

Reserved on : 20.04.2017
Delivered on : 26.04.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2017

CORAM

THE HON'BLE Mr. JUSTICE M.DURAI SWAMY

W.P.No.28351 of 2015 and
M.P.Nos.1 & 2 of 2015 and
W.M.P.Nos.5601 & 21138 of 2016

Ahle Sunnathwal Jamath Big Mosque
represented by its Muthavalli
K.O.Mohamed Elyas Sahib
No.1, Anna Salai,
Kilvisharam - 632 509, Vellore District.

... Petitioner

Vs.

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

2. The Superintendent of Wakf,
Vellore Circle, Vellore, Vellore District.

... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus calling for the records pertaining to the impugned order dated 28.08.2015 made in Na.Ka.No.541/North Arcot/ Suptd. of Wakf/Vellore Circle/2015 passed by the 2nd respondent, quash the same and consequently forbear the respondents from interfering with the internal administration and management of the petitioner Mosque at the hands of Muthavalli.

For Petitioner : Mr.N.Manokaran

For Respondents : Mrs.R.Sripriya
for Mr.V.Lakshminarayanan (R1)
R2 - no appearance
Mr.N.A.Nissar Ahamed
for impleading petitioner

O R D E R

The petitioner has filed the above Writ Petition to issue a writ of certiorarified mandamus to call for the records pertaining to the impugned order dated 28.08.2015 passed by the 2nd respondent, to quash the same and to consequently forbear the respondents from interfering with the internal administration and management of the petitioner Mosque at the hands of Muthavalli.

2.It is the case of the petitioner that he was elected as Muthavalli of the petitioner Mosque as per the wishes of the Executive Committee members on 07.11.2006. Further, according to the petitioner, his appointment to the post of Muthavalli is hereditary in nature and his forefathers were initially nominated as Muthavalli by selection by the Jamath as per customs and usage as per the order dated 18.08.1955. The members of the Executive Committee appointed are genuinely interested in the proper management of the Mosque, management of the properties and useful utilization of the funds for the purpose of which the endowment was created. According to the petitioner, the paramount consideration is only proper management of the Mosque and utilization of the funds for the purpose of the Mosque as per its custom and usage. The 2nd respondent issued the impugned order dated 28.08.2015 to convene the General Body Meeting on 11.09.2015 for conducting election of new Executive Committee members for the petitioner Mosque and also for Alisha Majith Kabaristan Small Mosque pursuant to the undisclosed order passed by the 1st respondent dated 07.08.2015. According to the petitioner, the respondents have pasted the impugned order in the Notice Board of the petitioner Mosque without serving a copy on him. Further, according to the petitioner, under the guise of conducting election of the Executive Committee, the respondents have predetermined to introduce strangers to dismantle the entire administration and management of the petitioner Mosque and to nullify the orders passed in the year 1955. The reason behind the impugned order is to supersede the functions of the petitioner Mosque and to entrust the administration to persons chosen by them.

3.The respondents in their counter have stated that the Writ Petition is not maintainable and the petitioner has got an appeal remedy under Section 83 of the Wakf Act, 1955 before the Wakf Tribunal.

4.In support of their contention, the learned counsel relied upon the following judgments:

(i) (2010) 14 Supreme Court Cases 588 [Board of Wakf, West Bengal and another Vs. Anis Fatma Begum and another] wherein the Hon'ble Supreme Court had held as follows:

"...

7.The dispute in the present case relates to a wakf. In our opinion, all matters pertaining to wakfs should be filed in the first instance before the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995 and should not be entertained by the civil Court or by the High Court straightaway under Article 226 of the Constitution of India. It may be mentioned that the Wakf Act, 1995 is a recent parliamentary statute which has constituted a Special Tribunal for deciding disputes relating to wakfs. The obvious purpose of constituting such a Tribunal was that a lot of cases relating to the wakfs were being filed in the courts in India and they were occupying a lot of time of all the courts in the country which resulted in increase in pendency of cases in the courts. Hence, a Special Tribunal has been constituted for deciding such matters.

...

12.We may further clarify that the party can approach the Wakf Tribunal, even if no order has been passed under the Act, against which he/she is aggrieved. It may be mentioned that Sections 83 (1) and 84 of the Act do not confine the jurisdiction of the Wakf Tribunal to the determination of the correctness or otherwise of an order passed under the Act. No doubt Section 83(2) refers to the orders passed under the Act, but, in our opinion, Sections 83 (1) and 84 of the Act are independent provisions, and they do not require an order to be passed under the Act before invoking the jurisdiction of the Wakf Tribunal. Hence, it cannot be said that a party can approach the Wakf Tribunal only against an order passed under the Act. In our opinion, even if no order has been passed under the Act, the party can approach the Wakf Tribunal for the determination of any dispute, question or other matters relating to a Wakf or wakf property, as the plain language of Sections 83 (1) and 84 indicates."

(ii)1992 2 L.W. 685 [Syed Ansaruddin Vs. The Tamil Nadu Wakf Board by its Secretary and 6 others] wherein this Court had held as follows:

"...

Under the Mahomedan Law the Court has no power to appoint anybody as hereditary muthavalli though it has power to appoint a muthavalli under certain circumstances. (Vide S.204(2)(d) of Mulla's Principles of Mohamedan Law). If the prayer is for declaration that the plaintiff is hereditary muthavalli, such a declaration no doubt can be granted by the Court. By such a declaration, the Court only puts its seal of

approval of the plaintiff's pre-existing right of hereditary muthavalliship. The Court has no such power of conferring hereditary muthavalliship on any person. Therefore, the prayer for "appointment" of the plaintiff as "hereditary muthavalli" is not maintainable at all."

5.As per Section 83 of the Wakf Act, the State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a Wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals. Any Mutawalli, person interested in a wakf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the wakf.

6.Under Section 85 of the Act, no suit or other legal proceeding shall lie in any Civil Court in respect of any dispute, question or other matter relating to any wakf, wakf property or other matter which is required by or under this Act to be determined by a Tribunal.

7.When there is a duly constituted Wakf Tribunal in Vellore viz., the Principal Subordinate Judge, the petitioner should have approached the Tribunal seeking for appropriate relief. The ratios laid down by the Hon'ble Supreme Court in the judgments cited supra squarely applies to the facts and circumstances of the present case. As per the judgment of this Court reported in 1992 2 L.W. 685 (cited supra), the Muslim Law does not recognize any right of inheritance to the office of Muthavalli and a Court has no power to appoint anybody as hereditary Muthavalli.

8.Since I am of the considered view that the Writ Petition filed by the petitioner is not maintainable and he should have approached the Wakf Tribunal seeking for appropriate relief, I am not going into the other aspects in the Writ Petition. It is also pertinent to note that the petitioner has challenged only the order passed by the 2nd respondent, which is only a consequential order, without challenging the impugned order passed by the authority. In these circumstances, following the ratios laid down by the Hon'ble Supreme Court of India in the above referred judgments, the Writ Petition is not maintainable and the remedy available to the petitioner is only by way of an appeal before the Wakf Tribunal. It is open to the petitioner to file an appeal before the Wakf Tribunal seeking for appropriate relief in accordance with law. Accordingly, the Writ Petition stands dismissed.

9. Since the Writ Petition stands dismissed as not maintainable, I do not find any reason to entertain the impleading petitions in the Writ Petition. However, it is open to the proposed parties to file appropriate application before the Wakf Tribunal for impleading them as parties in the event of the petitioner filing an appeal before the Wakf Tribunal. Hence, the petitions are closed. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

va

To

1. The Chief Executive Officer,
Tamil Nadu State Wakf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai - 600 001.
 2. The Superintendent of Wakf,
Vellore Circle, Vellore, Vellore District.
- +1 cc to Mr.N.A.Nissar Ahamed , Advocate, sr.25217
+1 cc to Mr.Rajeswari karthikeyan , Advocate, sr.25401
+1 cc to Mr.V.Lakshminarayanan , Advocate, sr.25484

सत्यमेव जयते

W.P.No.28351 of 2015 and
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W.M.P.Nos.5601 & 21138 of 2016

kgk(co)
rmp(03/05/17)

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