



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2017

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THE HONOURABLE MR.JUSTICE V.PARTHIBAN

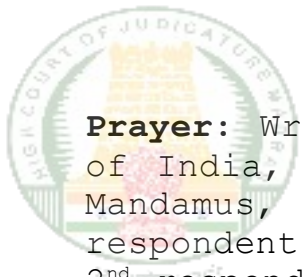
**W.P(MD)No.4769 of 2014
and M.P. (MD) Nos.1 and 2 of 2014**

S.M.Waris Mohideen

..Petitioner

Vs

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Backwards and Most Backward Classes Department,
Secretariat,
Fort St. George,
Chennai - 600 006.
 - 2.The Tamil Nadu Wakf Board,
Rep. by its Chief Executive Officer,
No.1, Jaffer Serang Street,
Vallal Seethakadhi Nagar,
Chennai - 600 001.
 - 3.The Chairman,
The Tamil Nadu Wakf Board,
No.1, Jaffer Serang Street,
Vallal Seethakadhi Nagar,
Chennai - 600 001.
 - 4.The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffer Serang Street,
Vallal Seethakadhi Nagar,
Chennai - 600 001.
 - 5.The Superintendent of Wakfs,
Madurai Zone,
Office of the Tamil Nadu Wakf Board,
The Wakf Board College,
Madurai.
 - 6.The Wakf Inspector/The Executive Officer,
Dindigul,
Office of the Tamil Nadu Wakf Board,
Dindigul.
 - 7.S.M.Mubarak Ali
- ..Respondents.



Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the Order of the 3rd respondent dated 30.03.2010, stated to have been pronounced by the 2nd respondent in the absence of any meeting, under Section 17 of the Wakf Act, 1995 on 10.06.2010 in Item No.3/09 in Na.Ka.No.7636/08/Aa15/Thegal, to quash the same and consequently to direct the 2nd respondent to re-conduct an enquiry under Sections 36(7) and 40(1) of the Wakf Act 1995, in the Item No.3/09 in Na.Ka.No.7636/08/Aa15/Thegal and dispose of the same, on its own merits, in accordance with law, within the time stipulated by this Hon'ble Court, in respect of a "Muslim Private Trust" named Madarasathul Sakiya Bi Balika Thaikka Trust, Dindigul.

For Petitioner : Mr.R.Suriya Narayanan

For 1st Respondent : Mr.M.Alagadevan
Special Government Pleader

For Respondents 2 to 6 : Mr.K.K.Senthil

O R D E R

The Petitioner has approached this Court seeking quash of the proceedings of the 3rd respondent dated 30.03.2010, said to have been pronounced by the 2nd respondent in the absence of any meeting, under Section 17 of the Wakf Act, 1995 on 10.06.2010 in Item No.3/09 in Na.Ka.No.7636/08/Aa15/Thegal, and consequently to direct the 2nd respondent to re-conduct an enquiry under Sections 36(7) and 40(1) of the Wakf Act 1995, in Item No.3/09 in Na.Ka.No.7636/08/Aa15/Thegal and dispose of the same, on its own merits, in accordance with law, within a time stipulated by this Court, in respect of a "Muslim Private Trust" named Madarasathul Sakiya Bi Balika Thaikka Trust, Dindigul.

2. According to the petitioner, his ancestors were responsible for creating a Trust, named "Madarasathul Sakiya Bi Balika Thaikka Trust" (hereinafter referred to as "Thaikka Trust"). According to the petitioner, the said Trust being a Muslim Private Trust was not under the control of Wakf Board. The petitioner was the Mutawalli of the Thaikka Trust during the relevant point of time. Against him there were several allegations of irregularities while dealing with the Trust. The matter was referred to the Wakf Board and the Wakf Board by order dated 03.03.2010, which is impugned in the present proceedings has removed the present petitioner in terms of the provisions of the Wakf Act, more particularly in terms of Section 64(g)(i)(k) of Wakf Act, 1995. Thereafter, a consequential direction was also issued that in the absence of the petitioner as Mutawalli immediately after removing the petitioner from the post as per Section 65 of the Wakf Act, 1995, the Thaikka



Trust was brought under the direct administration of the Wakf Board for a period of one year initially. Thereafter, the period was extended from time to time and the administration of the said Thaikka Trust is still under the control of the Walf Board and as on date no other person was appointed in the place of the petitioner.

3.The petitioner assailed the proceedings of the Wakf Board dated 03.03.2010 on various grounds as raised in the writ petition. According to the petitioner, appropriate procedure has not been followed by the Wakf Board before issuing the impugned proceedings.

4.Per contra, Mr.K.K.Senthil, the learned counsel appearing for the Wakf Board would submit that the writ petition is not maintainable in view of the effective statutory alternative remedy available under the Wakf Act, 1995. When a separate mechanism was provided for effective resolution of the disputes between the members of the Wakf Board, the same shall be availed before invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. Therefore, he prays for dismissal of the writ petition on the ground of availability of effective alternative remedy.

5.Mr.R.Suriyanarayanan, the learned counsel appearing for the petitioner submitted that as per sub-section (4) of Section 64 only the order passed under any of the clauses (c) to (j) of sub-section (1) of Section 64 is provided with the remedy of filing appeal to the Tribunal and not any other cases falling under other sub-clauses. According to the petitioner, he was removed for misappropriation and fraudulently dealing with the properties of the Trust, which is mentioned under sub-clause (k) of Section 64. In such view of the matter, the contention of Mr.K.K.Senthil, learned counsel appearing for the Wakf Board that alternative remedy is available cannot be countenanced in law.

6.Mr.K.K.Senthil, the learned counsel appearing for the Wakf Board in answer to the above submission would submit that the said provisions came up for consideration before this Court and the learned Single Judge in the decision reported in **2009-1-L.W. 753** in the matter of **M.Ali Hussain v. The Tamil Nadu Wakf Board and another** has held in paragraph 21 of the order, which is extracted below for effective appreciation of the case of the Wakf Board:

"21.To the above list, in my considered view, one more rule of construction has to be included viz., that when there are two alternative interpretations available, both of which result in undesirable consequences, the Court would prefer that interpretation which would rather in the least undesirable



consequence rather than the one which would result in the most undesirable consequence. In this case, if the petitioner is held not entitled to a remedy under Section 83(2), he would be entitled to move the Civil Court, which could not have been the intention of the legislature."

Finally the directions issued by the learned Judge are contained in paragraph 24, which is also extracted below for effective appreciation of the case:

"24. In the light of the above discussion, I hold that a person who is removed from the Office of Mutawalli, under clauses (a), (b) or (k) of sub section (1) of Section 64, though not entitled to file an appeal under Section 64(4), will be entitled to file an application before the Tribunal, under Section 83(2). Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed. It is open to the petitioner to approach the Tribunal under Section 83(2). The Registry is directed to return the original order impugned in the Civil Revision Petition, to the learned counsel for the petitioner to enable her to approach the Tribunal."

From the above, it could be seen that the learned Judge has elaborately discussed the interpretation of clauses and held that even though appeal is not a remedy under Section 64(4) of the Wakf Act, the same will be available under Section 83(2) of the Wakf Act. Section 83(2) of Wakf Act, 1995:

"83 (2) 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."

7. Moreover, the learned counsel appearing for the Wakf Board cited a decision of this Court reported in **2014(2) CWC 104** in the matter of **Janab S.A.K. Ibrahim v. The Chief Executive Officer, T.N. Wakf Board**. In the said decision, the Hon'ble Supreme Court of India has held that when an effective alternative remedy is available under the Wakf Act, even if the petitioner was not heard, the writ petition under Article 226 of the Constitution of India is not maintainable. The Tribunal established under the Wakf Act shall decide all the matters pertaining to the Wakf and therefore, the petitioner has an effective remedy before the



Tribunal or the Government as the case may be against the proceedings of the Wakf Board. In such circumstances, the petitioner cannot directly rush to this Court invoking the extraordinary jurisdiction of this Court of judicial review under Article 226 of the Constitution of India.

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8.The learned counsel appearing for the Wakf Board has also cited the decision of the Hon'ble Supreme Court reported in **2011 (1) CTC 636** in the matter of **Board of Wakf, West Bengal v. Anis Fatma Begum (SC)**, wherein the Hon'ble Supreme Court has held that the Wakf Tribunal has the power of the Civil Court under the Code of Civil Procedure and has power to grant injunction and to enforce injunction and a full-fledged remedy is available to any party if there is any dispute, question or other matter relating to a Wakf or Wakf property and only when the parties aggrieved by the decision of the Tribunal can approach this Court or Hon'ble Supreme Court. When there is a special law providing for a special Forum, then recourse cannot be taken to the general law and for the matter which falls under the purview of the Wakf Act, only the Wakf Tribunal has jurisdiction.

9.I have given my anxious consideration to the rival submissions of the parties.

10.The availability of effective alternative remedy is definitely an issue to be considered before entertaining the writ petition filed by the petitioner. In view of the above narrative, it could be seen that the petitioner has a very effective alternative remedy under the provisions of the Wakf Act as held by the Hon'ble Supreme Court of India and also by this Court. The Tribunal established under the Wakf Act has wide powers for adjudicating the dispute between the parties and it can also decide the question of fact as well as law. In such view of the matter, it cannot be comprehended as to how the present writ petition filed by the petitioner without availing the effective alternative remedy is maintainable, in the first place. Although a feeble attempt has been made by Mr.R.Suriyanarayanan, learned counsel appearing for the petitioner that there is no alternative remedy available for the action taken against the petitioner, the said contention was suitably resisted and answered by the counsel for the Wakf Board by placing reliance on the clear decisions of the Hon'ble Supreme Court of India and this Court on the subject mater.

11.In the conspectus of the above discussion, I am of the view that the writ petition is not maintainable as there is clear alternative remedy is available under the provisions of the Wakf Act, 1995. Therefore, the Writ Petition is dismissed. It is open to the petitioner to workout his remedy in the manner known to law



if he is so advised. Consequently, connected miscellaneous petitions are also dismissed. There is no order as to costs.

Sd/-

Assistant Registrar(CS-I)

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/True copy/

Sub Assistant Registrar

To

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Office of the Tamil Nadu Wakf Board,
Dindigul.

+1 cc to Mr.K.K.Senthil , Advocate in SR.No. 13698

sj

AE/SV MMS/13.04.2017/6P/8C

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and M.P. (MD) No.1 of 2014
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