismissal on 19.11.2021. They had thought it prudent not to question that order any further either by way of revision or by way of appeal or by any other method in manner known to law.



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26. They had filed two applications seeking re-delivery and not to record the delivery of possession when actually a judicial order had been passed recording delivery of possession. Both the revision petitions seeking a direction that those two applications should be numbered and taken up for consideration would not lie and would necessarily have to be dismissed by this Court.

27. It is also seen that the revision petitioners have, not brought the fact that the delivery had already been recorded by the Executing Court, to the notice of my learned predecessor when he passes the order as extracted above. They will have to now face the consequences of inviting such an order to be passed. They will have to suffer an order of dismissal in the revision petitions.

28. Accordingly, both the Civil Revision Petitions stand dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

18.04.2022

Index:Yes/No

Speaking Order:Yes/No

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To:

1.The Additional Subordinate Judge,



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Chengalpet.

- 2.The Section Officer,
V.R.Section,
High Court of Madras.
- 3.The Junior Engineer,
Tamil Nadu Electricity Board,
Alandur, St.Thomas Mount,
Chennai-600 016.
- 4.The Chief Executive Officer,
Tamil Nadu Wakf Board,
Chennai-600 001.

C.V.KARTHIKEYAN, J.



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