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C.R.P.No.2809 of 2019 & 2808 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.03.2023

Pronounced on : 06.04.2023

CORAM : JUSTICE N.SESHASAYEE

C.R.P.No.2809 of 2019 & 2808 of 2019
and CMP.Nos.18439 & 18449 of 2019

1.C.Saraswathi
2.C.Loganathan
3.C.Gandhimathi
4.K.Umashankari
5.Master K.Tamil Kumaran .. Petitioners / Appellants
(in both CRPs)

Vs

1.Ashraf Ali Sha and Fard Ali Sha Trust (Wakf)
Represented by its Secretary
New No.17, Old No.9, P.V.Koil Street
Mylapore, Chennai - 600 004.
2.The Estate Officer
Tamil Nadu Waqf Board
No.1, Jaffar Syrang Street
Vallal Seethakathi Nagar
Chennai - 600 001. .. Respondents / Respondents
(in both CRPs)

Common Prayer : Civil Revision Petitions filed under Section 115 C.P.C.,
praying to set aside the order passed in C.M.A.No.50 of 2015 and
C.M.A.No.51 of 2015 by the Principal Judge of City Civil Court, dated
30.07.2019 and confirming the order passed by the Estate Officer in



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P.P.No.18 of (Chennai) 2012 and P.P.No.19 of (Chennai) 2012
respectively, dated 29.04.2015

For Petitioners : Mr.S.N.Narasimhulu

For Respondents : Mrs.V.Srimathi for R2
Mr.S.Suresh Kumar for R1

COMMON ORDER

These revisions are preferred challenging the orders in CMA.No.50 of 2015 and CMA.No.51 of 2015 on the file of Principal Judge, City Civil Court, Chennai, confirming the orders of the Estate Officer, Chief Executive Officer, Tamil Nadu Wakf Board in P.P.No.18/2012/Chen and P.P.No.19/2012/Chen, both dated 29.04.2015.

2. A certain Chandrasekar was the tenant of the first respondent Waqf . The leased out properties in question are two in number. One is a tiled house inside the waqf premises and it includes a row of shops facing Sivaraman Street bearing Door No.1, St.Mary's Road, Mandaveli, Chennai, measuring an extent of 1,885/- sq.ft., and other is a residential portion inside the waqf premises having an extent of 1.026 sq.ft. The tenant was paying a monthly rent of Rs.3,770/- and Rs.2,255/- respectively for the demised premises.



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While so, Vide notice dated 29.02.2012, the first respondent terminated the tenancy. As he did not vacate, the first respondent, Waqf preferred two separate petitions in P.P.No.18/2012/Chennai and P.P.No.19/2012/Chennai respectively before the Estate Officer / CEO constituted under the Waqf Act, for an order for evicting the tenant.

3.The tenant entered appearance and he contended that the building belonged to him whereas the site alone belonged not to Waqf but to Trust, and that he cannot be considered as an unauthorised occupant within the meaning of Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act 1975 (hereinafter will be referred to as the 'Act'). And inasmuch the site belonged to the Trust, and not the Waqf Board, the CEO constituted under the Waqf Act cannot exercise the powers of an Estate Officer under the Act.

4. After holding enquiry, the Estate Officer passed an order directing the eviction of the tenant. In arriving at the conclusion, the Estate Officer relied on Section 2(g) and Section 2(3)(e) of the Act.



5. The tenant challenged these order of eviction in CMA.No.50/2015 and CMA.No.51/2015. During the pendency of the appeal, the tenant passed away and his legal representatives were brought themselves on to the record. After due enquiry, the appellate Court confirmed the order of the Estate Officer and dismissed the appeals. Hence, these revisions at the instance of the appellants.

6. Both sides stuck to their respective grounds in the arguments. The counsel for the revision petitioners would submit that the properties were taken on lease over some 100 years ago, that the building belonged to the tenant and that notice of eviction was not proper. He relied on the ratio of this Court in *Nagoor Kaniammal and Ors. v. Tenkasi Vangaru Muthu Meeran Sahib Thailka Pallivasal and Ors.* [2015 (4) CTC 34].

7. On perusing the papers, this Court does not find any material to support the case of the appellants / revision petitioners that the building in the property was put up by the present tenant or by any of their predecessors in title. Indeed, no documentary evidence worth the name was produced to support their theory. Therefore, this Court is of the view that the orders



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passed by the Tribunals below are not perverse as to warrant an interference with the same.

8. Before appreciating the ratio of any authority, one needs requisite facts and also the evidence supporting these facts. With nothing on record, this Court cannot consider that the authority in *Nagoor Kaniammal and Ors. v. Tenkasi Vangaru Muthu Meeran Sahib Thailka Pallivasal and Ors.* [2015 (4) CTC 34] circulated by the counsel for the revision petitioners has any real significance.

9. In the result, both the revisions are dismissed. The appellants/revision petitioners are granted 3 months to vacate and hand over the possession. No costs. Consequently, connected miscellaneous petitions are closed.

06.04.2023

Index : Yes / No
Speaking order / Non-speaking orders

To:
1.The Principal Judge, City Civil Court, Chennai.
2.The Section Officer
VR Section, High Court, Chennai.



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N.SESHASAYEE.J.,

ds

Pre-delivery order in
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