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W.P.Nos.4885, 4887 of 2004, 18341, 28623 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.04.2024

Pronounced on : 03.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.4885, 4887 of 2004 & 18341, 28623 of 2010 and
MP.No.1 of 2010

WP.No.4885 of 2004

1.E.Sundaresan(deceased)

2.S.Sankar

(LR of the deceased first petitioner substituted
as per order of the court dated 26.07.2006
in WPMP.No.44320 of 2004 in
WP.No.4885 of 2004)

... Petitioner

Vs.

- 1.Tamilnadu Wakf Board,
New No.7, Old No.4, 9th Cross Street,
Indira Nagar, Chennai 600 020
- 2.The Chief Executive Officer,
Tamilnadu Wakf Board,
New No.7, Old No.4, 9th Cross Street,
Indira Nagar, Chennai 600 020
- 3.The Superintendent of Police,
Chengalpattu(East),
St.Thomas Mount,
Chennai 600 016
- 4.N.Abdul Kareem
- 5.The Commissioner,
Villivakkam Panchayat,
Villivakkam Panchayat Union Office,
Ambattur, Chennai

... Respondents



W.P.Nos.4885, 4887 of 2004, 18341, 28623 of 2010

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari calling for all the records in relation to the letter Rc.No.17719/C1/TVLR/02 dated 29.04.2003 written by the second respondent on behalf of the first respondent to the third respondent and to quash the same.

For Petitioners : Mr.M.Venkatakrishnan

For Respondents

For R1 & 2 : Mr.Avinash Wadwani,
Standing Counsel

For R4 : Mr.N.A.Nissar Ahamed,
Senior Counsel
for Mr.I.Kowser Nissar

For R3 : Mr.T.Chandrasekaran,
Special Government Pleader

For R5 : Mr.R.Ravichandran

WP.No.28623 of 2010

E.S.A.Mohammed Ali

... Petitioner

Vs.

- 1.Tamilnadu Wakf Board,
Rep. By Chief Executive Officer,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai
2. S.Sankar
- 3.N.Abdul Kareem
- 4.The Director General of Police,
Chennai
- 5.The Inspector of Police,



W.P.Nos.4885, 4887 of 2004, 18341, 28623 of 2010

Porur, Chennai

... Respondents

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PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Mandamus directing the respondents 4 & 5 to accord police protection to the petitioner to fence the petitioner's property comprised in S.No.187/1, 187/2 and 187/3, Vanagaram Village, Porur, Chennai-116 admeasuring 51 acres and 17 cents.

For Petitioner : Mr.G.R.M.Palaniappan

For Respondents

For R1 : Mr.Avinash Wadwani,
Standing Counsel

For R2 : Mr.M.Venkatakrisnan

For R3 : Mr.N.A.Nissar Ahamed,
Senior Counsel
for Mr.I.Kowser Nissar

For R4 : Mr.T.Chandrasekaran,
Special Government Pleader

For R5 : Mr.R.Ravichandran

WP.No.4887 of 2004

1.E.Sundaresan(deceased)

2.S.Sankar

(LR of the deceased first petitioner substituted
as per order of the court dated 26.07.2006
in WPMP.No.44322 of 2004 in
WP.No.4887 of 2004)

... Petitioner

Vs.

1.Tamilnadu Wakf Board,
New No.7, Old No.4, 9th Cross Street,



W.P.Nos.4885, 4887 of 2004, 18341, 28623 of 2010

- Indira Nagar, Chennai 600 020
2.The Chief Executive Officer,
Tamilnadu Wakf Board,
New No.7, Old No.4, 9th Cross Street,
Indira Nagar, Chennai 600 020
3.The Superintendent of Police,
Chengalpattu(East),
St.Thomas Mount,
Chennai 600 016
4.N.Abdul Kareem
5.The Commissioner,
Villivakkam Panchayat,
Villivakkam Panchayat Union Office,
Ambattur, Chennai

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Mandamus directing the fifth respondent to do statutory duty of preventing constructions without any sanction being put up in the property and to take steps for illegal and unauthorised constructions that had come up.

For Petitioners : Mr.M.Venkatakrisnan

For Respondents

For R1 & 2 : Mr.Avinash Wadwani,
Standing Counsel

For R4 : Mr.N.A.Nissar Ahamed,
Senior Counsel
for Mr.I.Kowser Nissar

For R3 & 5 : Mr.T.Chandrasekaran,
Special Government Pleader

WP.No.18341 of 2010

S.Sankar

... Petitioner

Vs.

1.Tamilnadu Electricity Board,



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- Rep. By its Chairman,
Anna Salai,
Chennai 600 002
- 2.The Assistant Engineer,
Tamilnadu Electricity Board,
Se.Mi.P.Va/West,
33/11KV, Sub Power Station,
Maduravoyal,
Chennai 600 102
- 3.Tamilnadu Wakf Board,
Rep. By its Secretary,
New No.7, Old No.4, 9th Cross Street,
Indira Nagar, Chennai 600 020
- 4.Porur Sheikh Manyam Masjid E.Kairunissa Muslim Jamadh,
Rep. By its President,
Abdul Kareem,
No.3, Arunachalam Garden,
Karambakkam, Porur,
Chennai 600 116
- ... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Mandamus forbearing the first and second respondents from granting electricity service connection to Porur Sheikh Maniyam Masjid-e-Khairunnissa Muslim Jamadh Vanagaram, the 4th respondent herein comprised in survey No.187/3D2, Vanagaram Village.

For Petitioner : Mr.M.Venkatakrisnan

For Respondents

For R3 : Mr.Haja Mohideen Gisthi

For R4 : Mr.N.A.Nissar Ahamed,
Senior Counsel



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W.P.Nos.4885, 4887 of 2004, 18341, 28623 of 2010

for Mr.I.Kowser Nissar

COMMON ORDER

The writ petition in WP.No.4885 of 2004 has been filed challenging the order passed by the second respondent dated 29.04.2003 thereby requested the third respondent to stop the construction of compound wall in and around the Sheik Manyam Masjid E.Kairunnissa Muslim Jamad to be put up by the petitioner until orders passed by the first respondent in respect of the subject property; The writ petition in WP.No.4887 of 2004 has been filed seeking direction to the fifth respondent to do statutory duty of preventing constructions without any sanction in the subject property; the writ petition in WP.No.18341 of 2010 has been filed for direction forbearing the first and second respondents from granting electricity service connection to the fourth respondent; and the writ petition in WP.No. 28623 of 2010 has been filed seeking police protection to fence the petitioner's property comprised in survey No.187/1, 187/2 & 187/3 situated at Vanagaram Village, Porur, Chennai admeasuring 51 acres and 17 cents.

2. In all the writ petitions except the writ petition in



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WP.No.28623 of 2010, the petitioners are one and the same. The issue in all the writ petitions is common and as such, this Court is inclined to pass common order.

3. The land comprised in survey No.187/1, 187/2 & 187/3 situated at Vanagaram Village, Porur, Chennai admeasuring 51 acres and 17 cents was originally personal inam lands and it was gifted to one, Haji Mohammed Habibullah by the gift deed dated 23.09.1898. It was sold to one, Anniah Naidu by way of registered sale deed dated 15.03.1917. He was adjudged as insolvent and the property was vested with the Official Assignee of this Court. Subsequently, it was sold out in favour of one, Jaganathan Pillai on 01.05.1919. Once again, the said Jaganathan was also declared as insolvent and the father of the deceased petitioner in WP.No.4885 of 2004 had purchased the same by the registered sale deed dated 31.10.1935. The said property has several superstructures including one in relation to which the dispute arose that there is old dilapidated building as mosque. There was partition and the petitioner was allotted 26 acres and 17 cents comprised in survey No.187/3 and the



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petitioner's brother was allotted 24 acres comprised in survey No.187/1. In the share allotted to the petitioner, the said mosque is situated in a dilapidated structure. Accordingly, the petitioner was issued patta.

3.1 While being so, in the year 1971, a suit was filed in OS.No.674 of 1971 on the file of the District Munsif Court, Poonamallee for injunction restraining the petitioner from interfering with their worshipping the mosque. The said suit was dismissed and aggrieved by the same, an appeal was preferred in AS.No.51 of 1982 on the file of the Sub Court, Chengalpet, which was also dismissed. Thereafter, second appeal in SA.No.224 of 1984 was filed, which was allowed and set aside the order passed by the courts below. Aggrieved by the same, the petitioner preferred SLP before the Hon'ble Supreme Court of India in Civil Appeal No.5334 of 1993. Though the Hon'ble Supreme Court of India granted *status quo*, the respondents attempted to trespass into the property and claimed that the property belongs to the Jamadh. They also claimed entire property in question to the extent of 50 acres and 67 cents as belongs to the mosque and grave yard. Finally, the Hon'ble Supreme



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Court of India held that the findings of this Court was curious after reappraising the evidence in holding that the building as a mosque and that it was speculative and conjectural finding. With the said observation, the order passed by this Court was set aside. The mosque filed review before the Hon'ble Supreme Court of India. Therefore, the petitioner lodged complaint for appropriate action as against the mosque. Even then, the mosque trespassed into the property and also attempted to obtain electricity service connection. Therefore, the petitioner submitted representation to the Electricity Department not to provide any electricity connection to the subject property. The petitioner also submitted representation before the third respondent seeking police protection to fence the petitioner's property. Now the first and second respondents also prevented the petitioner from putting up any compound wall in and around the subject property. While being so, respondents 1 and 2 issued communication to the third respondent directing to stop construction of compound wall in and around the subject property.



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4. The learned counsel for the petitioners in WP.No.4885 of 2004 would submit that the present issue is with regard to extent of 2.44 acres comprised in survey No.187/3D2A1 in patta No.13619 situated at Vanagaram Village. Specific claim of the fourth respondent is that there is a mosque and burial ground in the disputed property. It was also negatived by the civil court and confirmed by the Hon'ble Supreme Court of India. In fact, the first respondent also conducted detailed enquiry and rejected the claim made by the fourth respondent. Therefore, the fifth respondent has a statutory duty to prevent any unauthorised construction in the disputed property and whatever the construction put up by the fourth respondent is without any sanction or approval from the statutory authority and it is clear violation of the order passed by the this Court.

5. Heard, the learned counsel appearing on either side.

6. On perusal of records revealed that in pursuant to the order passed in WP.17359/2003 dated 25.06.2003, the mosque was provided with electricity service connection in SC.No.404-005-937 and electricity



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service connection was effected from 12.02.2022. Therefore, the prayer sought for in the writ petition in WP.No.18341 of 2010 has become infructuous. Accordingly, the writ petition in WP.No.18341 of 2010 is liable to be dismissed.

7. Insofar as the other writ petitions, the fourth respondent filed a suit for declaration that the subject property is a wakf property and also sought for injunction restraining the petitioner and his family members from interfering with the wakf property in OS.No.100 of 2005 on the file of the Wakf Tribunal/ Principal Sub Court, Chengalpet. While pending the same, the petitioner filed petition to reject the plaint and the same was dismissed. However, this Court allowed the civil revision petition and rejected the plaint in OS.No.100 of 2005 and the same was also confirmed by the Hon'ble Supreme Court of India and further, another writ petition was filed in WP.No.19193 of 2010 restraining the petitioner from putting up any construction in the wakf property. However, the said writ petition was dismissed, subsequently another writ petition was filed by the Jamadh in WP.No.40740 of 2016 for providing electricity service



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connection. The said writ petition was allowed. It was challenged by way of writ appeal in WA.No.319 of 2022 and granted interim stay. After these writ petitions, much water had been flown by way of so many writ petitions and as such prayers sought for in these writ petitions cannot be considered now, that too after period of 20 years. That apart, the title of the property cannot be decided in these writ petitions in respect of the disputed property. According to the Wakf Board, property comprised in survey No.187/3D2, Vanagaram Village was assigned to Waqf Institution under Section 4 of Waqf Act, 1954 before declaring a property as Waqf property is a *sine qua non*. Therefore, patta was granted patta in favour of the Tamilnadu Wakf Board. The fourth respondent institution is a waqf property and any transaction involving waqf property is unlawful and unenforceable. Further, the possession of the respective property also cannot be decided in these writ petitions. Hence, all the writ petitions are devoid of merits and liable to be dismissed.

8. Accordingly, all the writ petitions are dismissed. However, parties are at liberty to approach the authorities concerned for appropriate



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relief on fresh cause of action. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

03.06.2024

Neutral Citation: Yes/No
Index: Yes/No
Speaking/Non-speaking order
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To

1. Tamilnadu Wakf Board,
New No.7, Old No.4, 9th Cross Street,
Indira Nagar, Chennai 600 020
2. The Chief Executive Officer,
Tamilnadu Wakf Board,
New No.7, Old No.4, 9th Cross Street,
Indira Nagar, Chennai 600 020
3. The Superintendent of Police,
Chengalpattu(East),
St.Thomas Mount,
Chennai 600 016
4. The Commissioner,
Villivakkam Panchayat,
Villivakkam Panchayat Union Office,
Ambattur, Chennai
5. Chief Executive Officer,
Tamilnadu Wakf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar, Chennai

G.K.ILANTHIRAIYAN, J.

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- 6.The Director General of Police,
Chennai
- 7.The Inspector of Police,
Porur, Chennai
- 8.Chairman,
Tamilnadu Electricity Board,
Anna Salai,
Chennai 600 002
- 9.The Assistant Engineer,
Tamilnadu Electricity Board,
Se.Mi.P.Va/West,
33/11KV, Sub Power Station,
Maduravoyal,
Chennai 600 102
- 10.Secretary,
Tamilnadu Wakf Board,
New No.7, Old No.4, 9th Cross Street,
Indira Nagar, Chennai 600 020
- 11.President,
Porur Sheikh Manyam Masjid E.Kairunissa Muslim Jamadh,
Abdul Kareem,
No.3, Arunachalam Garden,
Karambakkam, Porur,
Chennai 600 116

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