



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
MADURAI

Reserved on : 29.04.2016
Pronounced on : 22.07.2016

WEB COPY

CORAM :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN
Writ Petition (MD) No. 19189 of 2015
and
M.P. (MD) Nos. 2 and 3 of 2015
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H. Mohammed Hyder Ali
President
Anjuvannam Peer Mohammadia Muslim Association
Thuckalay Village
Kalkulam Taluk
Kanyakumari District

..Petitioner

Versus

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

2. The Superintendent of Wakfs
Madurai, Ramnad, Tirunelveli Division
No.54/15, S.N. High Road
Tirunelveli - 627 001

..Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorari to call for the records of the alleged resolution/order dated 18.08.2015 in Na.Ka.No.144/11/A1/Ka.Kumari alleged to have been passed by the first respondent but which is only signed by the second respondent and that too on 10.09.2015 and quash the same.

(prayer amended as per the order dated 30.11.2015 passed in MP (MD) No. 4 of 2015 in WP No. 19189 of 2015)

For Petitioner : Ms. P.T. Asha

For Respondents : Mr. M. Ajmal Khan, Senior Advocate
for M/s. Ajmal Associates

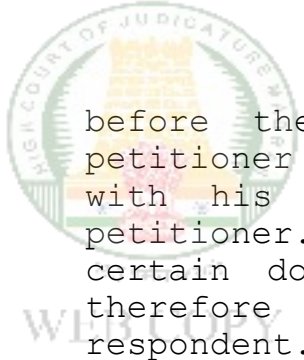
ORDER

The writ petition has been filed praying for issuance of a Writ of Certiorari to call for the records relating to the alleged resolution/order dated 18.08.2015 alleged to have been passed by the first respondent which was signed by the second respondent on 10.09.2015 and quash the same.

2. Originally, the petitioner has filed this writ petition praying to issue a Writ of Certiorari and Mandamus to quash the notice/order dated 14.10.2015 of the second respondent and consequently forbear the respondents from interfering with the management of the Anjuvannam Peer Mohammadia Muslim Association, Kanyakumari District managed by the petitioner. During the pendency of the writ petition, the prayer was amended to the effect to quash the resolution/order dated 18.08.2015 passed by the first respondent which was allegedly signed by the second respondent on 10.09.2015.

3. The petitioner claims that the Anjuvannam Peer Mohammadia Muslim Association/Jamath is one of the oldest Jamaths in Kanyakumari District and it is under the administrative control of the first respondent. The said Jamath is managed by the members, who were elected through secret ballot by the members of the said Jamath. In this context, by a notification dated 24.02.2014 and 12.03.2014 of the first respondent, fresh election for the 15 member executive committee of the Jamath was sought to be conducted. As per the notification of the first respondent, the second respondent conducted the election on 22.06.2014 in which totally 30 candidates contested. Out of the 30 candidates, 15 members were duly elected, including the petitioner. The petitioner also assumed charge and he is part of the day to day affairs of the petitioner association.

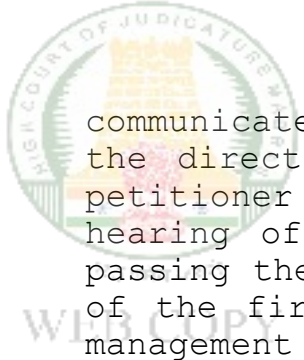
4. According to the petitioner, the unsuccessful candidates in the election have often resorted to create problems by sending frivolous and fictitious complaints against the Jamath as also the petitioner. On the basis of one such complaint made against the petitioner, a show cause notice dated 29.05.2015 was issued by the first respondent. The complaint was in the nature of the petitioner's alleged failure to cooperate with the investigation team sent by the first respondent in opening the Hundial, refusal to show the accounts, misappropriation of cash bundles left out during the counting of the money from the hundial, removing and adding members of the executive committee without informing the first respondent and resorting to social boycotting. On receipt of the show cause notice dated 29.05.2015, the petitioner submitted a detailed reply on 11.06.2015 denying the charges. According to the petitioner, the hundial was opened only on the orders of the first respondent and it was duly recorded in the form of a proceedings during which the members of the first respondent Board were present. Similarly, the other allegations raised against the petitioner were also denied by him in his reply dated 11.06.2015. Thereafter, by a notice dated 12.08.2015, the petitioner was directed to appear



before the first respondent on 18.08.2015. Accordingly, the petitioner appeared before the first respondent on 18.08.2015 along with his advocate, who filed his vakalath on behalf of the petitioner. On that date, the petitioner sought time to file certain documents in support of his defence. The enquiry was therefore posted for further hearing on 28.09.2015 by the first respondent. When the petitioner was anticipating to hear from the first respondent regarding the enquiry, he was shocked to note that a notice dated 14.10.2015 was pasted in the notice board of the petitioner association informing that the administration of the Anjuvannam Peer Mohammadia Muslim Association has been taken over by the second respondent. Therefore, challenging the notice dated 14.10.2015, the petitioner has filed this writ petition.

5. When the writ petition was taken up for hearing before this Court, a counter was filed by the first respondent stating that orders were reserved after conducting the enquiry on 18.08.2015. However, in the documents filed along with the counter, an order dated 18.08.2015 passed by the first respondent, which was signed by the second respondent only on 10.09.2015, has been filed. As per the order dated 18.08.2015, the first respondent directed the petitioner to handover the management of the petitioner association to the second respondent. Therefore, the petitioner sought to modify the prayer in the writ petition to challenge the order dated 18.08.2015 which was allegedly signed by the second respondent on 10.09.2015. This Court, by an order dated 30.11.2015 permitted the petitioner to amend the prayer as well as the affidavit filed in support of the writ petition.

6. Ms. P.T. Asha, learned counsel appearing for the petitioner would vehemently contend that the impugned order dated 18.08.2015 of the first respondent is legally not sustainable and it is contrary to the principles of natural justice. According to the learned counsel for the petitioner, on 18.08.2015, the petitioner appeared before the first respondent for an enquiry along with his counsel and his counsel filed Vakalath on behalf of the petitioner. On 18.08.2015, there was no enquiry conducted by the first respondent and the hearing was adjourned to 28.09.2015. Thereafter, on 10.09.2015, the first respondent has sent a communication to the petitioner addressing to him as President of the petitioner association and sought his cooperation during the counting of the hundial. While so, the impugned order could not have been passed by the first respondent on 18.08.2015 directing him to handover the charges of the petitioner association to the second respondent. Further, a show cause notice dated 29.05.2015 was given to the petitioner for which the petitioner has also submitted his explanation on 11.06.2015. Thereafter, the petitioner appeared before the first respondent for an enquiry along with his advocate on 18.08.2015 and on that date, the enquiry was only adjourned. However, on the same date the impugned order dated 18.08.2015 has been passed without affording any opportunity to the petitioner. Further, the impugned order dated 18.08.2015 has not been

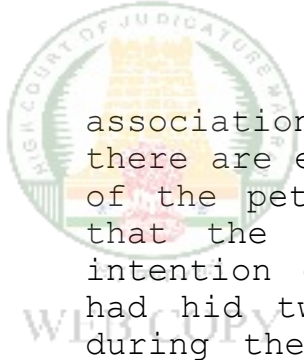


communicated to the petitioner and the petitioner was not aware of the directions issued by the first respondent therein. When the petitioner was waiting to hear from the first respondent the date of hearing of the enquiry, the first respondent is not justified in passing the impugned order. Consequently, the order dated 18.08.2015 of the first respondent, directing the petitioner to handover the management is to be treated as non-est in the eye of law. The learned counsel for the petitioner therefore prayed for allowing this writ petition.

7. In support of her contention, the learned counsel for the petitioner relied on several decisions to contend that the impugned order passed by the first respondent is in violation of principles of natural justice. The learned counsel for the petitioner also relied on the decision of the Honourable Supreme Court in (Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others) (1998) 8 Supreme Court Cases 1 to contend that alternative remedy is not a bar when there is violation of principles of natural justice or an order has been passed without jurisdiction. In such a circumstances, a writ petition under Article 226 of The Constitution of India is maintainable.

8. The learned counsel for the petitioner would further contend that the show cause notice was issued to the petitioner on 29.05.2015 raising several allegations against him including misappropriation of funds. The petitioner had sent his reply dated 11.06.2015 repudiating the allegations. While so, the first respondent ought to have proceeded further pursuant to the explanation offered by the petitioner. However, no action was taken thereof and instead the impugned order has been passed by the first respondent taking over the management of the petitioner association. In this context, the learned counsel for the petitioner relied on the decision of the Honourable Supreme Court in (Gorkha Security Services vs. Government (NCT of Delhi) and others) (2014) 9 Supreme Court Cases 105 to contend that when the first respondent did not take action pursuant to the allegations raised in the show cause notice, the impugned order cannot be sustained.

9. The learned senior counsel appearing for the respondents, relying on the vacate stay petition filed by the second respondent, would contend that the petitioner association/Wakf is a registered Wakf under Section 6 of the Wakf Act, 1955 and it is administered by an administrative body consisting of 15 members, including a President. Even though the petitioner and other members were elected in the election conducted on 22.06.2014, the first respondent received numerous complaints against the petitioner and others relating to misappropriation and mismanagement of the funds of the association. In fact, the first respondent sought for a report from the second respondent, based on which the second respondent conducted an inspection and submitted his report dated 07.03.2015 to the first respondent. In the report, it was stated by the second respondent that the general body of the petitioner



association has not been convened till the date of inspection and there are evidence to show large scale misappropriation of the funds of the petitioner association. It was also stated in the report that the petitioner, in collusion with other members, with an intention of misappropriating the Hundial collection of the Wakf, had hid two containers of contributions from the wakf officials during the counting of the contributions and converted the said amount into 3 gold coins and thereafter replaced the hundial. According to the learned Senior counsel, a committee of Wakf officials have inspected the petitioner association and conducted a detailed enquiry. During such enquiry, it was stated that the petitioner refused to cooperate with the committee and refused to furnish the books of accounts. In such circumstances, the notice dated 29.05.2015 was sent to the petitioner for which he had sent the explanation dated 11.06.2015. Thereafter, a notice for enquiry was sent based on which the petitioner and other members appeared before the first respondent on 18.08.2015. On 18.08.2015, an enquiry was conducted in which the members of the administrative body by name Mr. Wahid admitted that it was he who had hid the two containers of Hundial contribution from the wakf officials as per the instruction of the petitioner. Similarly, one Mr. Salim has admitted that on the direction of the petitioner, he converted the contributions in the hundial into gold coins. Thus, according to the learned Senior counsel for the respondents, on 18.08.2015, an enquiry was conducted in which the petitioner and others participated. Further, on 18.08.2015, submissions were made on behalf of the petitioner by his advocate and therefore it cannot be said that the impugned order is violative of principles of natural justice. When the petitioner and other members have indulged in fraud and mismanagement of the funds of the petitioner association, the first respondent is justified in directing the second respondent to take over the management of the petitioner association. In fact, the second respondent had taken over the management and the bank accounts of the wakf has also been transferred in the name of the second respondent. The second respondent is dealing with the financial management of the petitioner association from 14.10.2015.

10. The learned Senior counsel appearing for the respondents would further contend that there are disputed question of facts involved in this writ petition and therefore, the writ petition is not maintainable. The learned senior counsel for the respondents relied on the decision of the Honourable Supreme Court in (New Okhla Industrial Development Authority vs. Kendriya Karamchari Sahkari Grih Nirman Samiti) (2006) 9 Supreme Court Cases 524 wherein it was held that when disputed questions of fact are involved or questions having complex question of fact, a writ petition is not a remedy.

11. As regards the service of the impugned order, the learned Senior counsel for the respondents would contend that the impugned orders have been duly served on all the members of the petitioner association including the petitioner by registered post. The petitioner is fully aware of the order dated 18.08.2015 of the first

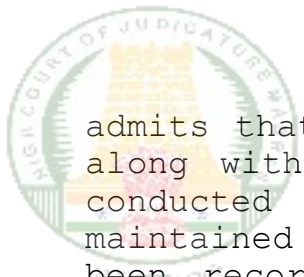


respondent and it was also published in the gazette on 01.10.2015. The petitioner has therefore filed this writ petition by suppressing the material facts and he is not entitled to the relief sought for in this writ petition. Above all, the learned Senior counsel for the respondents would contend that the writ petition itself is not maintainable in view of the appeal remedy provided under Section 38 and 65 of The Wakf Act, 1995. In this context, the learned senior counsel for the respondents relied on the decision of the Division Bench of this Court in the case of (Janab S.A.K. Ibrahim and others vs. The Chief Executive Officer, Tamil Nadu Wakf Board, Chennai and others) reported in 2014 4 Law Weekly 909 wherein it was held by the Division Bench of this Court that when effective alternative remedy is provided under Section 38 and 65 of the Wakf Act, the aggrieved persons have to seek appropriate relief only before the appellate forum. It was further held that under Section 65 (2) of the Wakf Act, an appeal lies before the State Government against an order passed by the Tamil Nadu Wakf Board taking over the administration of the Wakf. In this case also, the petitioner association/wakf has been taken over by the second respondent as per the orders of the first respondent, therefore, the petitioner has to file an appeal against such order and the writ petition is not maintainable. The learned senior counsel for the respondents therefore prayed for dismissal of the writ petition.

12. I heard the learned counsel for the petitioner and the learned Senior counsel for the respondents. In order to resolve the factual disputes emerging in this case, this Court has directed the respondents to produce the original records maintained by the second respondent and they were also produced before this Court.

13. The grievance of the petitioner is that the impugned order dated 18.08.2015 could not have been passed on that date as there was no enquiry conducted by the first respondent and the enquiry was in fact adjourned at the instance of the counsel for the petitioner. According to the petitioner, on 18.08.2015, he was present before the first respondent along with his advocate and on that date, his counsel has filed vakalath and sought time for production of certain documents. Therefore, the impugned order dated 18.08.2015 could not have been passed on that day. On the contrary, the respondents would contend that on 18.08.2015, a full fledged enquiry was conducted in which the members of the petitioner association deposed. On behalf of the petitioner, his advocate made his submissions and the petitioner was also fully heard by the first respondent before passing the impugned order. According to the respondents, during the course of such enquiry, the members of the petitioner association have clearly admitted the wrong doing on their part, purportedly at the behest of the petitioner herein and only thereafter, the first respondent has passed the impugned order.

14. On appreciation of the above narration of facts, it is seen that there is a factual dispute with regard to the conduct of enquiry on 18.08.2015 by the first respondent. The petitioner



admits that he was present on that day before the first respondent along with his advocate, however, denies any enquiry having been conducted on 18.08.2015. In this context, the resolution book maintained by the first respondent has been produced wherein it has been recorded that there was an enquiry conducted by the first respondent. In any event, such a factual dispute relating to conduct of enquiry on a particular day or not cannot be gone into by this Court in this writ petition under Article 226 of the Constitution of India. Such factual disputes can only be resolved by the appellate authority by going through the material records. In fact, as rightly pointed out by the learned senior counsel for the respondents, when there is an alternative remedy of appeal is provided, the present writ petition is not maintainable. This was the view taken by the Division Bench of this Court in (Janab S.A.K. Ibrahim and others vs. The Chief Executive Officer, Tamil Nadu Wakf Board, Chennai and others) reported in 2014 4 Law Weekly 909 wherein it was held that when effective alternative remedy is provided under Section 38 and 65 of the Wakf Act, the aggrieved persons have to seek appropriate relief only before the appellate forum. It was further held that under Section 65 (2) of the Wakf Act, an appeal lies before the State Government against an order passed by the Tamil Nadu Wakf Board taking over the administration of the Wakf. In this case, by the impugned order, the first respondent has appointed the second respondent to take over the administration of the wakf and therefore, as against such order, the petitioner ought to have filed an appeal and the present writ petition is not maintainable. In fact, the second respondent has also taken over the management of the petitioner association and the bank accounts of the wakf also transferred.

15. In the result, the writ petition is dismissed. No costs. The petitioner is permitted to prefer an appeal before the appellate Authority within a period of 15 days from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

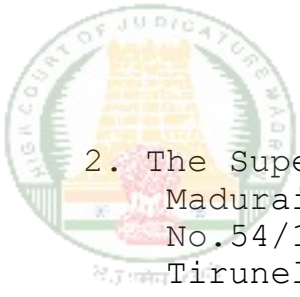
Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To

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



2. The Superintendent of Wakfs
Madurai, Ramnad, Tirunelveli Division
No.54/15, S.N. High Road
Tirunelveli - 627 001

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+1cc to M/S.P.T.Asha, Advocate SR.No.39310

Order in
WP (MD) No. 19189 of 2015

22-07-2016

RSH
SD/DB/22.08.2016/8P/4C