



Writ Petition No.11261 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :11.07.2023

PRONOUNCED ON :21.09.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

Writ Petition No.11261 of 2023

WMP.Nos.11144, 11145 and 11146 and 17282 of 2023

- 1.Dr.K.Harshavardhan Reddi
- 2.Dr.H.Rupa Lakshmi

...Petitioners

Vs

1.The Government of Tamil Nadu,
Represent by its Secretary,
Registration and Commercial Tax Department,
Fort St. George, Chennai – 600 009.

2.The Inspector General of Registration,
Registration Department,
No.100, Santhome High Road,
Pattinampakkam, Santhome,
Raja Annamalaipuram, Chennai – 600 028.

3.The District Registrar,
M.V.Street, Veeraraghava Nagar,
Thiruvallur, - 602 001.

4.The Joint – 1, Sub Registrar,
Saidapet, Nandanam,
Chennai – 600 035.

5.Tamil Nadu Waqf Board,

1/22



Writ Petition No.11261 of 2023

Represented by its Principal Executive Officer,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 001.

... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records of the 5th respondent in connection with the impugned proceedings bearing Na.Ka.No.12321/AA4/2005/Thiruvallur, dated 19.03.2021 and quash the same and direct the respondents 1 to 4 to register the documents presented by the petitioners as lawful owners of the land comprised in Survey No.187/1 of Vanagaram Village, Thiruvallur District.

For Petitioners : Mr.V.Prakash
Senior counsel
for M/s.T.Ramkumar

For Respondents : Mr.N.Naveen Kumar
Government Advocate for R1 to R4
Mr.S.Haja Mohideen Gisthi
Senior Standing Counsel
for Waqf Board for R5
Mr.N.A.Nissar Ahmed
Senior Advocate
M/s.N.A.Nasir Hussain
for impleading petitioner.



Writ Petition No.11261 of 2023

ORDER

WEB COPY

The writ petition is filed challenging the communication of the 5th respondent sent to respondents 2 to 4 dated 19.03.2021, objecting to the registration of documents pertains to S.Nos.187/1, 187/2, 187/3 in Vanagaram Village, Poonamallee Taluk and also for direction for respondents 1 to 4 to register the documents presented by the petitioners in respect of Survey No.187/1.

2. It is the case of the petitioners that 51 acres and 20 cents of land in S.No.187, Vanagaram Village originally belonged to one Haji Muhammed Abdul Hadi Badsha Saib. He gifted the property in favour of one Hajee Muhammed Habibullah Badsha Saib, his son, on 26.09.1898. The said Haji Muhammed Habibullah Badsha Saib executed a sale deed in favour of C.Anniah Naidu on 15.03.1917. Thereafter, the Official Assignee of High Court with whom the estate of insolvent Haji Muhammed Habibullah Badsha Saib was vested and C.Anniah Naidu executed a sale deed in favour of C.Jaganathan Pillai on 01.05.1919. Subsequently, the official assignee of this Court as assignee of estate of C.Jaganathan Pillai executed a sale deed on 31.10.1935 in favour of N.Elumalai Chettiar on



12.12.1935. Thus N.Elumalai Chettiar acquired right over the property.

The said N.Elumalai Chettiar had two sons namely E.Balakrishnan and E.Sundaresa Chettiar. There was a partition in the family on 09.03.1960 between N.Elumalai Chettiar, E.Balakrishnan and E.Sundaresa Chettiar. E.Balakrishnan under whom the petitioner is claiming title was allotted with 24 acres and 63 cents of land in S.No.187/1 and 40 cents in S.No.187/2 under “A” schedule to the said partition deed. His brother Sundaresa Chettiar was allotted with 26 acres and 17 cents in S.No.187/3 and 40 cents of land in Survey No.187/2. Subsequently, the above said Balakrishnan was granted with the settlement patta by Settlement Officer constituted under Tamil Nadu Act 30/63 in respect of 24.63 cents in S.No.187/1. Likewise Sundaresa Chettiar was granted patta in respect of 26.17 cents in S.No.187/3.

3. It is the specific case of the petitioners that they could trace title to the property from 1898 and the above said property is not a Waqf property. Recognizing petitioners' predecessor Balskrishnan's possession patta was also granted in his favour under settlement proceedings.



4. It is further stated by the petitioners that some individual persons on their behalf and also on behalf of the Muslim worshippers filed a suit in O.S.No.674 of 1971, on the file of the District Munsif Court, Poonamallee, seeking injunction restraining the above said E.Sundaresa Chettiar from interfering with their rights of worship in the Mosque situated in the above said S.No.187 in Vanagaram Village. The said suit was dismissed by the Trial Court with a finding that plaintiff therein failed to prove their possession and also their averment that they had been offering prayers in the building situated in the suit property. The trial Court based on Ex.B1 Gazette Publication dated 17.12.1958 found that no Mosque had been shown in the suit property. The said findings was confirmed by the First Appellate Court in A.S.No.51 of 1982. The plaintiff therein, filed a Second Appeal before this Court in S.A.No.224 of 1984 and the same was allowed and decree for injunction was granted in their favour. Aggrieved by the same, the above said E.Sundaresa Chettiar filed Special Leave Petition before the Supreme Court and the same was converted as Civil Appeal No.5334 of 1993. Ultimately, the Apex Court set aside the judgment passed in Second Appeal on the ground that the High Court cannot re-appreciate the evidence and give a finding with regard to the existence of Mosque. The



Apex Court by referring to Exs.B1, B2, B3 and B4 also observed that there was no public mosque in the suit property.

5. Thereafter one Abdul Kareem filed a petition for electing a Committee to manage the Waqf in the suit property. The said request was rejected by Waqf Board by its resolution dated 23.07.2003 on the ground that appointing a committee for management of non-existing Mosque would go contrary to the Apex Court Judgment. Subsequently, the above said Abdul Kareem claiming himself as a President of the Managing Committee of Porur Sheik Maniyam Masjid-E-Khirunnissa, Muslim Jamath filed a suit for declaration that 51.08 acres land situated in S.Nos.187/1 and 187/3 were Waqf properties and also for relief of permanent injunction. The petitioners' predecessor in title namely the above said Elumalai Chettiar who was arrayed as 3rd defendant in the said suit filed an application for rejection of the plaint in I.A.No.811 of 2005 in O.S.No.100 of 2005, the said petition was dismissed. Aggrieved by the same, he filed CRP.No.125 of 2007 and the same was allowed by this Court and consequently, the plaint was rejected. This Court rejected the plaint on the ground that the said suit would amount to re-litigation by relying on earlier judgment passed by the



Apex Court in C.A.No.5334 of 1993. The Special Leave Petition filed by the Porur Sheik Maniyam Masjid-E-Khirunnissa, Waqf Managing Committee in SLP.Nos.13919 of 2008 and 13920 of 2008 was dismissed. The resolution passed by the Waqf Board rejecting the request for appointment of Managing Committee to manage Porur Sheik Maniyam Masjid-E- Khirunnissa was challenged in CMA.No.27 of 2003 before the Waqf Tribunal and the same was also dismissed.

6. Though the petitioners' predecessor succeeded in all above litigations, there was continuous disturbance and hence the petitioners' father's brother E.Sunderaja Chettiar filed W.P.No.4886 of 2004 for police protection and the same was dismissed and the Writ Appeal filed against that order in W.A.No.764 of 2009 was also dismissed by this Court. While, dismissing the Writ Appeal, this Court observed that the appellant therein namely Sunderaja Chettiar has not obtained any decree for permanent injunction from a Competent Civil Court to protect his possession and therefore, no police protection could be granted. The above said writ petition was filed by Sunderaja Chettiar in respect of S.No.187/3 and the same is not in respect of his property in S.No.187/1. It is stated that the



above said Balakrishnan died on 06.10.1970 leaving behind his legal heirs Kamala Ammal and his daughter Prema Mahadevi. While Balakrishnan was alive he executed a settlement deed in favour of Prema Mahadevi settling 8 acres of land in S.No.187/1 on 27.09.1970, after his death remaining 16(+) acres devolved upon his wife Kamala Ammal, his mother Apuroo pammal and his only daughter Prema Mahadevi. The above said Apuroo Pammal died on 14.01.1978, executed a Will giving her share in favour of her grandson Subramanian. Balakrishnan's wife Kamala Ammal settled her share in favour of her only daughter Prema Mahadevi. Prema Mahadevi died leaving behind her legal representatives namely the petitioners herein. Thus the petitioners are claiming right over the land that fell to the share of Balakrishnan in the partition deed 1960.

7. When the 1st petitioner attempted to execute a release deed in favour of 2nd petitioner, the office of 4th respondent informed the petitioner that the properties were prohibited from any registration or transfer and furnished the copy of the impugned communication sent by 5th respondent in respect of land in S.Nos.187/1, 187/2 and 187/3 on the ground it belonged to Mosque. Therefore, the petitioners have come by way of this writ petition.



8. The learned senior counsel appearing for the writ petitioners

by taking this Court to the order passed by the Apex Court in C.A.No.5334 of 1993 and order passed by this Court in CRP.Nos.125/2007 and 1237 of 2006 contended that the property in question is not a Waqf property. It is the specific submission of the learned Senior counsel that the Apex Court in order passed in C.A.No.5334 of 1993 by referring to the documents filed in the connected proceedings observed that there was no evidence for existence of any Mosque in the property in question. When Porur Sheik Maniyam Masjid-E-Khirunnissa Waqf, which allegedly owns the property in question filed a suit seeking declaration of title in O.S.No.100 of 2005, the petitioners predecessor Elumalai and other Co-sharers filed an application for rejection of the plaint and the same was allowed on the ground that the suit for declaration of title would amount to re-litigation. Therefore, it is the submission of the learned senior counsel when title of the Waqf was negated in earlier proceedings the 5th respondent is not justified in sending a communication objecting to the registration of the property on the ground, the same belonged to the Waqf.



9. The learned counsel appearing for the 5th respondent Waqf

Board submitted that impugned order is a communication sent by the 5th respondent to 4th respondent and so far the 4th respondent has not passed any order refusing registration and therefore, the petitioners are not entitled to maintain this writ petition when no order have been passed against them. The learned counsel by taking this Court to the order passed in W.A.No.764 of 2009, submitted that inspite of the observation made by the Division Bench, the appellant therein failed to get any order from Civil Court to protect his possession neither the petitioners nor the other co-owners approached the Civil Court to establish their right. The learned counsel by referring the judgment of the Apex Court in ***Rashid Wali Beg vs Farid Pindari and others reported in (2022) 4 SCC 414*** submitted that if there is a dispute with regard to the question whether particular property is a Waqf property or not the proper forum to decide the same is Waqf Tribunal. The learned counsel by relying on the unreported judgment in W.P.No.13718 of 2023 in V.Govindharaji vs The District Collector, District Collector Office, Villupuram submitted once an objection is made for registration by a religious institution or Waqf Board, the registration authority has no power of adjudication and the parties claiming right must establish their right



before the competent forum. Therefore, it is the submission of the learned counsel that unless the right of the petitioners is established by moving appropriate forum they are not entitled to maintain this writ petition especially when their title over the property is not declared by any competent forum. The learned counsel also relied on the judgment in Vishwas Footwear Company Ltd., Vs The District Collector, Kancheepuram, reported in 2011 (5) CTC 94 for proposition that disputed question of facts cannot be adjudicated by writ.

10. The learned counsel for petitioner in impleading petition in WMP.No.17282 of 2023 representing the impleading petitioner submitted that when there is dispute with regard to the question whether particular property is a Waqf property or not it is for the Waqf Tribunal to decide the same and therefore, the writ petition filed by the petitioners is not maintainable.

11. The learned counsel also referred to the judgment and decree passed in O.S.No.107 of 2005, on the file of District Munsif, Poonamallee and submitted that a suit for injunction filed by the petitioners



predecessor Elumalai against the members of Waqf was dismissed for default. Therefore, it is the submission of the learned counsel that unless petitioners establish their rights before the competent forum they are not entitled to maintain a writ petition. The learned counsel also relied on the judgment of the Apex Court in ***Sayyed Ali Vs Andhra Pradesh Wawf Board reported in 1998 (2) SCC 642***, for the proposition a Waqf property will always remain as a Waqf and grant of patta under Inam Act will not nullify dedication of property in favour of the Waqf.

12. A perusal of the averment found in the affidavit filed in support of the writ petition and the various documents filed by the petitioners in the typed set of papers would suggest that the petitioners are able to trace the title from the year 1898. Earlier some individuals claiming themselves as Muslim worshippers filed a suit for injunction against Sunderasa Chettiar, co-owner and brother of petitioners' predecessor Balakrishnan, the said suit culminated by order passed by the Apex Court in C.A.No.5334 of 1993, wherein the Apex Court observed as follows:

The question whether there ever existed a public mosque in the disputed land is essentially a question



of fact and it can never be termed as a substantial question of law. The trial court as well as the appellate court concurrently held that the plaintiff-respondents had failed to establish that there was a public mosque. Further both the courts inter alia found that : (1) non mention of disputed mosque as a wakf property in exhibit. B1, the gazette publication dated 17.12.1958 containing the list of wakfs existing at the time in Chengalput district, that, (2) the absence of reference to any mosque in exhibit. B2, the settlement register extract, exhibit. B3, Inam register extract, exhibit. 84, Inam title deed lead to the conclusion that there never existed any public mosque, that there was no dedication of building for the purpose of public mosque by the original founder and that the land was never used as a public mosque or the Muslim community have ever used the land as a burial ground. Curiously enough, the High Court after reappraising the evidence held that the possibility of a building having been erected initially which served as a mosque could not be ruled out. This was speculative and conjectural finding. The High Court has not recorded any definite finding that earlier there existed a public mosque. In absence of such a finding no relief could have been granted to the plaintiffs.



WEB COPY

13. Therefore, there is a positive observation by the Apex Court to the effect that the subject matter of the suit therein was never used as a public mosque or the Muslim community have ever used the land as a burial ground. However, in the impugned communication the 5th respondent mentioned that High Court passed a Judgment holding the disputed property belongs to the mosque and the same was confirmed by the Apex Court. Therefore, the impugned order was passed by the 5th respondent without taking into consideration that the judgment passed by the High Court was set aside by Apex Court in C.A.No.5334 of 1993. The impugned communication was made by the 5th respondent mainly on the mistaken assumption that High Court order passed in favour of Muslim worshipper was affirmed by the Apex Court.

14. Further, the 5th respondent while making impugned communication failed to take into consideration earlier resolution dated 23.07.2003. The said resolution reads as follows:

It is seen from the records that in a dispute raised before



the Hon'ble Supreme Court in C.A.No.5334 of 1993, the Hon'ble Supreme Court in its order dated 03.10.2002 has held that:

“The question whether there ever existed a public Mosque in the disputed land is essentially a question of fact and it can never be termed as a substantial question of law. The Trial Court as well as the appellate Court concurrently held that the plaintiff-respondents has failed to establish that there was a public mosque. Further both the Courts inter alia found that (1) non-mention of disputed mosque as a waqf property in Ex.B1, the Gazette publication dated 17.12.1958 containing the list of waqfs existing at Chengalpattu District, that (2) the absence of reference to any mosque in Ex.B2, the Settlement Register extract, Ex.B3, Inam Register extract, Ex.B4- Inam title deed lead to the conclusion that there never existed any public mosque that there was no dedication of building for the purpose of public



mosque by the original founder and that the land was never used as a public mosque or the Muslim community have ever used the land as a burial ground. Curiously enough, the High Court after re-appraising the evidence held that the possibility of a building having been erected initially which served as a mosque could not be ruled out. This was speculative and conjectural finding. The High Court has not recorded any definite finding that earlier there existed a public Mosque. In absence of such a finding no relief could have been granted to the plaintiffs.

Since the very approach of the High Court in allowing the appeal was contrary to law, this appeal deserves to be allowed. Consequently, the judgment is set aside and the appeal is allowed. No costs.

As the tenor of the petitioner during the enquiry seems to be only to pursue the other remedies contrary to the decision of the Supreme Court, the Board cannot grant approval to any committee to



enable them to overreach the orders of the Hon'ble Supreme Court. The judgment of the Hon'ble Supreme Court is conclusive on the issue and the board is of the view that no purpose will be served if the committee is approved when the purpose for seeking approval is to agitate the matter once against, it is clear that such a step would only lead to further complications. It would be inappropriate for the Board to appoint a committee in the management of a non existent Mosque and a burial ground which is said to be the wakf that is to be administered. The Board is of the considered view that approval cannot be granted to the committee.

There is no other valid reason put forth by the petitioner for seeking approval of the committee.

In view of the above, the representation for approval of the committee dated 24.02.2003 and 24.04.2003 are rejected.”

15. A perusal of above resolution passed by Waqf Board would suggest, even earlier, very same 5th respondent by referring to the Apex Court judgment refused to consider the representation for approval of the management committee on the ground that Waqf was not in existence.



WEB COPY

16. It is also seen from the documents enclosed in the typed set of papers the impleading petitioner represented by one Abdul Kareem filed a Civil suit in O.S.No.100 of 2005 on the file of Principal Subordinate Judge, Chengalpattu, seeking declaration that the above mentioned property in S.No.187/1 belonged to the Waqf, the impleading petitioner herein. The plaint in the suit was rejected by this Court on the ground of re-litigation in CRP.Nos.125/2007 and 1237 of 2006. Therefore, in the suit filed by the impleading petitioner represented by one Abdul Kareem, it was categorically held the impleading petitioner was not entitled to declaration of title. In fact, the plaint was rejected on the ground of re-litigation. When impleading petitioner filed a suit for declaration of title and the said plaint was rejected on the ground of re-litigation by this Court absolutely there is nothing to presume, even remotely, that property in question is a Waqf property belongs to impleading petitioner.

17. As mentioned earlier, the impugned communication was made by the 5th respondent without referring to earlier order passed by the Apex Court in C.A.No.5334 of 1993 and its own resolution dated



Writ Petition No.11261 of 2023

23.07.2003 and order passed by this Court in CRP.Nos.125/2007 and 1237 of 2006. The impugned communication was made by 5th respondent on a mistaken assumption that High Court's order in S.A.No.224 of 1984 was confirmed in C.A.No.5334 of 1993. Accordingly, the impugned communication is liable to be set aside.

18. In view of the discussion made earlier, the writ petition is allowed by setting aside the impugned communication of the 5th respondent to 4th respondent. No costs. Consequently, connected miscellaneous petitions are closed.

21.09.2023

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
ub



WEB COPY



Writ Petition No.11261 of 2023

To

1.The Government of Tamil Nadu,
Represent by its Secretary,
Registration and Commercial Tax Department,
Fort St. George, Chennai – 600 009.

2.The Inspector General of Registration,
Registration Department,
No.100, Santhome High Road,
Pattinampakkam, Santhome,
Raja Annamalaipuram, Chennai – 600 028.

3.The District Registrar,
M.V.Street, Veeraraghava Nagar,
Thiruvallur, - 602 001.

4.The Joint – 1, Sub Registrar,
Saidapet, Nandanam,
Chennai – 600 035.

5.Tamil Nadu Waqf Board,
Represented by its Principal Executive Officer,
No.1, Jaffer Syrang Street,

20/22



Vallal Seethakathi Nagar,
Chennai – 600 001.

WEB COPY



Writ Petition No.11261 of 2023

S.SOUNTHAR, J.
ub

Pre-delivery order made in
W.P.No.11261 of 2023



WEB COPY



Writ Petition No.11261 of 2023

21.09.2023