

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] No.1555 of 2009

and M.P.No.1 of 2009

1. Mohideen Andavar Pallivasan
Rep by its P.Aresident - Muktavalli
C.K.U.Abdul Karim,
S/o.Late Uthumansa Rawther,
Muslim Street,
Valangaiman 612 804
Tiruvarur District.
2. C.K.U.Abdul Karim
3. M.K.A.Haja Mydeen
4. A.Alla Bux
5. Sait Mohamad Arief
6. M.Pakkir Mydeen
7. A.Ajmalkhan
8. M.Sabeer Ahamed
9. M.E.M.Noor Mohamed
- 10.M.Amanullah
- 11.M.M.Bavaji
- 12.Jahabar Ali
- 13.Jahabar Haja
- 14.Haleel Rahman
- 15.Pesh Imam Mohamed Fakrudeen
16. P.K.E.Abdulla

... Petitioners

Vs

1. A. Shajahan
 2. M.Mohamed Riyaz
 3. H.Salahudeen
 4. N.E.P.Hasan Farook
 5. C.K.U.A.Ismath Basha
 6. A.Riaz Mohamed
- ... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the orders in I.A.No.39 of 2008 in W.O.P.No.6 of 2008 dated 16.09.2008 on the file of the Wakf Tribunal (Principal Subordinate Judge) of Tiruvarur at Nagapattinam.

For Petitioner	: Mr.G.Krishnasamy
For Respondents-1 to 5	: Mr.S.Vediappan
For Respondent-6	: No Appearance

ORDER

The respondents in the Wakf O.P before the Tribunal are the petitioners in the present revision preferred under Article 227 of the Constitution of India.

2. The respondents in the Civil Revision Petition filed the O.P before the Tribunal for various reliefs contending that original petition was not competent because of the failure to serve notice on the Wakf Board under Section 89 of the Wakf Act,1995. The revision petitioners

filed an application in I.A.No.39 of 2008 in W.O.P.No.6 of 2008 praying for the rejection of the O.P. Section 89 of the Wakf Act was cited as the provision under which the relief of rejection of O.P was sought for. The learned Tribunal, after hearing, dismissed the said application holding that Section 89 of the Wakf Act, 1995 was not attracted as the Wakf Board is not a party to the O.P. It is as against the said order of the Tribunal, the present Civil Revision Petition has been filed.

3. The respondents 1 to 5 have entered appearance and they are represented by counsel. The submission made by Mr.S.Krishnasamy learned counsel for the petitioners and by Mr.S.Vediappan, learned counsel for the respondents 1 to 5 are heard.

4. The short point that arises for consideration in this case is whether the mandatory notice contemplated under Section 89 of the Wakf Act, 1995 shall be served on the Wakf Board even if the case is filed against persons other than the Wakf Board without making the Wakf Board itself as a party defendant.

5. For proper appreciation, Section 89 of the Wakf Act, 1995 is reproduced hereunder:

No suit shall be instituted against the Board in respect of any act purporting to be done by it in pursuance of this Act or of any rules made thereunder, until the expiration of two months next after notice in writing has been delivered to, or left at, the office of the Board, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

6. A reading of the said Section will make it clear that prior notice is contemplated only when a suit (O.P) is filed against the Wakf Board. In case the Wakf Board is not a party, Section 89 of the Wakf Act, 1995 will not get attracted. However, learned counsel for the petitioner would refer to Section 90 of the Wakf Act, 1995 and contend that even in cases wherein Wakf Board is not a party, service of notice on the Wakf Board is contemplated and that since no notice was

served on the Wakf Board as per Section 90, the W.O.P should have been rejected by the Tribunal.

7. This Court is not in a position to accept the above said contention of the learned counsel for the petitioner. Section 89 contemplates pre-suit notice as a condition for entertaining the suit(O.P), whereas Section 90 contemplates post-suit notice to the Wakf Board even in cases wherein the Wakf Board is not made a party provided the other conditions stipulated therein are present. Section 90 of the Wakf Board mandates the Court / Tribunal to issue notice at the cost of the plaintiff / Petitioner. Hence, the failure of the Court / Tribunal to issue such notice at the cost of the plaintiff cannot be the ground on which the O.P. can be sought to be rejected.

8. Yet an another attempt has been made by the learned counsel relying on the judgement of the learned Judge of this Court in ***M.S.Abdul Hameed -Vs- 1. S.M.Sheik Mohammed and four others*** reported in 2003-3-Law Weekly 184. The said judgment does not render any help to the learned counsel for the petitioner in support of his contention in this case. The distinction between the suit in which the Wakf Board was made a party defendant and a suit in which the

Wakf Board was not a party, attracting Section 89 in the former case and Section 90 in the later one, was not adverted to. On the other hand, in the said case a contention was sought to be made reading Section 80 Sub Clause (2) C.P.C into Section 89 of the Wakf Act,1995 to show that the Court or the Tribunal shall have the power to dispense with the notice in case emergent orders were sought to be made. In that context alone, the case came to be decided holding that it was not permissible to read Section 80 of C.P.C. into Section 89 of the Wakf Board Act.

9. Since the Wakf Board is not made a party defendant in the O.P concerned in this revision, this Court hereby holds that the Tribunal did not commit any mistake in coming to the conclusion that Section 89 of the Wakf Board was not attracted and the petition could not be rejected on the ground of non- service of notice on the Wakf Board contemplated under Section 89 of the Wakf Board. There is no defect or infirmity in the order passed by the Tribunal and no case has been made out for interference with such order in exercise of power of this Court under Article 227 of the Constitution of India. There is no merit in the revision and the same fails.

10. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

09.03.2016

Index: Yes/No
Internet: Yes/No

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To

The Principal Subordinate Judge
Nagapattinam.

P.R.SHIVAKUMAR, J

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