
M.G. Faiyaz Ahmed Vs Tamil Nadu Wakf Board

Writ Petition No. 12232 of 2006

Court: Madras High Court

Date of Decision: Nov. 17, 2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2A#Constitution of India, 1950 " Article 226#Madras City Tenants Protection Act, 1922 " Section 7#Waqf Act, 1995 " Section 3, 70, 71, 83, 83(1)

Citation: (2010) 3 LW 727 : (2010) 4 MLJ 177

Hon'ble Judges: N. Kirubakaran, J

Bench: Single Bench

Advocate: S.B. Fazluddin, for the Appellant; A.S. Kaizer, for R1 and T.R. Suresh, for R2, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

N. Kirubakaran, J.

The writ petition has been filed challenging the order passed by the first Respondent on 25.4.2002 increasing the rent

from Rs. 137/- to Rs. 800/-per month.

2. The case of the Petitioner is that he and his brother jointly purchased the superstructure bearing No. 24/37, Raza Hyder Street, Anna Salai,

Chennai-2 from its owner Mrs. Ponnammal. The superstructure stands on the land belonging to the second Respondent under whom the aforesaid

Mrs. Ponnammal was a tenant in respect of the land. For registering the superstructure no objection certificate was required to be obtained from

the first Respondent. While granting no objection certificate, the first Respondent namely the Tamil Nadu Wakf Board, resorted to fix the rent at

Rs. 800/- per month instead of Rs. 137/- in respect of the property measuring to an extent of 1130 sq. ft. The said order is being challenged

before this Court.

3. Mr. S.B. Fazluddin, learned Counsel for the Petitioner firstly submitted that the Petitioner approached the first Respondent only for the purpose

of getting no objection certificate as the registering authority insisted the same to register document in respect of the property owned by the

religious Trust/Institution and the Wakf Board has got no power to raise the monthly rent while applying for no objection certificate. Secondly he

contended that the monthly rent was unilaterally and arbitrarily increased six times without any valid reason. Thirdly he contended relying upon the

proviso to Section 7 of the Chennai City Tenants' Protection Act 1921, which prohibits the enhancement of rent more than 25%. Section 7 of the

Chennai City Tenants' Protection Act 1921 is extracted as follows:

7. Application of landlord for fixing the rent. -Any landlord may apply by a petition to the Court having jurisdiction to entertain a suit for ejectment

(or, in the City of (Chennai), either to such Court or to the Presidency Small Cause Court) to fix a reasonable rent for the occupation of the land

by the tenant and thereupon the court shall, by its order, fix such such rent as it deems reasonable:

Provided that the rent previously payable for the land shall not be enhanced by more than (twenty-five naye paise) in the rupee.

4. On the other hand, learned Counsel for the Tamil Nadu Wakf Board, Mr. A.S. Kaizer, submitted that the property is a Wakf property and it is

governed by the provision of Wakf Act 1995 and that if any dispute arises with regard to the Wakf property it has to be decided by the Wakf

Board by filing an application u/s 83 of the Wakf. Section 83(1) reads as follows:

83 Constitution of Tribunals etc.- (1) The State Government shall, by notification in the Official Gazette ,constitute as many Tribunals as it may

think fit for the determination of any dispute, question or other matter relating to a wakf or wakf property under this Act and define the local limits

and jurisdiction under this Act of each of such Tribunals.

5. Referring Section 83 (1) of the Wakf Act, learned Counsel for the Respondent submitted that for determination of the issue with regard to Wakf

Property, the Tribunal alone has got jurisdiction and without availing alternative effective remedy before me Tribunal the Petitioner filed the writ

petition and the same is liable to be dismissed on the ground of availability of alternative remedy. Learned Counsel for the Respondent further

submitted that the property is situated at Mount Road area and the extent of property under occupation of the Petitioner is about 1310 sq. ft.,

which is capable of fetching more amount than the amount determined by the Wakf Board; The Wakf Board has got power and jurisdiction to

determine the rent payable by the Petitioner in respect of the Wakf property under his occupation. He also relied upon the judgment of the Division

Bench of this Court passed in Mukram Sherif Vs. Moinudeen Sheriff and The Tamil Nadu Wakf Board, wherein it has been held that all the

disputes relating to Wakf Board and its property should be filed at the first instance before the Wakf Tribunal, which has been constituted u/s 83 of

the Wakf Act Following the said judgment an another decision passed in I. Salam Khan Vs. The Tamil Nadu Wakf Board and Others, . In the

said judgment, it was categorically held that writ petition under Article 226 of the Constitution of India cannot be a way entertained without

exhausting the alternative remedy available u/s 83 of the Wakf Act.

Paragraphs 6 and 8 of the judgment are extracted as follows:

6. Thus, the Wakf Tribunal can decide all disputes, questions or other matters relating to a Wakf or Wakf property. The words ""any dispute,

question or other matters relating to a Wakf or Wakf property"" are, in our opinion, words of very wide connotation. Any dispute, question or other

matters whatsoever and in whatever manner which arises relating to a Wakf or Wakf property can be decided by the Wakf Tribunal. The word

"Wakf has been defined in Section 3(r) of the Wakf Act, 1995 and hence once the property is found to be a Wakf property as defined in Section

3(r), then any dispute, question or other matter relating to it should be agitated before the Wakf Tribunal. It is not proper for this Court to straight

away entertain writ petitions relating to a Wakf or Wakf property when there is a special Tribunal constituted for this purpose.

7. -

8. u/s 83(5) of the Wakf Act, 1995 the Tribunal has all powers of the Civil Court under the Code of Civil Procedure, and hence it has also powers

under Order 39 Rules 1, 2 and 2A of the CPC to grant temporary injunctions and enforce such injunctions. Hence, a full-fledged remedy is

available to any party if there is any dispute, question or other matter relating to a wakf or wakf property.

Citing these judgments, learned Counsel for the Respondents submitted that the Petitioner has to approach the Wakf Tribunal even if a wrong

order has been passed by the Wakf Board.

6. The contention of the learned Counsel for the Petitioner relying upon Section 7 of the Chennai City Tenants" Act 1921, cannot be entertained as

Wakf Act 1995 and it is a Special Act. The Wakf Act alone governs Wakf properties. Apart from that the jurisdiction of Civil Court is barred u/s

85 of the Wakf Act 1995 and the same is extracted as follows:

Bar of jurisdiction of Civil Courts-- No suit or other legal proceeding shall lie in any Civil Court in respect of any dispute, question or other matter

relating to any wakf, wakf property or other matter which is required by or under mis Act to be determined by a Tribunal.

7. When the civil court is barred by Special Act, there is no question of invoking Chennai City Tenants Protection Act 1921 under which remedy is

available only before the Civil Court, whereas the remedy under Wakf Act is before the Wakf Board and then before the Tribunal and thereafter

before this Hon"ble Court under Article 226 of the Constitution of India.

8. It is an admitted fact that the property is a wakf property. As long as the property remains as Wakf property, the provisions of Wakf Act alone

would be applicable and no other Act would be pressed into service. It is a well settled position of law that Special Act will override the General

Act.

9. Apart from the nicety of the legal position, it is a known fact that any property in the City is of much value and especially the property in and

around Mount Road would fetch more rent. The property in question measuring about 1311 sq. ft is more than half of a ground and this Court is of

the opinion that the monthly rent fixed by the Wakf Board is reasonable. However the above observation made by this Court should not be taken

as a finding by the Tribunal, in case, if the Petitioner approaches the Tribunal for relief.

10. As far as the availability of alternative remedy is concerned, as rightly contended by the learned Counsel for the Petitioner alternative remedy is

not an absolute bar for maintaining the writ petition. It is a self imposed restraint by this Court. In any event with regard to rent, parties and experts

like engineers have to be examined to adduce evidence and on appreciation of pleadings and evidence alone decision with regard to rent could be

reached. As rightly pointed by the learned Counsel for the first Respondent that the Wakf Tribunal is a competent enough to try the application like

a Civil Court. The matter would be decided as per Section 70 of the Act which is extracted as follows:

70. Inquiry relating to administration of Wakf-Any person interested in a wakf may make an application to the Board supported by an affidavit to

institute an inquiry relating to the administration of the wakf and if the Board is satisfied that there are reasonable grounds for believing that the

affairs of the wakf are being mismanaged, it shall take such action thereon as it thinks fit.

The manner of holding inquiry is prescribed u/s 71 of the Act, which is extracted as follows:

(a) hold an inquiry in such manner as may be prescribed; or

(b) authorise any person in mis behalf to hold an inquiry into any matter relating to a wakf and take such action as it thinks fit.

Sections 83(5) (7) (8) of the Wakf Act, 1995 reads as follows:

(5) The Tribunal shall be deemed to be a Civil Court and shall have the same powers as may be exercised by a Civil Court under the Code of Civil

Procedure, 1908 (5 of 1908), while trying a suit, or executing a decree or order.

(7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a Civil

Court.

(8) The execution of any decision of the Tribunal shall be made by the Civil Court to which such decision is sent for execution in accordance with

the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

11. When the Wakf Tribunal is clothed with the power as that of Civil Court this Court is of the opinion that the Wakf Tribunal alone is competent

to decide the matter. Since this Court can decide the matter based on the affidavit only whereas the Tribunal as stated above is competent to try

the applications as that of a Civil suit.

12. In view of that, the writ petition is dismissed giving liberty to the Petitioner to approach the Wakf Tribunal, if so advised. Learned Counsel for

the Respondent submitted one month's time is limitation for filing the application before the Wakf Tribunal against the orders of Wakf Board as per

rule prescribed under the Act. In view of that, the Petitioner is given one month time to approach the Wakf Tribunal from the date of receipt of the

copy of the order in case if he intends to file any application against the impugned order.

13. With the above observations/liberty, the writ petition is disposed of. No costs.