



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 25.07.2016

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THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P (MD) No.10184 of 2016

and

WMP (MD) Nos.7952 & 7953 of 2016

The Janab. O.K.N.Mohammed of Saliqu
President of Masjid Baharsha Oliyulla Mosque,
Mahilambu Thaikkal Niruvaga Sabai, Main Road,
Rajakiri, Papanasam, Taluk, Thanjavur District. ... Petitioner

Vs

- 1.The State of Tamil nadu
Rep. By its Secretary to Government,
Department of Backward Classes and Wakf,
Fort St.George, Chennai - 600 009.
- 2.The Tamil Nadu Wakf Board,
Through its Chairman,
Mannadi, Chennai
- 3.The District Revenue Officer / Chief Executive Officer,
Tamil Nadu Wakf Board,
Chennai.
- 4.The Executive Officer,
Zonal Superintendent of Wakf,
Thanjavur.
- 5.Janab.M.Khader Mohideen Sherif ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned notice issue by the 4th respondent, dated 01.06.2016 in his Na.Ka.g.s.340/Va.Ka.Thanjai/Ni.A/2016, the resolution of 2nd respondent dated 18.02.2016 in Na.Ka.No.5708/15/aa7/Thanjai and the Notification Rc.No.5708/15/B7/TNJ No.VI-3(a)/4/2016 17.03.2016 published in the gazette by the 3rd respondent and quash the same and direct the 2nd respondent to conduct the election to the



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For Petitioner : No Appearance
For Respondent-1 : Mr.V.Muruganandam
Addl.Govt.Pleader
For Respondents : Mr.K.K.Senthil
(R2 to R4)
For Respondent-5 : Mr.P.Muthusamy

ORDER

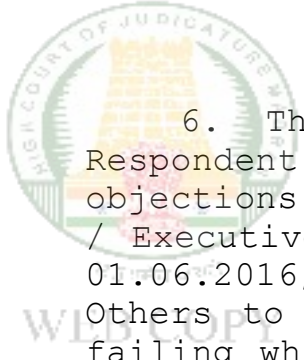
None appears for the Petitioner.

2.Heard the Learned Additional Government Pleader appearing for the First Respondent, Learned Standing Counsel for Respondents No.2 to 4 and the Learned Counsel for the Fifth Respondent and noticed their contentions.

3.According to the Petitioner, he is the President of the 'Masjid Baharsha Oliyulla Mosque', Mahilambu Thaikkal, Main Road, Rajakiri. As a matter of fact, the Fifth Respondent together with one K.Sheik Allaudeen and Noorul Ameen claiming to be the Secretary and Treasurer had filed W.O.P.No.4/2015, before the Learned Sub Judge (Wakf Tribunal), Thanjavur, praying for rendering of accounts with respect to the Masjid Baharsha Oliyulla Mosque President, Secretary and Treasurer.

4.The stand of the Petitioner is that the Fifth Respondent together with one K.Sheik Allaudeen and Noorul Ameen claiming to be the Secretary and Treasurer of the concerned Wakf had filed a complaint against the Petitioner before the Wakf Tribunal (Sub Judge), Thanjavur. In fact, the Fifth Respondent. in the Petition, dated 16.12.2014, had mentioned himself. as President and Secretary of 'Baharsha Thaikal', Rajakiri. However, three persons had signed in the Petition claiming to be the President, Secretary and Treasurer and they are purportedly functioning from 07.07.2014. It appears that no approval from the Wakf Board was obtained.

5. The plea of the Petitioner is that in the Writ Petition in W.P.(MD)No.21040 of 2014 filed by the Fourth Respondent before this Court, the Petitioner was not impleaded, as one of the Respondent. In fact, the Second Respondent / Tamil Nadu Wakf Board, Chennai, had issued Notice to the Petitioner, based on the complaint of the Fourth Respondent / Executive Officer, Zonal Superintendent of Wakf, Thanjavur and the Petitioner together with the Fourth Respondent appeared and filed objections in respect of the complaint.



6. The grievance of the Petitioner is that the Second Respondent had not passed any orders on the petition and the objections made by the Petitioner. However, the Fourth Respondent / Executive Officer, Zonal Superintendent of Wakf, Thanjavur, on 01.06.2016, had issued a Notice, directing the Petitioner and Others to hand over the Management and accounts within 15 days, failing which, action would be initiated under Section 68 of Wakf Act, 1995.

7. The plea of the Petitioner is that there is absolutely no necessity to invoke Section 65 of the Wakf Act, 1995 in the present circumstances of the case. Furthermore, aggrieved by the impugned Notice issued by the Fourth Respondent, dated 01.06.2016, the Resolution of the Second Respondent, dated 18.02.2016 and the Notification, dated 17.03.2016, published in the Gazette, the Petitioner has filed the present Writ Petition on the ground that the Petitioner is functioning, as the President of the Mosque duly elected by the Jamath Members and the Fifth Respondent, only with an oblique motive and with malafide intention, had submitted a petition against the Petitioner and others before the Second Respondent. In fact, the Second Respondent / The Tamil Nadu Wakf Board, Chennai, issued Notice to the Petitioner and the Petitioner had filed his objection. In this connection, the stand of the Petitioner is that without passing any orders, the Resolution, dated 18.02.2016, was passed by the Second Respondent / Tamil Nadu Wakf Board, Chennai, on 18.02.2016 and in fact, no communication was sent to the Petitioner.

8. The Other ground raised in the Writ Petition is that the Third Respondent, based on the Resolution, had issued the Notification, on 17.03.2016, by invoking Section 65(1) of the Wakf Act, 1995, taking over the Mosque of the Petitioner, under direct Management of Tamil Nadu Wakf Board, for a period of one year and appointed the Fourth Respondent, as an Executive Officer.

9. At this juncture, the legal plea taken on behalf of the Petitioner in the Writ Petition is that Section 65(1) of the Wakf Act, 1995 deals with direct Management of certain Wakf by the Board, when there is no suitable person available for appointment, as Muthawalli of a Wakf and in the instant case, there are numerous persons available in the Jamath for appointment of Muthawalli and therefore, the impugned Resolution by the Second Respondent invoking Section 65(1) of the said Act, is highly an arbitrary and illegal one.

10. Also, it is the stand of the Petitioner that the Fourth Respondent had issued Notice, directing the Petitioner to hand over the Management within 15 days and that the Third Respondent had appointed a Committee to manage the Mosque and therefore, the order passed by the Second and Third Respondents are contradictory in nature. Apart from that, also a plea is taken on behalf of the



Petitioner that the Second Respondent / Tamil Nadu Wakf Board, had passed the Resolution without hearing the Petitioner and in this regard, there is negation of principles of natural justice and further, the Petitioner in the objection had prayed for the conduct of the election by the Second Respondent. However, without the election, Section 65(1) of the Wakf Act, was invoked on the ground that there is no proper person for appointment of 'Muthavalli' to the Wakf.

11. Per contra, it is the submission of the Learned Standing Counsel for Respondents Nos. 2 to 4 that the Writ Petition filed by the Writ Petitioner is not maintainable before this Court because of the reason that under Section 65(2) of the Wakf Act, 1995, an application may be filed by any interested person in the Wakf and even the State Government may on its own motion may call for the records of any case for the purpose of satisfying itself as to the correctness, legality and propriety of the Notification issued by the Wakf Board, under Sub Section (1) and pass such orders, as it may think fit and the orders so made by the Government shall be final and shall be published in the manner specified in Sub Section (1).

12. As such, it is projected on the side of Respondent No.2 to 4 that, when the Petitioner has an alternative remedy of approaching the State Government, by means of filing an application, as provided under Section 65(2) of the Wakf Act, 1995, then, the filing of the Writ Petition by the Writ Petitioner is not maintainable.

13. At this juncture, the Learned Standing Counsel for Respondents No. 2 to 4 relies on the Judgment of this Court in **Janab S.A.K.Ibrahim & Others Vs. The Chief Executive Officers, Tamil Nadu Wakf Board & Others** reported in (2014(2) CWC 104), wherein, it is interalia observed that 'Writ Petition under Article 226 is not maintainable and further that effective alternative remedy is available under the Wakf Act.' Also in the aforesaid decision, it is observed at Page 123, as under:-

"A reading of the above said Judgments would show that the Petitioners herein cannot straight-away approach this Court under Article 226 of the Constitution of India, when effective alternative remedy is available to them, even if there is violation of Principles of Natural Justice. In the instant case, the Management of the Wakf was taken over by the 1st Respondent only for the better administration of the Wakf as an interim measure, pending the framing of Scheme. Hence, absolutely there is no violation of



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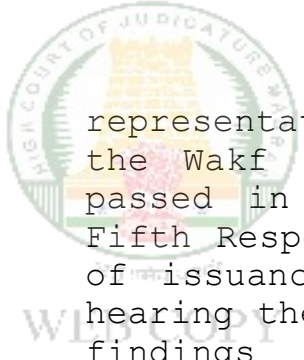
Principles of Natural Justice in passing the impugned order. When that being so, I am of the opinion that the Writ Petition itself is not maintainable. If the Petitioners feel aggrieved by the impugned order, they have to work out their remedy by way of Revision before the State Government, if they so desire."

14. The Learned Additional Government Pleader for Respondents No.2 to 4 cites the decision of this Court in **Tamil Nadu Wakf Board Vs. Janab K.S.M.A.Mohamed Mansoor** reported in **(2010 (1) L.W 935)** wherein at paragraph No.13, it is observed as under:-

"13. The Wakf Act provides a revisional remedy against the order passed by the Wakf Board under Section 65(1) and the revisional power is conferred on the State Government. Hence, without filing a revision under Section 65(2) of the Wakf Act, the respondent is not entitled to file an application before the Wakf Tribunal under Section 83(2) of the Act. In the judgment reported in (2009 (2) MLJ 342) also, this position has been made clear and this Court has held that against the order passed under Section 65(1) of the Act, the remedy lies only by filing a revision before the State Government. Hence, the respondent can only approach the State Government, if he is aggrieved by an order passed under Section 65(1) and without filing a revision, it is not open to the respondent to file an application before the Tribunal under Section 83(2). Hence, the revision petition is allowed and the W.O.P.No.2 of 2009 on the file of the Wakf Tribunal/Sub Court, Dindigul is strike off. There is no need to pass any orders in the Miscellaneous Petitions and the same are closed.

"

15. It is to be borne in mind that, if an alternative remedy / Forum is provided by Law then the Petitioner is to avail that remedy, as opined by this Court. Furthermore, before entertaining a Writ Petition, the High Court must take into account of parameters pertaining to the availability of alternative remedy and in proper / appropriate case (of course, based on facts and circumstances) should relegate the Petitioner to avail such remedy at the earliest point of time in the considered opinion of this Court.



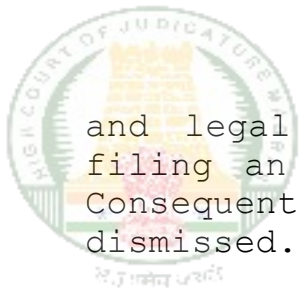
representation, dated 16.12.2014, about the state of affairs in the Wakf in question, and pursuant to an order of this Court passed in W.P(MD)No. 21040 of 2014, the representation of the Fifth Respondent was enquired by the Second Respondent, by means of issuance of Notice to the concerned parties and only after hearing their written and oral arguments through counsel also, the findings were recorded, by means of proceedings in SE.Mu.Aannai.No.5708/15/B7/Thanjai, dated 10.02.2016, and the matter was placed before the Wakf Board to pass appropriate orders in respect of recovery of the Wakf properties, which was dealt with by the persons in management etc.

17. Thereafter only, the matter was taken up for hearing by the Wakf Board on 18.02.2016 after issuing Notice to the Petitioner as well as his Learned Advocate, who appeared for him in the enquiry conducted before the Third Respondent and the Wakf Board, after considering the circumstances prevailing in the Wakf and its administration etc., had resorted to bring the Wakf under its direct Management by exercising its power provided under Section 65(1) of the Wakf Act, by assigning reasons thereto.

18. Besides the above, the Gazette Notification, in terms of ingredients of Section 65 of the Wakf Act, 1995 was issued on 23.03.2016 and that the Forth Respondent had assumed the charge of the Wakf, as an Executive Officer, in the presence of Tahsildar, Papanasam, Revenue Inspector, Ayyampettai and Village Administrative Officer, Rajagiri and had submitted a report to that effect to the Second Respondent's Office and the administration of the Wakf is still conducted from that date.

19. When the Petitioner was put on Notice and when summons was issued to him as he had enclosed in the typed set of papers (at page 18), then it is not open to him to take a contra plea that no notice was issued to him. Also, when the Petitioner has an effective, viable alternative remedy under Section 65(2) of the Act, to file an application before the State Government against the Resolution, dated 18.02.2016, passed by the Second Respondent / Tamil Nadu Wakf Board, then, this Court comes to a consequent conclusion that the Writ Petition filed by the Petitioner is a premature and otiose one. Viewed in that perspective, the Writ Petition is devoid of merits and it fails.

20. In the result, the Writ Petition is dismissed leaving the parties to bear their own costs. It is abundantly made clear that the dismissal of the present Writ Petition by this Court will not preclude the Petitioner to file a necessary application before the State Government, in terms of Section 62(2) of the Wakf Act, 1995 and to seek appropriate remedy, as it deems fit and proper, based on the facts and circumstances of the case, which float on the surface. It is open to the Petitioner to raise all factual



and legal pleas before the State Government, in the event of filing an application by the Petitioner (by way of an Appeal). Consequently, connected miscellaneous petitions are also dismissed.

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Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
The State of Tamil Nadu
Department of Backward Classes and Wakf,
Fort St.George, Chennai - 600 009.
2. The Chairman,
The Tamil Nadu Wakf Board,
Mannadi, Chennai
3. The District Revenue Officer / Chief Executive Officer,
Tamil Nadu Wakf Board,
Chennai.
4. The Executive Officer,
Zonal Superintendent of Wakf,
Thanjavur.

+1 cc to MR.P.MUTHUSAMY, Advocate SR.No.39635
+1 cc to MR.M.MOHAMED IBRAHIM ALI, Advocate SR.No.39304
+1 cc to MR.K.K.SENTHIL, Advocate SR.No.39340
+1 cc to Special Government Pleader, SR.No.39416

MPK

SME/SKSN/02/08/2016 :3P/6C

25.07.2016

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