



Writ Petition No.8204 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22/10/2024

C O R A M

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

Writ Petition No.8204 of 2020

a n d

W.M.P.No.9779 of 2020

Jb.K.S.Masthan

...

Petitioner

Vs

The Estate Officer

Tamil Nadu Public Premises

(Eviction of Unauthorised Occupants) Act 1975

“Wakf House” No.1 Jaffer Syrang Street

Vallal Seethakathi Nagar

Chennai 1.

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Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records of the respondent vide notice dated 19/5/2020 in Case No.PP/1/CUD/2020 and quash the same.

For petitioner

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Mr.N.A.Nassir Hussain
for Mr.N.A.Nissar Ahmed

For respondent

...

Mr.Avinash Wadhawani

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ORDER

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This writ petition has been filed to quash the Notice dated 19/5/2020 issued by the respondent in Case No.PP/1/CUD/2020.

2. The case of the petitioner is that the petitioner is the owner and possession of the property comprised in S.No.42/1 to an extent of 1.86 cents and S.No.188/1 measuring 6.16 cents and S.No.188/2 measuring 7.11 cents and S.No.42/1B measuring 0.58 cents and 2 acres in Periyakanjikulam, Krishnapuram, Gingee Taluk, Villupuram District by virtue of sale deeds bearing Doc.Nos.1016/05 and 2149/2011. While so, the Chief Executive Officer of the Tamil Nadu Wakf Board issued a notice under Section 40 of the Wakf Act, 1995 and called for enquiry on 26/2/2020 under Section 40 (1) of the Wakf Act, 1995

3. The Chief Executive Officer of the Tamil Nadu Wakf Board has issued a Notice under Section 4 (1) of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975, stating that the petitioner is an unauthorised occupant in respect of S.Nos.42/1, 188/1, 2, 42/1B, Periyakanjikulam, Krishnapuram, Gingee Taluk, Villupuram District and the same was served on the respondent on 26/5/2020. When the enquiry is



pending, the Chief Executive Officer has no jurisdiction to invoke the provisions of the Public Premises Act. Being aggrieved, the petitioner has come forward with the instant writ petition.

4. Heard Mr.Mr.N.A.Nassir Hussain, learned counsel for the petitioner and Mr.Avinash Wadhawani, learned counsel for the respondent.

5. The learned counsel appearing for the petitioner submitted that when an enquiry under Section 40 of the Wakf Act is pending, the respondent has no jurisdiction to usurp the powers as Estate Officer and proceed against the petitioner. The properties do not fall under the definition of Premises, as defined under Section 2 (e) of the Public Premises Act, as there is no finding or decision to the effect that the properties are Wakf properties.

6. It is relevant to extract Section 40 of the Wakf Act, 1995, which reads as under:-

“The Board may itself collect information
regarding any property which it has reason to



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believe to be a wakf property and if any question arises whether a particular property is a wakf property or not or whether a wakf is sunni wakf or shia wakf, it may after making such enquiry as it may deem fit decide the question.

7. The word 'Public Premises' is defined under Section 2 (d) of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975, is as follows:-

“Any premises belonging to or taken on lease or requisitioned by or on behalf of the Government and includes any premises belonging to a wakf registered with the Tamil Nadu Wakf Board.”

8. The Chief Officer of the Wakf Board, appointed under Section 23 of the Wakf Act, 1995 and appointed as Estate Officer under Section 3 of the Public Premises Act, cannot take action without deciding the issue whether the properties are Wakf properties or not. When the alleged property hasnot



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yet been decided as Wakf property under Section 40 of the Wakf Act, 1995 and when the enquiry is pending, the Chief Executive Officer under the pretext of functioning as the Estate Officer, under the Public Premises Act has no jurisdiction or authority to invoke the provisions of the Public Premises Act. In such a view of the matter, this Court is of the considered view that one the alleged property has not yet been decided as Wakf property, under Section 40 of the Wakf Act, 1995, the respondent has no jurisdiction to invoke the provisions of the Public Premises Act.

9. In the result, this writ petition is allowed and the impugned show cause notice is hereby set aside. No costs. Consequently, the connected Miscellaneous Petition is closed.

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mvs.

Index : Yes / No

Neutral Citation: Yes/No



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