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W.P(MD)No.14623 of :



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.07.2024

Delivered on : 02.08.2024

CORAM :

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P(MD)No.14623 of 2021

and

W.M.P(MD)No.11556 of 2021

Chanda Hussain Thaikal waqf
Rep.by its Joint Mutawalli,
Mohamed Shabi,
9B/32 Manambu Chavadi,
Muslim Street, Thanjavur – 613 001.

: Petitioner

Vs.

- 1.Tamil Nadu Wakg Board,
Rep.by its Secretary,
No.1, Jaffar Syrang Street,
Vallal Seethakadi Nagar,
Chennai -1.
- 2.Tamil Nadu Information Commission,
Rep.by its Registrar,
No.2, Sir Thiagaraya Salai,
Teynampet, Chennai – 18.
- 3.The Public Information Officer/Assistant Secretary,
Tamil Nadu waqf Board, No.1, Jaffar Syrang Street,
Vallal Seethakadi Nagar, Chennai -1.
- 4.The Superintendent of waqf,
Thanjavur.

: Respondents



PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of declaration, to declare that the petitioner waqf is not public authority under Section 2(h) of the Right to Information Act, 2005 and consequently, held that the provisions of the Right to Information Act, 2005 (Act 22 of 2005) does not apply to the petitioner waqf.

For Petitioner : Mr.K.Hema Karthikeyan

For Respondents : Mr.D.S.Haroon Rasheed, for R1, R2 & R4.

: Mr.K.K.Senthil, for R3.

ORDER

The petitioner has filed the above writ petition to declare that the petitioner waqf is not a public authority under Section 2(h) of the Right to Information Act, 2005 and consequently held that the provisions of the Right to Information Act, 2005 (Act 22 of 2005) does not apply to the petitioner waqf.

2. The above writ petition has been filed by the Chanda Hussain Thaikal waqf represented by its Joint Mutawalli Mohammed Shabi. The case of the petitioner is that the petitioner waqf owns several properties in Thanjavur and it is being administrated by their family hereditarily; that their waqf properties are being encroached by several persons and Mohammed Shabi being one of the Muttavalli has been taking steps to remove the encroachments; that the



encroachers aggrieved by their steps have been making petition after petition invoking Right to Information Act, which Act is not at all applicable to the petitioner waqf; that the petitioner waqf receives no aid or fund from the Government and is neither owned nor controlled by the State; that though certain provisions of waqf Act are applicable to the waqf, the waqf being a hereditary and private one, had its independency and being run of its own funds and no Governmental aid is being received by it; that on the basis of certain applications under the Right to Information Act, the respondents 3 and 4 had directed the petitioner vide proceedings, dated 03.08.2021; that the information as per the order of the second respondent had to be given under the Right to Information Act, 2005; that the information commission has also been directing the official respondents to obtain information from the waqf and provide the same to the applicants failing which, penalty proceedings would be initiated under Section 20 of the said Act; that the very provisions of the Right to Information Act would not apply to the petitioner waqf and that therefore, the petitioner waqf is not required to comply with the obligations cast on a public authority under the Right to Information Act.

3. The first respondent waqf board has filed a counter affidavit, wherein they have admitted that the petitioner waqf owns several properties in



Thanjavur and it is being administrated by their family hereditarily; that the petitioner waqf is controlled and supervised by the Tamil Nadu waqf Board under the various provisions of the Waqf Act and that the waqf is not coming under the category of public authority under the Right to Information Act, but disputed the other petitioner's averments.

4. It is the specific contention of the first respondent that the second respondent had not issued any direction to obtain information from the petitioner's waqf and to provide the same to the applicant under the Right to Information Act; that the Information Officer has not sought for any information from the petitioner and no proceeding was issued to the petitioner and the petitioner himself invoked the provisions of Right to Information Act and got the copy of the information commission order, dated 23.06.2021 under Right to Information Act and that the petitioner has filed this false, frivolous and vexatious writ petition without any cause of action and the same is liable to be dismissed.

5. The learned counsel for the second respondent would fairly admit that though the first respondent Tamil Nadu Waqf Board is amenable to the provisions of Right to Information Act, the said Act cannot be made applicable to the waqfs such as petitioner waqf.



6. No doubt, as rightly contended by the learned counsel for the respondents 3 and 4 that the third respondent has sent the copy of the order passed by the second respondent, dated 23.06.2021, against the third respondent, directing them to provide information as sought for by the applicant Thiru.A.Mohammed Sulaiman within a week failing which further action will be taken under the provisions of Right to Information Act, vide letter, dated 03.08.2021.

7. At this juncture, it is necessary to refer Section 2(h) of Right to Information Act.

“2. Definitions. - In this Act, unless the context otherwise requires, -

(h) "public authority" means any authority or body or institution of self- government established or constituted—

(a) by or under the Constitution;

(b) by any other law made by Parliament;

(c) by any other law made by State Legislature;

(d) by notification issued or order made by the appropriate Government, and includes any—

(i) body owned, controlled or substantially financed;

(ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;



8. The learned counsel for the petitioner would rely on the decision of the Kerala High Court reported in **(2011) 2 KLT 312 [Bhanunni Vs. The Commissioner, Hindu Religious and Charitable Endowments (Admn.) Department]**, wherein it was held that the mutts and temples are not public authorities under the Right to Information Act 2005 and that therefore, the provisions and obligations gave under the Right Information Act 2005 do not apply to unaided religious institutions. In the case of **G.Rajenderanath Goud Vs. The Government of Andhra Pradesh** reported in **(2019) 2 ALT 140**, relied by the learned counsel for the petitioner, the Andhra Pradesh High Court has specifically held that the religious institutions like temples, churches, mosques, which are not financed/funded by the government, do not fall within the purview of the Right to Information Act 2005 and the Andhra Pradesh High Court has further observed that the provisions of Right to Information Act cannot be made applicable to the Temples and Mutts, which are not aided by the State and cannot be treated as public authorities, merely because certain provisions of Andhra Pradesh Charitable and Hindu Religious and Endowments Act apply to such institutions.

9.The learned counsel for the petitioner would rely on the judgment of this Court in the case of **The Dharmapuram Adheenam represented by its**



Adheena Kartha Vs. The Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Department and others in W.P.(MD)No.13670 of 2021, dated 04.07.2022, wherein, a learned Judge of this Court after referring to the decisions of Kerala High Court and Andhra Pradesh High Court has also referred the decision of another learned Judge of this Court in the case of Thiruvavaduthurai Adheenam, Thiruvavaduthurai Rep.by its Adheenakartha Vs. The Secretary to Government, Tamil Development Religious Endowments and others in W.P.Nos.16567 of 2010 batch, dated 01.10.2021 has observed as follows :

“66. The expansive nature of activities engaged in by a Mutt today as well as the substantial resources that many of them enjoy necessitates some form check upon the management and deployment of resources. Thus, though the Mutts cannot be called upon to furnish information to any and all interested persons, some amount of responsibility cannot be shied away from and the petitioners, to this extent, fairly agree. Queries or clarifications sought for by statutory and other public bodies and authorities in relation to secular aspects of the functioning of the Mutt, have to be responded to, and the required particulars must be furnished by the Mutt as and when called for. The line of distinction between what constitutes



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secular/temporal on the one hand, and religious/spiritual on the other, is fine, and is best left to the judgement of the respective Mutts to decide and convey to the authorities, if and when queries/clarifications are sought.”

With the greatest of respect to the Hon'ble Judge, I may add that the distinction between the secular and religious activities of the mutts may not be determinative of the issue posed for consideration. The relief sought for in this writ petition hinges on whether the mutt is a public authority as defined in the RTI Act. Once the answer is in the negative, declaration has to be granted as a matter of course. When once Dharmapuram Adheenam or its constituent religious institutions are held to be not “public authorities” for the purpose of The Right to Information Act, the consequence is that the writ petitioner or its constituent religious institutions cannot be directed to furnish any information at the instance of the Information Commission. They are also not required to appoint any Information Officer.

10. The learned counsel for the second respondent as well as the learned counsel for the first respondent would fairly admit that the Tamil Nadu Waqf



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Board is amenable to the provisions of Right to Information Act, but the same cannot be made applicable to Waqfs such as the petitioner waqf.

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11. It is not the case of the respondents that the petitioner waqf has been receiving aid or funds from the Government directly or indirectly and under the control of the Government directly or indirectly. Considering the above and taking note of the legal position above referred, this Court has no hesitation to hold that the petitioner waqf cannot be considered as a public authority as contemplated under Section 2(h) of the Right to Information Act and that therefore, the provisions of the Right to Information Act cannot be made applicable to the petitioner waqf.

12. In the result, the Writ Petition is allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

02.08.2024

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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K.MURALI SHANKAR, J

DAS

Pre-delivery order made in
W.P(MD)No.14623 of 2021
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Dated 02.08.2024