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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.01.2017

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

**W.A. [MD].No.1262 of 2016 and
C.M.P. (MD)No.8604 of 2016**

H.Mohammed Hyder Ali : Appellant/Petitioner

Vs.

- 1.The Tamil Nadu Wakf Board,
rep. by its Chief Executive Officer,
No.1, Jaffar Serang Street,
Vallal Seethakathi Nagar,
Chennai-600 001.
- 2.The Superintendent of Wakfs,
Madurai Ramnad, Tirunelveli Division,
No.54/15, S.N.High Road,
Tirunelveli-627 001.
- 3.The Secretary to Government,
State of Tamil Nadu,
Backward Classes Most Backward Classes Minorities
Welfare Department, Fort St. George,
Chennai.
[R-3 is suo motu impleaded as per the order of this Court
dated 06.01.2017 in W.A. (MD)No.1262 of 2016]
: Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order of a learned Single Judge of this Court dated 22.07.2016, made in W.P. (MD).No.19189 of 2015.

Prayer in WP(MD). 19189/ 2015 :

Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus calling for the records of the alleged resolution/order dated 18.08.2015 in Na.Ka.No.144/11/A1/Ka.Kumari alleged to have been passed by the first respondent but which is only signed by the second respondent and that too on 10.09.2015 and quash the same.

(prayer amended as per order dated 30.11.2015 passed in MP(MD)No.4 of 2015 in WP(MD)No.19189 of 2015)



For Appellant : M/s.P.T.Asha,
For M/s.Sarvabhauman Associates
For Respondents 1&2: Mr.K.K.Senthil

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JUDGMENT

[Judgment of the Court was delivered by **R.SUBBIAH, J.**]

The appellant is the writ petitioner. He has filed the present Writ Appeal as against the order passed by a learned Single Judge of this Court dated 22.07.2016, made in W.P.(MD).No.19189 of 2015, dismissing his Writ Petition, which was filed to quash the resolution/order dated 18.08.2015, alleged to have been passed by the first respondent herein, which was signed by the second respondent only on 10.09.2015.

2. The case of the appellant before the learned Single Judge was that he was the President of Anjuvannam Peer Mohammadia Muslim Association. The said Jamath is one of the oldest Jamaths in Kanyakumari District under the first respondent. The Jamath is managed by the members elected through secret ballot from and by the members of the said Jamath. Likewise, by notifications dated 24.02.2014 and 12.03.2014, in Na.Ka.No.144/11/A1/Ka.Kumari, the first respondent has announced fresh election for the 15 members Executive Committee of the Jamath. As per the notification issued by the first respondent, election was conducted by the second respondent on 22.06.2014 for the Jamath. Totally, 30 candidates contested for the said 15 member post and 375 votes were polled in the said election. After counting of the votes, results were announced by the second respondent on the very same day, in and by which, 15 members Committee was duly elected. The appellant was also duly selected having secured 216 votes. The elected members selected the appellant as the President of the Jamath. The appellant herein also assumed the charge and he has been properly carrying on the day-to-day affairs of the Association.

3. While so, the persons, who lost in the election, had started to create problems. They were constantly interfering in the day-to-day management of the Jamath. They have also sent frivolous complaints against the Jamath particularly against the appellant. On the basis of one such complaint made against the appellant, a show cause notice dated 29.05.2015 was issued by the first respondent, in which, the first respondent has stated that he has received the complaint against the appellant and he has listed out five complaints. The complaints are as follows:

"(i) Failure to co-operate with the investigation team sent by the first respondent in opening the Hundial.

(ii) Refusal to show the accounts.

(iii) Misappropriating two bundles of cash left out



during the counting of the money from the Hundial and thereafter converting it as gold coins and replacing it in the Hundial.

(iv) Removing and adding members of the Executive Committee without informing the first respondent.

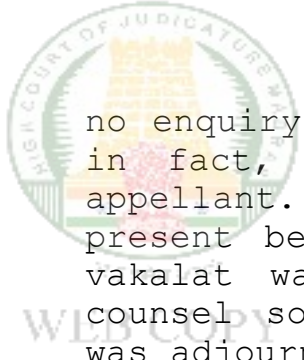
(v) Social boycotting which is against bye-law 13 of the Executive Committee."

He was directed to give his explanation to the complaints detailed in the show cause notice. As directed by the first respondent, the appellant has also sent a reply on 11.06.2015 denying the charges.

4. Again, the appellant had received a notice from the first respondent dated 12.08.2015, asking the appellant to appear for the enquiry on 18.08.2015 before the first respondent to give his explanation to the show cause notice. On the said date, the appellant had appeared before the first respondent along with his advocate. His advocate has filed a vakalat on his behalf and sought sometime for filing documents in support of his defence. Thereafter, the first respondent posted the matter for further enquiry on 28.09.2015. Though the appellant and his advocate appeared on the adjourned date, the enquiry was not conducted by the first respondent. While so, the appellant received a notice dated 10.09.2015 informing the appellant that the first respondent proposed to open the Hundial in the presence of the second respondent and other officers under the first respondent on 15.09.2015. As directed by the first respondent, the appellant has also given his assistance to the officers of the first respondent and the Hundial was opened on 15.09.2015 in the presence of the officers of the first respondent. Once again, the appellant was a mere spectator, since it is the second respondent and the other officials who counted and accounted the money and who gave him the Hundial amount after deducting 7% of their share. The said proceedings were also video-graphed.

5. While so, after 28.09.2015, the appellant has not received any further communication from the first respondent informing him about the next adjourned date. But, suddenly, on 14.10.2015, when he came to office, he was astounded to know that a notice/order dated 14.10.2015 passed by the second respondent was pasted in the notice board of his Association informing that the administration of Association was taken over by the second respondent. The said notice speaks about an order dated 18.08.2015 passed by the first respondent. The said order was not at all communicated to the appellant and before passing the impugned order, he was not given an opportunity of hearing. Therefore, challenging the same, he filed the Writ Petition.

6. In the Writ Petition, it is the main contention of the learned counsel for the appellant that the impugned order dated 18.08.2015 could not have been passed on that date, as there was



no enquiry conducted by the first respondent and the enquiry was, in fact, adjourned, at the instance of the counsel for the appellant. According to the appellant, on 18.08.2015, he was present before the first respondent along with his advocate and vakalat was filed on his behalf. In fact, on 18.08.2015, the counsel sought sometime for filing documents and hence, enquiry was adjourned to 28.09.2015.

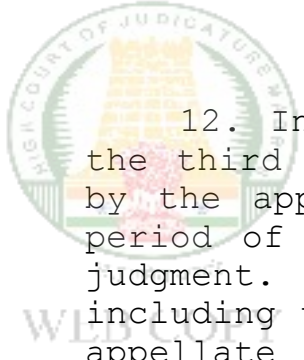
7. The said contention was resisted by the first and second respondents stating that on 18.08.2015 a full-fledged enquiry was conducted, in which, the members of the appellant Association participated and deposed on behalf of the appellant and his advocate made his submissions and the appellant was also fully heard by the first respondent before passing the impugned order.

8. However, the learned Single Judge, holding that under Section 65(2) of the Wakf Act, an appeal lies before the State Government against an order passed by the Tamil Nadu Wakf Board, dismissed the Writ Petition, however, permitting the appellant to prefer an appeal before the appellate Authority within a period of 15 days. Aggrieved over the same, the present Writ Appeal has been filed.

9. When the matter was taken up for consideration, the learned counsel for the appellant mainly contended that the impugned order was passed without conducting any enquiry and without giving opportunity of hearing to the appellant. Moreover, the first respondent has not chosen to serve a copy of the alleged impugned order upon the appellant or upon the other members of the Association. It was only during the pendency of the proceedings, the same was filed by the respondents. Therefore, it violates principles of natural justice.

10. The learned counsel for the Wakf Board submits that pursuant to the order passed by the learned Single Judge, the appellant has filed an appeal under Section 65(2) of the Wakf Act and the same is pending consideration before the third respondent, who has been *suo motu* impleaded as party-respondent to the Writ Appeal. He has also produced a copy of the appeal petition filed before the third respondent. Thus, the appellant can work out his remedy in the pending appeal before the third respondent.

11. In view of the above stated position, when there is an alternative remedy available to the appellant and by availing such benefit, he filed an appeal before the third respondent and the same is also pending, we are of the considered view that instead of entertaining the present Writ Appeal, a direction should be given to the third respondent to dispose of the appeal, within a



12. In the result, the Writ Appeal is disposed of, directing the third respondent to consider and dispose of the appeal filed by the appellant under Section 65(2) of the Wakf Act, within a period of six weeks from the date of receipt of a copy of this judgment. The appellant is at liberty to raise all the points including the grounds raised in the present Writ Appeal before the appellate authority in the pending appeal. Till the disposal of the appeal, *status quo*, as on date, shall be maintained. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

SML

To

The Secretary to Government,
State of Tamil Nadu,
Backward Classes Most Backward Classes Minorities
Welfare Department, Fort St. George,
Chennai.

+1CC to M/S.Sarvabhauman Associates, Advocate Sr.No.1738

+1CC to Mr.K.K.Senthil, Advocate Sr.No.1314

GJM/MP/VR/31.1.17-5p-4C

JUDGMENT MADE IN
W.A. (MD) No.1262 of 2016
Dated: 06.01.2017