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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.14902 of 2023
W.M.P No.14484 of 2023

Mrs.Gulzar Begum

Petitioner

VS.

1.The Estate Officer,
WAKF HOUSE,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 001.

2.The Superintendent of Waqfs,
Cuddalore.

3.The Waqf Inspector,
Cuddalore.

4.Mohamed Shahid

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the impugned proceedings of the 1st respondent in Case No.243/CUDD/2022 dated 15.03.2023.

For Petitioner : Mr.K.Kaviyarasu

For Respondents : Mr.Hajamohideen Gisthi
Standing Counsel for R1 to R3

Mr.G.Mohan for R4

**ORDER**

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The subject matter of challenge in the present proceedings pertains to the order passed by the 1st respondent through impugned proceedings dated 15.03.2023 under the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975.

2. Heard Mr.K.Kaviyarasu, learned counsel appearing on behalf of the petitioner, Mr.Haja Mohideen Gisthi, learned Standing Counsel appearing on behalf of the respondents 1 to 3 and Mr.G.Mohan, learned counsel appearing on behalf of the 4th respondent.

3.The learned counsel for the petitioner mainly raised a technical ground to the effect that Section 54 of the Waqf Act, 1995 provides for removal of encroachment from the Waqf property and Section 108A of the Act will have an overriding effect and hence, the proceedings initiated by the 1st respondent under the Public Premises Act is without jurisdiction. To substantiate this submission, the learned counsel for the petitioner placed reliance upon the interim order passed by this Court in W.P.Nos.13507, 13510 & 13514 of 2023, dated 28.04.2023.

4.On going through the records, it is seen that the 4th respondent had filed a Public Interest Litigation before this Court in W.P.No.21638 of 2019 on the ground that the petitioner had put up an illegal construction in the subject property and no



steps were taken for the removal of the illegal construction and therefore, the 4th respondent had sought for appropriate directions. This writ petition was disposed of by an order dated 07.11.2022 and for proper appreciation, the relevant portions in the order are extracted hereunder:

6. Taking us through Section 2(e)(3) of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 [for brevity, “the said Act”], learned counsel for the second respondent submitted that any unauthorised occupation of the premises belonging to a Wakf, which is registered with the Tamil Nadu Wakf Board, can be evicted as per Sections 4, 5, 7 and 8 of the said Act.

7. For proper appreciation, Section 2 of the said Act is extracted hereunder:

“2. Definitions. - In this Act, unless the context otherwise requires, -

...

(e) “public premises” means any premises belonging to or take on lease or requisitioned by, or on behalf of, the Government, and includes -

(1) and (2) ...

(3) any premises belonging to a wakf, registered with the Tamil Nadu Wakf Board.”



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Classes, Most Backward Classes and Minorities Welfare (T1) Department, dated 20.12.2007, learned counsel for the second respondent further submitted that in order to remove the unauthorized occupants in Wakf lands, the Chief Executive Officer, Tamil Nadu Wakf Board has been appointed as Estate Officer as per Section 3 of the said Act and the Estate Officer is the authority having power to remove the unauthorised occupants in the Wakf land.

5. Pursuant to the above order, proceedings were initiated under the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 and the impugned order came to be passed by the 1st respondent.

6. The petitioner even to raise a technical plea of jurisdiction, must first establish before the Court his right to occupy the property. In other words, the petitioner must show some semblance of right to occupy the property and put up a construction. Admittedly, there is not even a Sale Deed in favour of the petitioner in this regard. Hence, the petitioner is not able to trace his right to any document. When this was brought to the notice of the learned counsel of the petitioner, the learned counsel submitted that the earlier occupant of the property had a Sale Deed in his favour. This cannot be an answer for satisfying this Court while finding out the right that is claimed by the petitioner.



7. This Court while exercising its jurisdiction under Article 226 of the Constitution of India has the discretion not to exercise such a power in an appropriate case where the Court does not even find a semblance of right in favour of the petitioner. The interim order that is produced before the Court cannot become the precedent for deciding the present case and the present case has to be decided on its own facts. In view of the same, this Court is not inclined to exercise its jurisdiction, since the petitioner has absolutely no right to occupy the property and even without a semblance of right, this Court will not permit the petitioner to maintain a writ petition on certain technical grounds by questioning the authority of the 1st respondent. This is more so, since the authority took action pursuant to the directions issued by this Court in a Public Interest Litigation. There are absolutely no merits in this writ petition.

9. In the result, this writ petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

06.06.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
ssr



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N. ANAND VENKATESH, J.

ssr

To

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