

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2016

CORAM

THE HON'BLE Mr. JUSTICE M.M.SUNDRESH

W.P.No.40985 of 2015 and
M.P.Nos.1 and 2 of 2015

Coimbatore Kottai Hithayathul
Islam Shafiyya Jamath
Represented by its Secretary
Mr.T.I.Abdul Wahab No.1, H.M.P.R.
Street Fort Coimbatore-641001. .. Petitioner

Vs.

- 1 The Chief Executive Officer
Tamilnadu Waqf Board,
No.1, Jaffar Syrang Street
Vallai Seethakathi Nagar,
Chennai-01.
- 2 The Waqf Superintendent
Majid Compex,
No.14-15, Avinashi Salai,
Coimbatore-641018. .. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus calling for the entire records ending with Election Notification No.2 dated 22.12.2015 of the Second Respondent and quash the same and direct the Respondents to consider and pass orders on the representations dated 14.6.2015 and 21.12.2015 sent by the petitioner to the First Respondent.

For Petitioner .. Mr.S.D.S.Phillip
For Respondents .. Mr.Hassan Fizal

ORDER

This writ petition has been filed by the petitioner representing the present office bearers challenging the election notification dated 22.12.2015 on various grounds.

2. The learned counsel for the petitioner submitted that the notification is not preceded by the resolution of the Wakf Board. There is no voter ID which is available. The representation made has not been considered. The persons, who contravened Rule 4(4) of the Wakf Properties Lease Rules, 2014 have been disqualified though the object of the wakf is to help the members of the family.

3. The learned counsel for the respondent submitted that writ petition is not maintainable on law and facts. Admittedly, there is alternate remedy open to the petitioner before the Wakf Tribunal. The election process has already begun. There is no necessity for a resolution of the Wakf Board. The notification has been issued after due authorisation. The earlier representation made by a third party alleging that a plague has been destroyed has been considered and found to be not correct. It is not possible to consider the representation of the petitioner at this stage which would amount to change in the notification along with the schedule. There are about 43 nominations found to be valid. If any disqualification is found later, then it is for the Wakf Board to take action as per law. Therefore, no interference is required.

4. Admittedly, the term of the members of the petitioner is over as early in the year 2014. The period of extension is also over. What is proposed to be done is an election for which law does not mandate the prior resolution by the Board. Once election process is on, the remedy of the petitioner is elsewhere. The contentions raised on other grounds also cannot be accepted. The nominations have been approved. 43 persons have been found to be qualified. If subsequently, the elected members are found to be disqualified, then it is for the Wakf Board to take action after following the procedure. Considering the scope and object behind Rule 4(4) of the Wakf Properties Lease Rules, 2014, it cannot be said, that notwithstanding the embargo, a person can file his nominations. Therefore, looking from any aspect, this Court is not inclined to entertain the writ petition.

5. However, coming to the question of identifying the correct voters, it is well open to the petitioner or its authorised representative to be present on the date of voting and assist the respondents by pointing out any fraud that is likely to take place, in which case, the second respondent is expected to look into the same. This observation is made as it is well open to the members to assist the second respondent in whichever manner as per law for fair conduct of the election. Similarly, in the event of election of any member of managing committee having found disqualified, then, the appropriate action can only be taken by the Wakf Board and not by second respondent.

6. With this observation, the writ petition is closed. No costs. Consequently, connected miscellaneous petitions are closed.

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s/d-

Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

To

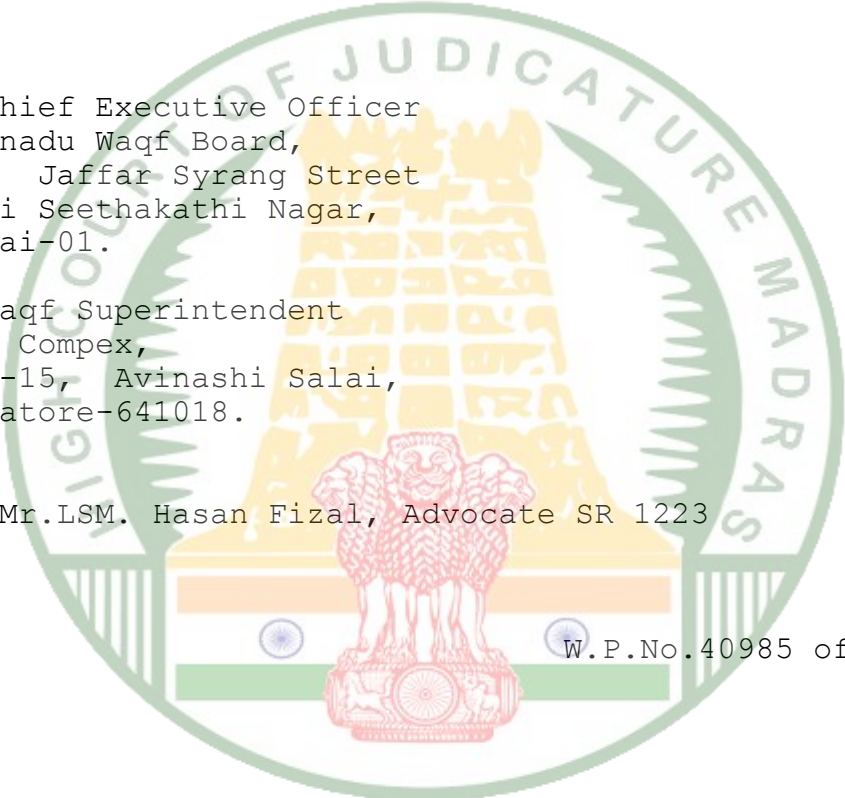
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+ 1 cc to Mr.LSM. Hasan Fizal, Advocate SR 1223

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