

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.3462 of 2018 and 31691 of 2017
and
W.M.P.Nos.4233 and 4234 of 2018 & 34836 and 34837 of 2017

Matheen Basha .. Petitioner in both the Writ
Petitions

Vs.

1. The Director of School Education,
College Road, Chennai-600 006.
 2. The Chief Educational Officer,
Vellore District.
 3. The District Educational Officer,
Thirupattur, Vellore District.
- .. Respondents 1 to 3 in W.P.No.3462 of 2018

1. The Director of Elementary Education,
College Road, Chennai-600 006.
 2. The District Elementary Educational Officer,
Vellore District.
 3. The Assistant Elementary Educational Officer,
Thirupattur, Vellore District.
- .. Respondents 1 to 3 in W.P.No.31691 of 2017

4. The Secretary,
Tamil Nadu Wakf Board,
No.1, Jaffar Syringa Street,
Vallal Seethakathi Nagar,
Chennai-600 001.
 5. Ubaibas Foundation Wakf,
No.1, M.M.Abdul Heque Street,
Tirupattur-635 602, Vellore District.
- .. Respondents 4 and 5 in both W.Ps.

6. Thiru.S.Hussain Afroze,
Correspondent,
Ubaibas Girls Higher Secondary School,
Thirupathur.

.. Sixth respondent in W.P.No.3462 of 2018

6. Thiru.S.Hussain Afroze,
Correspondent,
Ubaibas Girls Primary School,
Thirupathur.

.. Sixth respondent in W.P.No.31691 of 2017

7. Thiru.S.Hussain Afroze,
Correspondent,
Ubaibas Primary School,
Krishnagiri Road, Thirupathur.

.. Seventh respondent in W.P.No.31691 of 2017

Writ Petition No.3462 of 2018 filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the entire records connected with the impugned proceeding of the third respondent passed, vide Na.Ka.No.2252/Aa2/2017, dated 09.05.2017 and quash the same and direct the fourth respondent to approve the petitioner and any one of the legal heirs of Mr.S.Janah Ubaidulla Sahib (late) in the place of Mr.S.Janah Ubaidulla Sahib and Mr.P.I.Syed Abbas, of the fifth respondent as President and Secretary and consequentially direct the second respondent to pass appropriate order to approve the petitioner as Correspondent to administer and maintain the fifth and sixth respondent.

Writ Petition No.31691 of 2017 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the entire records connected with the impugned proceeding of the second respondent passed vide Mu.Mu.No.1055/Aa5/2017, dated Nil.05.2017, signed on 15.05.2017 and quash the same and direct the fourth respondent to approve the petitioner and any one of the legal heirs of Mr.S.Janah Ubaidulla Sahib (late) in the place of Mr.S.Janah Ubaidulla Sahib and Mr.P.I.Syed Abbas, of the fifth respondent as President and Secretary and consequentially direct the second respondent to pass appropriate order to approve the petitioner as Correspondent to administer and maintain the sixth and seventh respondent.

For petitioner : Mr.S.N.Ravichandran in both W.Ps.

For respondents : Mrs.V.Annalakshmi, Govt. Advocate
for RR-1 to 3 in both W.Ps.

Mr.L.S.M.Hasan Fizal for RR-4 in both W.Ps.

Mr.Zafarullah Khan for RR-6 and 7 in W.P.31691 of 2017
and for R-6 in W.P.No.3462 of 2018

Mr.N.A.Nissar Ahmed for R-5 in both W.Ps.

COMMON ORDER

Writ Petition No.3462 of 2018 filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the entire records connected with the impugned proceeding of the third respondent passed, vide Na.Ka.No.2252/Aa2/2017, dated 09.05.2017 and quash the same and direct the fourth respondent to approve the petitioner and any one of the legal heirs of Mr.S.Janah Ubaidulla Sahib (late) in the place of Mr.S.Janah Ubaidulla Sahib and Mr.P.I.Syed Abbas, of the fifth respondent as President and Secretary and consequentially direct the second respondent to pass appropriate order to approve the petitioner as Correspondent to administer and maintain the fifth and sixth respondent.

2. Writ Petition No.31691 of 2017 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the entire records connected with the impugned proceeding of the second respondent passed vide Mu.Mu.No.1055/Aa5/2017, dated Nil.05.2017, signed on 15.05.2017 and quash the same and direct the fourth respondent to approve the petitioner and any one of the legal heirs of Mr.S.Janah Ubaidulla Sahib (late) in the place of Mr.S.Janah Ubaidulla Sahib and Mr.P.I.Syed Abbas, of the fifth respondent as President and Secretary and consequentially direct the second respondent to pass appropriate order to approve the petitioner as Correspondent to administer and maintain the sixth and seventh respondents.

3. It is not in dispute that the petitioner's father (Mr.P.I.Syed Abbas) died on 14.12.2016 and the sixth respondent's father (Mr.S.Janah Ubaidullah Sahib) died on 25.03.2017. The said deceased persons were co-founders of Ubaibas Foundation and they acted as President and Secretary. The petitioner made various representations to the educational authorities/Wakf Board, intimating the factum of death of the above two persons and prayed that in the place of co-founders, any one of the legal heirs of the co-founders can be appointed by the Wakf Board, who alone, in turn, can act as President and Secretary and that till the registration of legal heirs of the deceased co-founders is done by Wakf Board, any correspondence, pay bills, etc., from any other person claiming to be President or Secretary of the institutions should not be acted upon.

4. Apart from causing Lawyer's notice, dated 28.04.2017 to the District Elementary Educational Officer, Vellore and the Assistant Elementary Educational Officer, Thirupattur, Vellore, the petitioner made a representation even to the Wakf Board and that based on the Resolution of the School Committee, the sixth respondent was nominated by the School and that the subject matter of the Writ Petition. It is further stated that there is no School Committee in the minority institutions.

5. Admittedly, from the pleadings and the contentions made by the parties, the petitioner is seeking a right of inheritance. The father of the petitioner and the sixth respondent, have started a Trust for educational foundation for the education of women Muslims community and it has been sought to be watered down by the children, more particularly by the petitioner. The foundation was started after obtaining donations which were utilised for running the Schools. The Wakf Board has control over the properties with superintendent power over the three educational institutions run by the Trust. The Muthavalli has also rightly pointed out that the Schools were run by the Trust and the petitioner's father was a Trustee and that the legal heirs of the deceased father of the petitioner also wanted to be Trustee(s).

6. It may be true that the petitioner might have got minority status to the educational institutions. It is worthwhile to refer Section 53-A of the Tamil Nadu Recognised Private Schools (Regulation) Act, which reads as follows:

Section 53-A: Settlement of dispute as to Educational Agency, etc.--(1) Notwithstanding anything contained in Section 53, whenever any dispute as to the constitution of any educational agency, or as to whether any person or body of persons, is an educational agency, in relation to any private school, or as to the constitution of a School Committee, or as to the appointment of the Secretary of the School Committee arises, such dispute may be referred by the persons interested or by the competent authority to the Civil Court having jurisdiction, for its decision.

(2) Pending the decision of the Civil Court on a dispute referred to it under subsection (1), or the making of an interim arrangement by the Civil Court for the

running of the private school, the Government may nominate an officer to discharge the functions of the Educational Agency, the School Committee or the Secretary, as the case may be, in relation to the private school concerned."

7. A reading of Section 53-A of the Act makes it clear that the Civil Court is the competent authority for the settlement of the dispute. As the petitioner seeks for the right of inheritance, he has no right to approach this Court under Article 226 of the Constitution of India by filing these Writ Petitions.

8. Even though various points have been addressed, this Court does not want to deal with the same, as it would be touching the merits of the matter and if a finding is rendered, it will shut down the doors of the petitioner from approaching the competent civil forum either for inheritance or for invoking the Civil Court in terms of Section 53-A of the Act. On the ground that the petitioner has no locus-standi to maintain the present Writ Petitions, the same are accordingly dismissed on that ground and not on any other ground. This Court does not want to prevent the petitioner from invoking any other remedy available to him in accordance with law. The interim order granted pending W.P.No.31691 of 2017, shall stand vacated. No costs. Consequently, W.M.Ps. are closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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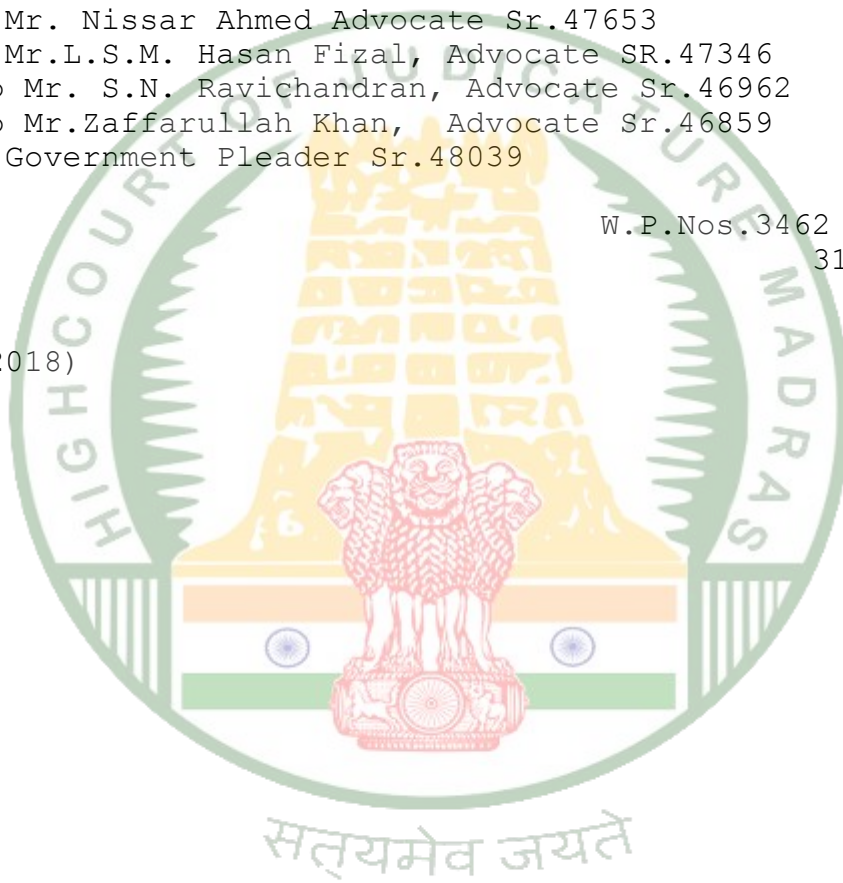
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7. The Secretary,
Tamil Nadu Wakf Board,
No.1, Jaffar Syringa Street,
Vallal Seethakathi Nagar,
Chennai-600 001.

- + 1 cc to Mr. Nissar Ahmed Advocate Sr.47653
- + 1 cc to Mr.L.S.M. Hasan Fizal, Advocate SR.47346
- + 2 ccs to Mr. S.N. Ravichandran, Advocate Sr.46962
- + 2 ccs to Mr.Zaffarullah Khan, Advocate Sr.46859
- + 1 cc to Government Pleader Sr.48039

W.P.Nos.3462 of 2018 and
31691 of 2017

(CS-V)
EU(03/08/2018)



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