

(2012) 06 MAD CK 0036

In the Madras High Court

Case No : C.R.P. (NPD) No. 2103 of 2012

Rasipuram Chinna Mazjid Sunnath Jamath

APPELLANT

Vs

S.V. Thangam (Died) and others

RESPONDENT

Date of Decision : 25-06-2012

Acts Referred:

Waqf Act, 1995 — Section 40, 54

Citation : (2012) 4 LW 65

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : R. Nalliyappan, for the Appellant;

Final Decision : Dismissed

Judgement

G. Rajasuria, J.—Animadverting upon the order dated 21.10.2011 passed in W.O.P. No. 39 of 1999 by the learned Principal Subordinate

Judge, Wakf Tribunal, Salem this civil revision petition is focussed. At the entertaining stage itself, I have considered the matter after hearing the

learned counsel for the petitioner and passed the following order without notice to the other side.

2. The long and short of the germane facts absolutely necessary for the disposal of this revision would run thus:

According to the learned counsel for the revision petitioner herein, the property described in the W.O.P. is a Wakf property and there is no doubt

about it. The Muthavalli representing the said Rasipuram Chinna Maziid Sunnath Jamath also is the proper Muthavalli, over which there is no rival

claim. The grievance expressed in the W.O.P. by the Muthavalli concerned on behalf of the Rasipuram Chinna Mazjid Sunnath Jamath was to the

effect that, the defendants without any manner of right encroached a portion of

the Wakf property and lay claim over it as if it is their own

property. In such circumstances, the Tribunal to which they straightaway approached without approaching the Wakf Board, ordered that it is for

the petitioner to approach the Wakf Board itself for proper remedy; he also referred to Section 40 of the Wakf Act and rendered his finding that it

is for the petitioner to approach the Wakf Board concerned. Over and above that, I would like to refer to Section 54 of the Wakf Act, which is

reproduced hereunder:

54. Removal of encroachment from Wakf property.-(1) Whenever the Chief Executive Officer considers whether on receiving any complaint or on

his own motion that there has been an encroachment on my land, building, space or other property which is Wakf property and, which has been

registered as such under this Act, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and

calling upon him to show cause before a date to be specified in such notice, as to why an order requiring him to remove the encroachment before

the date so specified should not be made and shall also send a copy of such notice to the concerned mutawalli.

(2) The notice referred to in sub-section (1) shall be served in such manner as may be prescribed.

(3) If, after considering the objections, received during the period specified in the notice, and after conducting an inquiry in such manner as may be

prescribed, the Chief Executive Officer is satisfied that the property in question is wakf property and that there has been an encroachment on any

such wakf property, he may, by an order, require the encroacher to remove such encroachment and deliver possession of the land, building, space

or other property encroached upon to the mutawalli of the wakf.

(4) Nothing contained in sub-section (3) shall prevent any person aggrieved by the order made by the Chief Executive Officer under that sub

section from instituting a suit in a Tribunal to establish that he has right, title or interest in the land, building, space or other property:

Provided that no such suit shall be instituted by a person who has been let into possession of the land, building, space or other property as a lessee,

licensee or mortgagee by the mutawalli of the wakf or by any other person authorised by him in this behalf.

A mere perusal of Section 54 of the Wakf Act coupled with Section 40 of the Act, would leave no doubt in the mind of the Court that the authority under the Wakf Act has got ample powers to decide all matters relating to Wakf property and if really the defendants as stated by the petitioner are encroachers, then the appropriate authority under the Act could proceed as against the encroachers and do the needful. When such is the legal position, I could see no perversity or illegality in the order passed by the lower Court. Accordingly, this revision petition is dismissed and it is for the petitioner to approach as per the above provisions the authority concerned under the Act and get appropriate remedy. No costs.