

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2018

CORAM

THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.50174 of 2006
and
M.P.No.1 of 2006

Srivilliputtur Jumma New Mosque,
Rep: by its President,
Mr.S.Mehaboob John, Srivilliputtur,
Virudhunagar District. Petitioner

vs.

1. The Tamil Nadu Wakf Board,
Rep: by its Chief Executive Officer,
New No.7, Old No.4, IX Cross Street,
Indira Nagar, Adayar, Chennai-20.
 2. The Chief Executive Officer,
The Tamil Nadu Wakf Board,
New No.7, Old No.4, IX Cross Street,
Indira Nagar, Adayar, Chennai-20.
 3. The Superintendent of Wakfs,
Tamil Nadu Wakf Board,
56Q, No.3, Goodshed Road, Anna Nagar,
Velipattinam, Ramanathapuram.
 4. The Wakf Inspector,
Virudhunagar, Virudhunagar District.
 5. S.Ismail
 6. The Tamil Nadu Information Commission,
Rep: by its Secretary,
89, Dr.Alagappa Road,
"Krishnavilas", Purasaiwalkam,
Chennai-84.
 7. The State of Tamil Nadu,
Rep: by its Secretary, Department of Wakfs,
St, George Fort, Secretariat, Chennai-9.
- ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the order of the second respondent, dated 24.11.2006 made in Na.Ka.No.2815/02/Virudhunagar/Aa(2) and to quash the same.

For Petitioner : Mr.M.N.S.Mohamed Habeeb Raja

For R1 to R4 : Mr.A.S.Kaizer

For R5 : No appearance

For R6 : Mr.Niranjan Rajagopal
for M/s.G.R.Associates

For R7 : Mr.M.Elumalai
Government Advocate

ORDER

The petitioner is a Public Mosque, registered and notified as a Wakf in G.S.No.229/RMD. The said Mosque was constructed in the year 1900 and thereafter it was dedicated as a Wakf. As per column No.7 of Proforma Report, the following are the objects and conditions of grant for the said Wakf.

(a) The maintenance, upkeep and lighting of the Srivilliputtur "Jumma Pudu Pallivassal", as well conducting congregational prayers 5 times daily according to Islamic tenets.

(b) Conducting a "Madarasa" or "Islamic Religious Instruction School" for imparting religious education to Muslim children and adults as well.

(c) Providing and maintaining a burial ground for Muslims at Srivilliputtur

(d) Conducting moulooth, Rathib, Fathiha and other pious, Religious and Charitable functions recognized in Islam.

(e) To look after the General Welfare benefit and advancement of the Muslim Jamath of Srivilliputtur "Jumma Pudu Pallivassal".

2. All the above said functions are the fundamental objectives of the petitioner Wakf and all its administrative affairs, are intended only to enforce the said objectives, in its true letter and spirit. As per Column No.7 of the proforma Report specifically states that the wakf has to be administered in accordance with the "scheme decree" framed by the District Subordinate Court, Ramanathapuram at Madurai in O.S.No.11 of 1938. The Rule of succession for the office of Muthavalliship is by election according to the said scheme decree sanctioned in the said O.S.No.11 of 1938. Ever since the framing of the said scheme decree the "petitioner Mosque" has been administered, in accordance with the terms and clauses of the above said scheme decree to the satisfaction of the members of the Muslim Jamath of Srivilliputtur. There was another Mosque in Srivilliputtur namely Inam Kunangulam Old Masjid, which ceased to function for

the past many decades, due to various kinds of mismanagement by various third parties. On account of the certain disputes in this regard, the parties are constrained to initiate the litigations.

3. The learned counsel for the respondents contended that the issues involved in the present writ petition are squarely covered in respect of the orders passed by this Court dated 19.01.2018 in W.P.No.22768 of 2006 and the relevant paragraphs are extracted here under:

"2.The learned counsel appearing on behalf of the writ petitioner strenuously contended that the larger issue has been involved in an other writ petition and this Writ petition also to be tagged along with other writ petition. In this regard, the learned counsel for the writ petitioner cited the judgment of the Hon'ble Supreme Court of India in the case State of Uttaranchal and another Vs. Sunil Kumar Vaish and Others reported in [2011] 8 SCC 670 . Paragraph no.17, as referred by the learned counsel, is extracted hereunder:

"17.Of late, we have come across several orders which would indicate that some of the Judges are averse to decide the disputes when they are complex or complicated, and would find out ways and means to pass on the burden to their brethren or remand the matters to the lower courts not for good reasons. Few Judges, for quick disposal, and for statistical purposes, get rid of the cases, driving the parties to move representations before some authority with a direction to that authority to decide the dispute, which the Judges should have done. Often, causes of action, which otherwise had attained finality, resurrect, giving fresh causes of action. Duty is cast on the Judges to give finality to the litigation so that the parties would know where they stand."

3.Citing the judgement, the learned counsel for the writ petitioner is of the opinion that the present case is about the information to be provided to the respondents based on the impugned notice dated 15.06.2006. The learned counsel for the petitioner says that the petitioner is not liable to provide any such informations as such sought for in the impugned notice.

4.The learned counsel for the 5th respondent made a submission that the fourth respondent in his capacity as Inspector of Wakfs, has got power under Section 50 of the Wakfs Act, 1995 and therefore, the

notice issued to the writ petitioner seeking certain particulars, in order to provide certain particulars to the applicant, who has sought for under the Right to Information Act is well within the ambit of the Act itself and there is no violation as such under the provisions.

5. In this regard, the learned counsel for the fifth respondent has stated that the Wakfs Board as a "State" within the meaning of Article 12, has got a public duty and the information sought for has to be provided in respect of its activities. Thus, they are bound by the provisions of the Right to Information Act and they have to provide information to the applicant, whenever such informations are sought for. In compliance of the provisions of the Right to Information Act, the fourth respondent requested the writ petitioner to provide certain information. Such a notice cannot provide any cause of action for the writ petitioner to file the present writ petition.

6. The learned counsel referred to Sections 50 and 101(2) of the Wakfs Act, 1995 which read thus,

Section 50 :

Duties of mutawalli. #It shall be the duty of every mutawalli: #

- (a) to carry out the directions of the Board in accordance with the provisions of this Act or of any rule or order made thereunder;
- (b) to furnish such returns and supply such information or particulars as may from time to time be required by the Board in accordance with the provisions of this Act or of any rule or order made thereunder;
- (c) to allow inspection of wakf properties, accounts or records or deeds and documents relating thereto;
- (d) to discharge all public dues; and
- (e) to do any other act which he is lawfully required to do by or under this Act.

Section 101(2) in The Wakf Act, 1995

(2) Every mutawalli of a wakf, every member of managing committee, whether constituted by the Board or under any deed of wakf, every Executive Officer and every person holding any office in a wakf shall also be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

7. Therefore, the writ petitioner is also a public servant and he is bound to provide information

whenever the information is sought for by the Wakfs Board and in other words, the writ petitioner functioning as a public servant under the provisions of the Wakfs Act, cannot evade from providing information under the Right to Information Act.

8.This being the legal position the learned counsel appearing on behalf of the fifth respondent states that the writ petition cannot be maintained and it is for the writ petitioner to provide all the informations as such sought for by the 4th respondent. The writ petitioner accordingly act in accordance with the Wakfs Act.

9.This court is of an opinion that the notice under challenge dated 15.06.2006 cannot provide any cause of action to the writ petitioner for filing this writ petition.

10.On perusal of the notice impugned, it is stated that the writ petitioner has to provide information and send documents along with the explanation without any further delay. At the outset, the impugned notice states that the required information are sought to be provided to the Inspector of Wakfs without causing any further delay. The writ petitioner being a public servant under the provisions of the Wakfs Act, 1995, is bound to provide information as such sought for by the Inspector of Wakfs.

11.This apart, under Section 50 of the Wakfs Act, the Inspector of Wakfs is entitled to invite the explanations or documents from the writ petitioner, who is a mutawalli.

12.Thus, there is no irregularity as such in respect of sending notice to the writ petitioner through letter dated 15.06.2006. This apart, the writ petitioner on receipt of any such notice, instead of providing informations or documents to the fourth respondent, moved this writ petition without any valid reason. All the public servants are accountable and they should act beyond doubt and when they are performing public duties. It is constitutional requirement of the public authorities who are bound to provide information and an administrative transparency is also a constitutional perspective. In order to ensure development in the arena of transparency, the

Government of India enacted the Right to Information Act.

13.However, the citizen of this great nation are entitled to get informations and documents, which are all in public arena. Thus, no public servant can deny any information, unless it is prohibited under the provisions of the Right to Information Act to communicate the same to the applicant, whoever it may be.

14.This being the concept and principles to be followed, this Court is unable to understand, why the writ petitioner is not providing the information and documents to the public authorities more specifically to the fourth respondent under the provisions of the Wakfs Act, 1995.

15.The letter or show cause notice seeking information cannot be challenged by way of writ petition and no writ can be entertained in a routine manner. Writ petition questioning the validity of the impugned notice can be entertained only on exceptional circumstances and in the event of raising point of jurisdiction, incompetency or the allegations of malafides. Even in case of raising allegation of malafides, the authorities against whom such an allegation is raised is to be impleaded as party in the writ petition in his personal capacity. In the absence of any such mere letter inviting particulars and documents from the writ petitioner cannot find a cause of action to move a writ petition under Article 226 of the Constitution of India.

16.It is left open to the writ petitioner to submit his explanation or information to the authorities concerned and accordingly, perform his public duties in the manner known to law. This being the opinion of this Court and the legal principles to be followed, the petitioner has not made out any valid grounds to entertain this writ petition.

17.The learned counsel for the writ petitioner states that earlier this court has passed an order stating that the connected writ petition no.50174 of 2006 also to be posted along with this writ petition. This Court had gone through the said order and states that vide order dated 11.04.2008, NPVJ has passed the following order:

"post along with W.P.No.50174 of 2006."

On perusal of the said order, this court is of an opinion that such an order was passed based on the representation made by the learned counsel for the writ petitioner. The said order would not in deciding the present writ petition in its own merits. It is clear that the learned counsel for the petitioner has made an attempt to postpone the present writ petition.

18. However, this Court is of an opinion that the present writ petition is filed challenging the notice dated 15.06.2006 and in view of the fact that no writ can be entertained against such notice seeking information, it is not necessary to post the other writ petition along with present writ petition and the present writ petition has to be decided independently on the basis of the fact that the impugned order is just a notice issued to the writ petitioner, seeking certain informations or documents to be provided by the Wakfs Board to the applicant under the Right to Information Act.

19. Further, it is clarified that the fourth respondent has issued the notice to the writ petitioner. The fourth respondent is a Wakfs Inspector, who is competent to seek particulars and documents from the writ petitioner under Section 50 of the Wakfs Act, 1995. Such being the position, the writ petitioner has to provide all the informations and documents to the fourth respondent pursuant to the impugned notice dated 15.06.2006.

20. The learned counsel for the writ petitioner also made a submission that the writ petitioner has no objection to provide information to the fourth respondent.

21. This Court is of the opinion that that is the intent and purport of the notice issued by the fourth respondent and the learned counsel states that the writ petitioner is ready and willing to provide all the information and documents to the fourth respondent under the provisions of the Wakfs Act and therefore, no further consideration in respect of the grounds is required in this writ petition.

22. Thus the writ petition stands dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed."

4. It is further contended that the only difference would

be in the writ petition cited supra, it is a Wakf Inspector and as far as the present writ petition is concerned, it is the Wakf Board issued the impugned order, directing them to furnish the informations. In all other aspects, the principles laid down in the above writ petition applies to the present writ petition also.

5. It is brought to the notice of this Court that the issues are pending for long years and delay in disposal will cause prejudice to the Wakf itself. Thus, the following orders are passed:

(1) The writ petitioner is directed to submit the informations as such sought for by the Wakf Board within a period of four weeks from the date of receipt of a copy of this order.

(2) On receipt of such informations, the Wakf Board is directed to take appropriate steps to indicate same to the information seekers by following the procedures as contemplated within a period of six weeks from the date of receiving the informations from the writ petitioner.

6. With these directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

1. The Tamil Nadu Wakf Board,
Rep: by its Chief Executive Officer,
New No.7, Old No.4, IX Cross Street,
Indira Nagar, Adayar, Chennai-20.
2. The Chief Executive Officer,
The Tamil Nadu Wakf Board,
New No.7, Old No.4, IX Cross Street,
Indira Nagar, Adayar, Chennai-20.

3. The Superintendent of Wakfs,
Tamil Nadu Wakf Board,
56Q, No.3, Goodshed Road, Anna Nagar,
Velipattinam, Ramanathapuram.
4. The Wakf Inspector,
Virudhunagar, Virudhunagar District.
5. The Tamil Nadu Information Commission,
Rep: by its Secretary,
89, Dr.Alagappa Road,
"Krishnavilas", Purasaiwalkam,
Chennai-84.
6. The State of Tamil Nadu,
Rep: by its Secretary, Department of Wakfs,
St, george Fort, Secretariat, Chennai-9.

+1cc to M/s.G.R.Associates, Advocate SR.No.85339

W.P.No.50174 of 2006

VSN II(CO)
GMY(07/01/2019)



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