



W.P. No. 34738 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2024

CORAM

THE HON'BLE MR. JUSTICE N. SATHISH KUMAR

W.P. No. 34738 of 2022

D.Ramesh

... Petitioner

-VS-

1. The Inspector General of Registration,
100, Santhome Highway Road,
Raja Annamalaipuram,
Chennai – 600 028.

2. The District Registrar,
102, State Bank Road,
Gopalapuram,
Coimbatore – 641 018.

3. The Office of Sub-Registrar,
The Sub Registrar,
Perianaickenpalayam,
Coimbatore – 641 020.

4. The Tamil Nadu Waqf Board,
No. 1, Jaffar Sarang Street,
Vallal Setthakathi Nagar,
Seethakadi Nagar,
George Town,
Chennai – 600 001.

Respondents

...

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari Mandamus, calling for the records of the 3rd respondent pertaining to the refusal slip dated 12.07.2022 and quash



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the same and permit the petitioner to convey the subject property in any form of the Petitioner's choice viz., sale, gift, settlement, mortgage, etc., without obtaining No Objection from the 4th respondent and direct the 3rd respondent to register the document to the choice of the Petitioner.

For Petitioner : Mr. S.Mukunth,
Senior Counsel
for M/s. Sarvabhauman Associates

For Respondents : Mr. L.S.M.Hasan Fizal,
Additional Government Pleader
(for R1 to R3)

Mr. S.Haja Mohideen Gisthi (for R4)

ORDER

The writ petition has been filed challenging the impugned refusal slip passed by the 3rd respondent directing the petitioner to obtain no objection certificate from the Waqf Board.

2. It is the case of the writ petitioner that he is the owner of the property in S.F. No. 271/D in Thudiyalur Village of Coimbatore District. When the sale deed was presented by the purchaser for registration on 13.04.2022, the 3rd respondent/Sub Registrar refused to register the document on the assumption that the property belong to the Waqf Board. It is the case of the writ petitioner



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that the property never belong to the Waqf Board and in the suit in

O.S.No.1009 of 1960, his rights have been decided and the suit was decreed.

Thereafter, the subsequent suit of the year 1967 was also dismissed and the rights of the parties were also decided. While so, now merely on the basis that objection letter has been received from the Waqf Board, the impugned refusal slip came to be passed. Hence, challenging the same, the writ petition has been filed.

3. It is the contention of the 4th respondent/Waqf Board that the property was service inam surveyed and notified by the Waqf in G.S. No. 122/CBE. Hence, the petitioner has to be work out his remedies only before the Waqf Tribunal and not before the 3rd respondent. The property has been notified as Waqf property on 19.03.1956 in column no. 12 of the proforma. According to him, the property is Waqf property.

4. It is the stand of the 3rd respondent that as per letter issued by the Waqf Board in Rc.No.786/2022/B2/CBE dated 21.02.2022, the document has not been registered for want of no objection certificate issued by the Waqf Board. Further, as per Section 22-A of the Registration Act, 1908, any document in respect of the property belonging to the Waqf Board cannot be registrable.



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Hence, he opposes the writ petition.

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5. The learned senior counsel appearing for the petitioner submits that the contention that the property is Waqf property is not true. In fact, the rights of the parties have been decided in the suit of the year 1960 even before the Waqf Act, 1995, came into force, which reached finality. Even in other proceedings also, rights of the parties have been decided conclusively. Therefore, once the rights had been decided, it cannot be reopened by mere issuance of objection letter to the registering authority. The learned senior counsel also points out that in the suit filed in this regard in the year 1960, the Civil Court had declared that the property is not Waqf property. In the above suit, the Waqf Board was the main defendant. It is also brought to notice that the other suit in respect of the property in the year 1967 in O.S. No. 1346 of 1967 has also reached finality and wherein, it has been held that the property is not Waqf property. The second appeal filed against that suit was also dismissed. Be that as it may, it is also noticed from the enquiry report of the 3rd respondent/Sub-Registrar dated 27.11.2020 that it is declared that the property in Survey Nos. 269/2, 270 and 271/1 is not Waqf property. Having found that it is not Waqf property, now the impugned refusal slip has been passed merely on the basis of the objection letter issued by Waqf Board.



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6. Whereas, the learned counsel appearing for the Waqf Board mainly submits that since there is a dispute with regard to the title, the writ petition is not maintainable, the Waqf Tribunal only has got jurisdiction to go into the issue. Much reliance is placed on the judgments of this Court in ***V.Govindharaji and 8 others Vs. District Collector, Villupuram and 5 others*** (Order dated 20.06.2023 in W.P. No. 13718 of 2023), ***K.Annapooshanam @ Pushparani Vs. Inspector General of Registration, Chennai and 4 others*** (Order dated 05.07.2023 in W.P. No. 8457 of 2023) and ***R.Krishnaswamy Vs. District Collector, Chengalpattu and two others*** (Order dated 25.08.2023 in W.P. No. 25171 of 2023) and similarly, the judgment of the Hon'ble Apex Court in ***Rashid Wali Beg Vs. Farid Pindari and others*** reported in (2022) 4 SCC 414. Therefore, according to him, the order impugned cannot be set aside as the title of the petitioner has to be decided only before the Waqf Tribunal.

7. As far as the reliance placed on judgments of this Court in ***V.Govindharaji and 8 others Vs. District Collector, Villupuram and 5 others*** (Order dated 20.06.2023 in W.P. No. 13718 of 2023), ***K.Annapooshanam @ Pushparani Vs. Inspector General of Registration, Chennai and 4 others***



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(Order dated 05.07.2023 in W.P. No. 8457 of 2023) and **R.Krishnaswamy Vs.**

District Collector, Chengalpattu and two others (Order dated 25.08.2023 in W.P. No. 25171 of 2023) is concerned, on a perusal of them, this Court is of the view that the above judgments are not applicable to the facts of the present case since they relate to the dispute raised for the first time and therefore, in that context, Court has directed the parties to work out their remedies in the manner known to law. Similarly, in the judgment of the Hon'ble Apex Court in **Rashid Wali Beg Vs. Farid Pindari and others** reported in (2022) 4 SCC 414, the suit has been filed before the Civil Court for permanent injunction and considering the various provisions of law, the Hon'ble Apex Court set aside the judgment of the High Court and returned the plaint to the plaintiff for presentation before the Waqf Tribunal.

8. It is relevant to note that those suits are filed after the advent of the Waqf Act, 1995, and constitution of the Waqf Tribunal. Only in view of the specific bar contained in the Waqf Act, 1995, the suit filed before the Civil Court were transferred to the Waqf Tribunal. Whereas, in the present case, the suit has been filed much before the constitution of the Waqf Tribunal under the Waqf Act, 1995. It is not the case that the Waqf Board was not a party to the proceeding. The Waqf board was a defendant in O.S. No. 1009 of 1960,



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wherein the Civil Court has declared that the property is not a Waqf property.

No contra material has been placed before the Court and to show that judgment has not reached finality. Whereas, other suit in O.S. No. 1346 of 1967 filed in respect of the same property, wherein findings are also recorded that the property is not a Waqf property and that suit has also reached finality upto the second appeal before this Court. Therefore, once the rights of the parties have been conclusively determined by the Civil Court and reached finality, this Court is of the view that mere citing of letter, the concluded matter cannot reopened. If such things are allowed to continue, there will be no end for the conclusiveness reached among the parties. Before this Court also no material has been placed to establish that the property is Waqf property. Whereas, the Civil Court conclusively decided the rights in the year 1967, which is before the constitution of the Waqf Tribunal.

9. It is also relevant to note that before the constitution of the Waqf Tribunal, the dispute were decided before the Civil Court. Such was the scenario, the matter cannot be reopened by mere objection letter before the authorities, who are performing duties relate to registration of documents. It is also to be noted that in the enquiry report dated 27.11.2020 after perusing all the judgments of the Civil Court and documents produced by the parties, the



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Sub-Registrar has recorded the finding to the effect that the property in Survey Nos. 269/2, 270 and 271/1 is not Waqf property. Having found that fact on the basis of records, the rejection of registration merely citing the objection letter issued by the Waqf Board cannot be sustained in the eye of law. Accordingly, the impugned refusal slip stands quashed and the 3rd respondent is directed to register the document presented by the petitioner in respect of the property within a period of one week.

10. In the result, the writ petition is allowed. No costs.

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Index: Yes/No

NCC: Yes/No

vjt

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