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W.P. No. 2878 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2024

CORAM

THE HON'BLE MR. JUSTICE V. BHAVANI SUBBAROYAN

W.P. No. 2878 of 2019

Mohaideen Abdul Khader Maraicar Trust,
Rep. by its Managing Trustee S.Abdul Gaffoor,
S/o. Sathak Thambi Maricar,
Kollar Street,
Nagore,
Nagapattinam District.

... Petitioner

-VS-

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

2. Mohamed Bathusha

3. The Revenue Divisional Officer,
Nagapattinam District.

4. The Tahsildar,
Nagapattinam District.
(R3 & R4 are impleaded vide order
dated 29.04.2024 in W.M.P. No. 13299 of 2024)

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the 1st respondent to take action under Section 54(1) of the Tamil Nadu Wakf Act, 1995 by considering the petitioner's representation dated 18.09.2018 in accordance with law within a time frame that may be fixed by this Court.



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For Petitioner : Mr. P. Sathishkumar
For Respondents : Mr. Mohammed Aseef (for R1)
Mr. A.Veerasamy (for R2)

ORDER

It is seen that the petitioner has sought for Writ of Mandamus directing the 1st respondent to take action under Section 54(1) of the Tamil Nadu Wakf Act, 1995, by considering the petitioner's representation dated 18.09.2018 in accordance with law within a time frame that may be fixed by this Court.

2. According to the petitioner, he is the Managing Trustee/Muthavalli of the petitioner Wakf/Trust, which is duly registered with the 1st respondent with Registration No. 330/2013. Most of the petitioner Trust's properties have been encroached by some third party encroachers and found to be fraudulently mutated in the name of the third parties in the revenue records. Since the petitioner Trust's properties in T.S. Nos. 1858 to 1897 in Ward No. 5, Block No. 22, Kolla Street and Main Road and Wakf lands in Thethi Village have been transferred in the name of various third parties and by misusing the official power, the 2nd respondent had mutated the same in his name and his wife's name, the petitioner had given representations to the 3rd and 4th respondents from the year 2014 along with sufficient documents to remove the encroachers



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and to cancel the fraudulent transfers in respect of the aforesaid properties. As no action was taken by the revenue authorities based on the said representations, the petitioner has filed the Writ Petition in W.P. No. 18478 of 2017 before this Court to remove the encroachers from the aforesaid properties. This Court by order dated 20.07.2017 in W.P. No. 18478 of 2017 directed the petitioner to file an appeal challenging the issuance of patta by the 4th respondent before the 3rd respondent, who in turn was directed to decide the same on merits and in accordance with law. In compliance of the said order, the petitioner preferred an appeal before the 3rd respondent on 26.09.2017.

3. According to the petitioner, the present issue is a classic example to the proverb 'fence eating the crop' as the 2nd respondent, who is working as a Member of the Wakf Tribunal in the 1st respondent office, has encroached the lands in T.S. Nos. 1889 and 1879 and S. Nos. 195(6), 302-2A and 302-2B in Thethi Village and transferred the same in his name and his wife's name Jainab Gani Mohamed Basha in the land survey records and in patta by misusing his official power. Further, the 2nd respondent has threatened the petitioner that if he tries to transfer the properties to the name of the petitioner Trust, he would be removed from the Trusteeship of the 2nd respondent and his representations would not be considered by the revenue authorities as they are under his control.



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As such, he has given representation dated 18.09.2018 and reminder dated 16.10.2018 to the 3rd and 4th respondents narrating the aforesaid facts and requested them to take action against the 2nd respondent under Section 54(1) of the Tamil Nadu Wakf Act, 1995, but it did not evoke any action from them. In such circumstances, provided with no other option, he has filed this Writ Petition for directing the 1st respondent to take action under Section 54(1) of the Tamil Nadu Wakf Act, 1995, by considering the petitioner's representation dated 18.09.2018 in accordance with law within a time frame that may be fixed by this Court.

4. The learned counsel appearing for the 1st respondent/Wakf Board submitted that the petition filed under Section 54(1) of the Tamil Nadu Wakf Act, 1995, was already considered by this authority and proper orders have passed on 29.02.2024 in Case No. PP.98/NGI/2022 by negating the claim made by the petitioner as Muthavalli and that eviction order could not be passed stating that the 2nd respondent and his wife is claiming right over the properties from the same waqf deed as one of beneficiaries of the trust and are not liable to be evicted. In that case, the rights of the parties cannot be decided as summary proceedings under the Public Premises Act, it has to be decided by the competent civil court, and the Tribunal is the competent authority under Section



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85 of the Waqf Act and it has to be decided by the Waqf Tribunal, thereby pleaded to dismiss the Writ Petition.

5. Considering the facts and circumstances of the case, it is clear that the rights of the parties cannot be decided as summary proceedings and it has to be decided by the Waqf Tribunal. It is left open to the petitioner to approach the competent authority in the manner recognized by law.

6. In the result, the Writ Petition is disposed of. No costs.

21.06.2024

Index: Yes/No

NCC: Yes/No

vjt

To

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