



WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) Nos.12718 to 12721 of 2024

and

**W.M.P.(MD) Nos.11338, 11339, 11321, 11324, 11317, 11319, 11314 and 11316
of 2024**

Kattu Bava Sahib Pallivasal @
Peer Mohammed Sahib Pallivasal,
rep. by its President,
N.Majeeth

... Petitioner in all W.Ps.,

/vs./

1.1.The Estate Officer,
The Tamil Nadu Waqf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai 600 001.

2.The Chief Executive Officer,
The Tamil Nadu Waqf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai 600 001.

... Respondents 1 and 2 in all W.Ps.,



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Bathur Nisa

... 3rd respondent in W.P.(MD) No.12718 of 2024

Mohamed Saliha

... 3rd respondent in W.P.(MD) No.12719 of 2024

Syed Ali Fathima

... 3rd respondent in W.P.(MD) No.12720 of 2024

Mohideen Fathima

... 3rd respondent in W.P.(MD) No.12721 of 2024

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling upon the records of the 1st respondent in PP Nos.92/TNV/2022, 93/TNV/2022, 93/TNV/2022 and 95/TNV/2022 dated 29.02.2024 and thereby quash the same as void, illegal, ultravires and unconstitutional and further direct the 2nd respondent to dispose the petition dated 03.06.2024 filed under section 54 of the Waqf Act 1995.

For Petitioner
in all W.Ps., : Mr.MMI.Khaleel

For R1 & R2 : Mr.D.S.Haroon Rasheed
Standing Counsel

COMMON ORDER

By this common order, all the 4 writ petitions are being disposed of at the time of admission after hearing the learned counsel for the petitioner and the learned Standing Counsel for the respondents 1 and 2 and after dispensing with



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the notice to the third respondent, as no adverse orders are proposed to be passed against the third respondent while disposing of this writ petition.

2.In these writ petitions, the petitioner has challenged the following orders:

<i>S.No.</i>	<i>Writ Petition</i>	<i>Impugned order date</i>	<i>Respondent</i>
<i>1</i>	<i>W.P.(MD) No.12718 of 2024</i>	<i>29.02.2024</i>	<i>First respondent</i>
<i>2</i>	<i>W.P.(MD) No.12719 of 2024</i>	<i>29.02.2024</i>	<i>First respondent</i>
<i>3</i>	<i>W.P.(MD) No.12720 of 2024</i>	<i>29.02.2024</i>	<i>First respondent</i>
<i>4</i>	<i>W.P.(MD) No.12721 of 2024</i>	<i>29.02.2024</i>	<i>First respondent</i>

3.These impugned orders have been passed by the first respondent under Sections 4, 5 and 7 of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 (TN Act 1 of 1976).

4.Operative portion in the respective orders are identical. They read as similar. Relevant portion from the impugned order in W.P.(MD) No.12718 of 2024 is reproduced below for the purpose of clarity.

“10. On 13.12.2023, petitioner and his counsel were present. Respondent and his counsel were present. Respondent's counsel filed vakalath and written submission. Both side arguments were heard. Order was reserved.



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Further, perused the eviction petition & counter on perusal of the counter the respondent has stated that he is not the owner of the shop and he is an employee under one P.Mohamed Illiyas S/o Peer Mohamed. As per the schedule of property an extent of 150 Sq ft., encroached for the purpose of having puncher shop. On the side of the petitioner so far has not filed any rejoinder denying the status of the respondent. In such circumstances without impleading the proper person namely the owner of the shop passing of order against the third party, who is not the proper and necessary party the order become invalid & un-executable Therefore, the petitioner is directed to implead the proper and necessary party namely the owner of the puncher shop. Hence the case is disposed off accordingly. ”

5.It is brought to the knowledge of the petitioner that the first respondent has failed to note that the Deputy Collector cum Secretary, State Wakf Board in his communication dated 12.07.1967 has informed about the exchange of land effected between the Muthawalli of the Wakf and V.Ganapathi Shanmugam Pillai, which has been ratified by the Board after the meeting held on 29.06.1961.

6.Copy of the said communication referred to by the learned counsel for the petitioner reads as under:



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WBNo:680/2085/A1/67

Office of the State Wakf Board
3.Santhom High road, Mylapore
Dated 12.7.67

From
F.Ahamed BSc
Dy Collector & Secretary
State Wakf Board,
Madras-4

To
The Administrative Officer,
Kovilpatti Lakshmi Roller
Flower Mill (P)Ltd.,
Gangaikondan East
Tirunelveli District

Sir,

Sub: Wakf Act 1954 -Tirunelveli District & Taluk-
Gangaikondan Kattuva Sahib Pallivasal alias Peer Md
Sahib Pallivasal -Exchange of Land -ratified

Ref: 1)Your letter No F27/67/dated 30.3.67
2)Board's Resolution dated 29.6.67.

You are informed that Exchange of land effected
between the Muthavalli of the above Wakf and Thiru V.Ganapathy
Shanmugam Pillai has been ratified by the Board at its meeting held
on 29.6.67.

Sd.,
Secretary

Copy to

- 1)Thiru E.M.Omer, Member State Wakf Board, Madras
- 2) The Supdt of Wakfs, Southern Zone Madurai
- 3) The Wakf Inspector, Tirunelveli
- 4) The S P E. Mohamed SahibRowther,Muthavallol Gangaikondan
Kattuva Sahib Pallivasal Shermadevi road, Pettai,
Tirunelveli 627004



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7.It is further submitted that pursuant to the aforesaid communication dated 12.07.1967, the records have been mutated in the revenue records in favour of the petitioner Wakf. Therefore, the above observation, which has been extracted above, is incorrect.

8.The learned Standing Counsel for the respondents 1 to 3 would submit that irrespective of the inaccurate observations in the impugned order, the petitioner is not without any remedy, as at this distant point of time, the issue stands covered against the petitioner insofar as the invocation of jurisdiction under the provisions of the aforesaid Act. It is submitted that the Hon'ble Division Bench has held that the provisions of the Act are *ultra vires*.

9.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Standing Counsel for the respondents 1 to 3.

10.The impugned orders are all dated 29.02.2024, on which date there was an assumption that the provisions will apply to the properties of the Wakf. However, the Hon'ble Division Bench in its order dated 23.04.2024, has now



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concluded that the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 (TN Act 1 of 1976) will not apply to the Wakf.

11. In para 13, the Hon'ble Division Bench has concluded as follows:-

“13. In the result,

13.1 W.P.Nos.6667 of 2013; 6561 and 6767 of 2022; 20553 and 22931 of 2023 and 1568 and 8121 of 2024 are allowed on the following terms:

(i) The Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Amendment Act 33 of 2010 is declared to be void qua the Wakf Act and hence ultra vires the Constitution; (ii) It is made clear that on application by the respective Wakf(s) or otherwise, the Chief Executive Officer will be entitled to move such application before the Wakf Tribunal under the Wakf Act, 1995 (as amended) against the petitioners or such encroachers and the Tribunal shall consider the same in accordance with the law.

(iii) There shall be no order as to costs. Consequently, all connected miscellaneous petitions are closed. W.M.P.No.6667 of 2022 in W.P.No.6561 of 2022 filed to permit the petitioners to file a single writ petition is allowed and disposed of.

13.2. W.A.Nos.2865, 2070, 2074, 2076, 2078, 2109, 2195, 2289 and 2290 of 2023; 820 and 944 of 2024 are allowed on the following terms:

(i) In view of our decision holding the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Amendment Act 33 of 2010 as repugnant, void and ultra vires the Constitution, the proceedings initiated against the appellants by issuance of show cause notices in exercise of the power of such enactment are unsustainable and, as such, the common order of the learned Single Judge dated 3.7.2023 in W.P.Nos.17331, 13507, 13510, 13514, 14424, 14426,



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14428, 14432, 16963, 17164, 17399, 17371, 18475 and 18479 of 2023 is set aside.

(ii) The respective show cause notices/orders issued against the appellants shall stand quashed. However, the respondent authorities will be at liberty to initiate fresh proceedings under the Waqf Act, 1995, as amended, in accordance with law.

(iii) There shall be no order as to costs. Consequently, all connected miscellaneous petitions are closed.”

12. In view of the above, these Writ Petitions stand disposed of by permitting the petitioner to move the Wakf Board under Section 54 of the Wakf Act to initiate appropriate action against the alleged encroachers, who are the private respondents in these writ petitions.

13. It is made clear that any observation made in this order touching on merits and defenses that may be available to the private respondents herein will not apply to the proceedings under Section 54 of the Wakf Act. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes / No
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14.06.2024

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C.SARAVANAN, J.

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