



C.R.P.(MD)No.2823 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: **17.08.2023**

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD)No.2823 of 2018

and

C.M.P.(MD)No.12259 of 2018

1.Ithikathu Muslim Valibar Sangam,

Represented Through its President

M.Abdul Nabilk,

Perungulam,

Ramanathapuram Taluk,

Ramanathapuram District.

2.E.Bazeer Khan

3.Nihamathu Nisha

4.Mohammed Ali

... Petitioners / Petitioners

Vs.

1.Tamil Nadu Waqf Board,

Through its Chief Executive Officer,

No.1, Jaber Siraj Street,

Vallal Seethakathi Nagar,

Chennai -1.

2.The District Collector,

Ramanathapuram District,

Ramanathapuram.



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3.Perungulam Muslim Jamath Pallivasal

Through its present President

Mohammed Ismail,

Perungulam Village,

Ramanathapuram Taluk,

Ramanathapuram District.

4.Sathathullah

...Respondents/Respondents 1 to 3/

& Petitioner No.4

(Respondent No.4/Petitioner No.4 arrayed as respondent

since he has gone to Malaysia and could not join as a

petitioner in this Revision)

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India r/w. Section 83 (9) of the Waqf Act, 1995, against the fair and decretal order, dated 09.08.2018, passed in W.O.P.No.1 of 2011, on the file of the Subordinate Judge, Ramanathapuram.

For Petitioners : Mr.V.Meenakshisundaram
for Mr.D.Nallathambi

For Respondents : Mr.Janab.M.Mohideen for R1
: Mr.Senthil Ayyanar

Government Advocate for R2

ORDER

The instant Civil Revision Petition has been filed against the order, dated 09.08.2018, passed in W.O.P.No.1 of 2011, on the file of the Subordinate Judge, Ramanathapuram.



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2. The revision petitioners herein are the petitioners, the respondents 1 to 3 herein are the respondents and the fourth respondent herein is the fourth petitioner before the Court below.

3. According to the petitioners, the first petitioner - Ithikathu Muslim Nala Sangam, is a registered Society. It is the further submission of the petitioners that the petition mentioned properties were originally belonged to one Fakkir Rowther, and that he was in actual physical possession and enjoyment of the property, by having Patta No.4. After his demise, the properties were devolved upon his daughter – Subuhana Beevi. After she became the owner of the property, she executed two gift settlement deeds, dated 29.10.1980 and on 17.11.1982, in favour of the Governor of Tamil Nadu, for construction of quarters for revenue inspectors, and for the Primary Health Centre. Subsequent to the above two transfers, the said Subuhana Beevi has orally gifted the remaining property in favour of the first petitioner and also handed over the possession to them. In pursuance there of, the first petitioner has leased out the portion of the property to M/s.Indian Overseas Bank, and for Telephone Exchange, and also for fish market. While this being so, during the



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Updating Register Scheme, Patta in respect of the petition mentioned property, was mistakenly issued in the name of the third respondent, namely, Perungulam Muslim Jamath Pallivasal. According to the petitioners, the third respondent has no semblances of right for the petition mentioned property. In order to fulfil the object of the first petitioner Sangam, they have divided the petition mentioned property into plots and sold the same to the petitioners 2 to 5. The petitioners would further submit that one Mohammed Asraf Ali filed W.O.P.No.2 of 2009, against the first and second petitioner and the President of the first and third respondent herein and two others. In pursuance to the explanation given by the third respondent, to the notice, dated 07.07.2010 the first respondent passed an impugned order, dated 02.02.2011, directing the second respondent to recover the Waqf properties and hand over the same to the Waqf Board. It is the categorical submission of the petitioner that the petition mentioned properties are not Waqf properties. Therefore, the petitioner prayed to allow the petition.

4. By refuting the above contention, the first respondent has filed a counter statement, saying that the third respondent is a Sunni Waqf



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registered with the Waqf Board, and that the Waqf was administered by a Committee consisting of office bearers, who were elected once in three years. It is the further submission that, in view of many complaints received by the first respondent, against the Management of the Jamath, the first respondent directed the Waqf Inspector of Ramanathapuram to make an enquiry and to submit report. In pursuance of the inspection, it comes to light to the first respondent that the petitioners have encumbered the suit property. Hence, they issued impugned notice, dated 02.02.2011. It is also the submission of the first respondent that the Fakkir Rowther is not the owner of the property, and that he was only managing the property as Mutawalli of Perungulam Jamath. It is also submitted that Mrs.Subuhana Beevi is not the daughter of Fakkir Mohamed. The first respondent would further submit that since the first petitioner Society was registered only during 2010, the question of receiving oral gift, on 02.12.1982 is illogical and could not be believed. It is also the submission of the first respondent that once the property is Waqf always the same is Waqf and cannot be alienated.



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5. Before the trial Court, the petitioner has examined one witness as P.W.1 and marked 18 documents as Ex.P1 to Ex.P18. On the side of the respondents, one witness was examined as R.W.1 and 8 documents were marked as Ex.R1 to Ex.R8.

6. After considering the pleadings, evidence and materials on record, the Court below has disbelieved the case of the petitioners and has ultimately dismissed the original petition.

7. Aggrieved with the order of the Court below, the petitioners have come forward with the instant Civil Revision Petition.

8. The learned counsel for the petitioners would contend that the first respondent has not issued notice to the petitioner under Section 52(1) of the Waqf Act (Herein after called “the Act”). Therefore, would contend that the very impugned notice is liable to be set aside. It is also the submission of the learned counsel for the petitioners, that when earlier gift deed executed in the name of the Governor of Tamil Nadu is not challenged, the very challenge in respect of alienation made by the first



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petitioner is not maintainable and hit by the principles of estoppel. The learned counsel for the petitioners would also submit that the impugned notice was not served upon the subsequent purchasers, therefore, the very proceedings is contrary to the principles of natural justice. Hence, the learned counsel for the petitioners prayed to set aside the impugned order and praying this Court to remit the matter before the first respondent for fresh disposal according to law.

9. Per contra, the learned counsel for the first respondent would invite the attention of this Court in respect of Ex.R1 – Proforma, and would submit that even during 1955, the suit schedule property was classified as Waqf property, and that if at all any one had any objection, they could have very well challenged the same before the appropriate authority. Having permitted such Proforma, since 30.09.1956, it is too late, for the petitioners to contend contra to the proforma-Ex.R1. The learned counsel for the first respondent would also submit that, there is no proof that the Fakkir Rowther was the owner of the property and that the Subuhana Beevi is his daughter, and that the property was orally gifted to the first petitioner herein. The learned counsel for the first respondent would rely upon the



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judgment of the Hon'ble Supreme Court reported in **2019-3-T.N.C.J.-582 (SC) (Syed Zainul Abdeen V. Rajasthan Board of Muslim Waqf)**, and another judgment of this Court reported in **2019-2-MadWN(Civil)138 (Madras.E.Rasheedia V. The Chief Executive Officer, the Tamil Nadu Waqf Board)**

10. I have given my anxious consideration to the either side submission.

11. While perusing the records, the first respondent has submitted the proforma – Ex.R1, dated 30.09.1956 of "Muslim Jamath Pallivasal" Perunkulam issued by the Assistant Commissioner of Waqf. According to the said proforma, the property was classified as Waqf property. As per Waqf Act, if any one have any issue in respect of the proforma published in the Gazette, then an objection can be made under Section 6 of the Act, within a period of one year.

12. In this regard, this Court would like to discuss the judgment cited by the first respondent. The learned counsel for the first respondent



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would rely upon the judgment of the Hon'ble Supreme Court reported in **2019-3-T.N.C.J.-582 (SC) (Syed Zainul Abdeen V. Rajasthan Board of Muslim Waqf)**. The relevant portion of the judgment is as follows-

*“17. The conjoint reading of the provisions of which a reference has been made clearly envisage that the survey is to be made of Waqfs by the State Government through its authorised Officer, i.e., Survey Commissioner under subsection (4) of Section 4 of the Act who could make an inquiry with the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908, and may submit its report under subsection (3) of Section 4 of Act, 1954 to the State Government. On receipt of the report under subsection (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 Waqfs under subsection (2) of Section 5 of the Act, 1954 and any disputes regarding Waqfs, to be more specific, regarding the properties which are specified as Waqf properties in the list of Waqfs published in the Official Gazette under subsection (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 Waqfs published in the Gazette added a proviso to Section 6 which has been couched in the negative words***



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that no suit shall be entertained after the expiry of one year from the date of publication of the list of Waqfs under sub section (2) of Section 5 of Act, 1954.”

(Emphasis supplied by this Court)

13. He would also rely upon another judgment of this Court reported in ***2019-2-MadWN(Civil)138 (Madras.E.Rasheedia V. The Chief Executive Officer, the Tamil Nadu Waqf Board)***. The relevant portion of the judgment is as follows-

*“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 Waqf Property in the year 1959 itself, no statutory suit has been filed as against that notification. **Once the property has been declared as Waqf under Section 5 of the Waqf 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 Waqf Act. On perusal of records it is clearly shown that no such suit has***



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been filed. Therefore, once it is established by the Defendants that Waqf has been notified and no suit has been filed by the person 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.”

(Emphasis supplied by this Court)

14. While considering the facts of this case in the background of above ratio, from the perusal of the records, no such objection has been made against such classification of the land as Waqf. However, the contention of the petitioners is that the petition mentioned property was originally belongs to Fakkir Rowther, and that after his demise the same was devolved upon one Subuhana Beevi. But, as rightly observed by the learned trial Judge the first petitioner has not submitted any scrap of paper to prove the ownership of one Fakkir Mohamad and thereafter one Subuhana Beevi. No doubt, in between, the said Subhuna Beevi has executed certain gift settlement in favour of the Government of Tamilnadu. Therefore, the petitioners by taking advantage of the said transaction, would contend that, as long as the said transactions are not challenged, the rights of the petitioners could not be disturbed.



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15. However, while perusing the impugned order, which is marked herein as Ex.P7, the first respondent has also included the two properties which was gifted to the Government, for recovery of possession. Therefore, the Gifting of the property will in no way improve the petitioners' case.

16. It is also pertinent to mention here that, the case of the petitioners to derive the ownership over the petition mentioned property is based upon the oral gift said to have been given by one Subuhana Beevi. But, to substantiate such oral gift of the year 1982, there are no materials, such as revenue records, and other documents produced before this Court. However, he would contend that, as the owner of the property, they have leased out the suit schedule properties to Bank, Telephone Exchange and to fish market. However, even to prove such lease, the petitioners did not produce any documents.

17. At this juncture, it is relevant to mention that, even the lease deed - Ex.R4 to Ex.R7 which stands in the name of Indian Overseas Bank,



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is between the President of M/s.Perungulam Muslim Jamath Nala Sangam, and the Bank and not by the petitioner. More curiously, in Ex.R5-lease deed, one Katti Mohamed, S/o. Mohamed Ali, has affixed signature on 21.01.2000. More pertinently and surprisingly the very same Katti Mohamed, during 2001, as the President of the first petitioner has executed the sale deed alleging that the property belonged to the first petitioner. The very conduct of the first petitioner would manifestly project the fallacy and dichotomy. Therefore, as rightly observed by the learned trial Judge, the petitioners have not substantiated their right, title over the schedule mentioned property.

18. However, the first respondent has succinctly, established the dedication of Waqf over the schedule mentioned property by producing Ex.R1 and the lease deeds Ex.R4 to Ex.R7. However, the petitioners have taken a vain attempt by referring revenue records viz., Ex.P13, P14, P15, and would contend that the respective purchasers name find a place, and that through same they could derive their title over the property.



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19. On close scrutiny of those documents, the Adangal was issued for the Fasli year 1425, in respect of the property comprised in Survey No. 65/1A1A, 65/15 and 65/27 in the name of the first petitioner / Society. But the corresponding Gregorian Calendar Year for the Fasli Year 1425 is 2015. Whereas, the instant petition was instituted prior to the date of Adangal, during 2011. Therefore, it is highly unsafe to rely upon those documents, that too when Ex.R1 is in existence. Therefore, as rightly observed by the learned trial Judge, even the case of oral gift is far from truth and the same is liable to be rejected.

20. As a last straw, the learned counsel for the petitioners would contend before this Court that, prior to issuing the impugned notice, no individual notice was issued to the petitioners, so as to submit their explanations before the Waqf Board as contemplated under Section 52(1) of the Act. Hence, the learned counsel for the petitioners prays that, to meet the ends of justice, after setting aside the impugned order prayed to remit back the case before the first respondent to decide the issue afresh according to law. But, this Court respectfully disagree with the arguments



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of the learned counsel of the petitioners, in view of Section 52 of the Waqf Act.

21. At this juncture, this Court deems it appropriate to extract Section 52 (1) of the Waqf Act, which reads as follows:

“52. Recovery of Waqf property transferred in contravention of Section 51- (1) If the Board is satisfied, after making any inquiry in such manner as may be prescribed, that any immovable property of a Waqf entered as such in the register of Waqf maintained under section 36, has been transferred without the previous sanction of the Board in contravention of the provisions of section 51, it may send a requisition to the Collector within whose jurisdiction the property is situate to obtain and deliver possession of the property to it.”

22. The plain reading of the Section 52(1) of the Act, provides “enquiry in such a manner as may be prescribed” under the Act. The enquiry has been provided under Chapter II of the Waqf Act with a heading Survey Of Auqafs. The chapter II provides a preliminary survey followed with the publication of the list of Auqafs, and dispute regarding Auqafs under Section 4 to 6 of the Waqf Act.



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23. According to Section 6, if there is any dispute in respect of classification of the property as the Waqf property, the same needs to be agitated within a period of one year by filing a suit. Therefore, here, the procedure mandated under Section 52(1) has been done as early as during 1955. Therefore, the petitioners at this stage cannot expect the notice from the first respondent.

24. Therefore, this Court is of the firm view that there are no ground made out to interfere with the well considered order of the Court below. In the result, the instant Civil Revision Petition is **dismissed**. There is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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NCC : Yes/No
Index : Yes/No
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To

- 1.The Subordinate Judge,
Ramanathapuram.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN.,J.

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Order made in
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