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WP.No.1876 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2024

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

WP.No.1876 of 2024
and W.M.P.Nos.1950 & 1952 of 2024

Abida Fathima

.. Petitioner

Versus

1.The Sub-Registrar
Triplicane, Chennai – 14

2.The District Registrar
Chennai Central, Adyar
Chennai

3.The Inspector General of Registration
Santhome High Road
Chennai – 600 028

4.Tamil Nadu Wakf Board
Rep by its Chief Executive Officer
No.1, Jaffer Syrang Street
Vallal Seethakathi Nagar
Chennai – 1

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent ending with the order dated 02.01.2024 in refusal checkslip No.RFL/Thiruvelikeni/1/2024 and quash the same and consequently direct the 1st respondent to register and release the deed of release dated 02.01.2024 to the petitioner without insisting on No Objection Certificate from the 4th respondent.



WP.No.1876 of 2024

For Petitioner : Mr.N.A.Nassir Hussain

For Respondent : Mr.Yogesh Kannadasan for R1 to R3
Special Government Pleader

Mr.Fakkir Mohideen for R4

ORDER

This writ petition has been filed challenging refusal checkslip dated 02.01.2024 issued by the first respondent, quash the same and consequently direct the 1st respondent to register and release the deed of release dated 02.01.2024 to the petitioner without insisting on No Objection Certificate from the 4th respondent.

2. It is the case of the writ petitioner the plot bearing Old Door No.38, New No.16, presently New No.33, Old No.16, Maroof Sahib Street, Mount Road, Chennai – 600 002 originally belonged to Ameerunissa Begum Sahiba Endowment Committee. When the suit was filed for ejection of tenants in O.S.No.130/1974 before the Small Causes at Madras, an application is taken by the petitioner's great grandmother namely Kursheedunissa Begum under Section 9 of the Madras City Tenants' Protection Act, 1921. The order was passed for sale of property in respect of 1188 sq.ft., Pursuant to the said order, the sale deed was executed on 26.12.1984 in favour of the petitioner's mother/grand daughter of Kursheedunissa Begum namely Surraiya Begum.



WP.No.1876 of 2024

After the death of the petitioner's mother, the petitioner was permitted for equal share in the property along with the brother namely Syed Azeem Hussainy. Thereafter, the petitioner's brother executed release deed dated 02.01.2024 in respect of his half share in favour of the petitioner. When the document was presented, the same was refused to be registered on the ground that objection has been raised by the Wakf Board and No objection certificate is required. Challenging the refusal slip, the present writ petition is filed.

3. A counter has been filed by the fourth respondent, wherein, it is the contention of the fourth respondent that as per Section 51 (1-A) of the Waqf Act, 1995 "Any sale, gift, exchange, mortgage or transfer of waqf property shall be void ab initio" Provided that in case the Board is satisfied that any waqf property may be developed for the purposes of the Act, it may, after recording reasons in writing take up the development of such property through such agency and in such manner as the Board may determine and move a resolution containing recommendation of development of such waqf property, which shall be passed by a majority of two-thirds of the the total membership of the Board. Provided further that nothing contained in this sub-section shall affect any acquisition of waqf properties for a public purpose under the Land Acquisition Act, 1894 (1 of 1894) or any other law relating to



WP.No.1876 of 2024

acquisition of land if such acquisition is made in consultation with the Board.

Similarly, as per Section 104-A of the Waqf Act, 1995, there is a Prohibition of sale, gift, exchange, mortgage or transfer of waqf property

4. Further, it is a settled position of Law that once a Waqf is created, it is always a Waqf and the nature of the property cannot be changed or altered in any manner known to law as per the verdict of the supreme Court in the case of *Sayyed Aliv V Andra Pradesh Waqf Board* reported in 1998 (1)SCR 398. It is clearly enumerated in Section 51 (1-A) and 104 A of the Waqf Act, 1995 that Waqf properties should not be alienated and it is also punishable under section 52-A of the Act. Hence, opposed the writ petition.

5. The learned counsel for the petitioner vehemently contended that the property. The property was originally governed under the Scheme of this Court. Before the amendment in the Madras City Tenants' Protection Act, 1921, there was no bar for sale of the property to the tenant under Section 9 of the Madras City Tenants' Protection Act, 1921. Whereas, in this case, the property was sold prior to the amendment brought under the Madras City Tenants' Protection Act, 1921 namely Section 3(f) under Tamil Nadu Act 2 of 1996. Therefore, the Waqf Act, 1995 cannot be applied in the case. Therefore,



WP.No.1876 of 2024

now the Waqf Board cannot claim the title over the property which has already been transferred in favour of the petitioner's great grand mother pursuant to the orders of the Court. Hence, the order of the respondent refusing to register the document cannot be sustained in the eye of law.

6. The learned Special Government Pleader for the respondents 1 to 3 would submit that it is only the dispute between the petitioner and the fourth respondent, they refused to register the release deed only on the basis of an objection raised by the fourth respondent/Waqf Board. The learned counsel for the fourth respondent would submit that the property is still Waqf property as per the Waqf Act, 1995. Section 90 of the said act stipulates in every suit, notice ought to have been given to the Waqf Board, in the absence of any notice to the Board, any sale or proceedings will be void. Further it is contention that still endowment is in the possession of the property and they are collecting the rent. Hence, seeks dismissal of this writ petition.

7. Heard both sides and perused the entire materials placed on record.

8. The judgment placed in the typedset passed by the Small Causes Court in Ejectment Suit No.126 of 1974 makes it clear that the suit has been



WP.No.1876 of 2024

filed by the Ameerunissa Begum Sahiba Endowment Committee, Rep. by its President for eviction of various tenants. The third defendant one Kursheedunissa Begum said to be the great grand mother of the petitioner was also made as a defendant. An application was filed by the third defendant was allowed by the Court on 27.02.1976 and there was a direction to sell the property which was in occupation of the tenant. Accordingly, a permission was granted for sale of property for an extent of 1188 sq.ft., fixing the value as per Section 9 of the Madras City Tenants' Protection Act, 1921. Aggrieved over the fixation of the value, the tenant had filed an appeal, the same was dismissed and the Order of the Trial Court stood confirmed. Pursuant to the same, the sale deed was executed on 26.12.1984. These facts are not disputed and clearly established on record.

9. The only contention of the respondent Wakf Board is that since the Board has not been served with any notice in the suit, the sale or proceedings in the suit shall be void as per Section 90 of the Waqf Act, 1995. It is relevant to note that the such contention has no legs to stand for the simple reason that the very Ejectment Suit is filed by the endowment. Prior to the Act 43 of 1995, the Wakf Act, 1954 was governing the field. Section 57 of the Wakf Act, 1954 deals with the Notice of suits, etc., by Courts. Section 57 of the Wakf Act,



WP.No.1876 of 2024

WEB COPY

1954 reads as follows:

"57. Notice of suits, etc., by courts. (1) In every suit or proceeding relating to a little to wakf property or the right of a mutawalli, the court shall issue notice to the Board at the cost of the party instituting such suit or proceeding.

(2) Whenever any wakf property is notified for sale in execution of a decree of a civil court or for the recovery of any revenue, cess, rates or taxes due to the Government or any local authority, notice shall be given to the Board by the court, collector or other person under whose order the sale is notified.

(3) In the absence of a notice under sub-section (1), any decree or order passed in the suit or proceeding shall be declared void, if the Board, within one month of its coming to know of such suit or proceeding, applies to the court in this behalf.

(4) In the absence of a notice under sub-section (2), the sale shall be declared void, if the Board, within one month of its coming to know of the sale, applies in this behalf to the court or other authority under whose order the sale was held."

Emphasis supplied

10. The above provision makes it clear that such sale without any notice will be void provided the Board applies to the Court within a period of one month for cancellation of the same. However, no such action whatsoever taken by the Board. It is also relevant to note that the property was under the Scheme and control of the Act. The endowment is managed by the President and other trustees and some of the trustees are also the board members. Therefore, it cannot be said that Wakf Board was not aware with regard to the sale or proceedings in respect of the property.



WP.No.1876 of 2024

11. It is also relevant to note that prior to amendment brought in Madras City Tenants' Protection Act, 1921 namely Section 3(f), the religious properties are also subject to sale under Section 9 of the Madras City Tenants' Protection Act, 1921. Further, amendment under Section 3(f) also makes it clear that the amendment will not invalidate any suit or proceedings in which the decree or order passed has been executed or satisfied in full before the amendment came into effect, i.e., 11.01.1996. Therefore, when the property is already legally transferred, merely because some of the survey numbers in the vicinity also belong to the Waqf Board, a part of the property already sold in a proceedings initiated by the endowment and which is a statutory right under Section 9 of the Madras City Tenants' Protection Act, 1921, that right cannot be divested merely neighbouring survey number is still under the control of Waqf Board.

12. Such view of the matter, now the Wakf board cannot make objection in respect of the property already being sold. It is relevant to note that the documents are placed before this Court as if the endowment is still receiving rent from the tenants. On the face of it, it appears that same has been produced only for the purpose of this case. There is no indication from whom the rent is being received, no signature whatsoever is available on the receipt.



WP.No.1876 of 2024

13. Such view of the matter, these documents cannot be given much importance at this stage particularly when proceedings are already concluded and title is already passed, pursuant to the decree and the judgment. Hence, this Court is of the view that Waqf Board has no right to object the registration of the release deed executed by one of the Co-owner.

14. Accordingly, the impugned order is set aside and there shall be a direction to the first respondent to register the release deed dated 02.01.2024 presented by the petitioner without insisting No Objection Certificate from the fourth respondent. Such exercise shall be completed within a period of one month from the date of receipt of a copy of this Order.

15. With the above direction, this writ petition is allowed. Consequently, connected miscellaneous petitions stands closed. No costs.

10.04.2024

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WEB COPY



WP.No.1876 of 2024

N. SATHISH KUMAR, J.

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