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C.R.P.No.4243 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

C.R.P.No.4243 of 2022
and C.M.P.Nos.22266 of 2022 & 720 of 2023

M/s.Masid-e-Makkapur and
Madrasa-e Bilal Wakf Committee
Rep. by its President / Muthavalli,
Mohammed Amjed Hussain,
No.11, Makkapur First Street,
Lloyds Road, Avvai Shanmugam Salai,
Triplicane, Chennai – 600 005.

.. Petitioner/Petitioner/3rd Defendant

Vs.

1. D.Sasikumar ... 1st respondent/1st respondent/plaintiff

2. The Chairman,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chennai – 600 005.

3. The Estate Officer – VI,
Tamil Nadu Slum Clearance Board,
No.212, R.K.Madam, Mylapore,
Chennai – 600 014.

.. 2nd & 3rd Respondent/2nd & 3rd Respondent
/1st and 2nd defendants



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Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order passed in I.A.No.5 of 2021 in O.S.No.8020 of 2019 dated 22.09.2022 on the file of the learned II Additional Judge, City Civil Court at Chennai.

For Petitioner : Mr.H.Mohamed Ghouse

For Respondents : Mr.R.Dhanasekar

ORDER

This Civil Revision Petition has been filed as against the order dated 22.09.2022 passed in I.A.No.5 of 2021 in O.S.No.8020 of 2019 on the file of the II Additional Judge, City Civil Court, Chennai, wherein the petitioner herein has filed a petition before the trial Court to reject the plaint on the ground that it is barred by law.

2. The averments of the petitioner in the petition filed before the trial Court is that he is the third defendant in the main suit and the first respondent has filed a suit before the trial Court for the relief of declaration and permanent injunction. The petitioner / third defendant is the Wakf Committee and the property belongs to Wakf Board and thereby the suit is



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not maintainable and Wakf Tribunal alone have the jurisdiction to entertain the suit. Therefore, the first respondent / petitioner filed a petition before the trial Court for rejection of plaint since the suit is barred by law. The trial Court failed to consider that the suit is barred by law and the Civil Court has no jurisdiction and the Wakf Tribunal only have the jurisdiction to try the case.

3. According to the respondents, the plaintiff is the owner of the suit property and he purchased the property from the Slum Clearance Board and thereby, he filed a suit for the relief of declaration and permanent injunction. Therefore, the Civil Court only has the jurisdiction to declare the right of the first respondent / plaintiff. While so the petitioner / third defendant filed an application before the trial court to reject the plaint by stating that the property belongs to Wakf Board and thereby the Wakf's Tribunal alone has the jurisdiction to entertain the case. The trial Court rightly dismissed the application by holding that it cannot be decided at that stage and it needs elaborate trial. Therefore the order passed by the trial Court is in order and the present petition should be dismissed.

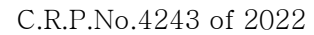


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4. Before the trial Court no oral or documentary evidence have been adduced by either side. The trial Court after hearing both sides, dismissed the application filed to reject the plaint.

5. The learned counsel appearing for the petitioner would contend that the property originally belonged to the petitioner / third defendant Wakf and the first respondent / plaintiff has filed the suit for the relief of declaration by impleading the Wakf board as one of the party to the proceedings and sought for the relief of declaration and permanent injunction as against the Wakf Board. Therefore, the Wakf Board alone has the jurisdiction to try the suit and the Civil Court has no jurisdiction to try the suit. The first respondent / plaintiff himself admitted in the pleadings that he was a tenant under the petitioner and thereby, he admitted the title of the property and thereafter, he purchased the property from the Slum Clearance Board. Once the first respondent / plaintiff admitted that his father was a tenant, he cannot deny the title of the property. Even as per the pleadings in the plaint, the property belongs to the Wakf Board and therefore the Wakf Board alone have the jurisdiction to decide the title of the property. But the trial Court failed to consider the same and hence the



6. To support his contentions, the learned counsel for the petitioner relied on the judgments in :

i) *Rajasthan Wakf Board Vs. Devki Nandan Pathak & others*
reported in **2017 AIR (SC) 2155**

ii) *Rashid Wali Beg Vs. Farid Pindari & Ors* reported in 2022(4)
SCC 414

iii) *Board of Wakf, West Bengal Vs. Anis Fatma Begum & Anr.*
reported in *2010(7) Supreme 1059*

iv) *I.Salam Khan Vs. The Tamil Nadu Wakf Board & Others*
reported in *2005 0 Supreme (Mad) 143*

v) *V.S.B.Sikkandar Vs. K.M.Mhader Gani & Another* reported in *2006 5 CTC 346*

vi) *S.Kamalchand Baid and ors. Vs. Jumma Mosque* reported in **2023(4) LW 80**

vii) *S.N.M.Ubayadullah Vs. Hazarath Serya / Shamiyan Saqqaf Thaikkal, Thanjavur by its Senior Trustee Syed Moin Ahmed, rep. by his Power Agent Syed Matheen Ahamed Saqqat* reported in 2023 1 CTC 53



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viii) ***Inamdhar Pallivasal Wakf by its Muthavalli I.Shamiyan Sahib***

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Vs. Sheik Abdullah reported in 2012 4 LW 699

7. The learned counsel for the respondents would contend that the first respondent purchased the property from the Slum Clearance Board and he is the owner of the property and the Wakf Board is only a formal party. Since he is denying the claim of the petitioner, he is also added as a party. Therefore, the Civil Court only has the jurisdiction to decide the title of the property. The trial Court has rightly held that at this stage the plaint cannot be rejected and the matter needs elaborate trial. Therefore, the order passed by the trial Court has to be confirmed and the present petition has to be dismissed.

8. This Court heard both sides and perused the materials available on record.

9. In this case the suit is filed for the relief of declaration and permanent injunction as against the defendants and the third defendant is the Wakf Committee. The plaintiff in the plaint pleaded as under:



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“ .. 3. The plaintiff submits that he is the absolute owner of plot bearing Plot No.54 in R.S.No.1020 (part), Mylapore Village and Taluk, Chennai District measuring to an extent of 200 sq.ft. bearing Door No.2, Avvai Shanmugham Salai, (Lloyds Road), Krishnampet, Chennai – 600005, which is morefully described under the schedule hereunder. Originally the plaintiff's father Mr.Dayalan was tenant under the third third defendant M/s.Masjid E Makkahpur and carrying on business in the name and style of Golden Beef Stall from 01.112004. The plaintiff's father used to pay rent to the third defendant believing that the said property is belongs to the Wakf Board. The suit schedule property was let out to the plaintiff's father as vacant land, it is the plaintiff's father who put up superstructure of shop premises for the purpose of carrying on his business.

4. The plaintiff states that it is the plaintiff's father put superstructure over the said property and developed the same for his business. While the facts being so, the third defendant herein filed a suit in O.S.No.5342 of 2014 on the file of I Assistant City Civil Court, Chennai to quit and deliver vacant possession to them in respect of the shop portion as against the plaintiff's father as they are the landlord of the suit schedule property. The plaintiff's father also filed his written statement in the above said suit by admitting his tenancy. The said suit was between the landlord and tenant, not with regard to the title of the suit schedule property. Later the plaintiff's father came to know that the suit schedule property is belongs to Tamilnadu Slum Clearance Board the defendants 1 and 2 herein.”



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10. On a careful perusal of the plaint pleadings it is clear that the plaintiff himself admitted that the property was leased to his father by the third defendant Wakf Committee and also filed a suit in O.S.No.5342 of 2014 to deliver the possession of the property. Thereafter he came to know that the third defendant is not the owner of the property and purchased the property from the Slum Clearance Board / first defendant. Once the plaintiff admitted the ownership of the third defendant and he entered into lease, later he denied the title before he denied the title, thereby it is clear that there is a dispute in respect of title between the plaintiff and the third defendant Wakf Committee.

11. As per Wakf Act, if any dispute arising out of the properties belongs to Wakf Board, the Wakf Tribunal is having the jurisdiction and the Civil Court has no jurisdiction to entertain the suit in respect of the Wakf properties. As per Section 85 of the Wakf Act, no suit or other legal proceedings shall lie in any civil court in respect of any dispute, or other matter relating to Wakf's property or other matter which is required by or under this Act to be determined by a Tribunal. For clarity, Section 83 and 85 of the Wakf Act, is extracted hereunder:



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“83. Constitution of Tribunals, etc.—1 [(1) *The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals.*]

(2) *Any mutawalli person interested in a 2 [waqf] or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the 2 [waqf].*

(3) *Where any application made under sub-section (1) relates to any 2 [waqf] property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of the 2 [waqf] actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:*

Provided that the State Government may, if it is of opinion that it is expedient in the interest of the 2 [waqf] or any other person interested in the 2 [waqf] or the 2 [waqf] property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such 2 [waqf] or 2 [waqf] property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall



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deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the Tribunal is of opinion that it is necessary in the interest of justice to deal with the application afresh.

[(4) Every Tribunal shall consist of—

(a) one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, who shall be the Chairman;

(b) one person, who shall be an officer from the State Civil Services equivalent in rank to that of the Additional District Magistrate, Member;

(c) one person having knowledge of Muslim law and jurisprudence, Member; and the appointment of every such person shall be made either by name or by designation.

(4A) The terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as ex officio members shall be such as may be prescribed.]

(5) The Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, or executing a decree or order.

(6) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), the Tribunal shall follow such procedure as may be prescribed.

(7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a civil court. (8) The execution of any decision of the Tribunal shall be made by the civil court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).



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(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal: Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit.

...

85. Bar of jurisdiction of civil courts.—*No suit or other legal proceeding shall lie in any 2 [civil court, revenue court and any other authority] in respect of any dispute, question or other matter relating to any 1 [waqf], 1 [waqf] property or other matter which is required by or under this Act to be determined by a Tribunal.”*

12. In the case on hand, even as per the pleadings in the plaint, the father of the plaintiff was a tenant under the third defendant and the property originally belonged to third defendant Wakf. Even as per the plaint averments, the third defendant is the owner of the property and thereafter the property was purchased by the respondent / plaintiff from the Slum Clearance Board. Therefore, the matter has to be decided by the Wakf Tribunal and there is a bar of Civil Court jurisdiction. But, the trial Court failed to consider the same and erroneously dismissed the petition



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that the property belongs to Tamil Nadu Urban Habitat Development Board and the property was sold to plaintiff and there are triable issues involved in the suit which could be decided by way of full fledged trial. Therefore the order passed by the trial Court is liable to be set aside.

13. The learned counsel appearing for the petitioner also relied on the following judgments:

i) ***Rajasthan Wakf Board Vs. Devki Nandan Pathak & others*** reported in ***2017 AIR (SC) 2155***

ii) ***Rashid Wali Beg Vs. Farid Pindari & Ors*** reported in ***2022(4) SCC 414***

iii) ***Board of Wakf, West Bengal Vs. Anis Fatma Begum & Anr.*** reported in ***2010(7) Supreme 1059***

iv) ***I.Salam Khan Vs. The Tamil Nadu Wakf Board & Others*** reported in ***2005 0 Supreme (Mad) 143***

v) ***V.S.B.Sikkandar Vs. K.M.Mhader Gani & Another*** reported in ***2006 5 CTC 346***

vi) ***S.Kamalchand Baid and ors. Vs. Jumma Mosque*** reported in ***2023(4) LW 80***



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viii) ***Inamdhar Pallivasal Wakf by its Muthavalli I.Shamiyan Sahib Vs. Sheik Abdullah*** reported in ***2012 4 LW 699***

On a careful perusal of the above judgments it is clear that the question whether certain land was Wakf Property or not can be decided only by Wakf Tribunal and not by the Civil Court. In the case on hand also the plaintiff who is the first respondent in the petition admitted that his father was a tenant under the petitioner / third defendant and admitted the ownership and later he purchased the same property from Slum Clearance Board, thereby the Wakf Tribunal only can decide the case and Civil Court jurisdiction is bar under Section 83 and 85 of Wakf Act. In view of the above said discussions the trial Court committed error and failed to consider the plaint pleadings and dismissed the petition and thereby the order passed by the trial Court is liable to be set aside.



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14. In the result the Civil Revision Petition is allowed and the order passed by the trial Court in I.A.No.5 of 2021 in O.S.No.5 of 2021 dated 22.09.2022 is hereby set aside and the petition is allowed and the plaint is rejected on the ground that the Civil Court has no jurisdiction to decide the dispute in respect of Wakf property. No costs. Connected miscellaneous petitions are closed.

09.07.2024

Index: Yes / No

Speaking order / Non speaking order

Neutral Citation : Yes / No

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The II Additional Judge,
City Civil Court, Chennai.



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P.DHANABAL, J.,

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