



W.P.Nos.61 & 9393 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2024

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

W.P.Nos.61 & 9393 of 2024

V.Pauldas
S/o A.Velayudham
Advocate / Receiver
Khan Sahib Mehdi Hussain Sahib Wakf
Estate No.82/106, Perambur High Road Lane
Jamalia, Chennai 600 012 .. Petitioner in both W.P's.

v.

1. Regional Deputy Commissioner (South)
Greater Chennai Corporation
Zone XIII, Adyar, Chennai 600 020
2. The Executive Engineer
Greater Chennai Corporation
Zone XIII, Adyar, Chennai 600 020
3. Mrs.B.Vanishree
4. Mr.B.Balaji .. Respondents 1 to 4 in both W.P's
5. The Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natarajan Maaligai



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No.1, Gandhi Irwin Road
Egmore, Chennai 600 008

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(R5 suo motu impleaded vide order
of Court dated 02.04.2024
in WP.61/2024)

.. Respondent No.5 in W.P.61/2024

W.P.No.61 of 2024 is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records on the file of second respondent and consequently quash the proceedings in Notice No.Z-13/Dn.173/F3/012 dated 20.11.2023 as perse illegal and unlawful.

W.P.No.9393 of 2024 is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records of the first respondent culminating in passing the impugned order vide RDC(S)/C.No./919/2023 dated 27.10.2023 and consequently quash the order as perse illegal, unlawful and against rule of law.

For Petitioner :: Mr.T.Mohan
Senior Counsel for
Mr.M.L.Ganesh

For Respondents :: Mr.Arun Dhanapalan for
Mr.D.B.R.Prabhu
Standing Counsel for R1 & R2
Mr.Karthik Rajan for
Mr.N.Srinivas Jayaprakash
for R3 & R4
Mrs.P.Veena Suresh
Standing Counsel for R5



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COMMON ORDER

(Order of the Court was made by S.S.SUNDAR,J.)

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Since these two writ petitions are interlinked and arise out of common cause of action, they are taken up together and disposed of by this common order.

2(a). W.P.No.9393 of 2024 is filed challenging the impugned order passed by the first respondent dated 27.10.2023 directing action by locking and sealing the building at Door No.9/112, Sardar Patel Road, Adyar, Chennai under the Tamil Nadu Combined Development and Building Rules and Urban Local Bodies Act, 1998.

2(b). W.P.No.61 of 2024 is filed challenging the impugned order passed by the second respondent pursuant to the direction in the order impugned in W.P.No.9393 of 2024.

3. Brief facts that are necessary for the disposal of these writ petitions are as follows:-

(a) The petitioner is an Advocate Receiver, who has been appointed by this Court for the purpose of administering the Wakf known as “Khan



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Sahib Mehdi Hussain Sahib Wakf Estate”. The case of the petitioner, in the affidavits filed in support of the writ petitions, is that by virtue of a sale deed dated 02.07.1920 registered as Document No.2150 of 1920, the subject property was purchased by the founder of Wakf, namely, Khan Sahib Mohammed Hussain Sahib Bahadur. Later the author dedicated the property in favour of the Wakf known as “Khan Sahib Mehdi Hussain Sahib Wakf Estate”, by virtue of a Wakf Deed dated 06.10.1939. The said Wakf was also notified by the Government on 20.05.1959.

(b) In the existing building that was put up either by the author of Wakf or by the Wakf itself long back, sanction was obtained from the CMDA for additional construction in the subject property, on 25.08.1986. Meanwhile, there was a dispute between the beneficiaries of the Wakf and a suit in C.S.No.1306 of 1992 was filed on the Original Side of this Court. By orders of Court, Receiver was appointed for the administration of Wakf in view of the dispute between two groups. The petitioner was appointed as Court Receiver by order dated 24.02.2006 in Application No.397 of 2006 in C.S.No.1306 of 1992 and took charge from the previous Receiver.

(c) The respondents 3 & 4 have raised some dispute with regard to



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title over the property in which the construction had been put up. However, the respondents 3 & 4 have not filed any civil suit so far, even though they admit and acknowledge the continuous possession and enjoyment of the petitioner Wakf from 1939. However, claiming title to the property, the respondents 3 & 4 appear to have approached the respondents 1 & 2 alleging unauthorised construction by the petitioner and to take action under the provisions of the Town and Country Planning Act.

(d) When an order was passed by the authority on the representation of the private respondent on 09.10.2022, the petitioner challenged the same before this Court in W.P.No.30923 of 2022. By order dated 09.01.2023, this Court disposed of the writ petition in the following lines:-

“7. Considering the fact that the petitioner claims that property belongs to Khan Sahib Mehdi Hussain Sahib Wakf for more than 100 years, appointment of petitioner as Receiver by this Court by the order dated 24.02.2006 in Application No.397 of 2006 in C.S.No.1306 of 1992 and O.A.No.29 of 2022 filed by the petitioner before the Wakf Tribunal, Chennai, the impugned order dated 09.10.2022 passed by the 1st respondent is set aside and the matter is remanded back to the 1st respondent for fresh consideration.



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The 1st respondent is directed to give opportunity to the petitioner and respondents 3 & 4 to let in evidence with regard to approval of the building based on which superstructure was put up and let in evidence with regard to stability of the building. The 1st respondent is directed to permit the petitioner and respondents 3 & 4 to file all the documents and let in evidence and considering the oral and documentary evidence, pass orders on merits and in accordance with law. Till such time, the respondents 1 & 2 are restrained from taking any coercive steps against the petitioner.”

(e) In view of the rival claim made by the respondents 3 & 4, the petitioner has also filed a civil suit in O.S.No.9 of 2023 for declaration of title and for consequential injunction against respondents 3 & 4 and others. The petitioner also obtained ad-interim injunction and the same was later made absolute and therefore the petitioner enjoys the benefit of interim injunction as against the respondents 3 & 4 and others who are defending the suit.

(f) Pursuant to the direction in the writ petition in W.P.No.30923 of 2022 vide order dated 09.01.2023, the petitioner has also filed an



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application under the Right to Information Act seeking certain particulars relating to the building plan sanction given to the petitioner Wakf on 25.08.1986 and in response to the application submitted by the petitioner on 13.10.2023 under the Right to Information Act, the officials of CMDA informed that planning permission was issued for the proposed addition and alteration vide letter No.B1/7985/86 to Mrs.Shamoo Khalleel, the erstwhile mutawalli. However, the CMDA informed that records from 1985 to 1991 have been destroyed and therefore they are unable to verify the genuineness of the planning permit enclosed in the petition filed by the petitioner under the Right to Information Act. The petitioner has also produced before this Court the entries in the register suggesting that in the records maintained by CMDA, the application dated 04.06.86 by the Wakf had been entered and it is seen that the CMDA has also granted approval for the addition and alteration in the subject property. It is evident that the document produced by the petitioner has been acknowledged by the respondent CMDA by producing the same copy in their typedset.

(g) After referring to the order dated 09.01.2023 passed by this Court in the earlier writ petition, the first respondent appears to have conducted



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enquiry. The first respondent recorded the fact that the Superintending Engineer (Electrical & Planning) of Greater Chennai Corporation vide communication dated 01.08.2023 informed that no records are available in their office for the approved sanction plan vide reference proceedings dated 27.09.1986. Only based on the fact that no records are available in the office of Corporation as well as CMDA, the impugned order dated 27.10.2023 was passed holding that the petitioner had failed to produce the relevant documents in support of his claim with regard to the original plan and the planning permission and that the genuineness of the plan produced by the petitioner is questionable.

(h) It is to be seen that the petitioner is an officer of Court being appointed as Receiver and admitted before the first respondent that he is unable to lay his hands to the sanction or approval granted to the building plan, as he was appointed in 2006 to take care of the administration of the Wakf. Following the order dated 27.10.2023 passed by the first respondent impugned in W.P.No.9393 of 2024, the second respondent passed the order dated 20.11.2023 impugned in W.P.No.61 of 2024, which reads as follows:-

“With reference to cited above, as per the order of Hon'ble



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High Court in WP No.30923/2022 the Regional Deputy Commissioner (South) conducted re-enquiry and concluded that the petitioner had failed to produce any relevant document in support of their claim with regards to original planning and building permits since the genuinity of the produced plans are questionable and unproved it is a fit enough care to proceed further action as per Tamil Nadu Building Rules under ULB Act, 1998 and rules 2023.

Pursuant to the orders it is found that an unauthorized development of building has been carried out in the premises situated at D.No.112/9, Sardar Patel Road, Adyar Village, Guindy Taluk, Chennai District without Genuine permission for the building has been duly revoked.

You are hereby required to restore the building to its original condition before the said development took place by demolishing the building within 30 days from the date of receipt of this notice.”

4. Assailing the impugned orders, the petitioner has raised several grounds. The learned Senior Counsel appearing for the petitioner submitted that the respondents 1 & 2 have not taken action on their own and that at the instigation of respondents 3 & 4, who have made attempts to grab the



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property of Wakf by illegal means, the respondents 1 & 2 have initiated action by treating the construction put up by the petitioner as unauthorised.

Based on the interim order obtained by the petitioner in the suit filed by the petitioner in O.S.No.9 of 2023 and the previous proceedings, the learned Senior Counsel submitted that the respondents 3 & 4, who have no semblance of right over the property which is the subject matter of dispute, have instigated the official respondents with ulterior motive. Referring to the communications and the acknowledgment by the official respondents about the planning permission as well as the building plan approval granted to the petitioner long back for the additional construction in 1986, the learned Senior Counsel submitted that the impugned orders are arbitrary, unconstitutional, illegal and motivated only to help the private respondents to grab the property of Wakf.

5. This Court, while admitting the writ petition in W.P.No.61 of 2024 granted an order of interim injunction by order dated 08.01.2024, after recording the fact that the property in dispute belongs to Wakf and the building against which the respondents have initiated action by the



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impugned order is 100 years old. This Court earlier directed the petitioner to produce any record to show the genuineness of the plan which was produced by the petitioner. This Court also requested the official respondents to verify the genuineness of the plan produced before this Court by the petitioner. Though this Court earlier asked the petitioner to prove the genuineness of the plan produced by him, later understood that the petitioner came to the picture only in 2006 and therefore he was not in a position to produce the original building plan and the approval thereof. This Court has no reason to doubt the veracity of the statement of petitioner.

6. It was also brought to the notice of this Court by the learned Senior Counsel appearing for the petitioner that the Member Secretary, CMDA vide communication dated 25.08.1986 examined the application for building plan for additional construction and granted approval after relaxing the side set back. This communication is not in dispute. Similarly, the fact that petitioner had paid a sum of Rs.2000/- by challan dated 12.09.86 is seen from the communication dated 27.09.1986. From the facts admitted and the records produced before this Court, this Court is unable to disbelieve the



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statement of the Advocate Receiver that he does not have the sanctioned original plan and the building permission granted by the local body. The impugned orders proceed on the basis that the construction put up by the petitioner is unauthorised, as the petitioner has not produced any building plan approval. This is not appropriate having regard to the acknowledgments as to the acceptance of plan as well as the approval granted to the building plan even in the year 1986 to the petitioner. The petitioner has produced before this Court the xerox copy of a building plan approval. Even though the document produced is a xerox copy, having regard to the fact of petitioner's case that the original of the building plan approval is not with the petitioner, this Court deem it fit to consider the xerox copy. The respondents 1 & 2, who have earlier passed the impugned orders and proceeded on the basis that the construction is totally unauthorised, have failed to produce the communication emanated from the CMDA as well as Chennai Corporation. Therefore, we have to draw an adverse inference as against the respondents 1 & 2 for not producing the planning permission/approval granted to the petitioner for the additional construction.



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7. Be that as it may, the construction in this case is very old and it is not in dispute. The official respondents have proceeded not on their own, but at the instigation of the respondents 3 & 4 who have no semblance of right as on date. From the exchange of notices and representations, this Court is convinced that the respondents 3 & 4 have admitted the possession and enjoyment of the property by the Wakf for decades. However, their claim is on the basis of patta which has been granted very recently. Since the dispute regarding title is before civil Court and the private respondents have failed to seek recovery of possession for more than 50 years, this Court is unable to consider the objection of the private respondents as having any bona fides. The learned Senior Counsel appearing for the petitioner, during his arguments, submitted that the private respondents are permanent residents of different district and they have given objections only pointing out the unauthorised construction claiming title over the property.

8. This Court, considering the fact that the private respondents have not raised their little finger all along and the dispute is already in civil Court, is of the opinion that the respondents 3 & 4 are now interested in demolition



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on the basis of the revenue documents without taking any steps for several decades to seek possession from the petitioner. Since the official respondents have acted on the representation of the private respondents who are not in a position nor have taken action admitting the possession of the petitioner for several decades, the impugned action suffers from malafides apart from material irregularities. This Court has already seen that adverse inference has to be drawn against respondents 1 & 2 who are not producing before this Court any record even after admitting the existence of such records on their file. Therefore, the impugned orders are unsustainable and they are liable to be set aside. Accordingly, the writ petitions are allowed and the impugned orders dated 27.10.2023 and 20.11.2023 passed by the official respondents are set aside.

9. However, the learned Standing Counsel appearing for the respondent Corporation submitted that the construction which is found in the disputed property is not in adherence to the building plan that is now produced by the petitioner. If that is so, it is open to the official respondents to take appropriate action. Since the additional construction put up by the



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petitioner was long before the regularisation scheme, it is also open to the petitioner to seek regularisation of the building in the manner known to law.

Consequently, W.M.P.Nos.47 & 10408 of 2024 are closed. No order as to costs.

Index : yes/no
Neutral citation : yes/no

(S.S.S.R.,J.) (N.S.,J.)
20.06.2024

SS

To

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