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W.P.No.22044 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.No.22044 of 2024
& WMP.Nos.24020, 24022 & 24024 of 2024**

1.S.Kamalchand Baid
2.Kochar Lataben Hitesh
3.S.Prathapchand Baid
4.S.Padamchand baid
5.S.Sumermull Baid
6.M.Rajender

... Petitioners

Vs.

1.Chief Executive Officer,
Tamilnadu Wakf Board,
Chennai 600 001.

2.Jumma Mosque,
rep. by its Mutawalli,
Old No.176 New No.52, Kutchery Road,
Mylapore, Chennai 4.

... Respondents



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned Notification dated 14.10.2014 bearing Registration No.333/Chennai issued by 1st respondent and published the same in Government Gazette on 30.03.2016 quash the same in respect of the petitioners properties comprised in S.Nos.2078/2, 2079, 2080/1, 2110/1, 2081 and 2082, Kulchery Road, Mylapore, Chennai and consequently, direct the respondents to remove the petitioners survey numbers from the list of properties mentioned in Registration No.333/Chennai pending with the 1st respondent.

For Petitioners : Mr.Anupam Raghuraman

For Respondents : Mr.Avinash Wadhwani
for R1

M/s.Yusuf SQ
for R2

ORDER

This Writ Petition has been filed seeking for a Writ of Certiorarified Mandamus, calling for the records of the impugned Notification dated 14.10.2014 bearing Registration No.333/Chennai issued



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by 1st respondent and published in the Government Gazette on 30.03.2016 and to quash the same in respect of the petitioners' properties comprised in S.Nos.2078/2, 2079, 2080/1, 2110/1, 2081 and 2082, Kulchery Road, Mylapore, Chennai and consequently, direct the respondents to remove the petitioners survey numbers from the list of properties mentioned in Registration No.333/Chennai pending with the 1st respondent.

2. The case of the petitioners is that the petitioners' father namely R.Simbumull Sowcar had purchased various properties in Chennai including the properties situated at New Door No.55, (old No.8) and New No.56 (old No.9 & 10), Door No.58 and 59, Bazaar Road, Mylapore, Chennai – 600 004 for valuable consideration from the rightful owners by various sale deeds. Further, that from the date of purchase, the petitioners's father R.Simbumull Sowcar had been in uninterrupted possession of the aforesaid properties.



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3.It is the further case of the petitioners that by virtue of the partition deed dated 18.07.1956 registered as document No.2229 of 1956, the father of the petitioners 1 to 5 had partitioned the various items of properties among themselves and items 1 to 3 mentioned above were allotted to the petitioners' father. With regard to items 4 and 5 are concerned, under the same partition deed dated 18.07.1956, the father had allotted items 4 and 5 in favour of the third respondent herein. It is further averred that after the death of their father in the year 1961, the petitioners have been maintaining the aforesaid items of properties 1 to 3 and items 4 and 5 are in the exclusive possession and enjoyment of the third petitioner herein.

4.Further, it is also averred that the petitioners' father had also obtained lease hold rights over certain land from the 2nd respondent of an extent of 3000 sq.ft in the year 1928 and 1941 as registered documents which is located on the western side of the aforesaid five items of properties. The said lease hold lands were also in exclusive possession and enjoyment of petitioners' father and thereafter, the aforesaid properties have been in



enjoyment and possession of the petitioners jointly.

5.The further case of the petitioners is that on 15.11.2013, a representative of the 2nd respondent trespassed into the lease hold lands of the petitioners and started demolishing the walls illegally. Hence, the petitioner had moved a suit for bare injunction against the second respondent in C.S.No.18 of 2014 before this Court and had also obtained an interim order in their favour. Due to pecuniary jurisdiction, the above suit was transferred to XVIII Addl. City Civil Court at Chennai in 2019 and subsequently transferred to the City Civil Court at Allikulam. The petitioners had also filed C.S.No.244 of 2012 before this Court seeking for declaration of title and permanent injunction with respect to the very same properties involved in this case and had also obtained an interim order restraining the 2nd respondent from disturbing or preventing the plaintiffs from putting up compound wall into the property. Thereafter, this suit was also transferred to the City Civil Court, Allikulam Chennai in the year 2021 and renumbered as O.S.No.6802 of 2021.



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6.The further case of the petitioner is that in spite of the pendency of the above suits, the first respondent vide notification dated 14.10.2014 has notified a list of properties, including the petitioners' properties as properties of the Wakf Board. Challenging the same, the petitioners have filed the present Writ Petition.

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

8.This Court is of the view that when civil suits are pending before the civil Court as regards the title of the petitioners' properties, it is not appropriate on the part of the first respondent to have passed the impugned notification dated 14.10.2014 including the petitioners' properties in the list of properties belonging to the Wakf Board. Therefore, the impugned notification dated 14.10.2014 bearing Registration No.333/Chennai issued by the 1st respondent is set aside and the matter is remanded back to the 1st respondent for fresh consideration.



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9.The Writ Petition is allowed on the above terms. No costs.

Consequently, the connected miscellaneous petitions are closed.

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NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No
Tsg

To

Chief Executive Officer,
Tamilnadu Wakf Board,
Chennai 600 001.



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M.DHANDAPANI, J.

Tsg

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