

C.R.P.(MD)No.3223 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 29.04.2025

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)No.3223 of 2024

and

C.M.P.(MD).No.18531 of 2024

The Secretary,
Jumma Thozhugai Pallivasal,
Samayanallur, Madurai.

... Petitioners / 1st Respondent /
Petitioner

Vs.

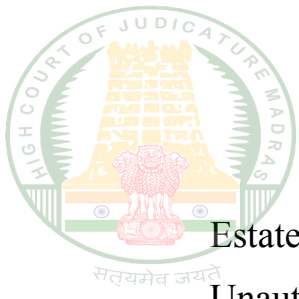
1.Sulthan Ibrahim

... 1st Respondent / Appellant /
Respondent

2.The Estate Officer / Chief Executive Officer,
Wakf House,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai - 600 001.

... 2nd Respondent / 2nd Respondent /
Presiding Officer

PRAYER : Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the judgment and decree dated 07.11.2021 and made in CMA No.44/22 on the file of the Principal District Judge, Madurai, allowing the appeal and setting aside the order dated 06.09.2022 and made in Case No.PP.No.16/MDU/2021 on the file of the



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Estate Officer under the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act 1975.

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For Petitioner : Mr.N.A.Nassir Hussain
for Mr.I.Kowser Nissar

For Respondents : Mr.S.Ramesh - for R1
Mr.S.A.Ajmal Khan for R2

ORDER

This revision petition has been filed to set aside the judgment and decree dated 07.11.2021 made in CMA No.44/22 on the file of the Principal District Judge, Madurai, allowing the appeal and setting aside the order dated 06.09.2022 made in Case No.PP.No.16/MDU/2021 on the file of the Estate Officer under the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act 1975.

2. The facts in brief is that the revision petitioner herein namely the Secretary, Jumma Thozhugai Pallivasal, Samayanallur, Madurai, initiated proceedings under Section 4, 5 and 7 of Tamil Nadu Public Premises Act, 1975 against the first respondent herein stating that the property bearing D.No.1/526 in S.No.213/4, Samayanallur Village,



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belongs to the wakf represented by the Secretary. The Wakf is managed by its committee approved by the Board. The respondent namely Sulthan Ibrahim who is the first respondent herein is in unauthorized occupation of the premises. He filed a suit in O.S.No.166 of 2001 before the District Munsif Court, Madurai, stating that the property was belonged to his father and right from 1996, he is conducting the business by paying the rent. Later, he was served with notice by the Wakf to vacate the premises and hand over the vacant possession. He further stated in the suit that due to some dispute regarding the management of the Wakf, they refused to receive the rent, hence the suit.

3. It was dismissed by the decree and judgment dated 06.03.2002. The Wakf has filed W.O.P.No.10 of 2001 before the Wakf Tribunal, Madurai for eviction. Later, it was not pressed on 22.12.2005. After that the respondent filed a suit in O.S.No.140 of 2015 before the District Munsif Court, Madurai, seeking injunction against the office bearers of the Wakf and for other relief. The petitioner sent notice on 17.02.2020 terminating the tenancy. The first respondent received the notice. But did not hand over the possession. Hence the petition.



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4. The first respondent appeared before the Estate Officer namely the second respondent and filed the counter. After receiving the counter, the matter was posted before the Estate Officer / the second respondent for personal enquiry. Two issues were framed by the second respondent and at the conclusion of the enquiry, the second respondent directed the first respondent herein to vacate the premises within 30 days and to hand over the vacant possession and consequent orders were passed in case of non compliance. Against the second respondent order, the first respondent preferred CMA(CS)No.44 of 2022 before the Principal District Judge, Madurai, arraying the revision petitioner as first respondent and the Estate Officer / second respondent. The appellate authority allowed the Civil Miscellaneous Appeal, setting aside the order passed by the second respondent on 06.09.2022. Against which this Civil Revision Petition is preferred.

5. Heard both sides.



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6. The Civil Revision Petition is preferred mainly on the question of legality of the order passed by the Appellate Authority. It is contended by the revision petitioner before the appellate authority that in pursuance of the order passed by the second respondent herein, possession was taken over on 14.10.2022. So nothing survives for adjudication in the appeal. A request was made by the first respondent to restore possession. But that was rejected. It was challenged in CRP (MD)No.2531 of 2022. It was dismissed on 13.02.2023.

7. Another turn took place in the form of the order passed by this Court in W.P(MD)No.6667 of 2013, challenging the Amendment Act 33 of 2010 to the Tamil Nadu Public Premises (Eviction of unauthorized Occupants) Act, 1975. The writ petition was allowed. The amendment Act 33 of 2010 was struck off. On the basis of the above said judgment, the appellate authority allowed the appeal filed by the first respondent.

8. It is further contended that the attempt made by the first respondent that the disputed property does not belong to the Wakf, was

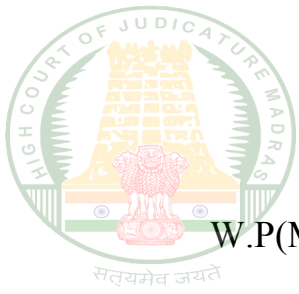


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rejected in O.A.No.64 of 2022 on 02.02.2024. Since, on the date of the CMA order, property was already delivered to the revision petitioner, it is not affected by the judgment of this Court in W.P(MD)No.6667 of 2013 dated 23.04.2024. Another contention is that the W.P(MD)No. 12628 of 2024 was filed by the first respondent herein challenging the proceedings of the Estate Officer by relying upon the judgment passed in W.P(MD)No.6667 of 2013, did not entertain the writ petition and directed the first respondent to agitate the same before the appellate authority in CMA(CS)No.44 of 2022.

9. In effect and in substance, the grounds in revision is that the order passed by the writ Court in W.P(MD)No.6667 of 2013 is only prospective and not retrospective. It will not affect the action which was already taken and property was already delivered. The above said act cannot be nullified retrospectively.

10. Learned counsel for the revision petitioner would rely upon the order passed by the Co-ordinate Bench of this Court in W.P.(MD)No. 22568 of 2024 dated 03.10.2024, subsequent to the judgment in



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W.P(MD)No.6667 of 2013. He would rely upon the following

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"6. The facts of the case is not in dispute. The only contention of the petitioner is that the Waqf Board has no power to invoke provision under Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 and to substantiate the same, learned counsel for the petitioner has relied on the judgment of the Division Bench of this Court reported in 2024 SCC Online Mad 955. On the date when the order came to be passed, the order of the Division Bench, relied on by the respondents was not in existence. The said order had come to be passed only on 23.04.2024. However, the order of the respondents was passed way back on 22.11.2022 and pursuant to the said order, possession also has been taken by the respondents on 13.07.2023. The present writ petition has come to be filed only in the year 2024, much after possession was taken by the respondent. It is to be pointed out that unless it is specifically stated by the Courts, an order passed would act only prospectively and not retrospectively. In the present case, the order having been passed on 23.04.2024, operates prospectively and therefore, it will not invalidate the order passed by the respondents on 22.11.2022. Therefore, the said order of the Division Bench cannot be pressed into service in the present case. Hence, the order passed by the second respondent in PP No.



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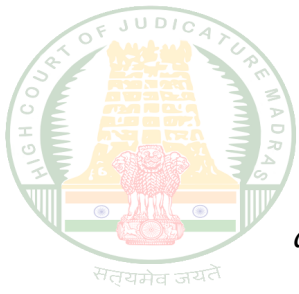


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52/SLM/2021 dated 21.11.2022 does not warrant any interference by this Court."

11. Per contra, learned counsel for the first respondent and the second respondent would submit that when a particular Act is struck off as un-constitutional, then it would take effect from the date of its birth. It will have retrospective effect and whatever action that has been taken will be illegal and void and for that purpose, they would rely upon the judgment of the Hon'ble Supreme Court in the case of *Assistant Commissioner, Income Tax, Rajkot Vs Saurashtra Kutch Stock Exchange Ltd., in Civil Appeal No.1171 of 2024* reported in (2008) 13 **SCR 421**. The relevant paragraph is as follows:

42. In our judgment, it is also well-settled that a judicial decision acts retrospectively. According to Blackstonian theory, it is not the function of the Court to pronounce a 'new rule' but to maintain and expound the 'old one'. In other words, Judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make new law. It only discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier



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decision of the Court operated for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood.

12. He would further rely upon the judgment of the Hon'ble Supreme Court in the case of ***P.V.George and Others Vs State of Kerala and others*** reported in ***(2007) 3 SCC 557***. According to the respondents, the law declared by this Court will take retrospective operation since the judgment of the Division Bench, the order passed in W.P.No.22568 of 2024, will have no effect and should not be followed.

13. On hearing both sides, this Court thought it fit to refer the judgment of the Constitutional Bench of the Hon'ble Supreme Court in CrI.Appeal.No.377 of 2007 in the case of ***CBI Vs R.R.Kishore*** and the constitutional Bench of the Hon'ble Supreme Court in the case of ***Subramanian Swamy Vs Director, Central Bureau of Investigation and another***.



14. Learned counsel for the revision petitioner would draw the attention of this Court to the following observation :

"28. The principles that can be deduced from the law laid down by this Court, as referred to above, are :

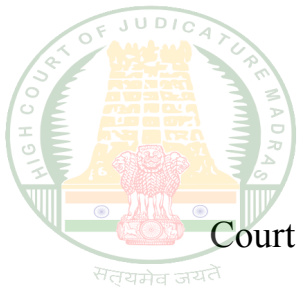
I. A statue which is made by a competent legislature is valid till it is declared unconstitutional by a court of law.

II. After declaration of a statue as unconstitutional by a court of law, it is non est for all purposes.

III. In declaration of the law, the doctrine of prospective overruling can be applied by this Court to save past transactions under earlier decisions superseded or statutes held unconstitutional.

IV. Relief can be moulded by this Court in exercise of its power under Article 142 of the Constitution, notwithstanding the declaration of a statute as unconstitutional.

15. He would submit that the amendment Act was held unconstitutional on 23.04.2024. As mentioned above, the order of the second respondent was put in execution and the property was delivered. So there is no question of going back prior to the date of order by this



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Court on 23.04.2024 and nullify those acts which were already completed.

16. Per contra, learned counsel for the respondent would submit that it cannot be taken as a complete act. It must be construed only as a continuous process. So whatever action initiated and whatever order passed is nullified because of the declaration by this Court. According to him even though property was delivered, he is entitled to get the property restored to him; the revision petitioner is not affected since he can invoke fresh proceedings as per law.

17. But however, when the co-ordinate Bench of this Court has passed an order directly on the point in WP(MD)No.22568 of 2024, unless the respondent herein is able to convince this Court that the matter requires for reference to the Larger Bench, I am of the considered view that the order passed in WP(MD)No.22568 of 2024 must be followed in this matter also, since I find no reason to differ from the view taken by the Co-ordinate Bench of this Court.



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18. Even on merits, the judgment of the appellate authority does indicate that on behalf of the respondent, no document was produced to say that the property belongs to some other persons but not to the Pallivasal. It has been specifically stated by the respondent before the appellate authority that the property belongs to Tamil Nadu Government and not Pallivasal. But there is a clear finding by the Estate Officer that the petition mentioned property belongs to the Jumma Thozhugai Pallivasal Waqf, Samayanallur, Madurai, also entered into the registration of Waqf. So the appellate authority also concluded that the property belongs to the Wakf. Mainly, concentration was made upon the jurisdiction of the Estate officer to pass the order of eviction. Even on merits regarding the property, I find no valid reason to record a finding that the property does not belong to the Wakf.

19. For the reasons stated above, this Civil Revision Petition is liable to be allowed. Accordingly allowed. The judgment and decree dated 07.11.2021 and made in CMA No.44/22 by the Principal District Judge, Madurai, allowing the appeal, is set aside and the order dated 06.09.2022 and made in Case No.PP.No.16/MDU/2021 by the Estate



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Officer under the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act 1975, is restored. Consequently, connected miscellaneous petition stands allowed. No costs.

29.04.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

- 1.The Principal District Judge, Madurai,
- 2.The Estate Officer / Chief Executive Officer,
Wakf House, No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar, Chennai - 600 001.
- 3.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN, J.

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