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A.No.5336 of 2024 in CS.No.694



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2025

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THE HONOURABLE MR JUSTICE A.A.NAKKIRAN

A. No. 5336 of 2024

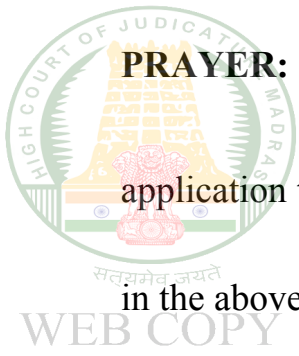
in CS.No.694 of 2012

The Tamil Nadu Waqf Board
Rep.by its Chief Executive Officer, No.1 Jaffer Syrang Street,
Vallal Seethakathi Nagar, Chennai 600 001.

Applicant(s)

Vs

1. P.Navaneetharaj
2. S. Ravi
3. S. Gomathi
4. Anjanapriya
5. Minor Gomatheeswaran
Rep by Mother and natural guardian
Anjanapriya
6. Neelavathy
7. The Asst. Commissioner (ULT)
Mylapore, Chennai 600 004
8. The Collector
Chennai District, Chennai 600 001
9. The District Revenue Officer
Chennai District, Chennai 600 001
10. The Tahsildar
Mylapore- Triplicane Taluk,
Mylapore, Chennai – 4. ...Respondents/Defendants



PRAYER: This application has been filed to condone the delay of 438 days the application to set aside the exparte decree passed against the 10th defendant dated 06.01.2023 in the above suit and the counter claim of the defendants 1 to 5.

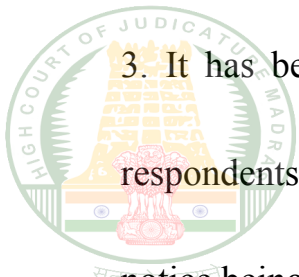
For Applicants: M/s.V.Srimathi
Avinash Wadhwani-mah/2780/2011

For Respondent(s):
M/s.Thanka Sivan
For R2 & R3

JUDGMENT

This application has been filed by the applicant for the above stated reliefs.

2. The learned counsel for the applicant submitted that the applicant was suo-moto impleaded as per order dated 17.08.2016 and 06.10.2016 in A.No.2814 of 2013. Further, summons were not served to the petitioner. It transpires that the suit came up for hearing before this court on 17.04.2017 for written statement and this court set the petitioner as ex-parte for non-appearance. Hence, the said suit came to be dismissed for default on 20.12.2021. On 14.09.2017, this court took cognizance of the fact that the suit property belonged to a Wakf and no issue has been framed as regards the maintainability of the suit property being Wakf property. There is a collusion between the plaintiffs and the defendants 1 to 5, who had already resisted CS.No.551 of 2013 citing the very same suit scheduled property to be one belonging to the Wakf.



3. It has been further submitted that on 06.01.2022, the counter claim filed

respondents 2 to 6, seeking for declaration of title has been decreed. in view of no

notice being served, they marked ex parte documents and misled this court by passing a

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decree on the counter claim without hearing on the side of the applicant. The decree

was not known to the applicant until an interference was made in the waqf property.

Further, the suit property which was surveyed and notified as waqf in the official

Gazette bearing G.S.No.96/MAD. The said waqf is under the supervisory control of

petitioner and hence the appearance of the petitioner is necessary to contest the case on

merits. Irreparable harm would be caused if the delay is not condoned. Hence, he seeks

to allow this application.

4. The learned counsel for the second respondent submitted that the basic claim of the

applicant that the suit schedule property is belonging to Wakf is a false and untenable

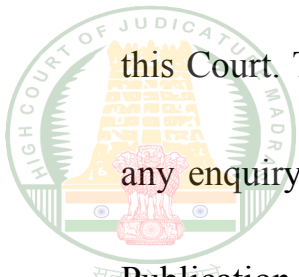
statement. The applicant has willfully suppressed the fact that they were duly

represented by their counsel even in the OSA.No.181 of 2018 and the Division Bench

of this court allowed the said OSA and remanded the matter back for fresh

adjudication. Thereafter the applicant has willfully failed to appear before this court.

After conducting full trial, the decree and judgment dated 06.01.2022 was passed by



this Court. There was no notice to the respondents and their predecessors in respect of

any enquiry of Gazette Publication at any point of time. It is settled law that Gazette

Publication of the applicant board will not bind the actual owners of the property. The

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gazette publication NO.96/MAD is void in law as per the law settled by this Court as

well as the Hon'ble Supreme Court of India, in a catena of judgments. The law is well

settled that delay of each day seeking condonation has to be explained. After having

participated in the suit as well as the original side appeal, it is not open for the applicant

to state that they were not served with any notice. While being so, the applicant cannot

seek to set aside the decree passed by this court in CS.No.694 of 2012. If the

application is allowed, serious prejudice and irreparable injury will be caused to the

respondents. Hence, the application is liable to be dismissed.

5. Heard both sides and perused the materials available on record.

6. On perusal of the records, it is seen that the applicant being the 10th defendant was

called absent and set exparte on 17.04.2017. Thereafter, the applicant has not filed any

application to set aside the aforesaid exparte order. For that, the applicant has not given

proper explanation.



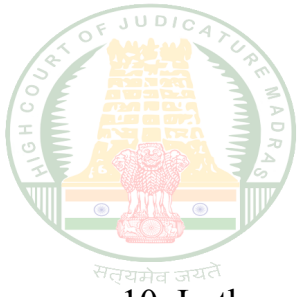
7. It is seen that the counsel for the applicant/10th defendant had represented their counsel in OSA No.181 of 2018 filed by the defendants wherein the present suit was remanded back by setting aside the dismissal Judgment dated 09.10.2017.

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8. Subsequently, this Court by Judgment dated 06.01.2022 decreed the suit on the counter claim. Even after this Judgment, the applicant has not come forward to file any application to set aside the aforesaid Judgment.

9. Further, A.No.3889 of 2024 has been filed by the applicant for condonation of delay of 392 days in representing the application which was allowed with costs by order dated 27.08.2024. Thereafter, the applicant has filed the present suit for condonation of the delay of 438 days. There is no proper explanation for the delay. If the applicant was really interested to contest the suit, they would have taken steps as early as possible. Hence, this Court has not accepted the reasons stated in the affidavit and is not inclined to allow the application.

A.A.NAKKIRAN, J.



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10. In the result, the application is dismissed. No costs.

17-04-2025

Lbm

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