



W.P.(MD).No.23158 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 27.09.2023

PRONOUNCED ON : 16.11.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.23158 of 2023

and

W.M.P.(MD)No.19359 of 2023

M.Prabhu

.....Petitioner

.Vs.

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

2.The Superintendent of Wakf,
Trichy Circle,
Office of the Superintendent of Wakf,
No.8/124, Quide Milleth Road,
Palakkarai, Trichy-620 008.

3.The Sub-Registrar,
Tiruverumbur Sub-Registrar Office,
4th Street, Vin Nagar Main Street,
Vin Nagar, Kattur,
Tiruchirappalli.

....Respondents



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PRAYER: This Writ Petition is filed for Writ Of Certiorarified Mandamus, to call for the records relating to the impugned proceedings of the 3rd respondent in refusal check slip dated 15.09.2023 in RFL/Thiruvarambur/162/2023 and quash the same and further directing the 3rd respondent to entertain the sale deed dated 19.05.2023 for registration and consequently to register and release the same.

For Petitioner : Mr.M.P.Senthil

For R-1 & R-2 : Mr.S.A.Ajmal Khan,
Standing Counsel

For R-3 : Mr.A.K.Manikkam,
Special Government Pleader

ORDER

This Writ Petition is filed for Writ of Certiorarified Mandamus, to quash the impugned proceedings dated 15.09.2023 and further directing the 3rd respondent to entertain the sale deed dated 19.05.2023 for registration and consequently to register and release the same.

2. The brief facts are that some vast extent of properties at various villages, Thiruverumbur Taluk, Tiruchirappalli District originally belonged to one N.M.Kajamian Rowther, son of N.Mohammed Mian Rowther. One such properties is also comprised in R.S.No.197, Keezhakurichi Village, Thiruverumbur Taluk, Tiruchirappalli District. The said Kajamian Rowther



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created a private wakf (Wakfnama) namely, Wakf-al-Aulad on 29.05.1946. The legal heirs of Kajamian Rowther being the Mutavallies of the wakf moved an application before the Tamil Nadu Wakf Board, in order to release the properties by holding three properties alone for the said wakf.

3. The main contention in the said application is that the beneficiaries have increased, however the income remains the same and consequently the beneficiaries are not able to maintain themselves. Further, the object of the Waqf has been defeated and there is no purpose in perpetuating the Wakq character of the properties. The Wakf Board after hearing the submissions of more than 150 beneficiaries, vide order, dated 21.06.1986, concluded to release the properties except holding three properties with certain conditions. Pursuant to the order, the Muthavalli complied with the conditions made therein and finally vide order, dated 24.08.1986 allowed the petition. Based on the order only three properties namely (i) Bungalow in Abhishagapuram, (ii) Three shops in Abhishagapuram (iii) Land and building in Thiruvettiur High Road, Tondiarpet, Madras are retained as Wakf properties and the other properties were released. The properties mentioned in the present writ petition in Survey No. 197 was released from the purview of the wakf in favour of the descendants of the late N.M.Khaja Mian Rowther. Subsequently, after various transactions by way of sale to third parties finally the properties in Survey No.197/112



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measuring an extent of 1 acre 21 $\frac{3}{4}$ cents, Survey No.197/II6 measuring an extent of 8 $\frac{1}{4}$ cents and Survey No.197/II1 measuring an extent of 29 $\frac{1}{2}$ cents totally measuring an extent of 1 acre 59 $\frac{1}{2}$ cents was purchased by one M.Senthilkumar from one J.S.Leyrronne Morais through a registered sale deed dated 30.04.2015 in Doc.No.2248/2015. After the said purchase of the said properties, the said M.Senthilkumar sold the aforesaid properties to one D.Veeraskathi representing Neomax Properties Pvt. Ltd., by way of a registered sale deed dated 12.01.2016 in Doc.No.134/2016.

4. Thereafter the said Neomax Properties Pvt. Ltd., sold the said lands to Sebco Property Private Limited represented by J.S.Leyrronne Morais under a registered sale deed dated 31.03.2016 in Doc.No.1789/2016. The said Sebco Private Limited had acquired nearby various other properties and formed a layout namely, “Morais City Extension-I”. The said J.S.Leyrronne Morais sold Plot No.703 measuring an extent of 3500 square feet in Survey No.197/II2 on 26.11.2020 and the same was registered in Doc.No.5933/2020. Subsequently in order to meet the marriage expenses of the petitioner's daughter, the petitioner had decided to sell the western portion of the above plot through sale deed dated 15.09.2023. The said document was presented for registration before the third respondent but the third respondent issued refusal check slip dated 15.09.2023 stating that W.P.(MD)No.15478 of 2023 is pending and hence the



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third respondent was not be in a position to complete the registration formalities.

5. The contention of the petitioner is that inspite of various proceedings releasing the said property from the character of Wakf, the registering authorities were insisting for production of NOC from the Wakf Board. In view of the same, many land owners made representation to the Wakf Superintendent to issue NOC in respect of the properties. The Wakf inspector also has recommended to the first respondent to consider for issuance of NOC by relying upon the proceedings of the Wakf Board dated 21.06.1986. Inspite of the same, there was no further action on the part of the respondents 1 & 2 as well as the wakf inspector. The petitioner states that based on the earlier order dated, 21.06.1986, the first respondent seems to have communicated vide order dated 11.08.2022 not to register the documents. In the said communication dated 11.08.2022 a list of properties is appended in the schedule and the Survey No. 197/112 also included in the list.

6. The petitioner further submitted that it is an error apparent, since the said communications is totally against and contrary to the proceedings of Wakf Board dated 21.06.1986. In the meanwhile, various purchasers have made representation, since the same not considered, various writ petitions were filed



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for directing the 1st respondent to delete the entry of the properties and consequently to issue No Objection Certificate. After considering the said writ petition, this Court directed the first respondent to consider the representations and pass orders within a stipulated period. Pursuant to the same, the first respondent, vide proceedings, dated 25.01.2023 had addressed the communication to the Inspector General of Registration, Chennai, specifically stating that except the three properties which are retained as Wakf properties, the other properties were released and the Wakf Board has no interest relating to the remaining properties as it has been already released. It seems the said proceedings dated 25.01.2023 has been challenged in W.P.(MD)No.7402 of 2023 and two more writ petitions in W.P.(MD)No. 6373 of 2023 and W.P.(MD)No.15478 of 2023. In view of the urgency, since the petitioner has arranged marriage for his daughter, presented the sale deed dated 15.09.2023 and also with the consequential direction to entertain the refusal check slip dated 15.09.2023 and register the same.

7. The learned Counsel appearing for the respondents submitted that one of the descendants of Muthavalli had filed W.P.(MD)No.7402 of 2023 and two more Writ Petitions and the same was heard by this Court and orders was reserved.



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8. Heard, Mr.M.P.Senthil, the learned Counsel appearing for the petitioners, Mr.S.A.Ajmal Khan, Standing Counsel the learned Standing Counsel appearing for the respondents 1 and 2 and Mr.A.K.Manikkam, the learned Special Government Pleader appearing for the third respondent and perused the materials available on record.

9. After hearing rival submissions from both sides, this Court has given its anxious consideration. The earlier writ petitions filed by the descendants of Muthavalli namely M.S.Mohamed Nymudeen had filed W.P.(MD)No.6373 of 2023, W.P.(MD)No.7402 of 2023 and W.P.(MD)No.15478 of 2023 batch and this Court after hearing the submissions of the Muthavalli, Wakf Board and the subsequent purchasers had passed an order dated 10.10.2023 and the relevant portion is extracted hereunder:

“13. After hearing the rival submissions and after perusing the order 21.06.1986, it is seen that except for the above said three properties, the waqf was created for the benefits of the family and the descendants of the creator of the Waqf. In such circumstances, it cannot be stated that the pious activities have been stopped. In fact, the pious and charitable activities are intact by retaining the three properties under A schedule and it is also sufficient to carry on such pious activities with the aforesaid three properties. Moreover, the order states “to release the remaining properties of the Khaja Mian Wakf Estate from the Wakf character for the absolute



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enjoyment of beneficiaries subject to the following terms and conditions” ought to be read comprehensively. When the order releases the property from wakf character, then the interpretation stated by the petitioner that the enjoyment is only a limited enjoyment and the property cannot be alienated cannot be sustained. It is also seen that the conditions prescribed thereunder; it is nothing to do with the released property. It only states that deed of declaration ought to be executed that the three properties would be used exclusively for charity. Therefore, as rightly pointed out by the Learned Senior Counsel appearing for the 3rd respondent J.S.Leyronne Morais, the property purchased by her is not wakf property. Therefore, this Court is of the considered opinion that as far as the properties in “B schedule” is concerned, the same is covered under the order dated 21.06.1986 and the properties are released from the character of wakf and the petitioner is not having any case regarding the other properties.

14. At this juncture, the learned Counsel appearing for the petitioner brought to the notice of this Court that the property earmarked for pious purpose under “A schedule”, was sold by the 4th respondent Mutawallis. For which the petitioner relied on the Property Tax Receipt No. 2018-2019/N042 /0896292 dated 29.11.2018 issued in the name of one G.Ambeermull. If the 4th respondent has sold any properties which are earmarked for pious purpose under “A schedule”, it is clear violation of order passed by the Board, dated 21.06.1986. Then, the duty is cast upon the respondents 1 and 2 to recover the said three properties and restore to the Wakf. Therefore the 1st respondent is directed to take necessary steps to conduct an enquiry, after issuing notice to the interested parties and if there is any sale regarding the said three properties, then appropriate steps shall be taken to recover the property and restore the said three properties to the wakf. The Wakf Board shall also take action against the Mutawallis who had sold the said three properties.



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15. *The learned Counsel appearing for the petitioner further submitted that even though some of the properties under the B schedule were dealt with by the 4th respondent, still there are some other properties which are not sold. Moreover, the Chief Executive Officer of Waqf Board has filed a counter affidavit in O.A.No.36 of 2021 stating that the order, dated 26.06.1986, is under reconsideration. Hence the petitioner prayed to issue direction to Wakf Board to restore the B schedule properties which are not sold. But this prayer of the petitioner is opposed by the Learned Counsel appearing for the 7th respondent in W.P.(MD)No.15478 of 2023, since the Board has passed the order after issuing notice to more than 150 Mutawallis, who were available at the time of passing the order dated 21.06.1986. In such circumstances, the Board is not having any power to recover the other properties which are released from the character of Wakf. Therefore, this Court is not inclined to issue positive direction to the Wakf Board to recover the other properties. If all the present Mutawallis and beneficiaries are inclined to retain the unencumbered properties, then may submit an application and the Wakf Board may decide the issue in accordance to law. It is made clear if the parties have acted upon the order dated 21.06.1986 and sold the properties to third parties and a third party right is created, then the same shall not be disturbed under the guise of reopening the issue.*

16. *With the above said directions, the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.”*

10. Since this Court has held that the order dated 21.06.1986 was already act upon by the beneficiaries and the Muthavallis and other persons. Moreover, when the third parties right are created, the said writ petitioner cannot seek to



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cancel the such sale deeds. Moreover, the said order dated 21.06.1986 was passed, after hearing more than 150 beneficiaries by the Wakf Board. Therefore, this Court declined to interfere in the properties which has already released. Following the said judgment there will not be any impediment for registering the sale deeds. Hence, the second respondent is directed to issue NOC within a period of one week (1) from the date of receipt of a copy of this order. The third respondent is directed to register the sale deed within a period of two weeks (2) therefrom and release the documents at the earliest.

11. With these observations and directions, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

16.11.2023

NCC : Yes/No

Index : Yes / No

Internet : Yes/ No

Sml

To

The Sub-Registrar,
Tiruverumbur Sub-Registrar Office,
4th Street, Vin Nagar Main Street,
Vin Nagar, Kattur,
Tiruchirappalli.



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S.SRIMATHY, J.

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