

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.32010 of 2015
and M.P.No.1 of 2015

Mir Habibullah

.. Petitioner

Vs.

1.The Tamil Nadu Wakf Board,
Rep. by its Chief Executive Officer,
No.1, Jaffar Serang Street,
Vallal Seethakathi Nagar,
Chennai-600 001.

2.The Chief Executive Officer,
The Tamil Nadu Wakf Board,
No.1, Jaffar Serang Street,
Vallal Seethakathi Nagar,
Chennai-600 001.

3.The Assistant Secretary-II/
Public Information Officer,
The Tamil Nadu Wakf Board,
No.1, Jaffar Serang Street,
Vallal Seethakathi Nagar,
Chennai-600 001.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the 3rd respondent's order dated 30.10.2014 made in Petition No.867/14/B4/TVL to quash the same and to consequently direct the 2nd respondent to place the petitioners application dated 28.08.2014 before the first respondent Wakf Board for reconsideration of its order dated 27.04.2001 made in WEA1/2000/E5/CGT under Section 26 of the Wakf Act, 1995 with the coram of the Shia Member of the Wakf Board.

For Petitioner : Mr.M.N.S.Mohamed Habeeb Raja

For Respondents : Mr.V.Lakshminarayanan
for R1 to R3

O R D E R

By consent, this writ petition is taken up for final disposal.

2. The petitioner would state that Ponnamallee Big Mosque is a Shia Wakf and as per Proforma, the Rule of Succession to the Office of the Muthawalli is hereditary by custom and that the petitioner is a direct descendant of the Wakif and therefore, requested the Tamil Nadu Wakf Board to appoint him as Muthawalli of the petitioner Wakf. The petition/representation submitted by the petitioner was rejected by the Tamil Nadu Wakf Board, Chennai-4, vide proceedings in WEA.1/2005/ES/CGT dated 27.04.2001. Challenging the legality of the said order, the petitioner filed an appeal dated 25.05.2001 to the Secretary, Tamil Nadu Wakf Board, Chennai-9, which in-turn forwarded the same to the Tamil Nadu Wakf Board. The petitioner has also invoked the provisions of the Right to Information Act to get information about the status of the application filed by him before the Tamil Nadu Wakf Board and the Assistant Secretary-II/Public Information Officer, Tamil Nadu Wakf Board, Chennai-1, vide letter dated 30.10.2014 informed the petitioner that his appeal dated 25.05.2001 is not readily traceable and further informed him that the appeal against the order of Board lies to the Wakf Tribunal as the Board is not empowered to review its own order.

3. The learned counsel appearing for the petitioner would contend that in the proceedings of the Tamil Nadu Wakf Board dated 27.04.2001, Chairman and other members had participated and number of them belong to Shia sect and since they did not have jurisdiction to pass such an order, the petitioner had filed an appeal and though the first respondent took a stand that the appeal papers are not traceable, has passed an erroneous order stating that Wakf Board cannot review its own order and the said stand per se is unsustainable in law for the reason that in respect of Shia Wakf, members belonging to Sunni sect cannot decide the issue and therefore, the matter may be remanded to the Tamil Nadu Wakf Board for fresh consideration.

4. Per contra, Mr.V.Lakshminarayanan, learned Standing Counsel for the Wakf Board would contend that even as per the Proforma Report dated 24.01.1956, it is a Sunni Wakf and therefore, there cannot be any impediment on the part of the members to decide the said issue and would further contend that the remedy open to the petitioner, if any, is to avail alternative remedy under Section 83 of the Wakf Act and prays for dismissal of the writ petition.

5. This Court has considered the rival submissions and also perused the materials placed before it.

6. The primordial submission of the learned counsel appearing for the petitioner is that in the proceedings dated 27.04.2001, the Chairman as well as the members belong to Sunni sect and therefore, they cannot adjudicate the said issue. Per contra, the learned Standing Counsel appearing for the Tamil Nadu Wakf Board would contend that even as per the Proforma Report dated 24.01.1956, it is only a Sunni Wakf and would further contend that even for the sake of arguments that the Chairman as well as the members belong to Shia sect, still they are competent to give findings and that apart in the light of the alternative remedy available, the petitioner can avail the said remedy.

7. In the considered opinion of the Court, the matter in issue prima facie appears to be involving adjudication of factual disputes and since the petitioner is having effective alternative remedy under Section 83 (2) of the Wakf Act, 1995, he is at liberty to avail the same.

8. In the result, this Writ Petition is dismissed. The petitioner is at liberty to avail the aforesaid alternative remedy, if he is so advised and as and when the Tamil Nadu Wakf Board is put on notice, they are always at liberty to put forth the defences available to them. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Chief Executive Officer,
The Tamil Nadu Wakf Board,
No.1, Jaffar Serang Street,
Vallal Seethakathi Nagar,
Chennai-600 001.

2.The Chief Executive Officer,
The Tamil Nadu Wakf Board,
No.1, Jaffar Serang Street,
Vallal Seethakathi Nagar,
Chennai-600 001.

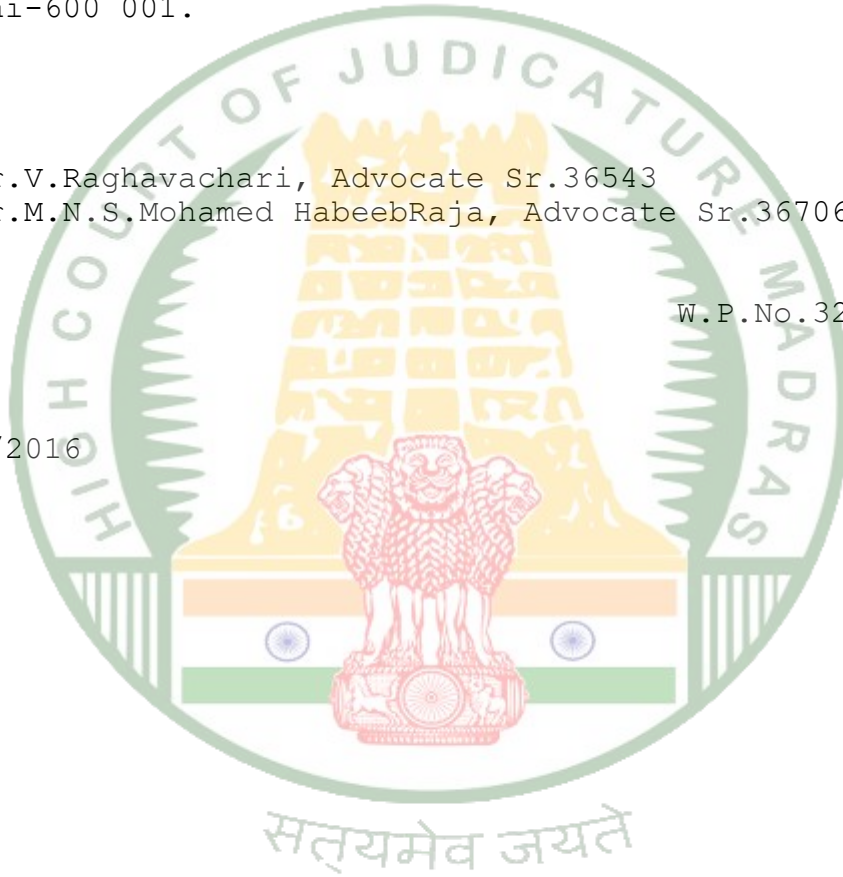
3.The Assistant Secretary-II/
Public Information Officer,
The Tamil Nadu Wakf Board,
No.1, Jaffar Serang Street,Vallal Seethakathi Nagar,
Chennai-600 001.

+1cc to Mr.V.Raghavachari, Advocate Sr.36543

+1cc to Mr.M.N.S.Mohamed HabeebRaja, Advocate Sr.36706

W.P.No.32010 of 2015

ak[co]
srg 21/07/2016



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