



WEB COPY



W.P.Nos.18079 & 14418 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2024

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

W.P.Nos.18079 & 14418 of 2022

M.Sagubar Saleem .. Petitioner in WP.18079/22

Mohammed Alija Khan
S/o Mohamed Muthar Ahmed Khan
Joint Muthavalli
Munir Khan Pious and Religious Charities
At No.1, First Floor,
Zamindar Street, Rajaji Nagar
Zamin Pallavaram
Chennai 600 043

.. Petitioner in WP.14418/22

v.

1. The Commissioner
Greater Chennai Corporation
Rippon Buildings
Chennai 600 003
2. The Zone Officer
Greater Chennai Corporation, Zone-V
No.61, Basin Bridge Road
Chennai 600 021



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3. The Executive Engineer
Greater Chennai Corporation, Zone-V
No.61, Basin Bridge Road
Chennai 600 021

4. The Assistant Executive Engineer
Greater Chennai Corporation
Unit-14, Zone-V
No.61, Basin Bridge Road
Chennai 600 021

5. The Assistant Engineer
Greater Chennai Corporation
Division-63, Zone-V
No.2, Veerabathiran Street
Pudupet, Chennai 600 002

.. Respondents in WP.18079/22

1. The Tamil Nadu Wakf Board
Rep by Chief Executive Officer
No.1, Jaffer Syrang street
Vallal Seethakathi Nagar
Chennai 600 001

2. The Commissioner
Corporation of Greater Chennai
Rippon Building
Kannapar Thidal
Chennai 600 003

3. The Executive Engineer
Zone 5, Greater Chennai Corporation
No.61, Basin Bridge Road
Chennai 600 021



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4. The Assistant Executive Engineer
Zone 5, Unit 14
Greater Chennai Corporation
No.61, Basin Bridge Road
Chennai 600 021

5. The Assistant Engineer
Zone-5, Unit 14, Division 63
Greater Chennai Corporation
No.61, Basin Bridge Road
Chennai 600 021

6. The Superintendent of Wakf
Tamil Nadu Wakf Board
Chennai Zone
No.139, Dr.Besant Road
Ice House, Chennai 600 005

7. B.Sagubar Saleem .. Respondents in WP.14418/22

W.P.No.18079 of 2022 is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned orders in Notice No.Dn/63/060/2022 issued by 3rd to 5th respondent on 29.06.2022 and to quash the same.

W.P.No.14418 of 2022 is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the 2nd respondent to demolish the unauthorized construction in the wakf property at Old No.9, New No.21, Veerabhadra Acharia Street, Pudupet, Chennai-2 put up by the 7th respondent as sought vide representation dated 28.03.2022.

For Petitioners :: Mr.D.Selvam for Mr.K.Karthik
in W.P.No.18079/22
Mr.N.A.Nassir Hussain
in W.P.No.14418/22



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For Respondents :: Mr.S.Gopinathan
Standing Counsel for
GCC in both the writ petitions
Mr.Haja Mohideen Gisthi
for Wakf Board in WP.14418/22
Mr.D.Selvam for Mr.K.Karthik
for R7 in WP.14418/22

COMMON ORDER

(Order of the Court was made by S.S.SUNDAR,J.)

Writ Petition No.18079 of 2022 is filed by one M.Sagubar Salem for issuance of a writ of certiorari to quash the impugned order bearing Notice No.Dn/63/060/2022 issued by 3rd to 5th respondent on 29.06.2022. Writ Petition No.14418 of 2022 is filed by one Mohammed Alija Khan for issuance of a mandamus directing the 2nd respondent to demolish the unauthorized construction in the wakf property at Old No.9, New No.21,Veerabhadra Acharia Street, Pudupet, Chennai put up by the 7th respondent, by considering the petitioner's representation dated 28.03.2022. Since common issues are raised in both the writ petitions, they are taken up together and disposed of by this common order.



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2. The writ petition in W.P.No.18079 of 2022 is filed by a person who claims to be in possession and enjoyment of the building. It is stated by the petitioner that the property bearing Old Door No.9, New No.21 at Veerabathiran Street, Pudupet, Chennai originally belonged to one Mr.Munir Khan and that the said Munir Khan sold the property to one V.R.Durai Kannammal. It is his case that the said Durai Kannammal sold the property to Mrs.Andalammal and Mr.D.Devaraj by a registered sale deed dated 09.07.1962. Thereafter, Mrs.Andalammal relinquished her right to her own son, the joint purchaser by name D.Devaraj on 27.11.1977. Subsequently, Mr.Devaraj executed a sale deed dated 21.07.1993 in favour of the petitioner and his wife.

3. It is not in dispute that the petitioner in W.P.No.18079 of 2022 is in possession and enjoyment of the property. All the sale deeds referred to by the petitioner show that the petitioner has purchased the building including the land. It is to be noted that the first sale deed was by a person by name Munir Khan, who is stated to be the erstwhile mutawalli of a registered wakf. From the stand taken by the respondents in W.P.No.18079 of 2022,



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this Court is unable to accept the case of petitioner that the property belonged to an individual. No doubt, it is true that the person who originally sold the property claimed himself to be the mutawalli of the wakf. When the fact that the land originally belonged to the wakf is not in dispute, the contention of the petitioner placing reliance on the subsequent sale deeds may not show the title of the petitioner to the building. It is the specific case of respondents that the sale even in respect of the building did not confer any right on the petitioner, as the sale itself was without obtaining permission from the wakf board. In such circumstances, the title in respect of the building cannot be presumed, unless the petitioner establishes the same before the civil Court. Since the property is claimed to be the property of wakf, it is also open to the wakf to institute appropriate proceedings before the Wakf Tribunal in accordance with law.

4. Be that as it may, the present dispute is in respect of the building as to whether it has got a valid planning permission and the construction is in accordance with the planning permission obtained by the petitioner in W.P.No.18079 of 2022.



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5. The writ petition in W.P.No.14418 of 2022 is filed for issuance of a mandamus to the Commissioner, Greater Chennai Corporation to demolish the unauthorized construction in the property of wakf at Old Door No.9, New No.21, Veerabathiran Street, Pudupet, Chennai. This writ petition is by an individual, who claims himself to be the joint mutawalli of the wakf known as “Munir Khan Pious & Religious Charities.

6. Even though the title to the building is in dispute, the fact that the land belongs to the wakf is not disputed by the petitioner in W.P.No.18079 of 2022. Since the impugned order challenged in W.P.No.18079 of 2022 is an order directing to discontinue the occupation of premises on the ground that the petitioner has not demolished the deviated portions, this Court is unable to countenance the arguments of the learned counsel for petitioner on the strength of planning permission obtained by the petitioner. Even though this Court for the present is not inclined to issue any direction to the respondents to cancel the planning permission, as the matter has to be finally resolved before the competent civil Court or the Wakf Tribunal, as the case may be, the complaint that the construction is not in accordance



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with the building plan can be considered by the respondents. Since the impugned order in W.P.No.18079 of 2022 is only for the purpose of demolition of unauthorized construction i.e., the construction which is in deviation or violation of the building plan permission, this Court directs the official respondents to take appropriate action as against the petitioner's unauthorized portion of the building, which is in contravention of building regulations or in violation of the approved building plan granted to the petitioner. The official respondents may also consider the objections raised by the petitioner in W.P.No.14418 of 2022 as well the Tamil Nadu Wakf Board. However, the official respondents need not decide the question of title, if the dispute is bonafide. As observed earlier, it is for the petitioner in W.P.No.14418 of 2022 or the Wakf Board to take appropriate legal action for taking possession in case the existing building that was put up originally belongs to the wakf. With the above observations, both the writ petitions stand disposed of. Consequently, W.M.P.No.13645 of 2022 is closed. No costs.

Index : yes/no
Neutral citation : yes/no
ss

(S.S.S.R.,J.) (N.S.,J.)
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