



*W.P.(MD) No.12628 of 2024*

**WEB COPY** BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**DATED: 14.06.2024**

**CORAM:**

**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

**W.P.(MD) No.12628 of 2024  
and  
W.M.P.(MD)Nos.11241 & 11242 of 2024**

Sulthan Ibrahim

... Petitioner

**Vs.**

1.The Estate Officer/Chief Executive Officer,  
Wakf House,  
No.1, Jaffar Syrang Street,  
Vallal Seethakathi Nagar,  
Chennai – 600 001.

2.The Secretary / Wakf Inspector,  
Jumma Thozhugai Pallivasal,  
Samayanallur,  
Madurai

... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the entire records pertaining to the records in Case No.PP.No.16/MDU/2021 dated 06.09.2022 passed by the 1<sup>st</sup> respondent and quash the same as illegal, ultravires and



W.P.(MD) No.12628 of 2024

unconstitutional and further direct the respondents to de-seal the subject property.

For petitioner : Mr.S.Ramesh

For respondents : Mr.S.A.Ajmalkhan  
Standing Counsel

\*\*\*\*\*

### **ORDER**

Heard learned counsel for the petitioner and the learned Standing Counsel for the respondents.

2. The issue is *prima facie* covered in favour of the petitioner in terms of the decision of the Hon'ble Division Bench of this Court rendered in ***W.P.Nos. 20553, 22931 of 2023 etc., batch, on 23.04.2023*** challenging the applicability of the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Amendment Act (Act No.33 of 2010).

3. The subject has been summarised by the Hon'ble Division Bench of this Court 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:*



W.P.(MD) No.12628 of 2024

WEB COPY

- (i) *The Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Amendment Act 33 of 2010 is declared to be void qua the Waqf 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, 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*



W.P.(MD) No.12628 of 2024

WEB COPY

*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.”*

4. In this connection, the observation in para 12.10 is relevant, as reads

as under:

*“12.10 The Hon'ble Supreme Court of India in Rashid Wali Beg, supra, has held that such bar is all pervasive. In that event, we cannot but hold that the Parliamentary law categorically and unequivocally occupies the entire field and the State enactment which provides for the Estate Officer to evict the encroachers in the waqf property directly runs into Section 85. In accordance with the dictum in Forum of Peoples Collective Efforts (Cited Supra) in this case, we see the intent of Parliament in enacting an exhaustive code on a subject in the Concurrent List. After finding that some states have carried amendments in their Public Premises Act and many have not, to promote uniformity and standardisation of the legislative scheme as a matter of public interest the amendments were made to the Wakf Act in 2013. The parliamentary law intends to secure the protection of wakf properties which requires uniformity of law and consistency of its application all over the country. The Central Act is thus made as an exhaustive code on the subject. Thus, the State enactment is repugnant to the Waqf Act, 1995, as amended in the year 2013.*

*12.11 Applying the direct conflict test also, it can be seen that the State Act, that is to say, Clause 3 of Section 2(e) of the State enactment, is in direct conflict with Section 85 as well as Section 54. Further, while the State Enactment empowers the Chief Executive Officer(Estate Officer) to pass*



W.P.(MD) No.12628 of 2024

WEB COPY

*orders of eviction, the Central Enactment requires him to file an application before the Tribunal. Without disobeying Section 85, no application can be laid before the Estate Officer under the impugned enactment.”*

5. It is noticed that the petitioner is already before the Principal District Munsif, Madurai in C.M.A.No.44 of 2022 against the impugned order passed by the first respondent.

6. Considering the same, this Court is inclined to dispose of this Writ Petition by directing the Principal District Judge, Madurai to dispose of C.M.A.No.44 of 2022 within a period of one month from the date of receipt of a copy of this order taking note of the above decision of the Hon'ble Division Bench of this Court. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No  
Internet : Yes / No  
apd

**14.06.2024**



WEB COPY



*W.P.(MD) No.12628 of 2024*

**C.SARAVANAN, J.**

apd

**W.P.(MD) No.12628 of 2024**

**14.06.2024**