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W.P.No.25242 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2024

CORAM:

**THE HON'BLE MR.JUSTICE S.S.SUNDAR
and
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR**

W.P.No.25242 of 2022

R.Hassan Ali Akbar,
Mutawalli,
Late Arcot Mohammed Khader Wakf Estate, Arcot,
New No.2, Muktharnisa Begum Street,
5th Lane, Mount Road, Chennai.

...Petitioner

vs.

- 1.The District Collector,
Ranipet District, Ranipet.
- 2.The Commissioner,
Arcot Municipality, Arcot – 632 503.
- 3.The Tamil Nadu Wakf Board,
Rep. by its Chief Executive Officer,
No.1, Jaffer Syrang Street,
Vallal Sethkathi Nagar, Chennai – 1.
- 4.M.G.Ravi
- 5.M.G.Suresh

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to
issue a Writ of Mandamus to direct the respondents 1 & 2 to initiate
action against the respondents 4 and 5 by demolition of unauthorized



W.P.No.25242 of 2022

construction at 44-A2, 44/2A, 44/5, Anna Salai, Arcot situated in Ward C, Block 4 in T.S.Nos.10, 10/1, 10/2 as per Section 216 of the Tamil Nadu District Municipalities Act.

For Petitioner : Mrs.I.Kowser Nissar

For Respondents : Mr.R.Vigneshwaran for R1
Government Advocate
Mr.B.Anand for R2
Standing Counsel
Mr.Haja Mohadeen Gisthi for R3
Mr.B.Mohan for R4

ORDER

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

The writ petition is filed for issuance of writ of mandamus directing the respondents 1 and 2 to initiate action against the respondents 4 and 5 by demolition of unauthorized construction at 44-A2, 44/2A, 44/5, Anna Salai, Arcot situated in Ward C, Block 4 in T.S.Nos.10, 10/1, 10/2 as per Section 216 of the Tamil Nadu District Municipalities Act.

2.The petitioner states that the shop bearing municipal Door No.44-A2, 44/2A, 44/5, Anna Salai, Arcot situated in Ward C, Block 4 in T.S.Nos.10, 10/1, 10/2 belongs to the Wakf in which he is the Mutawalli. The name of the Wakf is Late Arcot Mohammed Khader Wakf Estate, Arcot.

3.It is contended by the petitioner that the respondents 4 and 5 had



illegally constructed a commercial building in a property of Wakf without the permission of Mutawalli or the Wakf Board.

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4.It is further contended by the petitioner that no permission has been obtained from the Municipality for the construction put up by the respondents 4 and 5 in the property of Wakf.

5.This Court earlier passed an order dated 06.02.2024 for production of original documents by the second respondent. Now the learned standing counsel appearing for the second respondent submitted before this Court that the site approval was granted to the private respondents in 1969 and the building license and approval was obtained in the year 1987 for commercial purpose to an extent of 790 sq.ft.

6.Learned counsel appearing for the contesting respondents viz., the respondents 4 and 5 produced a typeset containing several lease agreements either registered or unregistered from 01.06.1967. The petitioner's predecessor has given permission to the petitioner to extend the building to suit the convenience of the lessee.

7.It is to be noted that in one of the rental agreements produced by



the respondents 4 and 5, it is seen that the lessor has described herself as the present Mutawalli of Wakf created by Late Arcot Mohammed Khader Wakf Estate, Arcot.

8.It is in the capacity of Muthawalli of Wakf, one Basheerunnisa Begum, executed a rental agreement or lease deed. Therefore, this Court need not go into the question as to whether the property belongs to the Wakf or not.

9.It appears that from the subsequent deeds that the rent had been periodically revised on renewal upto 1984 but the tenancy was not renewed after 1984.

10.Learned counsels appearing for the petitioner and the Wakf Board have submitted that the construction of building by the respondents 4 and 5 cannot be permitted in view of Rules 21 & 23 of Wakf Properties Lease Rules, 2014.

11.Learned counsels placed reliance on Rule 21 (5) and Rule 23 of the Wakf Properties Lease Rules, 2014. For convenience Rule 21 and 23 of the Wakf Properties Lease Rules, 2014 are extracted below:

21.Rights and obligations of the lessor



and lessee.-(1) *The rights and liabilities of the lessee shall include the following, namely:-*

(i) *Operation of leased premises.*-The lessee shall assume full responsibility for the operation and maintenance of the leased premises and for the repair or replacement of all fixtures located therein or thereon and to pay all expenses incurred in connection with such maintenance and operation of the leased premises:

Provided that the lessor may, upon failure to discharge such responsibility for the lessee under this clause, at its sole option and upon fourteen days prior written notice and without, any obligation to the lessee, elect to perform such maintenance, repairs or replacement as the lessor may reasonably deem necessary or desirable.

(ii) *Access by lessor.*- The lessee shall permit the lessor to enter the leased premises at any time outside normal hours in case of an emergency and otherwise, where such entry will not unreasonably disturb or interfere with the lessee's use of the leased premises.

(iii) *Lessee to carry out certain obligations.*-The lessee shall, -

(i) *promptly pay electricity charges, water charges or any cess, levies, duties, assessments, and license fees whatsoever whether*



municipal, school, provincial, parliamentary or otherwise;

(ii) upon the request of the lessor, promptly deliver to the lessor for examination all receipts for payment of such levies, duties, assessments and license fees;

(2) Installation of fixtures or improvements.- If any installation or repair work carried out by the lessee interferes with or damages the mechanical or electrical systems or the structure of the leased premises, the lessee shall promptly repair or remove such installations or fixtures on the leased property at its own expense:

Provided that the lessee shall, if required by the lessor, remove any leasehold improvements or fixtures from the leased premises upon the termination of the lease.

(3) Alterations by lessee.- The lessee shall bear the cost for making any modification, additions or improvements including alterations to the exterior, walls, roof, or other structural components of the leased premises made by the lessee:

Provided that the lessor shall perform any such work at the expense of the lessee as may be mutually agreed between the parties.

(4) Liens.-The lessee shall not create any



WEB COPY

W.P.No.25242 of 2022



lien or encumbrance on the leased premises under any circumstances including on the leasehold rights.

(5) Permission from local authorities.-The lessee shall, for the purpose of construction of any structure on the leased premises, take all necessary permission from the local authorities, after prior approval of the Board.

23. Default-*(1) Each of the following events shall constitute an event of default, namely:-*

(i) all or any part of the lease rent is not paid by the lessee after it become due for such payment;

(ii) the lessee fails to observe, perform or keep each and every of the covenants, agreements and conditions and fails to rectify or remedy the failure event after one month's notice by the lessor requiring the lessee to so remedy, correct, desist or comply;

(iii) the lessee builds any structure on the land or building without prior sanction or approval of the Board; or

*[***]*

(2) Upon the occurrence of one or more of the events referred to in sub rule (1), the lessor may, at its option, -

(i) be entitled to the full amount of the lease



rent due and payable;

(ii) have no obligation to refund the security deposit which shall be deemed to be forfeited in favour of the Waqf.

(iii) seize and sell such goods and equipment of the lessee after obtaining an order from the Tribunal and may apply the proceeds thereof to all lease rent to which the lessor is then entitled under the lease:

Provided that any such sale may be effected by public auction or otherwise, and either in bulk or by individual item, as the lessor in its sole discretion may decide;

(iv) terminate the lease by giving [three notices one after another with a gap of one month] and the lessee shall pay to the lessor lease rent for the unexpired portion of the term had it not been terminated.

12.Placing reliance on the rules, learned counsel appearing for the petitioner as well as the Wakf Board submitted that the lessee is not authorized to put up any construction in the leased premises of the Wakf unless permission from the local authority is obtained with the prior approval of the Board.

13.It is also reiterated that the lessee in terms of Rule 23 shall not

put up any building or structure or on the land or building without prior



sanction or approval of the Board.

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14. Though the provisions of the Wakf Act requires prior approval from the Wakf Board not only for sanctioning lease but also for putting up any construction, a building plan approval granted to the individual in accordance with law by the local body cannot be revoked by placing reliance of the requirement of Rule 21 or Rule 23. Then Rules do not control the local body to grant approval in exercise of their power under the District Municipalities Act.

15. Hence, this Court finds that the building plan approval cannot be revoked and action is warranted for the construction put up by the respondents 4 and 5 by the official respondents.

16. It is open to the petitioner or the Wakf Board to take whatever action that is permissible under law as against the persons who are now disputing the locus standing of petitioner. Having admitted tenancy from the persons who were acting as Mutawalli, the respondents 4 and 5 are estopped from denying title of wakf. However, it does not mean that the respondents 1 to 3 should take action for unauthorised construction at the instance of the petitioner as well as the Wakf Board. The respondents 4



and 5 are also claiming tenancy under the erstwhile Mutawalli of the Wakf as per the lease agreement.

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17.It is unfortunate to note that the fourth respondent has filed a counter affidavit denying the title of the Wakf on the basis of lease deed or rental deed obtained by the respondent predecessor Basheerunissa Begum. The lessor had earlier in unequivocal terms had acknowledged the title of Wakf. Atleast in few documents, the fact that the property belongs to the petitioner's Wakf is admitted. Therefore, the respondents 4 and 5 are estopped from denying or disputing the title of Wakf by virtue of Section 16 of Indian Evidence Act.

18.It is in the said circumstances, this Court is inclined to pass the following order:

The prayer for taking action against the respondents 4 and 5 for the unauthorized construction cannot be countenanced and hence the writ petition is dismissed. No costs. However, it is open to the petitioner or the Wakf Board to take/initiate appropriate action for removal or recovery of possession either by invoking the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 or under the Wakf Act as applicable.



WEB COPY

W.P.No.25242 of 2022



19.The writ petition stands disposed of accordingly. No costs.

(S.S.S.R.,J.) (N.S.,J.)
24.06.2024

Index: yes/no
Speaking order:yes/no
Neutral Citation:yes/no
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W.P.No.25242 of 2022

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WEB COPY

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WEB COPY



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