



IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Reserved on	Delivered on
30~01~2025	13 ~02~2025

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRP NPD NOs. 1666 & 1667 of 2003 &

W.P.Nos.27663, 27664 of 2003 & 26064 of 2005 &

WMP.Nos.33802, 33804 33805, 33807 of 2003 & 28490 & 28491 of 2005

1. V.P.Shakthivel [died]
2. V.K.Vaiyapuri [died]
3. Karuppannan [died]
4. Kuppasamy [died]
5. Jayaprakash
6. Thirumurugan
7. Senthil Kumar
8. Senthamarai

[Petitioners 5 to 8 are brought on record as LR's of the deceased Petitioners 1 to 4 respectively as per the Order of this Court dated 16.09.2022 made in CMP.Nos.14313, 14318 and 14322 of 2022 in CRP.No.1666 of 2023 by TVTSJ]

... Petitioners

Vs

1. S.Mubarak Ali
Muthawalli Of Tiruchengode, Muslim Mosquewakf,
Tiruchengode.
2. Thirugengode Town Muslim Mosque
Rep. by its Muthavalli, S.Mubarak Ali
3. D.K.Kaliammal
4. K.Arulmani



5. V.Saradamani

6. V.Elangovan

7. K.M.Palanisamy

... Respondents

Prayer : This Civil Revision Petition filed under Section 83[9] of the Wakfs Ack read with Article 227 of the Constitution of India against the judgment and decree in W.O.P.No.32 of 1999 on the file of the Wakf Tribunal Authority [Principal Sub Judge], Salem dated 18.03.2003.

Petitioners : Mr.S.Parthasarathy, Senior Counsel
for Mr.P.Dinesh Kumar

Respondents : Mr.K.P.Gopalakrishnan – R1

Mr.R.Abdul Mubeen – R2

Mr.P.Kumaresan,
Additional Advocate General
Asst. by Mr.M.Murali, Government Advocate
- R3 to R6

COMMON ORDER

Challenge has been made to the Order of the Wakf Tribunal Ordering eviction in WOP.Nos.32 and 33 of 1999 and also granting permanent injunction against the Government not to assign the property to any third party, the present Civil Revision Petitions and Writ Petitions have been filed.

2. Originally, the suit in O.S.No.823 of 1981 on the file of the District



WEB COPY

Munsif Court, Thiruchengode has been filed for recovery of the possession from the tenants. O.S.No.360 of 1992 has been filed seeking permanent injunction against the Government not to assign any part of the suit property in favour of the third parties. O.S.No.823 of 1981 originally decreed in favour of the Wakf. However, in an appeal before the Sub Court, in A.S.No.42 of 1990, the same has been reversed. Challenging the same, a second appeal has been filed before this Court in S.A.No.1517 of 1992. This Court by an Order dated 29.03.1995 has set aside the Order of the first appellate Court and remanded the matter to the District Munsif, Thiruchengode for fresh disposal with a direction to try that suit along with the suit O.S.No.360 of 1992, which is already pending on the file of the said Court. However, while disposing the appeal, this Court has held that denial of the title of the landlord by the tenant is not permissible. The question of title has not been decided by this Court. However, held that tenant is estopped from denying the title. Thereafter, both the suits were transferred to the Wakf Tribunal and are renumbered as WOP.Nos.32 of 1999 and 33 of 1999.

3. In WOP.No.32 of 1999, it is the case of the Wakf that the suit property to an extent of 66 cent in Survey No.90/2 in Thiruchengode Village is notified as a wakf property and classified as closed burial ground of the Muslims. The same was also published in the notification on 30.04.1959. The



said notification has not been challenged within one year. It is the contention of the wakf that in a revenue settlement, the property earlier mentioned as Mayanam and later it is classified as poromboke. The defendants 5 to 10 are the tenants under the wakf ever since 1968. The defendants took the properties on lease for running tea shop business. The rent was fixed at Rs.190/- per mensem at the earlier point of time. The defendants were paying rents regularly till the end of March 1974. Thereafter, the defendants have failed to pay rent. Now the defendants in collusion with certain persons inimically disposed towards the plaintiff is now setting up inconsistent and hostile title to the property. They are not entitled to deny the title of the landlord during the subsistence of tenancy. Hence, the suit has been filed for recovery of possession.

4. The defendants 2 to 4, who are impleaded as legal heirs of the first defendant have filed a memo admitting the claim of the plaintiff.

5. Whereas, the respondents 5 to 10 filed a counter stating that an extent of 0.66 acers in old survey No.90/2 was classified as mayanam poromboke in revenue records from the time immemorial. It is denied that the suit property has been granted to the Muslim community for kabarastan or mayanam. The property was never used as Muslim burial ground at any pint of time and the



property ceased to be used as kabarastan due to the development of Tiruchengode town is false. It is also denied that wakf has been created during the time of Thippu Sulthan for performing service to the mosque. According to them, one S.M.Sheik Abdulla falsely made a representation that the suit property is a wakf property and he was collecting rent for the buildings constructed and in occupation of the respondents. According to them, the buildings are constructed more than 35 years back and they are in possession and enjoyment of the building. During 1974, the Government authorities took proceedings under Madras Land Encroachment Act and issued notice under sections 5 and 6 of the Act. Thereafter, the Government collected B.Memo charges from the respondents. As the wakf is not having valid title over the property and they are not in the possession of the property, they are not entitled to the relief as prayed for. According to them, the title of the suit property vests with the Government.

6. In the Wakf Original petitions, the following points arose for consideration in W.O.P.No.32 of 199 :

1. Whether the petition mentioned property namely
S.No.90/2 [New T.S.No.2] Tiruchengode Village and
Tiruchengode Taluk is a wakf property??



WEB COPY

2. Whether the respondents 5 to 10 are tenants of the petitioner mosque?

3. Whether the petitioners are entitled to possession of the petition mentioned property?

5. Whether the respondents are liable to pay damages for use and occupation from 01.10.1975 to till 03.10.1977 to the tune of Rs.4750/-?

6. Whether the respondents are liable to pay damages at the rate of Rs.190/- per mensem from 01.11.1977 till date of delivery of possession?

7. To what relief?

7. In WOP.No.33 of 1999, it is the contention of the Wakf Board that entire property was dedicated to the Wakf by a title deed. The property was notified as the Wakf property by a notification dated 13.04.1959. The muthavalli of Tiruchengode had constructed shops in Survey No.90/2 and leased out to various tenants. The license for the construction of the building in a portion of S.No.90/2 was sanctioned in favour of Muthavalli of mosque on 09.12.1968. The defendants have also executed lease deeds in favour of the mosque during the years 1968, 1970, 1975, 1981 and 1985. When the matter



stood thus, the revenue officials issued B memos to some of the tenants and the tenants taking advantage of the said B memos, approached the authorities for assigning and issue of pattas in respect of the portion occupied by them. Their claims have been rejected by the Government. In fact, the District Revenue Officer, Salem on 04.01.1976 directed the Tahsildar not to book B memos against the occupiers of portions of land in Survey No.90/2 which is notified as wakf property. Hence, the relief of permanent injunction is sought against the Government.

8. The stand of the Government in their counter is that the land was originally classified as Myanam [burial ground] in the revenue records. The said land during the survey and settlement operations in the year 1934 bearing Old No.351 has been co-related and classified as burial ground. The said burial ground was surrounded by dwelling houses and business premises and hence, the burial ground was shifted to some other place. In the meanwhile, the District Revenue Officer by his Order dated 27.06.1977 Ordered that the land in Survey No.90/2 is a wakf property based on the Forte St. George Gazette notification dated 29.04.1959. Subsequent to the same, the District and Survey Settlement Officer in their proceeding in Roc.No.A1 5779/98 dated 21.04.1998, passed an Order that the property is a wakf property. Consequent to this Order,



changes and corrections were made in all the revenue records of the property.

However, the occupants of the property went on appeal against the Orders of the Director and Settlement dated 21.04.1988 and the Special Commissioner and Commissioner of Land Administration has cancelled the Order of Director of Survey and Settlement, Chennai by his Order dated 24.10.2002. Therefore, it is their contention that the property is not a wakf property. The Tahsildar as per the Orders of the High Court had conducted enquiry and passed Order holding that land is the Government Poromboke land and recommended for assignment of the land to the occupiers. Hence, it is his contention that the property is a Government property. The Government initiated action to classify the land into promboke and B Memos have been issued against the encroachers. Hence, according to them, the wakf has no title to the property.

9. In WOP.No.33 of 1999 the following points arise for consideration :

1. Whether the petition mentioned properties namely S.No.90/2 [New T.S.No.2] Tiruchengode Village and Tiruchengode Taluk is a Wakf property?
2. Whether the respondents 5 to 14 are tenants of the petitioner Mosque?
3. Whether the petitioner Mosque is entitled to the relief



WEB COPY

of permanent injunction as prayed for?

4. To what relief?

10. Common evidence was recorded on the side of plaintiff P.W.1 to 5 have been examined and Ex.A.1 to A44 have been marked and on the side of the respondents, R.W.1 was examined and Ex.B.1 to Ex.B.6 have been marked and also Ex.C.1 to Ex.C.3 have been marked.

11. The Wakf Tribunal after analysing entire evidence has held that the revision petitioners and others are tenants and also held that petition mentioned property belong to the wakf. As against which, the defendants 5, 8 to 10 in WOP.Nos.32 and 33 of 1999 have filed CRP NPD Nos.1666 and 1667 of 2003, and the sixth and seventh defendants in the Wakf Original Petition have filed Writ Petitions in W.P.Nos.27664 & 27665 of 2003 against the Order of the Wakf Tribunal passed in WOP.Nos.32 and 33 of 1999. Similarly, the Government has filed a Writ Petition in W.P.No.26064 of 2005 challenging the Order of the Wakf tribunal in W.O.P.Nos.32 of 1999 and 33 of 1999.

12. The learned Senior counsel Mr.S.Parthasarathy, appearing for the petitioners in Civil Revision Petitions in CRP.NPD Nos.1666 of 1667 of 2003 would submit that the tribunal has recorded a finding on the basis of Ex.A.30



dated 02.04.1998 whereas the Order passed by the Special Commissioner, Land Administration, Madras under Ex.B.1 was not considered by the Wakf Tribunal.

According to him, the Order of the Director of Survey and Settlement passed on 12.04.1998 has been cancelled on an appeal before the Special Commissioner on 24.10.2002 under Ex.B.1. Whereas, the trial Court has given undue importance to the earlier communications. Therefore, the earlier communications have already been set aside by the Special Commissioner under Ex.B.1. The trial Court not even considered this aspect. Further, the earlier communications, declared the property as myanam poromboke and the same was challenged before this Court in W.P.No.16539 of 1991. However, the Writ Petition has been dismissed and even the Writ Appeal filed against the said Order in W.A.No.1362 of 1993 has also been dismissed. Therefore, it is his contention that as long as title has not been established, the revenue records will clearly prove the fact and the dedication of the property to the wakf has not been established. Therefore, according to him, the wakf tribunal has not even properly considered the evidence in this regard. It is his further contention that Wakf Tribunal has no power to Order recovery of possession. In support of his contention, he relied on the judgment of the Supreme Court in **Board of Muslim Wakfs, Rajasthan Vs. Radha Kishan and others** reported in [1979] 2 Supreme Court Cases 468.



WEB COPY

13. Mr.P.Mani, learned counsel appearing for the writ petitioners in W.P.No.27663 and 27664 of 2003 adopting the submissions of the learned Senior Counsel in other aspects he has also submitted that there is no specific relief sought against all the tenants and the Order of eviction passed against the writ petitioners as well as the revision petitioners is not maintainable. In support of his contentions he relied on the following judgments of the Apex Court :

- 1] Punjab Wakf Board Vs. Tarlochan Singh [Dead Thiru LR's and another in Civil Appeal No.1509 of 2020**
- 2] Ramesh Gobindran [dead] through lrs Vs. Sugra Humayun Mirza Wakf in Civil Appeal No.1182 of 2006**
- 3] Punjab Wakf Board Vs. Sham Sing Harike and in Punjab Wakf Board Vs. Teja Singh in Civil Appeal No.92 of 2019 and 93 of 2019**

14. The learned Additional Advocate General appearing in the Writ Petition No.26064 of 2005 has submitted that the property is a Government poramboke land and it is not the wakf property. In support of his submissions,



he relied on the following judgments :

WEB COPY

**T.V.Ramakrishna Reddy Vs. M.Mallappa and
another in Civil Appeal No.5577 of 2021 of the Supreme
Court**

**Anathula Sudhakar Vs. P.Buchi Reddy [Dead] by
LRs. Reported in 2008 [6] CTC 237**

15. Whereas, the learned counsel appearing for the respondent / Mutavalli, Wakf would contend that the evidence adduced before the trial Court clinchingly establish the fact that the property is a wakf property. The property has been notified in the Gazette, which has been clearly established. Even the proceedings of the revenue authorities in the earlier proceedings clearly prove the fact that the property has been declared as the wakf property. Ex.B.1 Order has been passed at a later part of time only in order to support certain section of persons who are inducted as a tenant by Muthavalli. Further Ex.B.1 Order has been passed as if this Court passed the Order accepting the case of the Government in W.P.No.12586 of 1990. On the contrary, the said Writ Petition has been disposed of with a direction to consider the representation and pass Orders on merits. Similarly, Ex.B.1 Order has been passed on the basis of the judgment of the first appellate Court in A.S.No.42 of



1990, which has been set aside by this Court in the Second Appeal. Therefore, it is his contention that Ex.B.1 cannot be given importance. Whereas, Ex.A.1 and Ex.C.1 clearly establish the fact that the subject property is a wakf property. That apart, the defendants are tenants and they have executed lease deeds in favour of Muthavalli and hence, they are estopped from denying the title. Further, it is his contention that the Wakf has power to Order eviction. Therefore, the Order of the Wakf Board does not require any interference. In support of his contentions, he relied on the following judgments :

Indian Railway SAS Staff Association and others
Vs. Union of India and others reported in [1998] 2
Supreme Court Cases 651

Rashid Wali Beg Vs. Farid Pindari and others
reported in [2022] 4 Supreme Court Cases 414

16. Now the point that arise for consideration are that

1. Whether the property in question in Survey No.90/2 is a wakf property or the Government property?
2. Whether persons inducted into possession as tenants are entitled to deny the title of the landlord?



WEB COPY

17. It is the specific stand of the respondent/ wakf that the property is a wakf property and dedicated to wakf by way of Ex.A.1. As per Ex.,A.1 proforma and the notification issued indicate that as per the title deed No.995 dated 23.10.1963, the subject properties and other properties were dedicated to the wakf Board during the time of Tippusultan for performing service to the mosque. Though it is contended by the learned counsel for the respondent that the survey No.90/2 was not originally in the proforma and there was a interpolation, on a careful perusal of Ex.A.1 marked in this regard makes it very clear that Survey No.90/2 were subject matter of dedication by way of title deed No.995 dated 23.10.1963. It is also relevant to note that Ex.X.,1 is a public record maintained by the authorities. Remarks recorded in para 23 in Ex.X.1 indicate existence of burial ground attached to the mosque n survey No.90/2 Thiruvhengode Village below the tank bund by the side of the church, which is in the heart of the town and the same is a closed burial ground where no burial takes place. Subsequently the burial ground has been shifted to northern side of survey number S.No.46/1 poromboke 0.68 cents of Seetharampalayam Village. This is now used as a burial ground for the Muslims.

18. Further in Ex.X.1, it is stated that it is understood that as this is not



being used as burial ground, the local panchayat board taking advantage has applied to the Collector for the allocation of the entire site [60 cents] for the purpose of bus stand for the town. It appears that the Collector, Salem, inspected the site and was of the opinion that as there is no burials seen on the ground and the land has been kept waste without putting it to use, it is quite suitable for bus stand. He has also Ordered Panchayat to send their resolution for alienation of the land and the Panchayat Board has also submitted their resolution. Now the collector has ordered Thiruchengode Tahsildar to submit a proposal for alienation of the land together with the subdivision records through the Revenue Divisional Officer, Namakkal and the same is pending with the Tahsildar. The objections have been raised by the Muslims for use of the burial ground as public bus stand and the said remarks have been noted by the Assistant Commissioner of Wakf dated 16.12.1955. The above entry in Ex.X.1 makes it clear that the property was originally under the control of Wakf and as the same has not been used as a burial ground, an attempt was made to alienate the property in the year 1955 onwards. Thereafter, it appears that B memos were issued to the tenants.

19. It is relevant to note that in the suit in O.S.No.823 of 1981 an application in I.A.No.838 of 1996 has been filed to implead the Government,



wherein a stand has been taken on the side of the Government that they are not a necessary party to the suit since the property is a wakf property. The counter filed in the above application has also been marked as Ex.A.29. Though much emphasis is made to Ex.B.1, to contend that the Wakf Tribunal has relied upon the earlier communication, rather than Ex.B.1, a perusal of Ex.B.1, it is seen that the Commissioner of Land Administration by an Order dated 24.10.2002 has set aside the earlier Order of the Revenue Divisional Officer and the Director of Survey and Settlement, dated 21.04.1998, which is marked as Ex.A.13, which confirms that the property is a wakf property. The Commissioner while setting aside the Order proceeded as if the Writ Court has confirmed the Order of the Special Commissioner in Writ Appeal No.1361 of 1993.

20. It is further relevant to note that W.P.No.16539 of 1991 was originally filed challenging the Order of the authorities declaring 66 cents of land in Survey No.90/2 in Thiruchengode classified as myanam proromboke and the said writ petition has been dismissed mainly on the ground that in the appeal in A.S.No.42 of 1990 the Sub Court, Sankari has held that the suit property is a poromboke land. Taking note of said fact, in the writ petition filed in W.P.No.16539 of 1993, the petitioner is granted liberty to move the appellate



Court as the writ petition has been dismissed on the ground that the Writ Petition is not maintainable especially when the decision of the Civil Court is against them. That Order when challenged in the Writ Appeal in W.A.No.1362 of 1993, the Division Bench of this Court has dismissed the Writ appeal.

21. It is relevant to note that challenging the Order of the Commissioner, originally a Writ Petition in W.P.No.12586 of 1990 was filed. This Court disposed of the Writ Petition directing the writ petitioner to submit his explanation and with a direction to the Tahsildar to consider the representation and pass Orders on merits on the issue whether the land is a Government poromboke land or a wakf property. Therefore, it cannot be said that the Writ Court has decided the issue finally. Infact in Writ Appeal No.1362 of 1993, which has been filed challenging the Order passed in the Writ Petition in W.P.No.12586 of 1990, the Division Bench of this Court while dismissing the Writ Appeal made it clear that the question of title shall be decided only by the Civil Court. Therefore, the Order passed under Ex.B.1 relying upon the Writ Court Order as if the Writ Court has finally decided the issue in favour of the Government, in view of this Court is not correct. Therefore, the contention of the learned Counsel that Ex.B.1 will prevail has no legs to stand.



22. It is further to be noted that the entries in the public records particularly in the Gazette notification of the year 1955, Ex.X1, the remarks of the Commissioner in Ex.X.1 proves the fact that the property originally dedicated as wakf property. Later, the property has not been used as myanam or burial ground, as some other burial ground is already allotted to them. It appears that the Government taking note of the fact that the burial ground has been kept vacant has taken steps to convert it as Bus stand. This has been clearly recorded in the proceedings of the year 1955 itself. P.W.1 to P.W.5 have also clearly spoken about the nature of the property and its use. Ex.A.3 auction notice issued by the wakf in respect of S.No.90/2 and Ex.A.6 proves that the auction has been conducted by the wakf. Ex.A.5 and Ex.A.6 clearly prove that permission is granted by the Tahsildhar to remove the fallen trees from the property. Ex.A.8 and Ex.A.18 clearly show that the defendants and other parties have entered into a lease agreement. Therefore, the wakf has exercised its power all along and rent deeds brought before the trial Court clearly show that the defendants have been inducted as tenants. Merely because, the Government has attempted to take over the property and issued B memos to the parties, the same will not take away the status of tenants.

23. Once if a person is inducted as a tenant, he is estopped from denying



the title of the landlord. Infact, the request of some of the parties to assign the land is also communicated by the Government under Ex.A.28, wherein, it is clearly held that as the properties have already been notified as wakf property, the question of assignment does not arise at all. As long as the entries in the notification Ex.A.1 and Ex.X.1 is not challenged and no materials placed to discredit the entries, the presumption attached to such Government documents will also lie in favour of wakf. Therefore, this Court is of the view that the contention of the petitioners that the title is not with the wakf Board and it is only a Government land, has no legs to stand.

24. Yet another contention of the learned counsel for the petitioners is that the Wakf Tribunal has no jurisdiction to Ordering eviction. In this regard, the judgment relied on by he learned counsel appearing for the first respondent in the Civil Revision Petitions and the Writ Petitions in **Rashid Wali Beg Vs. Farid Pindari and others** reported in [2022] 4 Supreme Court Cases 414, in para 68, it has been held as follows :

“The dichotomy created in some decisions of this court, between the properties which are admitted to be waqf properties and properties which are disputed to be so, is on account of the misapplication of the two limited questions in [Sections](#)



WEB COPY

6(1) and 7(1) to the whole of the Act including [section 83](#). At the cost of repetition we should point out that [Section 83\(1\)](#) provides for the determination of any dispute, question or any other matter, (i) relating to a waqf and (ii) relating to a waqf property. This prescription cannot be taken to have been curtailed or circumscribed by [Sections 6\(1\)](#) and [7\(1\)](#), to come to the conclusion that the Tribunal will assume jurisdiction only when a property is disputed to be a waqf property.”

In view of the above judgment of the Supreme Court, the contention of the petitioners that the Wakf Tribunal has no jurisdiction to Order eviction cannot be countenanced.

25. The further contention of the petitioners that as the relief has been sought against only one defendant, therefore, no relief can be granted against the other defendants, a perusal of the original plaint and the amended plaint filed clearly indicate that the relief has been sought against all the defendants for recovery of possession. Therefore, their contention in this regard also has no legs to stand.



26. Accordingly, these Civil Revision Petitions and the Writ Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

13.02.2025

Index:Yes/No

Neutral Citation : Yes/No

vrc

To,

1. The Wakf Tribunal Authority [Principal Sub Judge],
Salem.



WEB COPY



N.SATHISH KUMAR, J.

VTC

**Order in
CRP NPD NOs. 1666 & 1667 of 2003 &
W.P.Nos.27663, 27664 of 2003 & 26064 of 2005**

13.02.2025