

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.27378 of 2015

and

M.P.No.1 of 2015

and

M.W.P.No.2797 of 2016

M.O.H.U.Basheerudeen ... Petitioner

Vs.

1. The Secretary to Government
(HR & WAKF)-cum-Collector,
Revenue Complex, Saram,
Puducherry.
2. The Chief Executive Officer-cum-Secretary,
Puducherry State WAKF Board,
No.1 & 3, Y.V.Pillai Street,
Puducherry.
3. The Committee of Management,
Mastan Sahib Valiyullah Dargah Shareef,
Karaikal-609 602. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Declaration, declaring that the entire process of agreeing the proposal of leasing out the WAKF property owned by the 3rd respondent herein comprising in T.S.No.11/2, R.S.No.81/2, O.S.No.211, Patta No.21, admeasuring 01.43.20 Hec., situated in Ward G, Block 03, Junction of D.K.Nagar and Mass Nagar, Karaikal in principle pursuant to the communication dated 19.05.2015 and 20.08.2015 by the respondents 2 & 3 to homeless downtrodden muslim people of Karaikal region for construction of houses as null and void.

For Petitioner : Mr.Ilanthirayan
of M/s.Sai, Bharath & Ilan

For respondents : Mr.A.Tamilvanan,
Government Advocate (Puducherry)

ORDER

This writ petition has been filed by the petitioner praying to declare that the entire process of agreeing the proposal of leasing out the WAKF property owned by the 3rd respondent herein comprised in T.S.No.11/2, R.S.No.81/2, O.S.No.211, Patta No.21, admeasuring 01.43.20 Hec., situated in Ward G, Block 03, Junction of D.K.Nagar and Mass Nagar, Karaikal in principle pursuant to the communications dated 19.05.2015 and 20.08.2015 by the respondents 2 & 3, to homeless downtrodden muslim people of Karaikal region for construction of houses, as null and void.

2. In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows:-

2-1. The petitioner is one of the Board Members of the 2nd respondent-Board viz., Puducherry State WAKf Board. The petitioner has been appointed as a member of the Wakf Board for the Union Territory of Puducherry by the 1st respondent vide G.O.Ms.No.33/US(WAKF)t.10/2010, dated 30.09.2010. As per the said G.O., the member of the Board shall hold office for a period of five years, from the date of issuance of the notification. The members shall meet and elect the Chairman from amongst themselves and the notice for such meeting would be issued by the Government. Thereafter, the 2nd respondent was elected as Chief Executive Officer-cum-Secretary of the Puducherry State Wakf Board.

2-2. While being so, a Member of Legislative Assembly viz., one Janab AMH.Nazeem made a representation dated 03.04.2015 to the 2nd respondent seeking to lease out the vacant land belonged to the Wakf to construct dwelling houses for the homeless downtrodden muslim people at Karaikal region. After 45 days from the date of the said representation, it was considered by the 2nd respondent by his communication dated 19.05.2015 to the 3rd respondent, thereby agreeing the proposal in principle, subject to the nod of the 3rd respondent and approval of the Wakf Board to leasing out the abandoned properties owned by the 3rd respondent to homeless downtrodden muslim people at Karaikal region to construct houses. Thereafter, the 3rd respondent sent a communication dated 07.08.2015 to the 2nd respondent, accepting the proposal agreed in principle by the 1st respondent and they were in the process of accepting donation of Rs.5000/- from the people concerned for allotment of house site by lease. Further, by its communication dated 15.08.2015, once again the 1st respondent approved the proposal agreed in principle and extended its approval for the forthcoming project and recommended for approval. After receipt of the communication, the 1st respondent informed by its communication dated 20.08.2015 that the approval of the Wakf Board is not necessary and the Moothavarzhi concerned is empowered to effect lease of the Wakf

properties for a period less than a year, on such terms and conditions as agreed upon by the parties as per the notification dated 03.06.2014 issued by the Ministry of Minority Affairs, New Delhi in the Extraordinary Gazette of India. Now, the 3rd respondent is collecting Rs.5,000/- per head, from 160 persons to lease out the vacant land to construct their respective residences. The entire process is gross violation of the Wakf Rules and Wakf Acts and its Regulations. According to the petitioner, the 1st respondent has absolutely no power to issue such a letter dated 19.05.2015 without previous consent of the Wakf Board in terms of the provisions contained in various clauses of Section 56 of the Wakf Act, when he himself is working under the administrative control of the Wakf Board, as per Section 23(3) of the Wakf Act. Similarly, the communication of the 1st respondent dated 20.08.2015 informing that the approval of the Wakf Board is not necessary and the Moothavazhi concerned is empowered to effect lease of the Wakf Properties for a period less than a year, is also in violation of the Wakf Act. Hence, the petitioner has come forward with the present writ petition before this Court for the relief as stated supra.

3. When the writ petition came up on 01.09.2015, this Court granted an interim order of status quo to be maintained by both the parties.

4. The 3rd respondent filed a petition in W.M.P.No.2797 of 2016 seeking to vacate the interim order of status quo, contending inter alia as follows:- The decision of leasing out the subject Wakf properties has been taken by the 1st respondent only as per Rule 4 of the Wakf Properties Lease Rules, 2014. As per the said Rule, for leasing out the property less than one year, Mutawalli or Board may take a decision. In the instant case, since the Board is not in existence, in order to generate income from the abandoned lands of the Wakf properties, it was decided to lease out the property only for the period of 11 months, after obtaining suitable instructions from the 2nd respondent, who is the competent authority under the Wakf Act. The 2nd respondent in his communication has made it clear that as far as leasing out the Wakf properties is concerned, as per the Wakf Act and Rules, there is no need to obtain previous sanction of the Board, for the 11 months lease and it is only after that clarification, decision was taken to lease out the properties in accordance with the Wakf Properties Lease Rules, 2014. The decision to lease out the wakf properties is not taken unilaterally. The committee of management unanimously resolved and sought the permission from the 2nd respondent and the same was considered and on appreciation of the legal provisions, it was informed that sanction of the Board is not necessary for the lease less than a year. Hence, there is no infirmity in the procedure adopted in leasing out the Wakf properties.

Thus, it is contended by the respondents that there is no violation of Wakf Act and Rules on the part of the respondents, as alleged by the petitioner. It is further stated by the 3rd respondent that if the petitioner is aggrieved by the decision of the respondents, he has to approach the Wakf Tribunal under Section 83(2) of the Wakf Act, 1995; but, instead of approaching the Wakf Tribunal, the petitioner has filed the present writ petition, which is not maintainable. Thus, the 3rd respondent sought for dismissal of the writ petition.

4.The petitioner has filed reply, denying the averments made by the respondents.

5.Heard the learned counsel for the petitioner as well as the learned Government Advocate (Pondy) appearing for the respondents and perused the materials available on record.

6.It is the submission of the learned counsel for the petitioner that to lease out the Wakf properties, prior permission of the Wakf Board is necessary. Whereas, according to the Government Advocate (Pondy), if the lease period is less than 12 months, prior permission of the Wakf Board is not necessary.

7.It is the allegation of the petitioner that the 3rd respondent is collecting Rs.5,000/- per head from 160 persons to lease out the vacant land, only in order to gain political advantage. But, this fact is denied by the respondents.

8.Irrespective of the submissions made on either side, this Court is of the opinion that the disputes questions of facts are involved in this case. This Court cannot conduct any roving enquiry with regard to the disputed questions of facts under Article 226 of the Constitution of India, in the writ petition. Further, in view of the provisions under Section 83 of the Wakf Act, if the petitioner is aggrieved by the order of the respondents, he has to approach the Wakf Tribunal, where the remedy of the petitioner lies. Therefore, the writ petition is not maintainable and the same liable to be dismissed.

In fine, the writ petition is dismissed. However, the petitioner is at liberty to approach the Wakf Tribunal, if he so desires. Consequently, connected Miscellaneous Petition are closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

SSV

To

1. The Secretary to Government (HR & WAKF)-cum-Collector,
Revenue Complex, Saram,
Puducherry.
2. The Chief Executive Officer-cum-Secretary,
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Puducherry.
3. The Committee of Management,
Mastan Sahib Valiyullah Dargah Shareef,
Karaikal-609 602.

+1cc to M/s.Sai, Bharath & Ilan, Advocate, S.R.No.9401

+1cc to Mr.R.G.Narendhiran, Advocate, S.R.No.9272

+1cc to the Special Government Pleader(T), S.R.No.9328

W.P.No.27378 of 2015

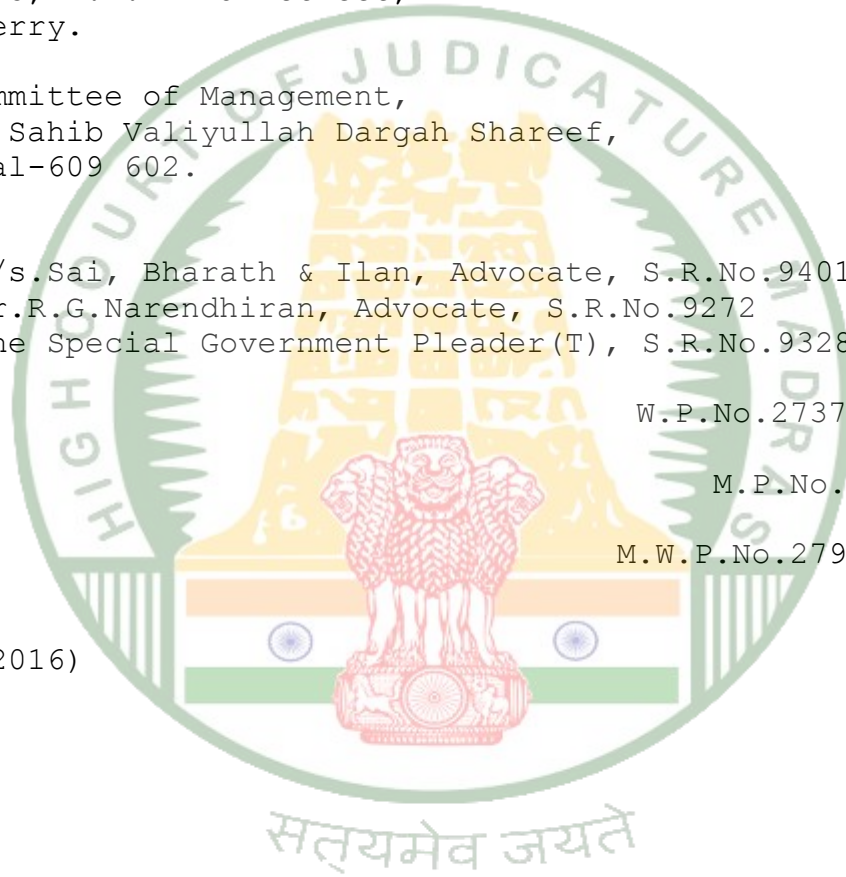
and

M.P.No.1 of 2015

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KJI (CO)
CA(18/02/2016)



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