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W.P.No.14747 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2024

CORAM

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P.No.14747 of 2017

and

WMP.Nos.15977 & 15978 of 2017

S.Rajakumar

...Petitioner

Vs.

1. The Tamil Nadu Wakf Board,
Rep. by the Commissioner of Archives and Historical Research/
Chief Executive Officer (FAC),
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar, Chennai – 1.

2. The Chief Executive Officer,
Tamilnadu Wakf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar, Chennai – 1.

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the 1st respondent dated 23.05.2017 in item 39/17 (R.C.No.14859/15/B9/CHE) as communicated vide letter dated 01.06.2017 in R.C.No.14859/15/B9/Chn and quash the same.



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For Petitioner : Mr.Nassir Hussain
for Mr.I.Kowser Nissar

For Respondents : Mr.Sunny Sheen

ORDER

This Writ petition has been filed seeking quashment of the proceedings of the 1st respondent dated 23.05.2017 in Item No.39/17 (R.C.No.14859/15/B9/CHE) as communicated vide letter dated 01.06.2017 in R.C.No.14859/15/B9/Chn, in and by which the petitioner was treated as an encroacher.

2. The case of the petitioner is that, initially, the 2nd respondent/Chief Executive Officer had initiated proceedings under Section 54(1) of the Waqf Act in respect of the subject premises and after completing the enquiry, he had arrived at a conclusion that there was a Memorandum of Understanding between two Muthawallies and the Managing partner of the Sri Balaji Motors Company treating them as a tenant and therefore, ultimately dropped the proceedings to treat the petitioner as a stranger and recognized the petitioner as a tenant. When things be so, the petitioner received the letter



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from the Tamil Nadu Waqf Board dated 01.06.2017 enclosing/communicating the resolution Item No.39/17 dated 23.05.2017, wherein in Clause 11 it is stated that *Therefore, orders of the Chief Executive Officer in the proceedings dated 02.12.2016 in so far as it declares Thiru.Rajkumar as legal tenant and directs the Muthawallis to enter into lease agreement of 11 months period is set aside with immediate effect* and whereby, the orders of the Chief Executive Officer was cancelled. Challenging the same, this Writ Petition has been filed.

3. Learned counsel for the petitioner by referring to Sections 54(1), 54 (2) and 54 (4) along with Section 83 (2) of the Waqf Act contended that any Muthawalli, who is aggrieved by the orders of the Chief Executive Officer, can only move the Waqf Tribunal to satisfy the order and they cannot decide the dispute on their own by way of a resolution and once the Wakf board has decided the issue, the same cannot be revisited by the board. Learned counsel further submitted that, the present impugned order came to be passed without hearing the petitioner and the same is a clear violation of principles of natural justice. Accordingly, he prayed for appropriate orders.



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4. On the above said contentions, heard learned counsel appearing on behalf of the respondents and perused the material documents placed on record.

5. Though very many contentions have been advanced by the learned counsel for the petitioner, at the time of arguments, however, a perusal of the available materials reveals that, as against the impugned order passed by the Wakf Board, there is an effective appeal remedy available before the Wakf Tribunal and without exhausting the said appeal remedy, straight away approaching this Court by way of filing this Writ petition, challenging the order passed by the Wakf Board is not sustainable.

6. In view of the above, this Court, without interfering with the order impugned, grants liberty to the petitioner to approach the Wakf Tribunal and workout its remedy in the manner known to law and if any such appeal is filed, the Wakf Tribunal shall decide the issue without being influenced by any of the observations made either in this Writ petition or in the impugned order and shall pass appropriate orders, after affording an opportunity of personal hearing to the petitioner and aggrieved persons, if any.



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WEB COPY 7. With the aforestated liberty, this Writ petition stands dismissed. No costs. Consequently, connected Miscellaneous petitions are closed.

03.09.2024

skt

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

To

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M.DHANDAPANI, J.

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