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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.04.2016

CORAM:
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.2590 of 2015 (PD)
and
M.P(MD)No.1 of 2015
and
C.M.P(MD)No.2017 of 2016

1)Kottar Elankadai Samudhaya Trust
Rep. By its present President,
Abdul Azeez Fidrathulla,
S/o.Fakkurudeen,
Elangadai, Kottar Post,
Nagercoil, Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District.

2.Treasurer,
Mohammed Ibrahim,
S/o.Peer Mohammed,
Elangadai, Kottar Post,
Nagercoil, Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District.

3.Secretary S.Rafeek Ali,
S/o.Syed Mohamed,
Elangadai, Kottar Post,
Nagercoil, Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District. .. Petitioners

Vs.

1.S.Abdul Salam
2.A.L.Meeran Mohaideen
3.S.M.Syed Mohamed
4.S.Mohammed Hassim
5.A.Lukman
6.M.Maheen Abubucker
7.H.Abdul Kadar Fahim .. Respondents

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to call for the records in connection with O.S.No.384 of 2015 on the file of I Additional District Munsif Court, Nagercoil to allow the Civil Revision Petition and to strike off the plaint.

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For Petitioners : Mr.A.Arumugam
For Respondents : Mr.S.R.Anbarasan

ORDER

This petition has been filed by the petitioners to call for the records in connection with O.S.No.384 of 2015, on the file of I Additional District Munsif Court, Nagercoil and to allow the Civil Revision Petition and to strike off the plaint.

2.The petitioners are the defendants. The respondents are plaintiffs in O.S.No.384 of 2015, on the file of the Principal District Munsif, Nagercoil. The respondents filed O.S.No.384 of 2015 challenging the order passed by the first petitioner, ex-communicating the respondents and for injunction restraining the petitioners from preventing the respondents from exercising their franchise. The respondents filed suit for the above relief as their civil rights are affected.

3.The petitioners filed the present Civil Revision Petition under Article 227 of the Constitution of India to strike out the suit filed by the respondents.

4.According to the learned counsel for the petitioners, Wakf Act is a special codified Act and all disputes relating to Wakf and its properties can be decided only by Wakf Tribunal Constituted under Section 83 of the Wakf Act, 1995. As per Section 85 of the Wakf Act, no suit or other legal proceedings shall lie in any Civil Court and jurisdiction of Civil Courts is barred. The suit initiated by respondents are abuse of process of Court. The suit is premature. There is no merit in the claim of respondents and the Court ought not to have numbered the suit.

5.Per contra, the learned counsel appearing for the respondents contended that the reliefs claimed by the respondents are not with regard to Wakf or Wakf property. It relates to ex-communication of respondents, which affected their civil rights. A Civil suit for enforcing civil rights, is not barred by Section 85 of the Wakf Act. The Wakf Tribunal has power to decide the issue as per the Wakf Act only. The Civil proceedings are not totally prohibitted.

6.The learned counsel for the respondents relied on the following Judgements:-

(i)***2008(2) CTC 492 (Salem Mohammedpura Parimala Sunnath Jammth Masjid Committee, rep. By its Muthuvalli, D.No.6, Majeed Street, salam-1 vs. P.A.Kareem and others)***

"49.The Wakf Act has created certain rights on the person in charge of administering the Wakf and its properties and obligates such person to do certain

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functions towards the betterment of the Wakf, taking into consideration the objects of the deed and the law governing wakfs. The Act does not create any forum for adjudication of any dispute between the landlord and the tenant, arising out of a lease deed. In such a situation, the ouster of Civil Court's jurisdiction is not to be easily inferred. Mere conferment of special jurisdiction on the Tribunal on certain specific subject matters in the Wakf Act does not by itself exclude the jurisdiction of Civil Court for enforcement of civil rights."

(ii)***2008(5) CTC 679 (A.R.Abdul Thurab vs. N.H.Md. Obaidullah Massood, General Secretary, Haarath Syed Thurabuddeen Sah, Qadariyul Chishthy Dargah, Advisory Committee, Govt. Stanley Hospital Compound, Chennai-1 and another)***

"20.In the decision, Salem Mohammedpura Parimala Sunnath Jammth Masjid Committee v. P.A.Kareem, 2008(2) CTC 492, this Court has held that the Wakf Act has created certain rights on person in charge of administering the Wakf and its properties and obligates such person to do certain functions towards the betterment of the wakf and mere conferment of special jurisdiction on certain specific subject matters under the Wakf Act, do not exclude the jurisdiction of Civil Court for enforcement of civil rights. This Court has further held that the intention of the legislature is not intended to take away the powers of the Civil Court where no remedy is provided under the Wakf Act. Therefore, the Wakf Tribunal, considering the interest of justice should judiciously exercise its power."

iii)2011(6) CTC 397 (Mohamed Mujeebur Rahman vs. 1.The State of Tamil Nadu, rep. By its Secretary, Backward and Most Backward Classes Department, Secretariat, Fort St. George, Chennai-9 and others)

"39.The further reliance placed on a judgment of a learned Judge of this Court in Salem Mohammedpura Parimala Sunnath Jammath Masjid Committee, rep. By its Muthavalli v. P.A.Kareem and others, 2008(2) CTC 492, also relates to a case of a tenant of a Wakf property who has filed a Suit for permanent injunction restraining the Wakf Board from interfering with its possession. It was in that context held that one has to consider the intention of Act 43 of 1995, which is a self-contained code for the particular object, and only in respect of those objects which are sought to be achieved under Act 43 of 1995, the remedy available under Act 43 of 1995 by way of approaching the Tribunal is available and that will not oust the jurisdiction of the Civil Court under Section 85 of Act 43 of 1995."

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iv) ***Judgment in S.A.(MD)No.374 of 2012***

"3.The plaintiff would aver in the plaint that he is a

follower of Islamic faith and he is a member of Jamath namely Anchuvannam Peer Mohammadia Muslim Association at Thuckalay, Kanyakumari District. The plaintiff would aver further that he is in the habit of writing poems in leading journals and he has written many research articles in the cultural and literal field of Islam and his book "Janakanamana" is the book prescribed to the students of Tamil department in Kerala University. The Jesult Tsunami Services organized a research seminar at Nagercoil and the central theme of the seminar is with regard to the alcohol and drinking habits."

7.I have heard the learned counsel appearing for the petitioners and the respondents and also carefully perused the entire materials on record and judgments relied on by the learned counsel for the respondents.

8.The points for consideration in this Civil Revision Petition is:

I) whether order of ex-communication passed by the first petitioner affect the civil rights of the respondents or it relates to Wakf or Wakf properties.

ii) whether suit filed by the respondents is barred as per Section 85 of the Wakf Act, 1995.

9.These issues are no longer *res-integra.* Both the issues were decided by earlier judgments of this court as well as by the Hon'ble Apex Court. This Court, in the judgments relied on by the learned counsel for the respondents, has categorically held that an order ex-communicating the person affects his civil right and a suit challenging the said order is maintainable. Claiming civil right does not come under the jurisdiction of Wakf Tribunal and Wakf Tribunal has jurisdiction to decide only the issues as conferred it by the Wakf Act.

10.The respondents are members of first petitioner. They were excommunicated as they questioned the misdeeds of petitioners. According to respondents, petitioners are misusing their position as office bearers and are mismanaging the affairs of Trust and are acting contrary to scheme decree made in O.S.No.119 of 1956 on the file of the Sub Court, Nagercoil. The respondent questioned the misdeeds of petitioners. They also filed W.P.No.5440 of 2013 against the petitioners and Wakf Board. In view of these steps taken by the respondents, the petitioners ex-communicated the respondents to prevent the respondent from participating in the election to be conducted to elect the office bearers. They are excommunicated which affects their civil rights.

11.In view of the decisions relied on by the learned counsel for the respondents referred to above, in O.S.No.384 of 2015 filed to enforce the civil rights is maintainable in Civil Court and it is not barred as per Section 85 of the Wakf Act, 1995.

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12.In the result, the Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(P&A)

/True copy/

Sub Assistant Registrar
Madurai Bench of Madras High Court,
Madurai.

am

To
The I Additional District Munsif,
Nagercoil.

+1 cc to M/S.Ajmal Associates Advocate SR No.19947

+1 cc to Mr.S.R.Anbarasan,Advocate Sr No.19441

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