



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.04.2022

CORAM:

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THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)Nos.13702 & 13703 of 2009

Mohamed Ali Lal

...Petitioner in
WP(MD) No.13702/2009

Akbar Ali

...Petitioner in
WP(MD) No.13703/2009

Vs.

1.Joint Sub Registrar No.II,
Tirunelveli.

2.The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffer Shyran Street,
Vallal Seethakathi Nagar,
Chennai - 1.

3.Inspector General of Registration,
Santhome High Road,
Chennai - 600 004.

...Respondents in both WPs

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondent No.1 to register and release the deed for release of partition rights dated 29.05.2009, pending with the respondent No.1 in document Nos.P 2009000162 (Book-1) & P 2009000163 (Book-1).

For Petitioner : Mr.M.P.Senthil
For R1 & R3 : Mr.A.Baskaran,
Additional Government Pleader
For R2 : Mr.N.Mohideen Basha
(In both WPs)

C O M M O N O R D E R

These writ petitions have been filed for a Mandamus, directing the first respondent to register and release the deed for release of partition rights dated 29.05.2009 in document Nos.P 2009000162 (Book-1) & P 2009000163 (Book-1) pending with them.



2.The case of the petitioners is that the property described in TS No.2003, 2004, 2005 absolutely belonged to the petitioners' ancestors. The petitioners in both writ petitions are brothers. After conversion of minor inams into Ryotwari Act 30 of 1963, an enquiry was conducted under Section 11 of the Act and the Settlement Officer/Tahsildar No.II, Kovilpatti granted Ryotwari Patta for the above said property in favour of the petitioners' father and mother. According to the petitioners, after the demise of the petitioners' father, the petitioners along with their other brothers and sister were in possession of the subject property. Since there was a dispute over the property, a civil suit in O.S.No.288 of 2003 was instituted and the parties have settled the issue amicably by way of compromise and they have executed release deeds. The grievance of the petitioners is that when the documents were presented for registration before the second respondent, they refused to do so. The petitioners approached the Information Officer under Section 6 of Right to Information Act, a reply has been received from the Information Officer that since they have to ascertain the fact as to whether the property belongs to Wakf Board or not, the documents were kept in abeyance without registration. Hence, the petitioners have filed the writ petitions in the year 2009.

3.The learned counsel appearing for the petitioners sought time to get instructions from the petitioners. At his request, the matters were listed before this Court for final hearing on various occasions. Today (27.04.2022), when the matters are taken up for final hearing, the learned counsel appearing for the petitioners filed a memo that he tried his level best to contact the petitioners, but he could not contact them. Therefore, he filed a memo as no instructions. The memo is recorded and the name of the petitioners were called in open Court and there is no representation for the petitioners.

4.The learned counsel appearing for the second respondent has produced a proforma report of the Wakf Board, Tirunelveli attested by the Chief Executive Officer, TamilNadu Wakf Board, Chennai stating that the subject lands are Wakf property and claimed that once the properties are declared as Wakf property, the grant of patta in favour of the petitioners under Inam Act does not in any manner affect the dedication made on the property as wakf property. He also relied on the judgment of the **Honourable Supreme Court in Sayyed Ali and others Vs. A.P.Wakf Board, Hyderabad and others**, reported in **(1998) 2 Supreme Court Cases 642**, wherein it was held as follows:-

"...13.Lastly, it was contended by the learned counsel for the appellant that once patta, under the Inams Act, having been granted in favour of Mokhasadars, it was not open to the High Court to hold that the property was a wakf



property. In other words, the argument seems to proceed on the basis that once patta has been granted under the Inams Act to Mokhasadars, the land has ceased to be a wakf property. It may be stated that a wakf is a permanent dedication of property for purposes recognized by Muslim law as pious, religious or chartitable and the property having been found as wakf would always retain its character as a wakf. In other words, once a wakf always a wakf and the grant of patta in favour of Mokhasadar under the Inams Act does not, in any manner, nullify the earlier dedication made of the property constituting the same as wakf. After a wakf has been created, it continues to be so far all time to come and further continues to be governed by the provisions of the Wakf Act and a grant of patta in favour of Mokhasadar does not affect the original character of the wakf property. We accordingly find no substance in the last argument of the learned counsel for the appellant."

5. Since the writ petition is pending from the year 2009 and even though there is no representation from the petitioners, this Court is inclined to dispose of this writ petition, based on the available materials placed before this Court.

6. In view of the specific stand taken by the second respondent that it is the wakf property and as per the proforma placed before this Court and in view of the dictum laid down by the Honourable Supreme Court, these writ petitions are dismissed on merits. No costs.

Sd/-

Assistant Registrar(AD-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vrn

To

1. The Joint Sub Registrar No.II,
Tirunelveli.

2. The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffer Shyran Street,
Vallal Seethakathi Nagar,
Chennai - 1.



3.The Inspector General of Registration,
Santhome High Road,
Chennai - 600 004.

+1 CC to M/s.SPL.GP. (SR-22526[F] dated 29/04/2022)

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ORDER MADE IN
W.P (MD) Nos.13702 & 13703 of 2009
27.04.2022

nsn(CO)
TR(17.06.2022) 4P 5C