

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.03.2015

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.7638 of 2015
and M.P.No.1 of 2015

M.Mohammed Ismail

[Petitioner]

Vs

- 1 The Superintendent of Wakfs
Tamil Nadu Wakf Board
Salem West Salem-636001.
- 2 The Chief Executive Officer
Tamil Nadu Wakf Board
No.1 Jaffer Syrang Street
Vallal Seethakadhi Nagar Chennai-1.
- 3 The District Collector
Salem District Salem.
- 4 The Jamiya Masjid Trust
Represented by its Executive Officer
Tamil Nadu Wakf Board
1st Agraharam Street
Salem- 636001.
- 5 The Election Officer
The Jamiya Masjid Trust
1st Agraharam Street Salem-636001.

[Respondents]

Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus forbearing the 1st 2nd and 5th Respondents from conducting election of the Jamiya Masjid Trust Board Salem Town for its maintenance.

For Petitioner : Mr.A.Anilan
For Respondents: Mr.S.Gunasekaran,GA

ORDER

Heard the learned counsel for the petitioner and Mr.S.Gunasekaran, learned Government Advocate, who took notice for the respondents and with their consent, the main writ petition is taken up for disposal at the admission stage.

2. The petitioner seeks for a writ of mandamus forbearing the respondents 1, 2 and 5 from conducting election of the Jamiya Masjid Trust Board, Salem.

3. The only ground on which the writ petition has been filed is by contending that Section 108(a) of the Wakf Act, 1995, as amended, declares that all the provisions of the Act shall have over riding effect if anything inconsistent contained in any instrument and therefore, the scheme decree virtually has been extinguished by the enforcement of Wakf Act.

4. It is seen that the notification for election was issued by the Managing Committee vide notification dated 06.03.2015. A copy of the notification has been enclosed in the typed set of papers, from which, it is seen that the election schedule has been notified and the election process has commenced on 06.03.2015 and the election is to be held on 22.03.2015 and three days just before the election, the present writ petition has been filed.

5. Further, it is seen that prior to the filing of the writ petition, there is no objection made by the petitioner to the Wakh Board or any other person. Further more, by merely relying upon Section 108(a) of the Wakh Act, it cannot be straightaway held that scheme decree would lose its force or virtually become ineffective.

6. That apart, on a perusal of the election notification, it is seen that the notification was issued pursuant to the orders passed by the Wakf Tribunal (Principal Sub Court), Salem, in I.A.No.39 of 2005 in O.S.No.36 of 1941 dated 20.03.2008 and the orders passed by this Court in W.P.No.3392 of 2011 dated 17.02.2011 and W.P.No.20320 of 2011 dated 06.09.2011 and the Resolution No.66 of 2014 in Na.K.aNo.15983/08/A2, Salem dated 26.06.2014 and the proceedings of the Chief Executive Officer of the Tamil Nadu Wakf Board in proceedings dated 28.07.2014. By virtue of these proceedings and the orders passed by the Courts, the voters list has been finalised and election process has commenced. The settled legal position is that the election process should not be interdicted after it has commenced. If at all the petitioner is aggrieved by any matter concerning the election, the only remedy available to the petitioner is to challenge the election after the elections are over. Therefore, the prayer sought for in this writ petition is mis-conceived and the writ petition is dismissed. However, this will not prevent the petitioner from working out his remedy in the manner known to law, after the election is over.

No costs. Connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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Tamil Nadu Wakf Board
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Salem- 636001.
- 5 The Election Officer
The Jamiya Masjid Trust
1st Agraharam Street Salem-636001.

+ 1 cc to Mr.A.Anilan, Advocate SR.15200

+ 1 cc Government Pleader Sr.15628

RJ(CO)
EU 30.03.2015

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