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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 10.11.2025

Orders Pronounced on : 28.11.2025

CORAM:

THE HONOURABLE MR. JUSTICE P.B.BALAJI

W.P.No.15686 of 2024
& WMP.Nos.17089 & 17091 of 2024
& WMP.No.44051 of 2025

Rajthilak

...Petitioner

Vs

1.The Estate Officer &
the Chief Executive Officer,
Tamil Nadu Waqf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Street,
Chennai – 600 001.

2.D.Suraiyabanu

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order dated 28.08.2022 passed by the 1st respondent in Case No.PP/4/CUDD/2023 and quash the same as unconstitutional and further direct the respondents to restore the petitioner's possession in the property measuring an extent of 393% $\frac{3}{4}$ sq.ft in T.S.No.348 now T.S.No.346/5 having Door No.58-A, Vellapirandian Mudali Street, Chidambaram, Cuddalore District.



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For Petitioner : Mr.R.Sreedhar

For Respondents : Mr.Abdul Mubeen
Standing Counsel for R1

Mr.I.Abdul Basith for R2

ORDER

The writ petitioner seeks issuance of a writ of Certiorarified Mandamus, calling for the records in order dated 28.08.2022 on the file of the 1st respondent in Case No.PP/4/CUDD/2023 and to quash the same unconstitutional and to further direct the respondents to restore the petitioner's possession of the property, measuring 393.75 sq.ft, comprised in T.S.No.348 now T.S.No.348/5, Door No.58-A, Vellapirandian Mudali Street, Chidambaram.

2.I have Mr.R.Sreedhar, learned counsel for the writ petitioner and Mr.Abdul Mubeen, learned Standing Counsel for the 1st respondent and Mr.I.Abdul Basith, learned counsel for the 2nd respondent.



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3.The learned counsel for the petitioner would submit that the subject property mentioned herein above was purchased by his father under a sale deed dated 15.02.2010 and that originally, the petitioner's father and his grandmother were tenants under the Mumti Fakir Thaikal Mosque Waqf. Section 9 of the Chennai City Tenants Protection Act, 1921, was invoked to direct sale of the subject property to the petitioner's father and his grandmother. It is only pursuant to the proceedings in the said suit that the entire sale consideration came to be paid and the sale deed came to be executed in favour of the petitioner's father.

4.It is the further case of the petitioner that his father died on 05.12.2014, leaving behind his wife, Lakshmi, the petitioner and the petitioner's sister, Bargavi. The mother and sister of the petitioner have settled their share in favour of the petitioner by executing a settlement deed on 18.09.2015. In the meantime, the petitioner received a notice on 25.04.2022 from the Waqf which was duly replied to by the petitioner. However, according to the petitioner, though the petitioner is the lawful owner of the property, Waqf had filed a declaratory suit in O.S.No.75 of



2013 before the Principal Sub-Judge, Chidambaram, against the petitioner's father and other occupants, seeking a declaration that the property belongs to the Waqf and also seeking recovery of possession. The said suit has admittedly been dismissed on 28.06.2016. Thereafter, the Waqf Board has invoked provisions of the Public Premises Act and issued a notice under Form-A.

5.The petitioner contends that he has availed of a loan through Pradhan Mantri Avas Yojana Scheme and started construction of a small house by demolishing the earlier hut which existed. According to the petitioner, the provisions of the Tamil Nadu Public Premises Act, cannot be invoked in the present case and even though the petitioner has challenged the notice under Form-A, the Estate Officer, by order dated 21.08.2022 dismissed the petitioner's claim, as against the which the petitioner has filed first appeal which is pending before the District Judge, Cuddalore in A.S.No.33 of 2022.

6.The petitioner refers to the decision of the Division Bench of this Court in W.P.Nos.20553 of 2023 etc batch, where it has been held that



the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants)

Amendment Act 33 of 2010, has been held to be repugnant, void and ultra-vires the constitution with a further direction that any show cause notice issued in exercise of powers under the void enactment are also unsustainable and the same were all quashed. Further liberty was granted to the respondents to initiate proceedings under the Waqf Act.

7.The learned counsel for the petitioner would therefore state that once the Amendment Act 33 of 2010 has been declared as repugnant and void, the very order under which the respondents proceeded to resume possession from the petitioner also becomes illegal and therefore, the petitioner is entitled to restoration of possession.

8.Per contra, Mr.Abdul Mubeen, learned Standing Counsel for the 1st respondent as well as Mr.I.Abdul Basith, learned counsel for the 2nd respondent would submit that the petitioner admittedly has been dispossessed in accordance with law, even prior to the decision of the Division Bench of this Court, holding the Amendment Act to be void and repugnant. It is therefore, the contention of the respondents that the



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petitioner cannot as a matter of right claim repossession of the property as, on the date of the petitioner being evicted the Amendment Act was in full force and the action taken by the respondents can only be termed to be legal. They would also contend that the Division Bench had only set aside show cause notice which had been issued pursuant to the Amendment Act and the Division Bench does not deal with cases where possession has already been taken pursuant to the proceedings taken under the Amendment Act 33 of 2010.

9. In fact, after hearing the parties, also considering the fact that the petitioner was only residing in a hut and after availing a loan under Pradhan Mantri Avas Yojana, he has also put up foundation and started construction of a new building, I felt that there is a possibility that at least the petitioner can be compensated by 2nd respondent. However, today, learned counsel for the parties stated that there is no possibility of settlement as the petitioner is keen on redelivery of the property in his favour and he is even willing to compensate the 2nd respondent for the additional expenses incurred to complete the building that has been originally commenced by the petitioner.



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10.The learned counsel for the respondents would further state that the petitioner can agitate the rights in the pending appeal in A.S.No.33 of 2022 or alternatively approach the authorities under the provisions of the Waqf Act.

11.I have carefully considered the submissions advanced by the learned counsel on either side.

12.No doubt, the Division Bench of this Court in a batch of writ petitions, has declared the Tamil Nadu Public Premises (Eviction of Unthorised Occupants) Amendment Act 33 of 2010 void and ultra-vires to the constitution. However, in all those cases before the Division Bench, proceedings had been initiated by issuance of show cause notices in pursuance of exercise of power under the amended Act and such show cause notices were quashed, giving liberty to the authorities to initiate fresh proceedings under the Waqf Act in accordance with law.

13.In the present case, even according to the petitioner, possession



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has been taken over from the petitioner and the 2nd respondent has proceeded to put up further construction on the strength of the foundation laid by the petitioner. As rightly contended by the respondents, on the date of the petitioner being dispossessed, the Amendment Act 33 of 2010 was in force and such an action therefore can only be termed as legal and valid. Merely because the Amendment Act has been struck down subsequently by the Court, it will not give a window to the petitioner to reopen the proceedings that have already attained finality. If such requests are entertained, then it will open a floodgate and proceedings that have attained between 2010 and up to April 2024, when the Amendment Act was declared to be unconstitutional will also be sought to be reopened, leading to an undesirable and chaotic situation.

14. In the light of the above, even though the Amendment Act 33 of 2010 has been declared as unconstitutional by the Division Bench of this Court, considering the fact that the petitioner has already been dispossessed during the period when the Act was in force, I do not see any merit in the writ petition. However, dismissal of the writ petition shall not preclude the petitioner from proceeding with the first appeal in



A.S.No.33 of 2022 or by making appropriate application before the Waqf Board/Tribunal in accordance with law for necessary relief as the petitioner may be advised.

15.In view of the above, the Writ Petition is dismissed. No costs.

Connected Writ Miscellaneous Petitions are closed.

28.11.2025

Neutral Citation: Yes/No
Speaking order/Non-speaking order
Index:Yes/No

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To

The Estate Officer & the Chief Executive Officer,
Tamil Nadu Waqf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Street,
Chennai – 600 001.



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P.B.BALAJI,J.

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