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W.P.No.30923 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2023

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P.No.30923 of 2022

and

W.M.P.No.30321 of 2022

V.Pauldas,
Advocate / Receiver,
Khan Sahib Mehdi Hussain Sahib Wakf Estate,
No.82/106, Perambur High Road Lane,
Jamalia, Chennai – 600 012.

.. Petitioner

Vs.

1.Regional Deputy Commissioner (South),
Greater Chennai Corporation,
Zone XIII, Adyar,
Chennai – 600 020.

2.The Executive Engineer,
Greater Chennai Corporation,
Zone XIII, Adyar,
Chennai – 600 020.

3.B.Vanishree

4.E.Feroz

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records



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on the file of the 1st respondent to quash the proceedings in RDC(S)/A9/919 of 2022 dated 09.10.2022.

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For Petitioner : Mr.M.L.Ganesh

For RR 1 & 2 : Mr.D.B.R.Prabhu
Standing Counsel

For R3 : Mr.S.Senthil

ORDER

(Order of the Court was delivered by V.M.VELUMANI,J.)

The petitioner has come out with the present Writ Petition to call for the proceedings of the 1st respondent dated 09.10.2022 in RDC(S)/A9/919 of 2022 and to quash the same.

2.The petitioner is Receiver appointed by this Court by the order dated 24.02.2006 in Application No.397 of 2006 in C.S.No.1306 of 1992 to maintain the property of Khan Sahib Mahdi Hussain Sahib Wakf Estate. According to petitioner, the said property belongs to one Khan Sahib Mohammed Hussain Sahib Bahadur (Deputy Collector Retired), who purchased the said property by the deed of sale dated 02.07.1920 and dedicated the said property to Khan Sahib Mahdi Hussain Sahib Wakf Estate on 06.10.1939 by the Registered Document No.1377 of 1939 on the file of the SRO, Triplicane. For more than 100 years, the



property is in possession of the said wakf and the petitioner, as Receiver appointed by this Court, is collecting rent and distributing the rent collected by him to the beneficiaries. While so, the 3rd respondent claiming her title from her grand father and patta issued by the Revenue Department, has given petition to the 1st respondent for demolition of the building. While the 1st respondent was conducting enquiry, the petitioner filed O.A.No.29 of 2022 before the Wakf Tribunal, Chennai and obtained interim injunction in I.A.Nos.163, 165 & 166 of 2022 on 01.04.2022. The 1st respondent passed the impugned order directing for demolition of superstructure of the petitioner. In such circumstances, the petitioner has come out with the present Writ Petition.

3.The learned counsel appearing for the petitioner submitted that the petitioner has produced two approved plan of the year 1986 for the building situate in the property. The 1st respondent without properly considering the documents produced by the petitioner and relying on the wrong stability report given by the Chartered Engineer, ordered demolition of the building. The 3rd respondent did not appear for enquiry. But the 1st respondent has recorded in the order as though the 3rd respondent and her Advocate appeared for the enquiry. The petitioner



obtained stability report from the Chartered Engineer stating that the building is in stable condition. The learned counsel appearing for the petitioner referred to the Chartered Engineer's Report dated 22.10.2022, two approved plan and stability report of the Chartered Engineer filed in the typed set of papers and prayed for allowing the Writ Petition.

4.Mr.D.B.R.Prabhu, learned Standing Counsel appearing for respondents 1 & 2 submitted that the 1st respondent has conducted enquiry properly in the presence of petitioner as well as 3rd respondent and her Advocate and considering the documents produced by the petitioner as well as the report produced by the Executive Engineer, has passed the impugned order by giving reason. The petitioner has not made out any case for setting aside the impugned order and prayed for dismissal of the Writ Petition.

5.Heard the learned counsel appearing for the petitioner, learned Standing Counsel appearing for respondents 1 & 2 and the learned counsel appearing for the 3rd respondent and perused the entire materials on record.



6.From the above submissions, it is seen that it is the grievance of the petitioner that the 1st respondent has not considered the two approved plan produced by the petitioner properly and that the report of the Executive Engineer relied on by the 1st respondent is not correct and has filed the report of the Chartered Engineer before this Court.

7.Considering the fact that the petitioner claims that property belongs to Khan Sahib Mahdi Hussain Sahib Wakf for more than 100 years, appointment of petitioner as Receiver by this Court by the order dated 24.02.2006 in Application No.397 of 2006 in C.S.No.1306 of 1992 and O.A.No.29 of 2022 filed by the petitioner before the Wakf Tribunal, Chennai, the impugned order dated 09.10.2022 passed by the 1st respondent is set aside and the matter is remanded back to the 1st respondent for fresh consideration. The 1st respondent is directed to give opportunity to the petitioner and respondents 3 & 4 to let in evidence with regard to approval of the building based on which superstructure was put up and let in evidence with regard to stability of the building. The 1st respondent is directed to permit the petitioner and respondents 3 & 4 to file all the documents and let in evidence and considering the oral and documentary evidence, pass orders on merits and in accordance with



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law. Till such time, the respondents 1 & 2 are restrained from taking any coercive steps against the petitioner.

8. Accordingly, the Writ Petition is allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

(V.M.V., J) (R.H., J)
09.01.2023

krk

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

1. Regional Deputy Commissioner (South),
Greater Chennai Corporation,
Zone XIII, Adyar,
Chennai – 600 020.

2. The Executive Engineer,
Greater Chennai Corporation,
Zone XIII, Adyar,
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V.M.VELUMANI, J.
and

R.HEMALATHA, J.

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