



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.09.2017

CORAM

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THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.A. (MD) No.1100 of 2017
and C.M.P. (MD) No.7572 of 2017

K.E.P.Mohamed Ali

... Appellant/Petitioner

Vs.

- 1.The District Collector,
O/o. the District Collector,
Thanjavur.
- 2.The Superintendent of Wakf,
Tamilnadu Wakf Board,
Thanjavur.
- 3.The Thasildar,
O/o. The Thasildar,
Papanasam Taluk,
Thanjavur District.
- 4.The Sub-Inspector of Police,
Ayyampettai Police Station,
Thanjavur District.
- 5.O.P.A.Bahseer Ahamed

... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letter Patent against the order passed by this Court in W.P.(MD)No.6795 of 2017 dated 03.08.2017.

Prayer in WP(MD). 6795/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorari to call for the records pertaining to the impugned proceedings passed by the respondent No.3 in Nil dated 05.04.2017 in connection with proceedings in Pa.Ve.992-2017 A5 dated 03.04.2017 and quash the same as illegal.

For Appellant

: Mr.G.Prabhu Rajadurai
for Mr.S.M.A.Jinnah

For Respondents 1, 3 & 4

: Mr.M.Murugan
Government Advocate

For 2nd Respondent

: Mr.K.K.Senthil



For 5th Respondent

: Mr.M.Ajmalkhan
Senior Counsel for
Mr.B.Jameel Arasu

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JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J)

This Writ Appeal is directed against the order of the learned Single Judge, in which a direction was issued to the second respondent herein to conduct the election, while directing the appellant herein being the respondent No.5 in the writ petition to hand over the keys to the second respondent, which shall be retained till the elections are over and a direction was also given to conclude the election within a period of four weeks.

2.The learned counsel appearing for the appellant would submit that though the tenure of the appellant as a Mutawalli got over by 2014, he is entitled to continue till the next Mutawalli is elected and he is deemed to be Mutawalli under the definition clause 68 of the Wakf Act, 1995 and therefore, until and unless he is removed or replaced, he cannot be asked to hand over the keys. After all Wakf is only a Trust, over which Wakf Board normally does not exercise its jurisdiction during the interregnum while conducting an election. It is not as if in all cases erstwhile Mutawalli is expected to hand over the key.

3.The learned Senior Counsel appearing for the 5th respondent /writ petitioner would submit that the learned Single Judge has rightly exercised his discretion for the purpose of conduct of election since appellant is not cooperating for the conduct of the election.

4.The learned counsel appearing for the Wakf Board would submit that the order dated 11.11.2015 and 19.11.2015 passed by the Wakf Board have not been challenged. Even in the said orders the status of the appellant has been stated with clarity. The appellant has not chosen to challenge the above said orders. Since the appellant did not cooperate, the election could not be conducted for the past two years. Therefore, the writ appeal will have to be dismissed.

5.The appellant is only an erstwhile Mutawalli. Merely because he is stated to be administering for a period of two years even after the expiry of his tenure, he cannot be given the status of Mutawalli. In such view of the matter, Section 68 of the Wakf Act has no application to the appellant. The learned Single Judge has exercised his discretion based upon the relevant materials. As
<https://hccourtscorpus.gov.in/corpus> submitted by the learned counsel for the Wakf Board the orders dated 11.11.2015 and 19.11.2015 have not been challenged. One thing is clear. For one reason or other, election could not be



conducted for more than two years. Keeping that in mind, the learned Single Judge has passed the order, which we do not find to be illegal.

6.The learned counsel appearing for the appellant would submit that it is not in all cases the Mutawalli will have to hand over the keys to the wakf board.

7.While there is no law which enables an erstwhile Mutawalli to hold on to his office, it is ultimately for the Wakf Board to decide as to whether the erstwhile Mutawalli can continue till next election conducted or not. This is a subjective satisfaction which has to be exercised in a given case. Therefore, looking from any perspective, we do not find any merit in the appeal.

8.Accordingly, the Writ Appeal stands dismissed. However, considering the submissions made by the learned counsel appearing for the Wakf Board, we grant six weeks time from the date of receipt of a copy of this order for the second respondent herein to carry out the directions issued by the learned Single Judge. We expect the parties to cooperate for the smooth conduct of the election. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To

- 1.The District Collector,
O/o. the District Collector, Thanjavur.
- 2.The Superintendent of Wakf,
Tamilnadu Wakf Board, Thanjavur.
- 3.The Thasildar, O/o. The Thasildar, Papanasam Taluk,
Thanjavur District.
- 4.The Sub-Inspector of Police,
Ayyampettai Police Station,
Thanjavur District.

+One cc to The Special Government Pleader, SR.No.80350

+One cc to Mr.B.Jameel Arasu, Advocate, SR.No.80076

+One cc to Mr.K.K.Senthil, Advocate, SR.No.80056

+One cc to Mr.S.M.A.Jinnah, Advocate, SR.No.80052

sj

RL/9C/2P/SKN/RSK/SAR1/22/9/2017

<https://hcservices.ecourts.gov.in/hcservices/>

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