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CRP Nos.3748, 3749 and 3751 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRP Nos.3748, 3749 and 3751 of 2023

D.Sundaramoorthy (Deceased)

1.S.Valarmathy

2.C.Rekhan

3.C.Sujatha

4.C.Saravana

... Petitioners 1to 4 in
CRP No.3748 of 2023

(Petitioners 1 to 4 impleaded as LRs
of the first petitioner as per order
dated 13.09.2023 in IA No.692 of 2022

5.J.Selva Mary

... Petitioner in
CRP No.3749 of 2023

G.Mariadoss (Deceased)

6 .M.John

M.James (Deceased)

7.M.Franklin

8.M.Sagayam @ Deiva Sagayam

9. Ruby

10.Clara

11.M.JohnKiro

....Petitioners 1 to 6 in
CRP No.3751 of 2023

Vs.



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1. The Chief Executive Officer,
Office of the Tamil Nadu Wakf Board,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai-600 001.

2. Shaik Madar Auuliya Dargah,
Represented by its Managing Committee,
No.5, Jonahan Street, Foreshore Estate,
Santhome, Chennai-600 028.

...Respondents in all CRPs

PRAYER in CRP No.3748 of 2023: Civil Revision Petition filed under Order 115 of Civil Procedure Code to set aside the fair and decreetal order passed by the learned Wakf Tribunal, Chennai in IA No.689 of 2022 in OA No.199 of 2018 dated 06.10.2023.

PRAYER in CRP No.3749 of 2023: Civil Revision Petition filed under Order 115 of Civil Procedure Code to set aside the fair and decreetal order passed by the learned Wakf Tribunal, Chennai in IA No.705 of 2022 in OA No.81A of 2018 dated 06.10.2023.

PRAYER in CRP No.3751 of 2023: Civil Revision Petition filed under Order 115 of Civil Procedure Code to set aside the fair and decreetal order passed by the learned Wakf Tribunal, Chennai in IA No.688 of 2022 in OA



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No.73 of 2018 dated 06.10.2023.

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For Petitioners : Mr.R.Mukud
for M/s. Menon, Karthik Mukandan
and Neelkantan

For Respondents : Mr.Haamohideen Gisthi
for respondent
Mr.L.Gavaskar
for second respondent

COMMON ORDER

The civil revision petitions are filed to set aside the fair and decreetal order passed by the learned Wakf Tribunal, Chennai in IA Nos.688, 689, and 705 of 2022 in OA Nos.199, 81A and 73 of 2018 dated 06.10.2023

2. According to the petitioners, they are in the possession of the properties in question. The Chief Executive Officer, Tamil Nadu/first respondent vide proceedings No.4293/C2/Ch/09 dated 14.01.2011, has issued eviction order to the petitioners. Thereafter, the petitioners had filed suits before the I Assistant City Civil Court, Chennai in OA Nos.4, 5 and 6 of 2011 seeking to declare the said notice as null and void and

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unsustainable. Subsequently, the said suits were transferred to Wakf Tribunal and re-numbered as OA Nos.199, 81A and 73 of 2018. The Tribunal, by order dated 06.04.2022, dismissed the said suits for non appearance of the petitioners. On coming to know that the junior counsel who was supposed to follow the case, has not followed it due to ill health and the suits were dismissed for default, the petitioners filed applications in IA Nos.688, 689 and 705 of 2022 to restore the suits in OA Nos.199, 81A and 73 of 2018 and to condone the delay in filing the application to restore the said suits. The Tribunal, by order dated 06.10.2023, had dismissed the said applications. Hence, the petitioners have filed the present civil revision petitions.

3. Learned counsel for the petitioners submits that there is no wanton negligence on the part of the petitioners and the delay has to be condoned and restoration petition has to be allowed and a chance has to be given to the petitioners to adjudicate their dispute on merit. Hence, he seeks for allowing the civil revision petitions.



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4. Learned counsel for the respondents has objected this revision petitions and supported the orders of the Tribunal and further contended that the reason assigned by the petitioners for the delay have not been properly explained to restore the suits. The Tribunal has already considered the reasons assigned for the delay in the impugned order and therefore, there is no reason to interfere with the order passed by the Tribunal. Hence, he seeks dismissal of the civil revision petitions.

5. Heard the parties and perused the materials available on record.

6. It is not disputed that OA Nos.199, 81A and 73 of 2018 were filed against the order passed by the Chief Executive Officer, Tamil Nadu Wakq Board, in proceedings dated 14.01.2011. Initially, the suits were filed before the I Assistant City Civil Court, Chennai in OA Nos.4, 5 and 6 of 2011 seeking to declare the eviction notice as null and void. Subsequently, the suits were transferred to the Tribunal and renumbered as OA Nos.199, 81A and 73 of 2018 and the Tribunal, by order dated 06.04.2022, had dismissed the said applications for default for non appearance of the petitioners. On the said date, since it was a covid 19 period, the junior



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counsel who was following the case did not appear and the petitioners did not have any knowledge about the non-appearance of the junior counsel. Subsequently, the petitioners came to know the about the dismissal of the said OAs. On the date. the petitioners came to knowledge about the said dismissal, they immediately filed applications to condone the delay in filing the applications to restore OA Nos.199, 81A and 73 of 2018.

7. Sufficient cause means the party had not acted in a negligent manner or there was want of bona fide on its part in view of the facts and circumstances of the case.

8. In these cases, the junior counsel who was following the case had not appeared. Therefore, the applications were dismissed. Further, in any application, the court has to determine whether the parties are honestly and sincerely conducting the case. Sufficient cause is a question of fact and the court has to exercise its discretion in the varied and special circumstances of the case, considering the nature of the case. In this case, the petitioners



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filed statutory appeal against the proceedings of the Chief Executive Officer proceedings dated 14.01.2011. Therefore, the statutory appeal has to be adjudicated on merits. It meets the parameters laid down by the Hon'ble Supreme Court in the case *Parimal vs Veena reported in AIR 2011 SC 1150*. The Tribunal, without considering the fact and situation of these cases and on technical ground had dismissed the applications, which is unsustainable. Therefore, impugned orders in IA Nos.688, 689 and 705 of 2022 dated 06.10.2023 are hereby set aside and the civil revision petitions are allowed. The Trial Court is directed to restore OA Nos.199, 81A and 73 of 2018 and dispose the same, within a period of three months from the date of receipt of a copy of this order. There will be no order as to costs. Consequently, CMP Nos.23363, 23368, 23373, 23375, 23365 and 23369 of 2023 are closed.

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Index: Yes/No
Internet: Yes/No
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To
The Wakf Tribunal, Chennai



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V.SIVAGNANAM, J.

(mrn)

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