

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.05.2016

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.P.No.17953 of 2016 &

W.M.P.Nos.15649 and 15650 of 2016

1.K.Nizamuddin
2.K.Aslam Basha
3.K.Zahoorudin ... Petitioners

Vs.

1.The Secretary to Government,
Department of Backward Classes,
Most Backward Classes and
Minorities Welfare Department,
Secretariat, Fort St.George,
Chennai-600 009.

2.The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffar Sarang Street,
Chennai-600 001.

3.The Superintendent of Wakf,
Tamil Nadu Wakf Board,
MAKKA Mosque Complex, Mount Road,
Chennai-600 002.

4.Syed Moinuddin,
"Z House", 116, Bells Road,
(near Chepauk Cricket Stadium),
Chepauk, Chennai - 600 005. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, to direct the second respondent either to appoint the petitioners as Muthawalli or an Officer of the Wakf Board itself to perform Sandal Urs to the Hazrath Syed Moosa Sha Khaderi (R.A.) Dargah-E-Mount Road on 23.05.2016.

For Petitioners :: Mr.E.I.Abdul Rahman
For Respondents :: Mr.P.Sanjai Gandhi
 Additional Government Pleader for R1
 Mr.M.Mohammed Fayez Ali for R2
 Mr.Zaffarullahkhan for R4

O R D E R

The prayer in the Writ Petition is to issue a Writ of Mandamus, directing the second respondent either to appoint the petitioners as Muthawalli or an Officer of the Wakf Board itself to perform Sandal Urs to the Hazarath Syed Moosa Sha Khaderi (R.A.) Dargah-E-Mount Road on 23.05.2016.

2. Heard the learned counsels appearing for the petitioners and the learned counsel appearing for the respondents and perused the records.

3. According to the petitioners, they are the legal-heirs of the parties to the Suit in C.S.No.116 of 1909 on the file of this Court, in which a Scheme Decree was framed for administering and managing the Dargah namely, Hazarath Syed Moosa Sha Khaderi and as per the Scheme Decree, now, it is the turn of the petitioners to hold the post of Muthawalli and perform this year Sandal Urs. However, contrary to the Scheme, the second respondent has appointed the fourth respondent.

4. The fourth respondent has filed a counter affidavit contending that a Scheme Decree was not passed in C.S.No.116 of 1909 and it is a Decree, wherein, the Turn Holding days were divided as 180 days to one Branch called "Syed Ismail" and 180 days to another Branch, called, "Syed Ghulam Dastagir". It is further stated that the Suit in O.S.No.2972 of 2010, filed by the petitioners before the Walk Board Tribunal is still pending and against the order passed by the second respondent, the petitioners have file to an Appeal before the Wakf Board Tribunal and the present Writ Petition is not maintainable.

5. The learned counsel for the petitioners would submit that the fourth respondent is not at all a Muthawalli and his turn expired long back and to render substantial Justice, the Writ Petition can be entertained, though an Appeal remedy is available to the petitioners, since the second respondent has passed an order appointing the fourth respondent contra to the Scheme Decree.

6. The learned counsel for the respondents 2 to 4 would vehemently contend that the petitioners as plaintiffs in O.S.No.2972 of 2010 have categorically admitted that the fourth respondent is Muthawalli of the Dargah and unless the inter-party disputes decided in the Suit, the petitioners are not entitled to hold the post. The respondents relying upon the orders passed in Writ Petition in W.P.No.17054 of 2012 and Writ Appeal in W.A.No.1793 of 2012 would contend that in similar facts, the Writ Petition was dismissed directing the parties to avail the alternative remedy by filing an Appeal before the Wakf Board Tribunal. I find force in the contentions of the learned counsel for the respondents.

7. The Division Bench of this Court in W.A.No.1793 of 2012, in paragraph No.7 held as follows:-

"7. In view of the aforesaid submission made by the learned counsel for the fifth respondent / Cavetor and also the observation made by the learned Single Judge that the Writ Petition is not maintainable and it is for the petitioners to work out their right and establish their right of Hundial collection to be handed over to the them, we are of the considered opinion that the declaration sought for by the writ petitioners / appellant cannot be granted under Article 226 of the Constitution of India and the only remedy available to them is to approach the Wakf Board Tribunal for redressal of their grievance."

8. In the light of the above facts and the dictum laid down by this Court, referred above, this Court is of the opinion that the Writ Petition is not maintainable. Hence, the Writ Petition is dismissed. It is for the petitioners to work out their remedy in the manner known to law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Vacation Officer.

/true copy/

Sub Asst. Registrar.

r n s

To

1.The Secretary to Government,
Department of Backward Classes,
Most Backward Classes and
Minorities Welfare Department,
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Chennai-600 009.

2.The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffar Sarang Street,
Chennai-600 001.

3.The Superintendent of Wakf,
Tamil Nadu Wakf Board,
MAKKA Mosque Complex, Mount Road,
Chennai-600 002.

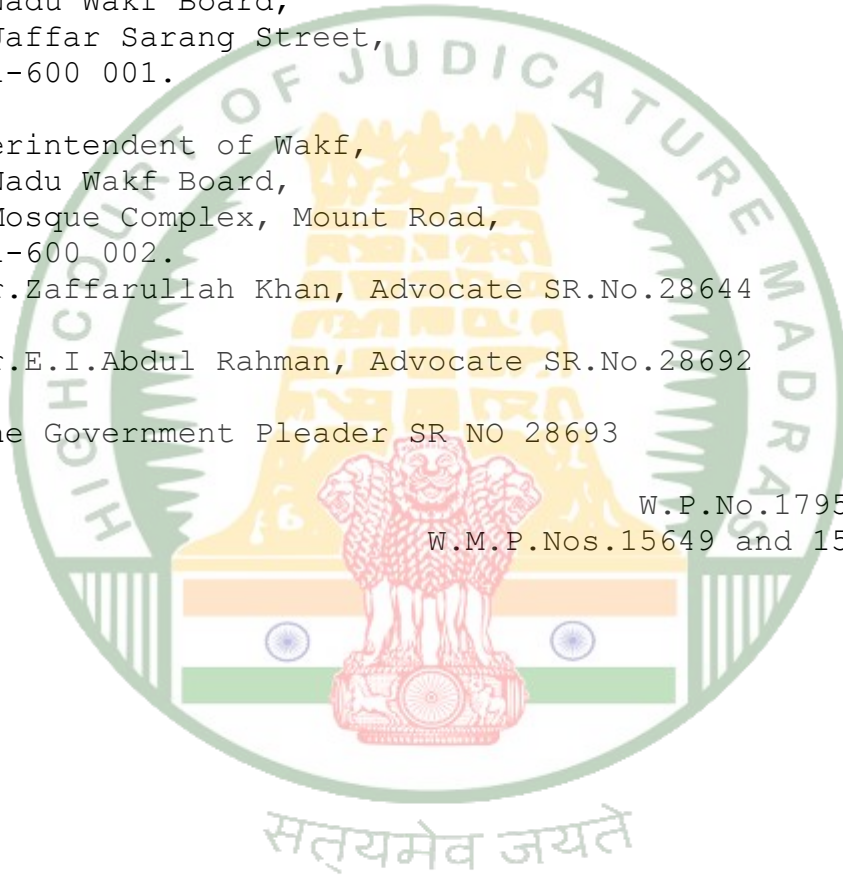
+1cc to Mr.Zaffarullah Khan, Advocate SR.No.28644

+1cc to Mr.E.I.Abdul Rahman, Advocate SR.No.28692

1 CC to the Government Pleader SR NO 28693

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