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1/22

WP No. 22695 & 23032 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-03-2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

WP No. 22695 of 2022

AND

WP NO. 23032 OF 2022

1. Sakilabanu
2. Krishnaveni
3. Jegadeeswari
4. Deepachandran
5. Rajkumar
6. Saraswathi
7. Jesu Arockiam
8. Dharmaraj
9. Ramamani
10. Padma
11. Dhandapani
12. Nirmala
13. Thirumalaisamy



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14. K.Balakrishnan @ G.S.Paul

15. Abdul Farook

16. Jaiganeshkannan

17. Bakkiyalakshmi

18. A. Balasubramanian

19. Sridhar

20. Nithya

21. Magudeswaran

22. Manikandan

Petitioner(s)

Vs

1. The Union of India

Rep. by the Secretary to Government,
Ministry of Shipping, Road Transport
and Highways, Department of Road
Transport and Highways, New Delhi.

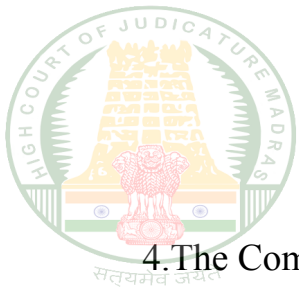
2. The Project Director,

National Highway Authority of India,
(Dindigul - Pollachi National Highways
No.209) Sennammanaickenpatti, Dindigul

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3. The District Collector,

Tiruppur District, Tiruppur.



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4.The Competent Authority cum
Special District Revenue Officer, Land
Acquisition, (National Highways
NH.209) Sennammanaickenpatti,
Dindigul- 4.

5.The Special Tahsildar
Land Acquisition, National Highways
-209, Udumalpet.

6.The Chief Executive Officer,
Tamilnadu Wakf Board, No.1, Jaffer
Seraang Street, Vallal Seethakathi Nagar,
Chennai 01

Respondent(s)

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The Chief Executive officer
Tamil Nadu Waqf Board, No.1, Jaffar
Sirang Street, Vallal Seethakathi
Nagar, Chennai- 600 001.

Petitioner(s)

Vs

1. The District Collector
Tirupur District, Tirupur.

2.The Special District Revenue Officer
Competent Authority (LA- NH), No.567,
A.P.J.Abdul Kalam Street,
Sennammanaickenpatti Post,
Dindigul-624 004.



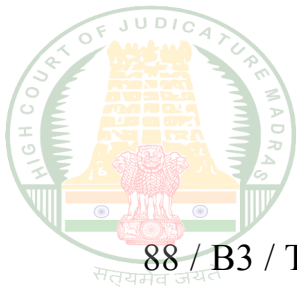
3. The Regional Officer

National Highways Authority of India,
No.2nd and 3rd Floor, Vijaya Krishna
Plaza, No.1 Lake Area, Melur Main
Road, Mattuthavani, Madurai- 625 107.

Respondent(s)

PRAYER in WP No. 22695 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the 5th Respondent dated 24.06.2022 vide Na.Ka.No.04/2018/Aa, quash the same and consequently direct the respondents, 1,2,4 and 5 to disburse the award amount for the acquisition of the petitioners' properties comprised in S.F.No.1/C1A1 and 1/C1B, Agrahara Kannadiputhur Village, Madathukulam Taluk, Tiruppur District respectively within a time frame as fixed by this Court.

PRAYER in WP No. 23032 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, call for the records pertaining to the impugned order dated 19.05.2022 passed under Na.Ka. No.15581 / 2018 /A4 by the 1st Respondent herein by Quash the same and consequentially direct the 1st Respondent to comply the orders of the Tamil Nadu Waqf Board Passed in resolution item No.20 / 2016 R.C.No.8281 / 88 / B3 / TPR and the consequential Executive order dated 05.07.2018 passed in R.C. No.8281/



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88 / B3 / TPR by the petitioner herein by handing over the Possession of the Waqf properties claimed in the said order dated 05.07.2018 in favour of the petitioner herein.

WP No. 22695 of 2022

For Petitioner(s): Mr.D.R.Arun Kumar

For Respondent(s): Mr.R.Rajesh Vivekananthan
Deputy Solicitor General of India
for R1
Mr.Su.Srinivasan,
Standing Counsel for R2
Mr.M.R.Gokul Krishnan
Additional Government Pleader
for R3 to R5
Mr.Haja Mohideen Gisthi
Standing Counsel for R6

WP No. 23032 of 2022

For Petitioner(s): C.Shankar

For Respondent(s): Mr.R.Rajesh Vivekananthan
Deputy Solicitor General of India
for R1
Mr.M.R.Gokul Krishnan
Additional Government Pleader
for R1 & R2
Mr.Su.Srinivasan
Standing Counsel for R3



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ORDER

The issue involved in both these Writ Petitions are common and interconnected and hence, they are taken up together, heard and disposed of through this common order.

2.W.P.No.22695 of 2022 has been filed challenging the proceedings of the 5th respondent dated 24.06.2022 and for a consequential direction to the respondents to disburse the Award amount to the petitioners for the properties that were acquired under the National Highways Act by the 2nd respondent.

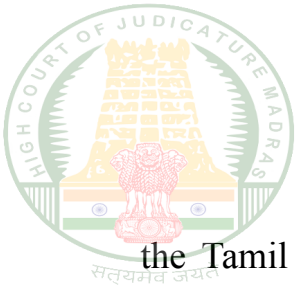
3.W.P.No.23032 of 2022 has been filed by the Tamil Nadu Waqf Board questioning the proceedings of the 1st respondent dated 19.05.2022 and for a consequential direction to the 1st respondent to comply with the orders of the Tamil Nadu Waqf Board passed through executive order dated 05.07.2018 and to handover possession of the waqf property to the Tamil Nadu Waqf Board.



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4. Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondents.

5. The petitioners in W.P.No.22695 of 2022 have come up with a case stating that they purchased the plots in an approved layout named as Arulpuram Layout which is located 15 kms from Udumalpet Town. Some of the petitioners have also built houses in the plots which were purchased by them and the others were in the process of putting up a construction. The further claim of the petitioners is that they are in absolute possession and enjoyment of the property. While so, the 1st respondent issued a notification under the National Highways Act on 24.08.2018 to acquire the plots and the houses that were constructed for laying a Four Track Road for NH209. Pursuant to the same, the lands were acquired and the possession was also taken and an Award was passed on 30.01.2020. The petitioners were not satisfied with the compensation that was fixed and they wanted to independently seek for enhancement of compensation. When the petitioners were attempting to get the compensation amount that was awarded disbursed in their favour, the 6th respondent who is the Chief Executive Officer of



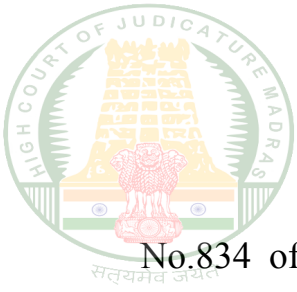
the Tamil Nadu Waqf Board submitted objection petition before the 4th and 5th

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respondents not to disburse the compensation amount on the ground that the subject property belongs to the Waqf Board. The 6th respondent was claiming right over the property based on the Waqf Deed dated 03.06.1934 and the consequential Gazette Notification dated 03.06.1959.

6.The 3rd respondent after an elaborate discussion came to a conclusion that the 6th respondent does not have a right or title over the subject property and since both sides are now claiming for the compensation amount, directed the compensation amount to be kept in deposit under Section 3H(1) of the National Highways Act. The parties were directed to workout their remedy before the Waqf Tribunal and based on the decision, they were directed to approach the authorities for payment of compensation. Aggrieved by the same, W.P.No.22695 of 2022 has been filed by the private individuals.

7.Insofar as W.P.No.23032 of 2022, the Tamil Nadu Waqf Board has filed the writ petition on the ground that the subject property was donated for pious and



No.834 of 1911. In the year 1934, another Waqf Deed dated 03.06.1934 was

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executed and it was registered as Document No.1961 of 1934 before the Sub Registrar, Udumalpet. Thereafter, the Waqfs were surveyed by the Assistant Commissioner of Waqfs under Section 4 of the Waqf Act, 1954 and it was published in the Gazette on 03.06.1959.

8.In the year 1990, the Muthavalli of the Waqf approached the Waqf Board for sale of lands in order to form a layout and to utilize the income for construction of a Mosque and for the benefit of the locality. On 01.11.1990, a resolution was passed by the Waqf Board permitting for a layout of 48 plots and for sale of the same. According to the Waqf Board, the Muthavalli did not comply with the conditions set out and hence, on 28.10.1994, a resolution was passed and the proposed sale of the plots was cancelled and the properties were restored back to the Waqf and this was also communicated to the Muthavalli. It is alleged that without the permission of the Waqf Board, the Muthavalli executed a Settlement Deed in favour of his sons on 18.06.2010 which was registered as Document



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9.The Waqf Board after coming to know of the fact the property belonging to the Waqf is being fraudulently dealt with, passed an executive order dated 05.07.2018 and directed the 1st respondent to take necessary action under Section 52 of the Waqf Act and to recover the alienated property belonging to the Waqf and handover the property to the concerned Waqf. While this was going on , the acquisition proceedings were initiated by the National Highways and the Award was determined and the compensation amount was also fixed. The petitioner by notice dated 28.04.2002 sought for the payment of compensation in favour of the petitioner. The same came to be rejected by the 1st respondent through the impugned proceedings dated 19.05.2022 and the same has been put to challenge in the present writ petition.

10.The main ground that was raised by the learned counsel for the petitioners who was appearing for the private respondents is that the title of the petitioners can be traced since the year 1944 and ultimately, the petitioners came



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90 persons including the petitioners had purchased the plots. The petitioners were

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not able to enjoy the properties since it was acquired and now the petitioners are being deprived of the payment of compensation and they are left high and dry.

11.The learned counsel for the petitioners submitted that the Waqf Board cannot claim any right or title over the property since the property does not belong to the Waqf and proper notification and publication in the Gazette was not done and the Waqf Board has slept over for more than 70 years without taking any action to recover the property. However, when the compensation amount was fixed and it was about to be disbursed, they got into the scene and were seeking for the payment of the entire compensation. The learned counsel for the petitioners in order to substantiate his submission, relied upon the judgement of the Apex Court in ***Tamil Nadu Waqf Board vs. Hathija Ammal (Dead) by LRs etc.***, reported in ***AIR 2002 Supreme Court 402, Joint Collector , Ranga Reddy District and another vs. D.Narsing Rao and others*** reported in ***2015 3 SCC 695*** and ***Punjab Wakf Board vs. Gram Panchayat alia Gram Sabha*** reported in ***2000 2 SCC 121***.



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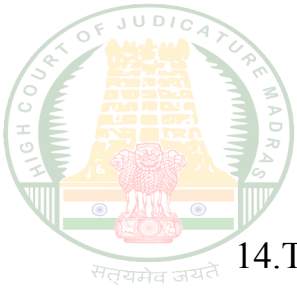
12. Per contra, the learned Standing Counsel appearing on behalf of the Waqf Board submitted that the District Collector exceeded his jurisdiction conferred under Section 52 of the Waqf Act. The learned counsel submitted that Section 52 of the Waqf Act read with Rule 15 of the Tamil Nadu Waqf Rules, 2000 makes it very clear that the District Collector cannot go into the right and title over the property and if the District Collector has any such doubt, he can only refer the question to the Board or he can ask the party to agitate before the Waqf Tribunal. However, the District Collector had arrogated to himself the power of the Board/Waqf Tribunal and had gone deep into the right and title over the property which is beyond the jurisdiction that is conferred on the District Collector under Section 52 of the Act. The learned Standing Counsel further submitted that the Proforma Report clearly establishes the fact that the subject property belongs to the Waqf and therefore, any alienation made is non est and will not bind the Waqf. If at all, the private individuals are claiming for any right over the property, they should have approached the Tribunal and sought for necessary relief and they cannot be allowed to agitate their rights before the District Collector. To



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substantiate the above submission, the learned Standing Counsel relied upon the judgement of the Apex Court in ***Rashid Wali Beg vs. Farid Pindari and Others*** reported in **2022 4 SCC 414** and also a series of orders passed by this Court in various writ petitions wherein, this Court had consistently taken a view that wherever there is a dispute regarding the title or ownership over the property, it is only the Waqf Tribunal which can resolve the same under Section 83(1) of the Waqf Act.

13. The learned Additional Government Pleader appearing on behalf of the official respondents submitted that the official respondents found that there was a genuine dispute regarding the right and title over the property and therefore, they have decided to keep this compensation amount in deposit and ultimately, whichever party succeeds before the concerned Forum, the compensation amount will be handed over to them. The learned Additional Government Pleader therefore submitted that whatever orders are passed by this Court, will be complied with by the official respondents.



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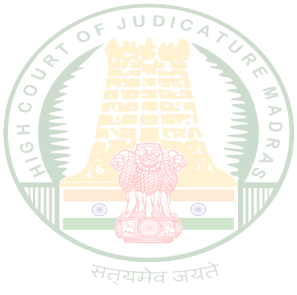
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14.This Court has carefully considered the submissions made on either side and also the materials available on record.

15.In the case in hand, the private individuals are tracing their right and title over the subject property situated at Agrahara Kannadiputhur Village from the year 1944 onwards based on the Sale Deed that was executed and which was registered as Document No.816 of 1944. Likewise, they also trace subsequent Sale Deeds which were executed and which ultimately ended up in a layout being developed and approved in the year 2000 whereby, more than 90 persons including the petitioners purchased the house sites.

16.On the other hand, the Waqf Board is tracing the right of the Waqf through documents from the year 1911 onwards. They were also relying upon the Proforma Report whereby the subject property has also been clearly mentioned and according to the Waqf Board, the property was surveyed by the Assistant Commissioner of Waqfs duly appointed by the Government under Section 4 of the Waqf Act and also relied upon the notification published in the Gazette of the



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17. It is quite apparent that there is a clear dispute on the right and title over the property. The learned counsel for the private individuals submitted that originally the name of the village has been mentioned as 'Sarkar Kannadiputhur' and all of a sudden, a correction was made and it is now identified as 'Agrahara Kannadiputhur'. There is no dispute with respect to the survey number and the extent and there is some dispute regarding the name as was pointed out by the learned counsel for the petitioners. Even this pertains to the right over the property and identity of the same. Since there is a confusion regarding the property which was identified by the Waqf Board to be a Waqf property and which according to the private individuals is not a Waqf property.

18. The property in question has already been acquired under the National Highways Act and the possession has been taken and the compensation amount has also been fixed and it is now kept in deposit due to the dispute between the private individuals and the Waqf Board.



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19. The Waqf Board had approached the District Collector under Section 52 of the Act for recovery of the property which was transferred in contravention of Section 51 of the Act. The Waqf Board has alleged that there was alienation of the Waqf property without the sanction of the Board and therefore, such alienation is void under the Waqf Act.

20. The Collector while dealing with such a request made by the Waqf Board must keep in mind the scope of Section 52 of the Act read with Rule 15 of the Tamil Nadu Waqf Rules, 2000. The Collector cannot go into the right and title over the property and if at all the Collector has any doubt on the right and title over the property, he should only relegate the parties to the concerned Forum. The entire power and jurisdiction of all the authorities is prescribed under the Act and no authority can act beyond what is prescribed and given under the Act. The District Collector in the impugned proceedings dated 19.05.2022 has virtually gone into the title over the property and has rendered a finding that the Waqf Board does not have any right over the property. In the considered view of this Court, such finding



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rendered by the District Collector is illegal and it is beyond the power and jurisdiction that has been conferred on the Collector by the Waqf Act.

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21.It is quite unfortunate that the property was allowed to be dealt with right from the year 1944 onwards and documents were also registered in the year 1944 as Document No.816 of 1944, in the year 1984, as Document No.228 of 1984 and in the year 1999, as Document No.771 of 1999. Thereafter, an approved layout was also developed through proceedings dated 31.08.2000 and nearly 90 persons have purchased the plots. Today all of them are left high and dry since the property had already been acquired by the National Highways Department and the very payment of compensation to them has become questionable due to the claim made by the Waqf Board.

22.This Court cannot exercise its jurisdiction under Article 226 of the Constitution of India and disregard the genuine dispute regarding the right and title over the property and direct payment of compensation to the private individuals only on the ground of mercy. A writ jurisdiction cannot be converted into a mercy



petition and even a writ Court is bound by the settled principles of law. Therefore,

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even though this Court finds that the private individuals have been put to untold hardship in this case, that does not mean that this Court can completely disregard the claim made by the Waqf Board and direct payment of compensation to the private individuals.

23. In the light of the above discussion, it is more appropriate to keep the compensation amount in bank deposit. It is left open to the private individuals to workout their remedy before the concerned Forum under the Waqf Act and ultimately, if they are able to establish their right and title over the property, the compensation amount will go in their favour. If they are not able to establish the same, the compensation amount will go in favour of the Waqf Board. The impugned proceedings of the District Collector dated 19.05.2000, is hereby set aside. The proceedings of the Special Tahsildar dated 24.06.2022, is hereby sustained and parties are directed to workout their remedy before the concerned forum under the Act.



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24. In the result, W.P.No.23032 of 2022 is allowed by setting aside the order passed by the District Collector dated 19.05.2000. W.P.No.22695 of 2022 is disposed of with a direction to the petitioners to workout the remedy before the concerned Forum under the Act to establish their right and title over the property and till then, compensation amount shall be kept in bank deposit. No Costs.

10-03-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

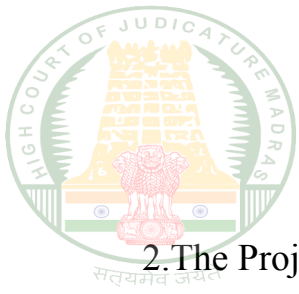
Neutral Citation: Yes/No

ssr

To

1. The Union of India

Rep. by the Secretary to Government,
Ministry of Shipping, Road Transport
and Highways, Department of Road
Transport and Highways, New Delhi.



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National Highway Authority of India,
(Dindigul - Pollachi National Highways
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8.The Regional Officer

National Highways Authority of India,
No.2nd and 3rd Floor, Vijaya Krishna
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SSR

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