



W.P(MD).Nos.2077 and 2079 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **16.10.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

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Ilayangudi Muslim Educational Association,  
A company registered under the Companies Act, 1913,  
Reg.No.G.O.Ms.No.4709, dated 03.10.1947,  
Represented by its Secretary,  
Sivagangai Road, Ilayangudi,  
Sivagangai District-630 072.

... Petitioner in both cases

Vs.

1.The State of Tamil Nadu,  
Rep.by its Secretary to Government,  
Backward, Most Backward and  
Minority Development Department,  
St.Fort George, Chennai-600 009.

2.The Tamil Nadu Wakf Board,  
Represented by its Special Officer,  
No.1, Jaffer Sarang Street,  
Seethakathi Nagar, Chennai-600 001.

3.The Chief Executive Officer,  
Tamil Nadu Wakf Board,  
No.1, Jaffer Sarang Street,  
Seethakathi Nagar,  
Chennai-600 001.

...Respondents in both cases



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**PRAYER in W.P(MD).No.2077 of 2019 :** Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Declaration, to declare that the land measuring an extent of 9.96 acres measuring an extent of 9.96 acres comprised in Survey No.59/1A and 4.45 acres comprised in Survey No.60/1B situated at South Illayangudi Village, Sivagangai District, as the property of the petitioner.

**PRAYER in W.P(MD).No.2079 of 2019 :** Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent having ref.Supplement to Part II, The Fort St.George Gazette-16B, dated 22.04.1959 and quash the same insofar as the petitioner's land measuring an extent of 9.96 acres comprised in Survey No.59/1A and 4.45 acres comprised in Survey No.60/1B situated at South Illayangudi Village, Sivagangai District.

For Petitioner : Mr.T.Selvan

For Respondents : Mr.M.Sarangan  
Additional Government Pleader  
for R1  
Mr.N.Mohideen Basha  
Standing Counsel for R2 and R3



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**COMMON ORDER**

These Writ Petitions are filed by Ilayangudi Muslim Educational Association as against the Gazette Notification dated 22.04.1959 and for a declaration to declare the lands in Survey No.59/1A measuring an extent of 9.96 acres and Survey No.60/1B measuring an extent of 4.45 acres situated at South Illayangudi Village, Sivagangai District as the properties of the petitioner.

2. The learned counsel appearing for the petitioner, by relying on a deed of Cowle executed by Sivaganga Samasthanam in favour of one K.M.N.Abdul Karim on 27.05.1947, submits that Dewan of Sivaganga Samasthanam on behalf of Zamindar of Sivaganga has executed a deed of Cowle on 27.05.1947 in favour of one K.M.N.Abdul Karim, son of Khalifa Nainamohammed, in respect of the lands in Survey No.59/1A measuring an extent of 9.96 acres and Survey No.60/1B measuring an extent of 4.45 acres for educational purpose. The conditions of the lease deed are extracted hereunder:

*8. That the lands shall be used only for the Educational purpose set out in the petition of Janab.K.M.N.Abdul Karim,*



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*and for no other purpose.*

*9.That the School buildings shall be constructed and the School opened within a period of five years from the date of grant.*

*10.That in the event of any infringement of these conditions the Semasthanam shall be at liberty to resume the grant and take possession of the lands or in the alternative collect the market value of the lands prevailing at -----Abdul Karim, N.V.Vidyanathan Iyyer, 5.-----, the time of resumption and then confirm the grant.*

3. The deed also states as follows:

*The ryot shall enjoy the land permanently at his own will and pleasure by using the same, for the construction of a High School subject to the conditions referred to in paras 8, 9, 10 and 11.*

4. The said Abdul Karim has established a School and has given the said lands to the petitioner Association by a registered Cowle dated 24.01.1952 bearing Document No.130/1952, which was duly registered in the Sub-Registrar Office, Ilyangudi. The petitioner Association has also created a Trust in the name of Ilyangudi Muslim Educational



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Association and applied for CBSE regularisation and is running a School in the said premises. Now, the petitioner has come to know about the Notification issued by the Wakf Board in the year 1959, in and by which, the said properties of this Association have been declared as Wakf properties and therefore, the petitioner has filed a writ petition in W.P(MD).No.2079 of 2020 challenging the Notification dated 22.04.1959 and prior to the said writ petition, the petitioner has filed the writ petition in W.P(MD).No.2077 of 2020 seeking a declaration to declare the lands in Survey No.59/1A measuring an extent of 9.96 acres and Survey No.60/1B measuring an extent of 4.45 acres situated at South Illayangudi Village, Sivagangai District as the properties of the petitioner.

5. The learned counsel appearing for the petitioner, by relying on the provisions under Section 4 of the Wakf Act, 1995, submits that in the event, if the respondents declare the property as wakf property, they ought to have conducted a preliminary enquiry as required under Section 4 of the said Act and shall publish the list of auqaf, as per Section 5 of the Wakf Act, 1959 and only thereafter, the Notification can be made. In



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this case, there was no survey conducted. The learned counsel has also relied on the judgment of the High Court of Andhra Pradesh in the case of ***B.Gowra Reddy vs. Government of Andhra Pradesh*** reported in ***AIR 2002 AP 313***, wherein, the High Court of Andhra Pradesh, following the judgment of the Hon'ble Supreme Court of India in the case of ***Muslim Wakfs Board, Rajasthan vs. Radha Kishan***, has held as follows:

*28. The respondents have placed before this Court, the letter of the Deputy Tahsildar dated 21-7-1967 and submitted that this report has been approved by the Survey Commissioner to the effect that the property in question was a wakf property and, therefore, it must be deemed that an enquiry was conducted by the Wakf Commissioner and such a presumption is permissible in law and that on the basis of this report of the Deputy Tahsildar, the notification was issued in 1989. Now, the question is whether the Survey Commissioner even assuming that he was appointed under the provisions of the Act, had conducted the enquiry as required under [Section 4](#) of the Act.*

*The pre-requisite for publishing the wakf is an enquiry to be conducted under [Section 4](#) of the Act and such an enquiry report has to be forwarded to the State Government, who in turn has to forward the same to the Wakf Board and the Wakf Board is required to examine the report and thereafter publish the list of wakfs in the Official Gazette. If these requirements were fulfilled, then the contention of the learned counsel for the Wakf Board and the learned*



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*Government Pleader would be sustainable. When the pre-requisite for publishing the wakf is not fulfilled, then the question would remain whether that can be challenged under [Article 226](#) of the Constitution of India or in a suit as is sought to be contended by the learned counsel for the respondents.*

*29. As held by the Supreme Court in MUSLIM WAF BOARD case (1 supra), the proceedings under [Section 4](#) of the Act are not administrative proceedings and they are quasi-judicial proceedings and there is no record to show that a notice was issued to either Mr. Rangaiah or his son Mr. Lakshmaiah at any point of time and no information is forthcoming as to what type of enquiry was conducted by the Survey Commissioner; which is required to be conducted under [Section 4](#) of the Act. Admittedly, the Survey Commissioner was vested with the powers of a civil Court while conducting the enquiry under [Section 4](#) of the Act and he has the powers to summon even the persons who are sought to be interested in the litigation. That is the reason why more importance was given to the report of the Survey Commissioner rather than the publication under [Section 5](#) of the Act as it is a consequential action pursuant to the report of the Survey Commissioner and its examination by the Wakf Board. It is not in dispute that the notification was issued in 1989, but the pre-requisite for issuing the notification is the enquiry, which is contemplated under [Section 4\(3\)](#) of the Act. The letter of the Deputy Tahsildar dated 24-7-1967 reads thus:*

*"With reference to the subject, it is to state that it has been proved beyond doubt that the property mentioned in the schedule at the margin in a wakf property pertaining to Abbas Ali Khan mosque, Meerpet, Jillalaguda, One*



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*Laxhmiah R/o Meerpet has illegally occupied over the said wakf property and enjoying the same. The said property is estimated to be more than Rs.6,000/- per acre as per the local rates. The said land may be taken under the custody of the Government and one year assignment may be arranged and legal action must be taken against the illegal occupant, which shall be beneficial."*

*30. Except the above letter, there is no other material forthcoming as to what type of enquiry was conducted. Learned Government Pleader would, however, tried to stress his argument to the extent that the survey report was prepared by the Survey Commissioner and in column 11(A)(viii) it was mentioned that during the enquiry it came to be known that at the time of Mr. Mir Abbas Ali Khan, the land was given on lease to Mr.Laxhmiah and since then he is in occupation and the lease amount was not being paid to any one. In the said column, it was also mentioned that in the Munthakab it was mentioned for the purpose of Ood-e-Gul only and there is no other document. The Survey Commissioner has recorded his findings as follows:*

*"As per the order dt.23-6-66 in file No. 841/CWV/67 S.Nos.38-131-153 M, 28 Acs. And 32 Gts. for the Mosque of Abbas Ali Khan entered in this form is wakf."*

*32. It is true that under [Section 83](#) of the Act any dispute arising out of wakf properties can be agitated only before the Tribunal constituted under the Act. But, in the instant cases, the very principal requirement of notice and conducting enquiry as envisaged under the Act are lacking. Therefore, the question of*



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*driving the petitioners to the Tribunal would not arise. Admittedly, the petitioners have made out their occupation rights from Mr. Rangaiah's possession and thereafter Mr. Lakshmaiah and they have purchased the land under registered sale deeds and that too after obtaining appropriate permission from the competent authority and it is also one of the contentions of the petitioners that they have acquired title by adverse possession. But, I am not inclined to adjudicate the same inasmuch as I am only concerned with the validity of the notification published in the Gazette on 9-2-1989. The decision referred to by the learned counsel for Wakf Board that the petitioners have to approach the Tribunal or the civil Court, as the case may be, even after the expiry of one year period after the publication of gazette notification is not applicable to the present cases, as that situation would not arise inasmuch as when the notice itself is lacking and no purpose will be served by approaching the Tribunal or civil Court. It is also to be noted that the report of the Survey Commissioner sent by the Government to the Wakf Board has no automatic acceptance. It is required to examine such report before publishing the list. This statutory obligation is also totally lacking in this case. When the violation of statutory provisions is made out, it is always open to the parties to approach this Court under [Article 226](#) of the Constitution of India. Admittedly, as can be seen from various documents filed by both the parties in these matters, nothing has been established to sustain the contention that the enquiry was conducted as required under [Section 4\(3\)](#) of the Act. In such a situation, it cannot be said that the impugned Notification is binding on the petitioners and*



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*accordingly, the petitioners are entitled to challenge the same as it is illegal and not enforceable as far as the petitioners are concerned. Accordingly, I have to reject the contention raised on behalf of the Wakf Board and also the Government in this regard.*

*33. It is also to be noted in this regard that though the Wakf Board has been contending that the property in question is a wakf property, which was notified in the Official Gazette as early as in 1989, but it is surprising to note that till today no action has been initiated either for evicting the petitioners or for recovery of possession of the wakf property and no proceedings were initiated before the Tribunal constituted under the Act. None of the revenue records even whisper about the property as belonging to Wakf Board. It appears that the Wakf Board has filed an appeal only against the order of granting occupancy rights to the petitioners, and that too after one and half decades which is pending before the appellate authority on which I am not inclined to make any comments. Under these circumstances, I have to necessarily hold that the notification published by the Wakf Board in the Gazette on 9-2-1989 is not valid and the same is not binding on the petitioners. Accordingly, it is set aside as far as the petitioners are concerned. So far as the relief for quashing the proceedings pending before the appellate authority under the Inams Abolition Act is concerned, I am not inclined to do so. It is open for the parties to agitate their respective rights before the appropriate authority.*



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6. The learned Standing Counsel appearing for the respondents 2 and 3 submits that the Notification has been made as early as in the year 1959. If any dispute is having with regard to the Notification issued by the respondents, the remedy available for the petitioner is only before the Wakf Tribunal for filing a suit and that too, within a period of one year from the date of publication of the list as contemplated under Section 6 of Wakf Act. He further submits that to circumvent the limitation, the petitioner has approached this Court by filing the present writ petitions. The learned counsel has relied on the judgment of the Hon'ble Supreme Court of India in the case of **Sayyed Ali and others vs. A.P.Wakf Board, Hyderabad and others** reported in (1998) 2 SCC 642, and the relevant portion is extracted hereunder:

*It may be stated that a wakf is a permanent dedication of property for purposes recognised by Muslim law as pious, religious, or charitable and the property having been found as wakf would always retain its character as a wakf. In other words, once a wakf always a wakf and the grant of patta in favour of Mokhasadar under the Inams Act does not in any manner, nullify the earlier dedication made of the property constituting the same as wakf.*



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7. The learned Standing counsel has also relied on the judgment of this Court in the case of ***Madarsa-E-Rasheedia vs. The Chief Executive Officer, The Tamil Nadu Wakf Board and others*** reported in ***(2019) 2 MadWN (Civil) 138*** and the relevant paragraphs are extracted hereunder:

*“10. I have perused the order and the pleadings of the parties. It is the contention of the Plaintiff that the suit property originally belong to one Ismail Hussain @ Maula Baksh Sahib and his predecessors had title over the property and the said Ismail Hussain @ Maula Baksh Sahib maintained the Gori viz., Nawab Subedhar Alikhan Tomb. Thereafter, same has been given to the Plaintiff for its maintenance in the year 1988. It is the specific contention of the defendants that though the suit property has been notified as Wakf Property in the year 1959 itself, no statutory suit has been filed as against that notification. Once the property has been declared as Wakf under Section 5 of the Wakf Act, 1995, any dispute regarding such notification, suit has to be filed within one year from the date of Gazette Notification as per Section 6 of the Wakf Act. On perusal of records it is clearly shown that no such suit has been filed. Therefore, once it is established by the Defendants that Wakf has been notified and no suit has been filed by the person*



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*who was in possession of the property questioning the declaration within the time, any claim by the subsequent persons, in my view, is not sustainable.”*

8. The judgment of the Hon'ble Supreme Court of India in the case of **Syed Zainul Abdeen vs. Rajasthan Board of Muslim Wakf** reported in **[2019 (3) TNCJ 582(SC)]** is relied upon by the learned Standing Counsel appearing for the respondents 2 and 3 and the relevant paragraphs are extracted hereunder:

*“17. The conjoint reading of the provisions of which a reference has been made clearly envisage that the survey is to be made of wakfs by the State Government through its authorised Officer, I.e., Survey Commissioner under sub-section (4) of Section 4 of the Act who could make an enquiry with the same powers as are vested in a civil Court under the code of Civil Procedure, 1908 and may submit its report under sub-section (3) of Section 4 of the Act, 1954 to the State Government. On receipt of the report under sub-section (3) of Section 4, the State Government will forward a copy of the same to the Board who may examine the report and publish it in the Official Gazette in the list of wakfs under sub-section (2) of Section 5 of the Act, 1954 and any disputes regarding wakfs, to be more specific,*



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*regarding the properties which are specified as wakf properties in the list of wakfs published in the Official Gazette under sub-section (2) of Section 5 by any person aggrieved may be challenged by way of a suit in a Court of competent jurisdiction under Section 6 of the Act and the Parliament, in its wisdom, consider it appropriate to attach finality to the list of wakfs published in the Gazette added a proviso to Section 6 which has been couched in the negative words that no suit shall be entertained after the expiry of one year from the date of publication of the list of wakfs under sub-section (2) of Section 5 of the Act, 1954.”*

9. This Court considered the rival submissions made on behalf of either side.

10. The lands in Survey Nos.59/1A and 60/1B situated at South Illayangudi Village, Sivagangai District are the properties of Sivaganga Samasthanam. Sivaganga Samasthanam has given these properties to one K.M.N.Abdul Karim, son of Khalifa Nainamohammed by way of a registered deed of Cowle on 27.05.1947 and the deed has also been made for educational purpose set out in the petition filed by the said Abdul Karim. The said Abdul Karim has executed a deed in favour of the



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petitioner Association in the year 1947. From the year 1947, the petitioner Association is holding over the property and running an Educational Institution. While so, in the year 1959, the Government has declared the said lands as wakf properties by way of Gazette Notification, dated 22.04.1959. However, it is not known as to on what basis, these lands have been declared as wakf properties in the Gazette Notification. The procedures have been contemplated for declaring the property as wakf property under Sections 4 and 5 of Wakf Act. Admittedly, it appears that no such procedures contemplated under Sections 4 and 5 of Wakf Act have been complied with. The High Court of Andhra Pradesh following the judgment of the Hon'ble Supreme Court of India has held that since the statutory obligations have not been complied with, the Court can entertain the writ petition filed under Article 226 of the Constitution of India.

11. In view of the ratio laid down by the High Court of Andhra Pradesh, this Court is inclined to set aside the Gazette Notification dated 22.04.1959 and declare the lands in Survey No.59/1A measuring an extent of 9.96 acres and Survey No.60/1B measuring an extent of 4.45



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acres situated at South Illayangudi Village, Sivagangai District as the properties of the petitioner.

12. Accordingly, these Writ Petitions are allowed. There shall be no order as to costs.

**16.10.2023**

Index: Yes/No  
Internet: Yes/No  
ssb



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**To**

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