



W.P.No. 9357 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2024

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No. 9357 of 2023

and

W.M.P.Nos.9456 and 9457 of 2023

K.Madhusudhanan

... Petitioner

versus

- 1.The Sub-Registrar,
O/o.The Sub-Registrar,
Dharapuram, Tiruppur District.
- 2.The Tamil Nadu Waqf Board,
Rep.by Chief Executive Officer,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 001.
- 3.Poorveega Sulthania Masjid Committee,
GS No.131 dated 3.6.1959, Alangium,



W.P.No. 9357 of 2023

Dharapuram Taluk, Tiruppur District – 638 657,

Represented by its Secretary

Mr.Mohammed Iqubal.

... Respondents

[R3 impleaded vide order dated 17.07.2023
in WMP.No.16719 of 2023 in W.P.No.9357 of 2023]

Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order passed by the first respondent in his proceedings in Na.Ka.No.795/2022 dated 23.11.2022 and quash the same and consequently direct the first respondent to register the Settlement Deed presented by the petitioner on 26.07.2022 in Temporary No.TP/127342650/2022 without insisting upon the No Objection Certificate from the second respondent.

For Petitioner : Mr.AR.L.Sundaresan
Senior Counsel for
Mr.C.Prakasam

For Respondents : Mr.Yogesh Kannadasan
Special Government Pleader for R1
Mr.S.Haja Mohideen Gisthi for R2
Mr.S.Selva Thirumurugan for R3

ORDER

This writ petition has been filed to quash the impugned order passed



W.P.No. 9357 of 2023

by the first respondent, vide proceedings in Na.Ka.No.795/2022 dated 23.11.2022 and consequently, direct the first respondent to register the Settlement Deed presented by the petitioner on 26.07.2022 in Temporary No.TP/127342650/2022 without insisting upon 'No Objection Certificate' from the second respondent.

2. Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioner submitted that the subject property measuring an extent of 36.42 acres in S.No.401, Alangiyam Village, Erode Revenue District, Dharapuram Sub-District, Periyar District (now Tiruppur District), originally belonged to one Late Kazi Haji Sagul Hameed, and after his demise, his son A.S.Bajlul Huq sold the entire extent in favour of one S.S.Abdul Saleem by virtue of a registered sale deed, vide Doc.No.854 of 1985 on the file of the Sub Registrar Office, Dharapuram on 30.03.1985. The second respondent - Waqf Board has filed a suit in O.S.No.69 of 1988 on the file of the Sub Court,



W.P.No. 9357 of 2023

Dharapuram, seeking for declaration, recovery of possession and mesne profits against A.S.Bajlul Huq and S.S.Abdul Saleem and the said suit was dismissed on 08.11.1990. Thereafter, the Waqf Board filed an appeal in A.S.No.476 of 1994 before this Court and the same was dismissed for default on 03.07.2002. Therefore, the findings of the trial Court attained finality. Thereafter, one Kanchanamala had purchased the entire property from S.S.Abdul Saleem and thereby, she sold the entire extent of the subject property by way of four sale deeds to five persons including the petitioner herein. Further, the petitioner has also purchased 50 cents out of 18.46 acres from R.Sabapathy and S.Santhamani. Subsequently, the petitioner decided to settle the property in favour of his wife. Thus, the petitioner presented the sale deed for registration before the first respondent, but the first respondent refused to register the same and passed Refusal check slip stating that the second respondent herein had made an objection that the properties situated in Old S.No.401, measuring an extent of 36.24 acres belonged to them.



W.P.No. 9357 of 2023

Hence, the petitioner, has earlier filed a writ petition in W.P.No.23261 of 2022 before this Court. Since the subject property was alleged to have been claimed as Waqf property, no notice has been issued to the petitioner, which is nothing but clear violation of principles of natural justice and hence this Court directed the first respondent to issue notice calling upon all the persons including the petitioner and to conduct enquiry and pass appropriate orders on merits within a period of twelve weeks. Pursuant to the same, the first respondent called upon the petitioner for enquiry and the petitioner also submitted his written submissions annexing all the documents on 15.11.2022. The first respondent, without issuing notice to all the parties and without conducting proper enquiry, passed the impugned order stating that the petitioner should obtain 'No Objection Certificate' from the second respondent/Waqf Board.

3. Learned Senior Counsel appearing for the petitioner further



W.P.No. 9357 of 2023

submitted that the subject property is a private property and it does not belong to the second respondent/Waqf Board, who had already lost their case in the suit in O.S.No.69 of 1988 itself. He further submitted that once the Civil Court had refused to declare the property as Waqf property and the same was not challenged by the Waqf Board in the appeal, which was also dismissed for default on 03.07.2002, the findings of the Civil Court attained finality. He further submitted that though the petitioner has submitted his submissions in detail and also annexed all the relevant documents, the first respondent failed to consider those documents and vital facts and directed the petitioner to obtain 'No Objection Certificate' from the second respondent, who does not have any title over the subject property which is nothing but a futile exercise. When the second respondent is not competent to issue 'No Objection Certificate', the question of obtaining the same shall not arise and as such, the impugned order is unjustifiable and unsustainable and the same is liable to be dismissed. He further submitted that since the



W.P.No. 9357 of 2023

first respondent has violated the principles of natural justice, this Court may direct the first respondent to conduct a fresh enquiry and pass a speaking order.

4. Mr.S.Haja Mohideen Gisthi, learned counsel appearing for the second respondent/Waqf Board submitted that the subject property is not a private property and it belongs to the second respondent/Waqf Board. One Bajlul Haq S/o. Kazi Shagul Hameed had separately obtained Patta in respect of the subject property by falsely showing the subject property as his ancestral property in connivance with the officials and based on that, he sold the subject property. The main contention of the petitioner is that he is the subsequent purchaser and he derives title to the subject land from his vendors, who obtained decree in their favour and he has also contended that he has obtained Patta in respect of the subject property. However, the said suit is a collusive suit and the findings of the trial Court would not affect the



W.P.No. 9357 of 2023

original nature of the Waqf property. It is settled law that when once the property is dedicated for "Waqf", no person can claim title over the Waqf property, without the approval of the Tamil Nadu Waqf Board.

5. Learned counsel for the second respondent further submitted that the third respondent herein had filed a complaint under Section 77-A of the Registration Act, 1908 before the District Registrar, Tiruppur District for cancellation of all the fraudulent documents pertaining to the subject property and thereby, the District Registrar, by proceedings dated 23.05.2023, issued notice to all the parties, including the petitioner herein to participate in the enquiry, which was scheduled to be held on 07.06.2023. However, on 07.06.2023, none of the opposite parties including the petitioner herein had appeared for enquiry and hence, no final order has been passed. Therefore, during the pendency of the enquiry proceedings before the District Registrar, Tiruppur, the first respondent/Sub-Registrar,



W.P.No. 9357 of 2023

Tiruppur, who is dealing with the subject property must be directed not to register any documents pertaining to the subject property. Learned counsel further submitted that as per Section 22-A of the Registration Act, 1908, the registering authority is empowered to refuse the document, if there are any objections from the Government or the Tamil Nadu Waqf Board. If the parties are claiming any right or title, they have to establish their case before the Competent Forum i.e. Waqf Tribunal to decide the dispute.

7. Heard both sides and perused the materials available on record.

8. Admittedly, the petitioner has already filed a writ petition in W.P.No.23261 of 2022 and this Court, by an order dated 30.08.2022, directed the first respondent herein to issue notice to all the interested parties, namely, the petitioner as well as rival claimants/interested parties/Waqf Board/Muthawalli/objectors, if any and conduct enquiry and



W.P.No. 9357 of 2023

pass appropriate orders on merits, whereas the first respondent had issued notice to the petitioner and also Muthawalli of the Waqf and the petitioner has submitted his written submissions along with necessary documents before the first respondent on 15.11.2022, however, there is no evidence to show that the first respondent has issued notice to the second respondent/Waqf Board.

9. Therefore, this Court, without going into the merits of the case, directs the first respondent to issue fresh notice to all the interested/aggrieved parties in the subject property as directed by this Court in W.P.No.23261 of 2022 dated 30.08.2022 and conduct fresh enquiry into the matter and pass appropriate orders on merits and in accordance with law. Such exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.



W.P.No. 9357 of 2023

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10. With the above directions, the writ petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

19.03.2024

Index: Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

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To

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2.The Chief Executive Officer,
The Tamil Nadu Waqf Board,
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W.P.No. 9357 of 2023

P.VELMURUGAN, J.

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W.P.No.9357 of 2023

19.03.2024

Page Nos.12/12