



C.R.P.(PD)Nos.996 of 2021, 429 & 434 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)Nos.996 of 2021, 429 & 434 of 2022
and C.M.P.Nos.8016 of 2021, 2198 & 2218 of 2022

- 1.Veeraiah
- 2.Karunanidhi
- 3.Krishnan
- 4.Pone.Paulmani

.. Petitioners in
all the three CRPs.

Vs.

1.Tamil Nadu Waqf Board
Represented by Chief Executive Officer
No.1, Jaffer Syrang Street
Vallal Seethakathi Nagar
Chennai-1.

- 2.Abdullah Sayabu
- 3.Lathif
- 4.Rahim
- 5.Abdul Kapoor



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- 6.Shajahan
- 7.Ajimath Ali
- 8.Abdul Subakahn
- 9.Jaheer Hussain
- 10.Allah Baks
- 11.Naina Mohammed
- 12.Ahamed
- 13.Abdul
- 14.Sarthar Batcha
- 15.Kathar
- 16.Banubeevi
- 17.Ajeeba Sahb
- 18.Sheik Abdullah
- 19.Abdul Mubarak
- 20.John Beevi (died)
- 21.Mariyam Beevi
- 22.Bousal Begum (died)
- 23.Samsath Begum
- 24.Fathimabeevi
- 25.Ajmeerbeevi
- 26.Selvam Neesha
- 27.Jainul Arabu
- 28.Ahamaedsha



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29.The Tahsildar
Tahsildar Office, Tirupathur.

30.The District Registrar
Sivagangai District.

31.The Sub-Registrar
Madhagupatti.

32.The District Collector
Sivagangai District.

.. Respondents in
all the three CRPs.

(Except 1st respondent, all other respondents are not necessary. The application was filed by the 1st respondent alone. Hence, the respondents 2 to 32 in CRP are given up.)

COMMON PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the fair and decretal order dated 09.03.2021 in I.A.Nos.260, 261 & 267 of 2018 in O.A.No.219 of 2018 on the file of the Waqf Tribunal at Chennai.

In all the three CRPs.

For Petitioners : Mr.K.Krishnan

For R1 : Mr.Haja Mohideen Gisthi

For RR29 to 32 : Mr.B.Tamilnidhi
Additional Govt. Pleader (CS)



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COMMON ORDER

I.A.Nos.260, 261 & 267 of 2018 are the three applications, which have been filed by the Tamil Nadu Waqf Board for the purpose of reopening the evidence, recalling the witness and marking of a document.

2. The case of the Waqf Board is that the property belongs to the Azhakarkulam Ahamath Shah Sahib Fakkir Dargah Pallivasal in Aralikottai. It is their plea that they had surveyed the notified Waqf and without the permission of the Tamil Nadu Waqf Board, the properties had been alienated by the Muthawallis. Therefore, they sought for declaration that the property had been endowed by the Raja of Sivagangai, in favour of the religious institution and consequently, to declare that the sale deed is contrary to Section 22-A of the Registration Act. Even in prayer No.(2) of W.O.P.No.2 of 2012, the notification that had been issued by the Government of Tamil Nadu in G.S.No.231(RMD) dated 22.04.1959 has been referred.



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3. As per the scheme of the Waqf Act, which was in force in 1959, a survey had to be conducted by the Survey Commissioner under Section 4. During the survey, he was entitled to examine witnesses for the purpose of coming to a conclusion as to whether the property is a waqf property or not. The document that has been sought to be filed by the Waqf Board, which has been allowed by the learned Waqf Tribunal is a statement that had been given by one Abdul Kadhar Sahibu to the Assistant Commissioner of Waqfs, on 20.03.1956.

4. Heard Mr.K.Krishnan, the learned counsel for the petitioners and Mr.Haja Mohideen Gisthi, the learned counsel for the 1st respondent and Mr.B.Tamilnidhi, learned Additional Government Pleader (CS) for the respondents 29 to 32 in all the revisions. I have carefully gone through the entire records.

5. It is the argument of Mr.K.Krishnan that the statement that had been given to the Assistant Commissioner of Waqf requires registration as



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it is unregistered and unstamped and therefore, the same cannot be received in evidence.

6. As seen from the Waqf Act, 1954, the Survey Commissioner had the power of the Civil Court for summoning and examining the persons in order to come to a conclusion as to whether the property is a waqf property or not. The power of the Survey Commissioner to take up such an endeavor has been settled by the judgment of the Supreme Court in ***Board of Muslim Wakfs, Rajasthan vs. Radha Krishnan and others (1979) 2 SCC 468***. Therefore, the power of the Survey Commissioner/Assistant Survey Commissioner to record the statements from persons interested including Muthawallis is statutory in nature. It is not a document written *inter vivos* and by which, title is transferred from the Muthawalli in favour of the Government. All that the Survey Commissioner does is to verify if a property is a waqf property or not and if he comes to a conclusion that it is a waqf property, he would send a report to the Government. On receipt of the report, the Government sends



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the same to the Waqf Board. After receipt of the comments from the Waqf Board, a notification is issued.

7. The 1st respondent in this case has merely attempted to produce the statement that has been given to the Assistant Survey Commissioner. Such a document does not come within the teeth of Section 17 of the Registration Act or Section 35 of the Stamp Act. It is the statement made by a person to an authority entitled to record the same. Whether it is relevant to the case or not is not for the Waqf Tribunal to decide at the time of disposal of the proceeding.

8. The learned Waqf Tribunal has exercised its discretion and allowed the applications. While sitting under Article 227 of the Constitution of India, I cannot interfere with the order unless and until it is capricious and arbitrary. As the sheet anchor of the case that the document is hit by Section 17 of the Registration Act and Section 35 of the Stamp Act fails, I cannot term the order to be arbitrary. Consequently,



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the Civil Revision Petitions fail. The Waqf Tribunal is requested to receive the document, subject to relevancy and proof of the same. An opportunity should be granted to the civil revision petitioners to cross-examine the person producing the document on the contents thereof.

9. With the above observation, the Civil Revision Petition stands dismissed. No costs. The Waqf Tribunal at Chennai is requested to dispose of the case within a period of six months from the date on closure of the evidence of P.W.1. Consequently, the connected Miscellaneous Petitions are closed.

17.08.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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V.LAKSHMINARAYANAN,J.

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