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W.P.No.22568 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2024

CORAM :
THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Writ Petition No.22568 of 2024
and W.M.P.No.24585 of 2024

Thamizharasi

Vs.

... Petitioner

- 1.The Chief Executive Officer,
Office at Superintendent of Waqf Board,
Salem Zone at No.4A & 5A,
First Floor, Thipusulthan Market,
1st Agraharam,
Salem – 636 001.
- 2.The Estate Officer,
Waqf House No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 001.
- 3.Muthawalli,
Peer Dastagir Sahib Dargah Waqf,
Sangagiri 84, Palani Aandavar Koil Street,
Bhavani – 638 301,
Erode District.

... Respondents

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorari calling for the records pertaining to the order passed by the second respondent in Case No.PP No.52/SLM/2021 dated 21.11.2022 and quash the same.



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For Petitioner : Mr.R.Marudhachalamurthy

For Respondents 1 & 2 : Mr.Haja Mohideen Gisthi,
Senior Standing Counsel
for Waqf Board

For Respondent 3 : Mr.N.A.Nissar Ahmed
for Mr.N.A.Nassir Hussain

ORDER

This writ petition has been filed by the petitioners to call for the records pertaining to the order passed by the second respondent in Case No.PP No.52/SLM/2021 dated 21.11.2022 and quash the same.

2. The case of the petitioner is that the property comprised in S.No.321 to an extent of 2.32 acres situated at Aavaniperur keezhalmugam Village, Vellandi Valasu Post, Edappadi Taluk, Salem District belongs to third respondent herein. In respect of the said property, the petitioner's brother Mr.Boopathy obtained a lease from the second respondent way back in the year 1952 and thereby enjoying the property by doing agriculture. This being so, the petitioner's brother died on 20.09.2015, leaving behind the petitioner as one of his legal heirs. Accordingly, the aforesaid possession came to the petitioner and she continues to enjoy the possession as an authorized lessee.



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2.1. Whiles, on 28.10.2020, there was a notice under Section 54(3) of Waqf Act, 1995 issued by the first respondent to the petitioner's brother's name, who was no more, stating that the petitioner's brother has encroached upon the third respondent's land. Therefore, the petitioner approached the first respondent and informed them that her brother was no more. Thereafter, the third respondent has initiated eviction proceedings under Section 4,5 & 7 of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 before the second respondent. After adjudication, without providing any opportunity to the petitioner, the second respondent passed an impugned order dated 21.11.2022 in PP No.52/SLM/2021 by evicting the petitioner as unauthorized occupant.

2.2. Aggrieved over the aforesaid order, the petitioner has preferred an appeal before the Principal District Judge, Salem. However, the District Court has returned the said appeal on 12.07.2024. Therefore, the petitioner has come forward with the present writ petition by challenging the order dated 22.11.2022 passed by the second respondent.



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3. Learned counsel for the petitioner would submit that issue arises in the present writ petition is whether the Waqf Board is entitled to evict a person by invoking Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975?. However, in a batch of cases decided on 23.04.2024 reported in 2024 SCC online Mad 955, the Division Bench of this Court has categorically held that the Waqf Board has no power to invoke the provisions of Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975. However, in the present case, the very same Act was used against the petitioner, which is not sustainable. Accordingly, he prayed for allowing this writ petition.

4. Per contra, learned counsel appearing for the respondents would submit that though the impugned order was passed on 22.11.2022, the Division Bench of this Court has passed an order only on 23.04.2024 and the decision cannot operate retrospectively and it can only operate prospectively, and prior to that, since the petitioner has not taken any effective steps by way of approaching this Court by filing writ petition or any other authority and obtained restraint order, the respondents have taken possession on



13.07.2023. Hence, the impugned order dated 22.11.2022 being prior to the decision of the Division Bench of this Court and having been acted upon the impugned order does not require any interference. Accordingly, he prayed for dismissal of this writ petition.

5. Heard the learned counsel on either side and perused the materials available on record.

6. The facts of the case is not in dispute. The only contention of the petitioner is that the Waqf Board has no power to invoke provision under Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 and to substantiate the same, learned counsel for the petitioner has relied on the judgment of the Division Bench of this Court reported in 2024 SCC Online Mad 955. On the date when the order came to be passed, the order of the Division Bench, relied on by the respondents was not in existence. The said order had come to be passed only on 23.04.2024. However, the order of the respondents was passed way back on 22.11.2022 and pursuant to the said order, possession also has been taken by the respondents on 13.07.2023. The present writ petition has come to be filed only in the year 2024, much after



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possession was taken by the respondent. It is to be pointed out that unless it is specifically stated by the Courts, an order passed would act only prospectively and not retrospectively. In the present case, the order having been passed on 23.04.2023, operates prospectively and therefore, it will not invalidate the order passed by the respondents on 22.11.2022. Therefore, the said order of the Division Bench cannot be pressed into service in the present case. Hence, the order passed by the second respondent in PP No.52/SLM/2021 dated 21.11.2022 does not warrant any interference by this Court.

7. Accordingly, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

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Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No



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