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W.P.(MD)Nos.5602 of 2011, 1121 of 2016, 17705 of 2018 and 3322 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD)Nos.5602 of 2011, 17705 of 2018, 3322 of 2019
and W.A.(MD) No.1121 of 2016
and M.P.(MD) No.1 of 2011 in W.P.(MD) No.5602 of 2011
and W.M.P.(MD) No.2604 of 2019 in W.P.(MD) No.3322 of 2019
and C.M.P.(MD) No.6905 of 2016 in W.A.(MD) No.1121 of 2016

P.Sahul Hameed

... Petitioner in all the Writ Petitions
and appellant in the Writ Appeal

Janab Vajihudeen

... Substituted petitioner in W.P.(MD)
No.5602 of 2011 and substituted
appellant in W.A.(MD) No.1121 of
2016

(Substituted vide order of this Court
dated 21.11.2023 made in W.M.P.
(MD) No.5344 of 2023 in W.P.(MD)
No.5602 of 2011 and C.M.P. (MD)
No.6804 of 2023 in W.A.(MD) No.
1121 of 2016 by SMSJ & VLNJ)

Vs.

1.The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffar Sirang Street,
Chennai – 600 001.

2.The Tamil Nadu Wakf Board,
Rep. by its Chairman,



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No.1, Jaffar Sirang Street,
Chennai – 600 001.

... Respondents 1 and 2 in all the Writ
Petitions and the Writ Appeal

3.T.K.Hidayathullah
4.M.Mohideen

... Respondents 3 & 4 in W.P.(MD)
No.3322 of 2019

3.Kalvath Nayagam Aameenammal Alimsha
Street Kudiyuruppoor Nala Sangam,
Kadayanallur, through its President,
V.M.Abdul Ravood Nistar,
S/o.Mohammed Maideen,
1C23D1/33, Aameenammal Street,
Iqbal Nagar,
Kadayanallur – 625 751, Tenkasi Taluk,
Tirunelveli District.

4.Sheik Mohammed

... Respondents 3 & 4 in W.A.(MD)
No.1121 of 2016

(R4 impleaded vide order of this Court
dated 21.11.2023 made in C.M.P.(MD)
No.2207 of 2019 in W.A.(MD) No.1121
of 2016)

PRAYER in W.P.(MD) No.5602 of 2011: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings in RC.No.15305/77/B1/TNV dated 05.05.2011 on the file of the 1st Respondent and quash the same and further directing the 1st Respondent to initiate proceeding under Section 52 of the Wakf Act against the encroachers of the properties of Kalvath Nayagam Thaikka Wakf, Kadayanallur, Tenkasi Taluk, Tirunelveli District.



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PRAYER in W.P.(MD) No.17705 of 2018: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents to remove the encroachments found in the Kalvath Nayagam Thaikka Wakf properties situated in Kadayanallur Village by considering the petitioner's representation dated 19.03.2018.

PRAYER in W.P.(MD) No.3322 of 2019: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the proceedings in Na.Ka.No.15305/77/Aa.1/Thi.veli dated 29.01.2019 on the file of the 1st Respondent and quash the same in so far as condition imposed and the Constitution of Committee.

PRAYER in W.A.(MD) No.1121 of 2016:- Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order dated 22.12.2011 made in W.P.(MD)No. 13954 of 2010 on the file of this Court.

For Petitioner in all the : Mr.G.Prabhu Rajadurai
Writ Petitions and
appellant in the Writ
Appeal

For Respondents : Mr.G.Chandrasekar
Standing Counsel for R1 & R2 in all the
Writ Petitions and appellant in the Writ
Appeal

Mr.Jeyamohan for R3 in W.P.(MD) No.
3322 of 2019



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Mr.M.P.Senthil for R3 in W.A.(MD) No.
1121 of 2016

Mr.S.A.Ajmalkhan for R4 in W.A.(MD)
No.1121 of 2016

COMMON JUDGMENT

(Judgment of the Court was delivered by **V.LAKSHMINARAYANANM, J.**)

W.A.(MD) No.1121of 2016:

This case has a checkered history. Originally the Muthavalli sought for permission to sell the property from the Wakf Board. Permission was granted. Auction was held and the auction purchaser did not deposit the amount. Despite the same, the then Muthavalli alienated the property in favour of the third party purchaser.

2. Challenging the same, a suit was presented by the Tamil Nadu Wakf Board in O.S.No.9 of 1983 on the file of the Sub Court, Tenkasi, for recovery of possession of the properties mentioned in the plaint as 2nd Schedule and for a direction to the defendants 3 to 35 therein to put the Tamil Nadu Wakf Board in possession of the scheduled properties. The same was dismissed.



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3. Feeling aggrieved, the Tamil Nadu Wakf Board filed appeal before this Court in A.S.No.216 of 1997. By a judgment and decree dated 15.02.1995, the First Appeal was allowed and the suit was decreed as prayed for with costs. In order to execute the decree, the Tamil Nadu Wakf Board filed E.P.No.43 of 2004 on the file of the Sub Court, Tenkasi.

4. Pending the Execution Petition, the Judgment Debtors moved the Tamil Nadu Wakf Board offering alternate property and sought for release of the said property from the Execution Petition. Accepting the same, the Tamil Nadu Wakf Board, which was the decree holder, withdrew the Execution Petition and accepted the alternate property. This was on the basis of the resolution of the Wakf Board in Na.Ka.No.15305/77-A12, Tirunelveli, dated 04.08.2010. Challenging the same, the present Writ Petition came to be filed.

5. Learned counsel for the appellant argued that the value of the property, which has been given in exchange, is of the very low and the property which had been given as an alternate property does not belong to the person who offered it.



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6. Learned Single Judge considered both the facts and came to the conclusion that it is up to the decree holder to settle the matter with the judgment debtor. He also found that the writ appellant despite issuance of the notice prior to passing the impugned order did not participate in the same. And thirdly, most importantly, found that the Wakf Board has settled the matter taking into consideration 149 families were residing in the property, which is the subject matter of E.P.No.43 of 2004 on the file of Sub Court, Tenkasi.

7. Learned counsel for the appellant urged the very same submission, he has made before the learned Single Judge.

8. It is not in dispute, as is clear from the writ affidavit, that prior to the enquiry, the writ appellant was issued notice, calling upon him to appear before the Wakf Board in order to decide this issue. The writ appellant did not appear on the date of hearing viz., 04.08.2010, despite being put on notice as early as on 26.07.2010. Therefore, the first ground of violation of principles of natural justice fails.



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9. Insofar as the second ground is concerned, the suit had not been initiated by the writ appellant but had been instituted by the Tamil Nadu Wakf Board. As against the dismissal of the suit, the writ appellant did not prefer any appeal, which he could have as a Muthavalli, after taking leave of the Court. Even at that stage, he did not feel aggrieved over the decree that had been passed against the Wakf. Instead, it was the Wakf Board, which had preferred appeal in A.S.No. 216 of 1987 and succeeded in getting the appeal allowed and obtaining a decree in its favour on 15.02.1995. The Code of Civil Procedure permits a compromise between the decree holder and judgment debtor. Prior to the compromise, a Resolution of the Wakf Board is necessary and that Resolution was also passed and acted upon. In this sense, the Wakf Board had received alternate property and had given up its claim insofar as the suit scheduled mentioned properties are concerned.

10. The Wakf Board is the authority to decide what is to be done in the interest of the Wakf and it is not for this Court, except in abnormal circumstances, to interfere with the subjective satisfaction of the Wakf Board which has been arrived at on the basis of the objective material available before it. The decree holder and judgment debtors having settled the matter on certain terms, which are



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not shockingly unconscionable, but on a consideration that alternative properties must be given to the Wakf Board and that had been offered and accepted. We do not feel that the writ petitioner, who had been standing by from 1987 till the compromise was arrived at, should be permitted to impugn the same. We do not find any error in the order of the learned Single Judge. Since, the curtains having been drawn after a long drawn litigation running into four decades, it would be unfair to reopen the same.

9. Learned counsel for the judgment debtors before us undertakes that the sale deed which had to be executed pursuant to the impugned resolution will be executed within a period of eight weeks from the date of receipt of a copy of this order. His undertaking is recorded.

10. In the light of the above, the Writ Appeal is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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11. Since the Writ Appeal in W.A.(MD) No.1121 of 2016 is dismissed,



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the W.P.(MD)Nos.5602 of 2011, 17705 of 2018, 3322 of 2019 are consequently,
dismissed. Consequently, connected Miscellaneous Petitions are closed.

**(S.M.S., J.) & (V.L.N., J.)
21.11.2023**

NCC : Yes / No
Index : Yes / No
SJ



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AND

V.LAKSHMINARAYANAN, J.

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