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W.P.No.32999 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P.No.32999 of 2022
and
W.M.P.Nos.32399 & 32400 of 2022

1.S.Raju
2.R.A.Aishwarya
3.R.A.Aravind

... Petitioners

Vs.

- 1.The Sub-Registrar,
SRO Pallavaram,
2nd Main Road, New Colony,
Chrompet, Chennai – 600 044.
- 2.The District Registrar (Chennai South)
District Registrar's Office,
Jennis Road, Saidapet,
Chennai – 600 015.
- 3.The Inspector General of Registration, Tamil Nadu,
Saidapet, Chennai – 600 015.
- 4.Tamil Nadu Waqf Board,
Chief Executive Officer,
No.1, JaffarSyrang Street,
VallalSeethakathi Nagar,
Chennai – 600 001.



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5. The State of Tamil Nadu,
Represented by its Secretary to Government,
Registration Department,
Secretariat, Fort St. George,
Chennai – 600 009.

... 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 1st respondent pertaining to letter dated 04.11.2022 in Na.Ka.No.799/2022 and the records of the 4th respondent pertaining to letter dated 14.07.2022 in Rc.No.786/2022/B4/CGT and quash the same and consequently direct the 1st respondent to assign the guideline value for the petitioner's property comprised in Plot No.65, Kamaraj Nagar 3rd Street, No.158, Jameen Pallavaram Village, Chennai-600 068, comprised in Old Survey No.334/1, New Survey No.334/1A1J Ward No.B, Block No.27, T.S.No.36, Chennai District, admeasuring 3400 sq.ft., in accordance with law.

For Petitioners	: Mr.Richardson Wilson for M/s.P.Wilson Associates
For R1 to R3 & R5	: Mr.D.Ravichander Special Government Pleader
For R4	: Mr.S.Haja Mohideen Gisthi



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ORDER

The order impugned dated 04.11.2022 issued to the writ petitioner by Sub-Registrar about the objection raised by the Chief Executive Officer of Tamil Nadu Waqf Board, is under challenge in the present writ petition.

2.The writ petitioners state that they are the absolute owners of the property more fully described in the present writ petition. The petitioners have proposed to know about the guideline value of the property and the indication shown in the office of the Sub-Registrar caused certain doubt and therefore, the petitioners again approached the Sub-Registrar to know about the status of the property belonging to the writ petitioners. The Sub-Registrar informed the petitioners that the Tamil Nadu Waqf Board raised an objection with reference to the subject property and therefore, the Sub-Registrar cannot register any document in respect of the subject property. The Sub-Registrar issued a communication to the petitioners stating that there is an objection raised by the Tamil Nadu Waqf Board for the purpose of dealing with the subject property and therefore, no document will be

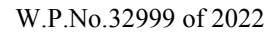


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registered in view of Section 22-A of the Registration Act, 1908. Based on the said information letter provided to the writ petitioners, the present writ petition has been filed.

3.Learned counsel for the petitioners mainly contended that, under Section 5 of the Waqf Act, 1995, the publication of list is mandatory, and Sub-Section (2) of Section 5 indicates that *“the Board shall examine the report forwarded to it under sub-section (1) and forward it back to the Government within a period of six months for publication in the Official Gazette a list of Sunni wakf or Shia wakf in the State, whether in existence at the commencement of this Act or coming into existence thereafter, to which the report relates, and containing such other particulars as may be prescribed”*. Section 40 of the Waqf Act denotes decision if a property is a waqf property. In the present case, the procedure as contemplated under Section 5 and Section 40 has not been followed by the Waqf Board and therefore, any such objection is not binding on the writ petitioners and thus, the letter issued by the Sub-Registrar is liable to be set aside.

4.In support of the said contention, the learned counsel for the



“142. Thus, we find that the power of the Board to investigate and determine the nature and extent of Wakf is not purely an administrative function. Such power has to be read along with Section 40 of the Act which enjoins “a Wakf Board to collect information regarding any property which it has reason to believe to be wakf property and to decide the question about the nature of the property after making such inquiry as it may deem fit.” The power to determine under Section 32(2)(n) is the source of power but the manner of exercising that power is contemplated under Section 40 of the 1995 Act. An inquiry is required to be conducted if a Board on the basis of information collected finds that the property in question is a wakf property. An order passed thereon is subject to appeal before the Wakf Tribunal, after an inquiry required is conducted in terms of sub-section (1) of Section 40. Therefore, there cannot be any unilateral decision without recording any reason that how and why the property is included as a wakf property. The finding of the Wakf Board is final, subject to the right of appeal under sub-section (2). Thus, any decision of the



Board is required to be as a reasoned order which could be tested in appeal before the Wakf Tribunal.

143. Therefore, the Wakf Board has power to determine the nature of the property as wakf under Section 32(2)(n) but after complying with the procedure prescribed as contained in Section 40. Such procedure categorically prescribes an inquiry to be conducted. The conduct of inquiry pre-supposes compliance of the principles of natural justice so as to give opportunity of hearing to the affected parties. The proceedings produced by the Wakf Board do not show any inquiry conducted or any notice issued to either of the affected parties. Primarily, two factors had led the Wakf Board to issue the Errata notification, that is, order of the Nazim Atiyat and the second survey report. Both may be considered as material available with the Wakf Board but in the absence of an inquiry conducted, it cannot be said to be in accordance with the procedure prescribed under Section 40 of the 1995 Act.”

5. Learned counsel appearing on behalf of the Waqf Board furnished a copy of Proforma Report, which is an extract from Bound Register, signed by Assistant Commissioner of Waqfs, Chengalpet District. Relying on the said Proforma Report, the learned counsel for the Waqf Board contended



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that the procedures as contemplated were followed and the objection letter was given by the Waqf Board to the Sub-Registrar under Section 22-A of the Registration Act, and therefore, the petitioners have no right, whatsoever, in respect of the subject property.

6.The learned counsel for the Waqf Board has now presented a copy of the Proforma Report showing that the subject property is belonging to the Waqf. Thus, it is for the petitioners to establish their title and ownership in the manner known to law before the appropriate forum.

7.The Power of Judicial Review of the High Court under Article 226 of the Constitution cannot be expanded for the purpose of adjudication of the disputes of civil nature. All such disputes are to be resolved based on the documents and evidences available on record and before the Competent Forum. Merely drawing an inference based on the revenue documents, title cannot be settled and in the event of passing any such order, it would cause prejudice on either of the parties.

8.This Court cannot conduct a roving enquiry in respect of such



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controversies or discrepancies in the matter of property disputes. Therefore, the petitioners, if at all aggrieved, have to approach the Competent Forum.

9.As far as the powers of the Registering Authority under Section 22-A is concerned, the Registering Authority has acted in consonance with the provisions of the Act and based on the objections raised by the Wakf Board. Once the objections are filed by the Religious Institutions and/or by the Tamil Nadu Wakf Board, the Registering Authority has no objection. Since the language of the word used in the Section 22-A is 'shall', the Registering Authority has no power of adjudication on these disputed issues of civil nature. Therefore, they acted in accordance with Section 22-A of the Act and if the parties are claiming any right, they have to establish their case before the Competent Forum. Thus, this Court do not find any infirmity in respect of the stand taken by the Registering Authority based on the objection submitted by the Tamil Nadu Wakf Board. The petitioners are at liberty to approach the appropriate Forum.

10.It is brought to the notice of this Court that, under Section 83 (1) of the Wakf Act, 1995, the Tribunal has already been constituted and



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enumerates that “*The State Government shall, by Notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a Wakf or Wakf property under this Act and define the local limits and jurisdiction of such Tribunals*”.

11.The scope of Section 83 (1) has been elaborately discussed by the Apex Court in the case of ***Rashid Wali Beg vs. Farid Pindari [(2022) 4 SCC 414]***. Section 83 (7) in unambiguous terms stipulates that “*the decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by the Civil Court*”.

12.As far as the judgment relied upon by the learned counsel for the petitioners is concerned, that is not relating to the registration of a document or under the provisions of the Registration Act. The limited powers conferred on the Registering Authority is to refuse registration in the event of any objection submitted by any authority under Section 22-A of the Registration Act. The Registering Authority is incompetent to conduct an



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enquiry or adjudicate the disputed issues regarding title, ownership or otherwise. Therefore, the petitioners cannot seek any relief against the Sub-Registrar, who is the Registering Authority, with reference to the objection raised by the Tamil Nadu Waqf Board. The right of title is to be proved independently before the competent forum. Therefore, the action initiated by the Sub-Registrar/Registering Authority in consonance with Section 22-A of the Registration Act cannot be found fault with and in fact, is in consonance with the spirit of Section 22-A of the Act.

13.This being the factum, the petitioners are at liberty to approach the competent forum for the purpose of proving their title or ownership. In the event of approaching any such forum, the period during which the present writ petition was pending before this Court is to be taken into consideration for the purpose of condoning the delay, if any.

14.With this liberty, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
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Speaking order / Nonspeaking order

To

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S.M. SUBRAMANIAM, J.

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