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W.P. No. 34481 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 34481 of 2023

A.R.Nazar Hussain

... Petitioner

-VS-

1. The District Collector
Tiruvannamalai District
Tiruvannamalai – 606605.
2. The Chief Executive Officer
Tamilnadu Waqf Board
No.1 , Jaffer Syrang Street
Vallal Seethakathy Nagar
Chennai – 600003.

3. K.Shajahan

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, to direct the First Respondent to take further action as per intimation dated 22.04.2015 in M-2/44168/2009 issued by the First Respondent pursuant to the order of this Hon'ble Court dated 02.08.2013 in W.P. No. 12161 of 2012 in accordance with section 52(5) of the Waqf Act – 1995 vide representation dated 10.11.2023.



W.P. No. 34481 of 2023

For Petitioner : Mr. Y.Kajnavas
For Respondents : Mr. S.Prabhakaran, GA (R1)
Mr. G.Mohamed Aseef (R2)
Mr. A.Mohamed Ismail (R3)

ORDER

Heard Mr. Y.Kajnavas, Learned Counsel for the Petitioner, Mr. S.Prabhakaran, Learned Government Advocate appearing for the First Respondent, Mr. G.Mohamed Aseef, Learned Counsel appearing for the Second Respondent and Mr. A.Mohamed Ismail, Learned Counsel appearing for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. It is the case of the Petitioner, who is the Mutawalli of Nawab Chanda Miyan Masjid and Mir Monin Madad Tomb Waqf (hereinafter referred to as 'the Waqf' for short), that an extent of 255.04 acres of land belonging to the Waqf had been encroached by various individuals and this Court by order dated 02.08.2013 in W.P. No. 12161 of 2012 filed by one K.Syed Yasin, then Mutawalli of the Waqf, had directed the First Respondent to initiate appropriate action for the removal of those encroachments under Section 52(2) of the Waqf Act, 1955 (hereinafter referred to as 'the Act' for short) within a period of six



W.P. No. 34481 of 2023

months from the date of receipt of its copy. Though the First Respondent in furtherance of that order by proceedings No. M2/44168/2009, dated 22.04.2015 had required the encroachers of 27 portions of that property belonging to the Waqf to vacate from there, no further action has been taken thereafter, despite representation dated 10.11.2023 made by the Petitioner in that regard, which has necessitated the filing of this Writ Petition.

3. It has been brought to notice that the Third Respondent, viz., K.Shajahan, who is in occupation of only one of the said 27 portions of the property belonging to the Waqf, had filed the Writ Petition in W.P. No. 14796 of 2015 challenging the aforesaid order dated 22.04.2015 passed by the First Respondent, which was disposed by order dated 09.07.2018 holding that he has to approach the Waqf Tribunal under the provisions of the Act for the purpose of redressing the grievances by way of an adjudication. Subsequently, the Third Respondent has filed O.S. No. 2 of 2024 before the Waqf Tribunal for Tamil Nadu in respect of the portion of property in his occupation. However, there is nothing to show that in respect of the remaining 26 portions, the occupants to whom notices to remove their encroachment has been sent under Section 52(2) of the Act, have challenged the same.



W.P. No. 34481 of 2023

WEB COPY

4. In the aforesaid circumstances, in respect of the said portion of property in occupation of the Third Respondent, it shall be incumbent upon the Waqf Tribunal for Tamil Nadu to determine the suit in O.S. No. 2 of 2024 filed by him under Section 52(4) of the Act following the prescribed procedure affording opportunity of hearing to all parties concerned including the Petitioner and the Second and Third Respondents ensuring that there is atleast one effect hearing every week showing progress of the case and monthly reports in that regard shall be sent to the Registrar (Judicial) of the Court till it is disposed. It is needless to add here that depending upon its outcome, the concerned parties are not precluded from pursuing their further course of action in accordance with law.

5. Coming to remaining the portions of the property belonging to the Waqf, it shall be incumbent upon the First Respondent to immediately take further action for removal of the encroachments (except the portion in the occupation of the Third Respondent), following the prescribed procedure in terms of Section 52(5) and (6) of the Act, which is extracted below:-



W.P. No. 34481 of 2023

WEB COPY

52(5). *Where an order passed under sub-section (2) has not been complied with and the time for appealing against such order has expired without an appeal having been preferred or the appeal, if any, preferred within that time has been dismissed, the Collector shall obtain possession of the property in respect of which the order has been made, using such force, if any, as may be necessary for the purpose and deliver it to the Board.*

52(6) *In exercising his functions under this section the Collector shall be guided by such rules as may be provided by regulations.*

Such exercise shall be expeditiously completed and report of its compliance shall be filed by 30.09.2024 before the Registrar (Judicial) of the Court.

In the result, the Writ Petition is disposed on the aforesaid terms. No costs.

13.02.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 04.03.2024.

Maya/gsa



W.P. No. 34481 of 2023

WEB COPY To

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W.P. No. 34481 of 2023

P.D. AUDIKESAVALU, J.

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W.P. No. 34481 of 2023

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