



W.P.No.16511 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 04.06.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **HEMANT CHANDANGOUDAR**

W.P.No.16511 of 2025
&
W.M.P No.18648 of 2025 in W.P.No.16511 of 2025

I.Kauser

... Petitioner

Vs.

1. The Revenue Divisional Officer-South Chennai
Office of the Revenue Divisional Officer
Guindy, Chennai - 600 032

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

3. Dilshad Begum

... Respondents

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pursuant to the order passed by the 1st respondent in Na.Ka.No.B1/1141/2019 dated 25.04.2025 and to quash the same and consequently direct the first respondent not to disturb the petitioner's possession.

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For Petitioner : Mr.S.Shujath

For Respondents : Mr.M.S.Arasakumar
Government Advocate for R1

Mr.Avinash Wadhwani
Standing counsel
and Mr.Vishnu.VR for R2

Mr.Malai Saravanan for R3

ORDER

[Order of the Court was made by **M.SUNDAR, J.,**]

An 'order of eviction captioned 'Thakkithu' [தாக்கீது] dated 25.04.2025 bearing reference ந.க.எண்:ஆ/1141/2019 made by R1' {hereinafter 'impugned order' for the sake of brevity, convenience and clarity} has been assailed in the captioned WP.

2. Mr.S.Shujath, learned counsel for writ petitioner adverting to the impugned order submits that it is a terse order, it pertains to property at '13/6, Dowlath Khan Bahadur Street, Ellis Road, Anna Salai, Chennai' [hereinafter 'said property' for the sake of brevity]. To be noted, the impugned order of R1 refers to said property also in terms of Village No.18, Tiruvallikeni Village, Mylapore Taluk, Chennai District and Walaja Big Mosque Lane.

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3. Be that as it may, there is no dispute about the identity or location of said property and therefore, we are not delving any further on this aspect of the matter.

4. Mr.S.Shujath, learned counsel for writ petitioner further submits that impugned order, which is an eviction order has been made by R1, a) without jurisdiction and b) without giving any opportunity to the noticee. It was pointed out that in and vide the impugned order, the writ petitioner has been called upon to vacate said property in seven days.

5. When that matter was listed in the Admission Board on 30.04.2025, an interim order staying the operation of the impugned order was granted by this Court, notice was issued, notice has since been served, all three respondents are represented by counsel and they are before us.

6. R1 is represented by Mr.T.K.Saravanan, learned Additional Government Pleader, R2 is represented by Mr.Avinash Wadhwani, learned Standing counsel along with Mr.Vishnu VR, for 'Tamil Nadu Waqf Board' [hereinafter 'Waqf Board' for the sake of convenience] and R3 (private respondent) is represented by Mr.Malai Saravanan.

7. We heard all the counsel.



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8. After hearing all the counsel, it came to light that the legal perimeter within which the captioned matter should perambulate is very limited *inter alia* owing to the reason that it turns on the short point as to whether R1 has jurisdiction to make the impugned order. Therefore, with the consent of all the aforementioned counsel, main WP was taken up.

9. To be noted, there is no disputation as between the parties before us that said property is a Wakf property governed by 'The Waqf Act, 1995 (43 of 1995)' [hereinafter 'Waqf Act' for the sake of convenience] as amended and as obtaining today. The Authority vested with the power for removal of encroachment qua Wakf properties is the 'Chief Executive Officer', which is a defined term, the same having been defined vide Section 3(d) of Waft Act, which reads as follows:

3. Definitions.—In this Act, unless the context otherwise requires,—

(a)

(b)

(c)

(d) “Chief Executive Officer” means the Chief Executive Officer appointed under sub-section (1) of section 23;

(e)

.....'



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10. Section 3(d) of Waqf Act takes us to Section 23(1), which reads as follows:

'23. Appointment of Chief Executive Officer and his term of office and other conditions of service.—[(1)There shall be a full-time Chief Executive Officer of the Board who shall be a Muslim and shall be appointed by the State Government, by notification in the Official Gazette, from a panel of two names suggested by the Board and who shall not be below the rank of Deputy Secretary to the State Government, and in case of non-availability of a Muslim officer of that rank, a Muslim officer of equivalent rank may be appointed on deputation.]'

11. There is no dispute that R2 is the Chief Executive Officer within the meaning of Section 3(d) read with Section 23(1) of Waqf Act. Therefore, if there has to be any eviction qua said property, the Authority vested with jurisdiction to make a removal of encroachment order is R2 and that would be by resorting to Section 54 of Waqf Act. The role of R1, if at all and if that be so, will be post such an order *inter alia* under Section 55 of Waqf Act. Therefore, in our considered view, there can be no two opinions that the impugned order deserves to be dislodged on the short point of lack of jurisdiction.



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12. Be that as it may, for the sake of completion of facts and clarity,

we deem it appropriate to record that it comes to light from the case file that the Waqf Board (Tamil Nadu Wakf Board) appointed R3 before us as Muthavalli of 'Asar-e-Sheriff waqf' (hereinafter 'said Waqf' for the sake of convenience) in which the said property vests. This order of the Waqf Board was assailed before the Tamil Nadu Waqf Tribunal by one K.P Ismath Basha, who is the spouse of the writ petitioner, before us. The Waqf Tribunal in and by an order dated 24.12.2019 dismissed the appeal confirming the order of the Waqf Board, the writ petitioner's spouse K.P.Ismath Basha has assailed this 24.12.2019 order of the Tamil Nadu Waqf Tribunal in this Court by way of a revision petition being C.R.P No.318 of 2018 and the same is now pending. Therefore, we make it clear that we are not expressing any view or opinion on the merits of the order of the Waqf Board, the order of the Waqf Tribunal or for that matter, on any issues which arise in the Civil Revision Petition which is in seisin qua a Hon'ble single Judge Bench of this Court. For the sake of abundant clarity, we write that Hon'ble single Judge Bench will consider the Civil Revision Petition on its own merits and in accordance with law untrammelled by this



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order, which is written for the limited purpose of testing the impugned

WEB COPY order.

13. Reverting to the impugned order, as we are dislodging the impugned order on the short point of lack of jurisdiction, we are not going into the second point of opportunity not being given. Suffice to say that Section 54 provides for a show-cause notice but we deem it appropriate to leave it at that as it is really not within the perimeter of the legal drill at hand.

14. It is also made clear that it is open to the parties to initiate removal of alleged encroachment proceedings afresh. If such a course is adopted, this order will neither impede nor serve as a impetus qua such proceedings.

15. Owing to the narrative, discussion and dispositive reasoning thus far, the writ petition succeeds, we accede to the prayer for issue of writ of certiorari. In other words, the writ petition is allowed. As the writ petition is allowed, captioned WMP becomes otiose and the same is disposed of as



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closed/unnecessary. There shall be no order as to costs.

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(M.S.,J.) (H.C.,J.)
04.06.2025

Index : Yes / No
Neutral Citation : Yes / No
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(1/2)**

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