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C.R.P.No.3699 of 2018 &
C.R.P.No.1927 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 29.08.2022

Orders delivered on 05.12.2022

CORAM :

THE HON'BLE Mrs.Justice **J.NISHA BANU**

C.R.P.No.3699 of 2018 and C.R.P.No.1927 of 2019

and

C.M.P.No.20581 of 2018 and C.M.P.No.12659 of 2019

C.R.P.No.3699 of 2018

1. Jamal Mohammed,
S/o Abdul Khader

2. Rahima Gani,
W/o Jamal Mohammed

3. A.Mohammed Ali,
S/o Abdul Khader

4. Badrunissa,
W/o A.Mohammed Ali,

.. Petitioners

Vs

1. The Estate Officer,
Tamil Nadu Wakf Board, rep. by CEO,
Chennai - 600 001.

2. Masjid-E-Mamoor Committee,
rep. by its Honorary President,
No.186, Old No.166-168,
Angappa Naicken Street,
Chennai - 600 001.

..Respondents.



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PRAYER: Civil Revision Petition filed under Section 115 of the C.P.C. against the judgment and decree dated 31.07.2018 made in C.M.A.No.2 of 2017 by the Principal Judge, City Civil Court, Chennai (made ready on 11.09.2018) confirming the order made in P.P.No.13 of 2016 passed by Estate Officer, Tamilnadu Wakf Board while exercising powers under the Public Premises (Eviction of unauthorised Occupants) Act, 1975.

For Petitioners : Mr.A.K.M.Samsunihar

For Respondents : Mr.V.Lakshminarayanan
for R1
Mr.S.R.Sundar for R2

C.R.P.No.1927 of 2019

1. Janab S.Ameer Hamsa
S/o Syed Abdul Sadiq

2. Janab H.Saleem,
S/o Hayathi Basha

.. Petitioners

Vs

1. The Estate Officer,
Under the Tamil Nadu Public Premises Act,
Tamil Nadu Wakf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai - 600 001.



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2. Masjid-E-Mamoor Committee,
rep. by its President,
No.186, Old No.166-168,
Angappa Naicken Street,
Chennai - 600 001.

..Respondents.

For Petitioners : Mr.S.Hussain Afroze

For Respondents : Mr.V.Lakshminarayanan
for R1
Mr.N.A.Nissar Ahmed for R2

COMMON ORDER

C.R.P.No.3699 of 2018 was filed as against the judgment and decree dated 31.07.2018 made in C.M.A.No.2 of 2017 passed by the Principal Judge, City Civil Court, Chennai, confirming the order made in P.P.No.13 of 2016 passed by the Estate Officer, Tamil Nadu Wakf Board. C.R.P.No.1927 of 2019 was filed challenging the order dated 21.02.2019 made in C.M.A.No.3 of 2019 passed by the learned Principal District Judge, City Civil Court, Chennai, confirming the order passed by the Estate Officer, Tamil Nadu Wakf Board in P.P.No.15/CHE/2016 dated 04.01.2017.



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2. The facts in brief in C.R.P.No.3699 of 2018 are as follows:

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The Masjid-E-Mamoor Wakf has filed P.P.No.13/Che/2016 under section 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1975 (TN Act 1 of 1976) before the Estate Officer, Tamilnadu Wakf Board, stating that the property measuring about 993 sq.ft. situated at No.2, Ibrahim Sahib Street, Chennai - 1 comprised in S.No.2825, 2826, New No.3614/2 belongs to Masjid-E-Mamoor Wakf, as found in the Register of Wakfs and patta stands in the name of the respondent/ Wakf. The petitioner herein had entered into a lease agreement dated 3.7.2011 with the Wakf Committee in respect of Door No.5, Ibrahim Sahib Street, Chennai -1, admeasuring 792 sq.ft., out of a larger extent morefully described in 'A' schedule in the lease deed. Since the petitioner herein attempted to put up illegal construction, the Wakf filed O.S.No.5965/12 before the IV Assistant City Civil Court, Chennai against the petitioner herein for permanent injunction and the suit came to be decreed. Against which, the petitioner herein has filed appeal in A.S.No.315/15 before the I Additional City Civil Court, Chennai, and is pending. While so, the petitioner herein has issued a reply notice dated 30.03.2015 that he is not a tenant in respect of the Wakf property and that the question of payment of rent does not arise. As such, the petitioners herein have acted against



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the interest of the Wakf and illegally squatting over the Wakf property.

The respondent/Wakf issued a legal notice dated 15.04.2016 to vacate and handover the possession to the Wakf. In spite of receipt of legal notice, the petitioners have not handed over possession of the schedule mentioned property to the respondent/Wakf till date. After perusal of records, on 4.1.2017, the Estate Officer passed an order directing Janab.Jamal Mohamed, Janaba.Rahima Gani, Janab.Mohammed, Janaba.Bagrunissa and all persons, who are in occupation of the schedule premises to vacate the premises within 15 days from the date of the order. Aggrieved over the same, the petitioners herein have preferred appeal in C.M.A.No.2 of 2017 before the City Civil Court, Chennai, which was also dismissed confirming the order passed by the Estate Officer. Against which, the present CRP.No.3699/2018 has been filed.

3. The facts in brief in C.R.P.No.1927 of 2019 are as follows:

The Masjid-E-Mamoor Wakf has filed P.P.No.15/Che/2016 under section 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1975 (TN Act 1 of 1976) before the Estate Officer, Tamilnadu Wakf Board, stating that the property measuring about 1832 sq.ft. situated at No.2(Old No.3) New No.5, Ibrahim Sahib Street, Chennai-1, comprised in R.S.No.2825, 2826, New No.3614/1 belongs to Masjid-E-Mamoor



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Wakf as found in the Registry of Wakfs and patta stands in the name of the respondent/Wakf. One Nirmala had been in unauthorized and illegal occupation of the above said property. The Wakf Committee had lodged a complaint against the said Nirmala with the police, wherein she gave statement before police that the petitioners herein approached her for purchasing the above said Wakf property after getting NOC from the Wakf in accordance with law. However, without obtaining NOC, the petitioners had executed and presented the sale deed in their favour and that the sub-Registrar declined to register and returned the document as it is a Wakf property and the petitioners herein had illegally obtained possession of the property inspite of her request to cancel the sale deed and refund the money paid by the petitioners herein. A committee has been duly constituted by the Wakf Board and the Committee filed a writ petition in W.P.No.16994/12 restraining the petitioners herein and others from any manner encumbering the said Wakf property and this Court was pleased to grant interim injunction against the petitioners herein and the same is pending. The Wakf has issued a notice dated 22.2.2016 calling the petitioners to quit and deliver vacant possession of the said property within 15 days from the date of receipt of the notice. The petitioners sent reply on 11.3.2016 Thereafter, legal notice dated 15.4.2016 was issued,



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for which, reply dated 7.5.2016 was sent by the petitioners herein. Till date, the petitioners herein have not handed over possession of the schedule mentioned property to the Masjide-E-Mamoor Wakf. After perusal of records, on 4.1.2017, the Estate Officer passed an order directing Janab.S.Ameer Hamsa and Janab.H.Saleem and all other persons who are in occupation of the schedule premises to vacate the premises within 15 days from the date of the order. Aggrieved over the same, the petitioners herein have preferred appeal in C.M.A.No.3 of 2017 before the City Civil Court, Chennai, which was also dismissed confirming the order passed by the Estate Officer. Against which, the present CRP.No.1927/2017 has been filed.

4.(i) Learned counsel for the petitioners in CRP.No.3699/2018 would submit that the petitioner is the owner of the property measuring about 995 sq.ft. in R.S.No.3614/Part at No.2, Ibrahim Sahib Street, First Lane, Chennai-1. There are other occupants in the same Survey No.3614 viz., (1) M.N.Ahmed Jameel Hussain & S.K.Momamed Ismail Gani, who have constructed four storeyed building in 1000 sq.feet area in R.S.No.3614 and G.Mohanasundaram in R.S.No.3614/Part. The said



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G.Mohanasundaram had filed O.S.No.2234/ 2012 against the 2nd respondent and obtained a decree dated 13.07.2015 against the 2nd respondent. The Masjid-E-Mamoor Committee filed an appeal against the said injunction which was dismissed on 4.10.2017 and the trial Court's judgment was confirmed in A.S.No.304 of 2015 by the III Additional Judge, City Civil Court. The appeal filed by Masjid-E-Mamoor Committee in respect of the same property against another owner was dismissed and the said judicial finding was in favour of the petitioners. The first respondent has not initiated any proceedings against the said Mohanasundaram as well as the other occupants of R.S.No.3614.

(ii) Learned counsel for the petitioners would further submit that the land in R.S.No.3614, George Town was gifted by the Prince of Arcot under the Prince of Arcot Endowment Act, 1922 vide Certificate No.1981 dated 24.04.1874. It was under the control and governance of Prince of Arcot and it was given to Mamur Mosque Endowment. The Masjid-E-Mamoor Committee was not in existence at that time. Later, Prince of Arcot Endowment came under the



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control of Wakf Board after various litigations. The revised Wakf

Act came into existence only in 1995. The subject property in R.S.No.3614, was sold by public auction in O.S.No.990 of 1949 and the sale certificate dated 4.4.1950 was issued to Tiruvenkadam Pillai by the City Civil Court, Chennai. His legal heirs sold it to one Perundevi Ammal and after various sales, the property was purchased by the petitioner vide document No.49 of 2007 for valid consideration. In 2012, the 2nd respondent Majsid-E-Mamoor Committee filed O.S.No.5965 of 2012 claiming that the property was obtained by them under the Prince of Arcot Act, 1925 and that the Committee was not a registered Wakf. They sought an injunction against the petitioner from demolishing the old superstructure over the landed property and reconstruction of the subject property. Their claim was also based on a lease agreement dated July, 2011 of the land which was not valid in law. The first respondent Wakf Board issued an order dated, May 2015 registering the second respondent Masjid-E-Mamoor as a Wakf. Thus, the suit filed by the 2nd respondent in 2012 was not maintainable. The



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petitioner filed O.A.No.13 of 2016 before the Wakf Tribunal challenging the entrustment of the land in R.S.No.3614 to the Masjid-E-Mamoor, as they are not the Mamur Mosque Endowment, the true beneficiary of Prince of Arcot Act, 1925. It is the case of the petitioner that when a property had been donated by the Donor for a specific purpose, the Wakf Board whose role is only to statutorily manage the Wakfs, cannot defeat the object for which the original donor had vested it. The Donee cannot defeat the Prince of Arcot Act, 1925, under the guise of exercising power under the Wakf Act, 1995. In fact, by a letter dated 30.03.2015, it was specifically replied to the Wakf Board that the petitioner is not a tenant of the second respondent, but the owner of the property by virtue of the sale deed of the year 2007 and the claim itself was unjust and invalid. The second respondent claimed that there was a lease in the year 2011 and it was terminated on 22.02.2016 and hence, the petitioner is an unauthorised occupant. On that premise, they sought to invoke the Public Premises Act before the first respondent. But, when the alleged unregistered lease itself was invalid and the second



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respondent was not having the power in 2011 to claim right over the property, the basis of the claim was wholly erroneous. The petitioner had also challenged the Wakf Board's order issued in 2015 and an interim stay was granted in O.A.No.13 of 2016 by the Wakf Tribunal. Assuming without admitting that the Wakf Board is the Principal and the Masjid-E-Mamoor Committee is its agent, the agent cannot act beyond the Principal. When the basis of the claim is interdicted by a valid Court's order, and it is in force, the subsequent claims based on the same are invalid.

(iii) The Wakf Board cannot act arbitrarily and defeat the Will of the maker of Wakf as it is opposed to Mohamedan law. The Estate Officer cum CEO was biased and supporting the Masjid-E-Mamoor Committee without any basis. The Estate Officer, recorded in the proceedings that the stay granted by the Wakf Tribunal shall be vacated by the WAKF. When there is a stay operating against the Wakf Board in OA.No.13 of 2016, the proceedings in PP.No.13 of 2016 are illegal and tantamount to disrespecting orders of the Tribunal.



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(iv) It is the contentions of the learned counsel for the revision

petitioners that sale deed of the year 2007 cannot be brushed aside by the Wakf Board. The Prince of Arcot Act, 1925 cannot be defeated as the Mamur Mosque Endowment alone was vested with the land in R.S.No.3614 of George Town. The earlier owners were never subjected to rent claim since 1950. The learned counsel would contend that the claim of the second respondent is contrary to the benefits of the donee. According to the learned counsel for the petitioners, there was no claim for rent against any owner even after 1995. Therefore, the impugned claim is false. The action of the second respondent is contrary to the Wakf Act.

(v) The learned counsel also brought to the notice of this court, the legal proceedings in OA.No.13 of 2016 before the Wakf Tribunal and A.S.No.315 of 2015 before the First Additional City Civil Court, Chennai, which was allowed in favour of the petitioner, thereby, reversing the order obtained by the second respondent. Therefore, according to the learned counsel for the petitioners, there was no valid document produced by the Wakf Board to prove that



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they had fixed the rent. The learned counsel for the petitioners, thus, prayed to set aside the order passed by the learned Judge, City Civil Court, dated 31.07.2018 in CMA.No.2 of 2017, whereby, the order made in P.P.No.13 of 2017 passed by Estate Officer, Tamil Nadu Wakf Board, directing the eviction of the petitioners was confirmed.

5.(i) Learned counsel for the 2nd respondent, on the other hand, would submit that the suit property belongs to 2nd respondent Wakf and the said property is also registered under the Registrar of Wakf and Patta also stands in the name of the 2nd respondent Wakf. The petitioner entered into a lease deed dated 03.07.2007 for Door No.5, measuring 792 sq.ft. out of the larger extent. Since the petitioner attempted to put up illegal construction, the Wakf filed O.S.No.5965 of 2012 before IV Assistant City Civil Court, which was decreed. Challenging the same, the petitioner filed Appeal in A.S.No.315 of 2015 before the I Additional City Civil Court, which was allowed setting aside the trial court decree.

(ii) On 30.03.2015, the petitioner issued a reply notice that he is not a tenant of the Wakf property and the question of payment of



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rent does not arise. On 22.02.2016 as an abundant caution, the lease was terminated and the petitioner was called upon to hand over vacant possession of property measuring 993.sq.ft. The Wakf properties situated in the State of Tamil Nadu and registered with the Tamil Nadu Wakf Board are brought under the purview of the Tamil Nadu Public Premises (Eviction of unauthorised Occupants) Act 1975 (TN Act 1 of 1976) as amended by Tamil Nadu Amendment Act, (33 of 2010) enlarging the scope of definition by including Wakfs as "Public Premises" -

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

(1) any premises belonging to, or taken on lease by, or on behalf of-

(i) any company as defined in section 3 of the Companies Act, 1956 (Central Act 1 of 1956) in which not less than fifty-one per cent of the paid-up share capital is held by the Government; and

(ii) any corporation (not being a company as defined in section 3 of the Companies Act 1956 (Central Act 1 of 1956) or a local authority) established by or under any law and owned or controlled by the Government;



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- (2) *any premises belonging to or vested in, a local authority or any Board constituted under any law; And*
- (3) *any premises belonging to a Wakf, registered with the Tamil Nadu Waqfs Board.*

(iii) The estate officer has taken into consideration with regard to the Patta issued by Pursawakam in favour of the 2nd Respondent and the Petitioner himself has sought no objection dated 13.02.2015 from the 2nd Respondent to construct a building after admitting and recognizing that the land belonging to the 2nd Respondent. Therefore, the petitioner is estopped under section 116 of the Evidence Act.

(iv) THE WAKF (AMENDMENT) ACT, 2013 in Section 3(ee) - stipulates an encroacher as follows -

3(ee) "encroacher" means any person or institution, public or private, occupying Wakf property, in whole or part, without the authority of law and includes a person whose tenancy, lease or licence has expired or has been terminated by mutawalli or the Board.

(v) The Estate officer, after considering the same, has allowed



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the petition filed by 2nd Respondent. Aggrieved against the same, CMA has also been filed. The learned Principal District Judge, after framing whether the eviction order is liable to be set aside, has clearly held that the property is the Wakf property and the Petitioner has recognised the 2nd Respondent as his landlord and entered into an lease agreement and clearly held that the stand of the petitioner is fallacious and liable to be rejected in terms of section 116 of the Evidence Act.

(vi) The learned Principal District Judge also clearly held that the sale deed reveals that the property namely the land belongs to the Petitioner and the Prince of Arcot Endowments Act, 1922 stands repealed after the enactment of the Wakf Act and all the properties which were earlier vested with the Prince of Arcot Endowments has to be registered as Wakf property under Wakf Act and the same was also registered on 21.05.2015. The petitioner is an unauthorised occupant in terms of Tamil Nadu Public Premises (Eviction of unauthorised Occupants) Act and due process of law has been passed.



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(vi) The learned Judge has also clearly held that the Prince of Arcot Endowments Act 1922 stands repealed after the enactment of Wakf Act 1954 and subsequent Act 1995 in effect all the properties under Prince of Arcot Endowments Act vest with General Superintendent TamilNadu Wakf Board namely the 1st Respondent and the Wakf was being managed by the committee approved by the Board and lease deed was entered on 30.07.2011 with the Wakf committee with regards to the property in question hence, the petitioner is estopped under section 116 of the Evidence Act to deny the title or take a different position or put up illegal construction without the approval of the Wakf Board. The finding at Para 12 of the impugned order clearly establishes that the petitioner is taking a different stand at the time of filing of appeal. He is willing to pay the arrears of rent when he has taken a position that he is not entitled to pay rent to the 2nd Respondent. Hence, the petitioner cannot approbate and reprobate. Further, there is a clear finding that the petitioner himself recognised that the land belonging to 2nd respondent way back in 2007 and he is not entitled to take a different



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position. The learned Principal Judge has also given a clear finding after taking into consideration of the Prince of Arcot Endowments Act that Mamoor Mosque Endowment in Ibrahim Sahib Street in survey no. RS.3614 is a Wakf property by the deed dated 24.04.1874 in certificate no. 1981 and the permanent land register also belongs to the 2nd respondent and the petitioner has not taken any proceedings the permanent land register in favour of 2nd Respondent. In terms of section 2(g) of Tamil Nadu Public Premises (Eviction of unauthorised Occupants) Act 1975, the petitioner is an unauthorised occupant and liable to be evicted under Tamil Nadu Public Premises (Eviction of unauthorised Occupants) Act 1975 confirming the order dated 04.01.2017, the same was passed by the Principal District Judge. The Permanent land register is filed as an additional typeset dated 14.07.2022 which clearly establishes that the said property is a Wakf property and the gazette publication at page no.9 clearly establishes that the property is a Wakf property. Hence, the Petitioner is estopped from taking a position that it is not the Wakf property. The reading of section 51 of the Wakf Act clearly



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establishes that any sale, gift, exchange, mortgage or transfer of Wakf property without the approval of the board is void. On this core alone the petitioners' CRP is liable to be dismissed.

(vii) The learned counsel relied on the following citations:-

1. MANU/TN/2752/2021

[Abdul Saleem vs The Mutawalli, Ashrad Syed Badusha and ors]

2. ILR 2012 KAR 173

[ITC Limited vs. Union of India and others]

3. MANU/SC/0614/1972

[Hari Singh and ors. vs Military Estate Officer and ors]

4. MANU/RH/2192/2013

[Ashok Matai and ors. VS Officer(Waqf) Jaipur and ors]

5. MANU/RH/0587/1996

[Wakf Committee Maszid Maniharan vs District Judge]

19. Heard the learned counsel for the petitioners and the learned counsel appearing for the respondents and perused the materials available on record.

20. Though the learned counsel for the petitioners contends that the property belongs to Nirmala and they had purchased the same from her, the extract from the Permanent Land Register would show that the



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property in question belongs to the 2nd respondent. From the perusal of the documents, it is clear that the property stands in the name of the 2nd respondent Wakf. Therefore, the contention of the learned counsel for the petitioners in this regard, cannot be accepted. It is clear from the sale deed dated 08.02.2012 that the petitioners have purchased only superstructure and they are the owners of the superstructure of the property alone. Therefore, the other contentions of the learned counsel for the petitioners have to be brushed aside. Since the petitioners put up illegal construction, the 2nd respondent issued notice dated 22.02.2016 stating that their tenancy was terminated and they were called upon to quit and deliver vacant possession. Even after receipt of notice, the petitioners have not handed over the possession. Hence, they are defaulters of rent and they are also not having any valid lease agreement. Section 2(g) of the Public Premises Act clearly states that “Any person occupying the public premises without any authority for such occupation and includes continuance in occupation is an unauthorised occupant”. It is clear that the petitioners are the tenants and it is proved that the property belongs to the 2nd respondent.

Therefore, this Court finds no infirmity or illegality in the orders passed by the learned City Civil Judge, confirming the order passed by



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the Estate Officer. Accordingly, both the Civil Revision Petitions are dismissed, confirming the orders passed in C.M.A.No.2 of 2017 dated 31.07.2018 and C.M.A.No.3 of 2019 dated 21.02.2019 by the learned Principal Judge, City Civil Court, Chennai. The eviction order dated 04.01.2017 passed by the Estate Officer in Case No.PP.13/Che/2016 and Case No.PP.15/Che/2016 are confirmed. The petitioners are directed to vacate the property and hand over the vacant possession to the 2nd respondent within a period of two months. In default thereof, it is open to the 2nd respondent to take action in accordance with the directions given by the Estate Officer. No costs. Consequently, connected miscellaneous petitions are closed.

05.12.2022

Index: Yes/No
Speaking order: Yes/No
vsi
To

1. The Principal Judge, City Civil Court, Chennai
2. The Estate Officer,
Tamil Nadu Wakf Board, rep. by CEO, Chennai - 600 001.



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J.NISHA BANU,J.

vsi

Pre-delivery order made in
C.R.P.No.3699 of 2018
and
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