

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 4.6.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.A.No.1197 of 2018
and
C.M.P.No.9649 of 2018

1. K.Zahooruddin
2. K.Nizamuddin ...Appellants/3rd Petitioner

Versus

1. M.A.Syed Ahamed Hussain khaderi, ...1st Respondent/Petitioner
2. The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffer Sarang Street,
Vallal Seethakathi Nagar,
Chennai 600 001. ...2ntRespondent/Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 12.4.2018 passed in W.P.No.8684 of 2018 on the file of this court.

Prayer in W.P.No.8684/2018:-

writ Petition filed U/A 226 of the constitution of India praying to issue a writ of Mandamus directing the respondent to dispose of the petition /representation dated 15.09.2017 submitted to the respondent and pass order as per Law regarding the payment of the amount outstanding and pending with him which the petitioner is entitled to from 01.04.2010 to 15.04.2010 01.04.2011 to 15.04. 2011 01.04.2012 to 15.04.2012 01.04.2013 to 15.04.2015 01.04. 2016 to 15.04.2016 01.04.2017 to 15.04.2017 in respect of the Hundial collections in the Hazrat Sayed Moosa Sha Khaderi Dargah situated at Anna Salai (formerly Mount Road) Chennai 2

For appellants : Mr.T.Velumani
For R2 : Mr.V.Raghavachari

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for the appellants and Mr.V.Raghavachari, learned counsel, who takes notice on behalf of the second respondent-Wakf Board.

2. Having failed in their attempt to get impleaded in the writ petition, the third party-appellants have filed the present writ appeal, contending that their interest is affected by the order passed by the learned Single Judge in the writ petition.

3. Considering the scope of the appeal and the nature of claim of the appellant, this court is of the view that notice to the first respondent needs to be dispensed with.

4. Having heard the learned counsel appearing for the parties and perused the materials available on record, we find that in connection with inheritance of the right of muthavalli, a suit was filed by the present appellants and it came to be dismissed and Appeal Suit as against such judgment and decree has been filed and the same is pending. However, claiming some right of succession, the first respondent herein/first defendant in the suit had submitted a representation to the Wakf Board and subsequently the writ petition seeking a mandamus for effecting payment of some amount which is said to be kept with in the safe custody as directed by the Civil Court.

5. On merits, the learned counsel appearing for the appellants would contend that since the mother of the first respondent had predeceased her mother, she herself was not vested with any right. A detailed adjudication would be required to decide the correctness of such claims. Be that as it may, the amount under claim, as contended by the learned counsel appearing for the Wakf Board, is in safe custody and an Appeal Suit had already been filed as against the judgment and decree of the Suit filed on the issue of inheritance of muthavalli and the same is pending. Therefore, it would not be fair to decide any issue with regard to disbursement of any amount, before ever the Appeal Suit is disposed of on merits and in accordance with law after hearing all the parties concerned. In that view of the matter, though the writ appeal does not survive for consideration on merits, in view of the factual position and also the submission made by the counsel for the respondent-Wakf Board, the appellate court is directed to take up the issue at the earliest to resolve the lis between the parties on the legal position without any further delay. It is for the appellants as well as the contesting parties to agitate all of their claims before the appellate court in the pending lis.

6. The writ appeal is disposed of accordingly. No costs.
The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssk.

To:

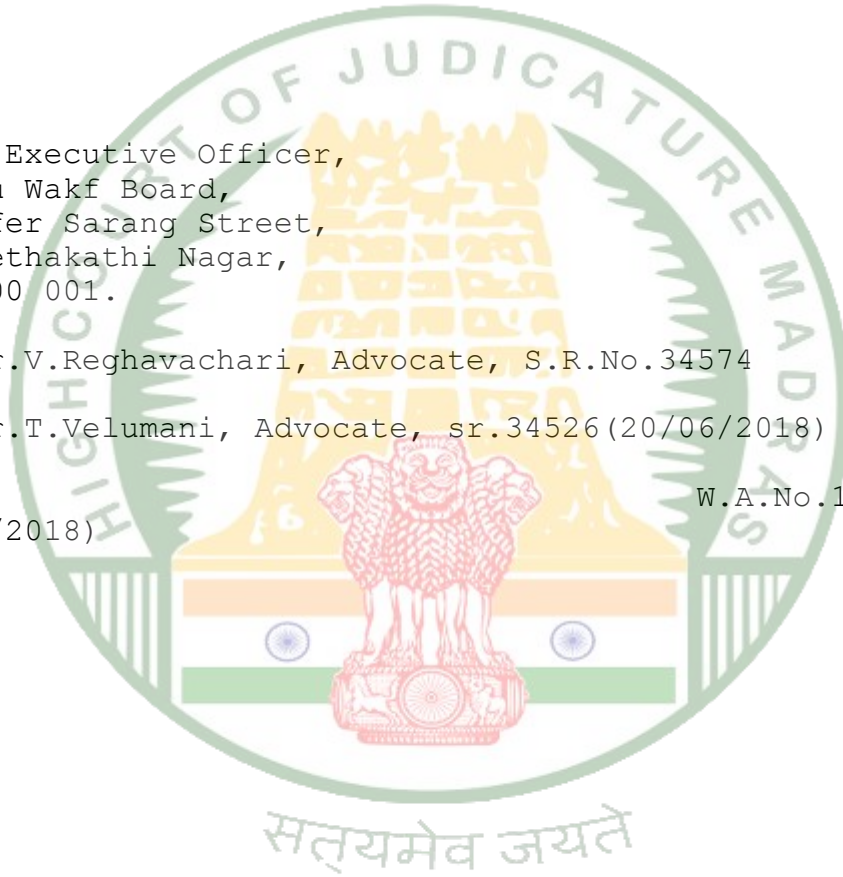
The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffer Sarang Street,
Vallal Seethakathi Nagar,
Chennai 600 001.

+1cc to Mr.V.Reghavachari, Advocate, S.R.No.34574

+1cc to Mr.T.Velumani, Advocate, sr.34526(20/06/2018)

GSP(20/06/2018)

W.A.No.1197 of 2018



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