

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.310 of 2015
and MP No.1 of 2015

A.S.Mahboob Basha
Trustee

Hazrath Syed Sha Hameed Awliya
Badusha Darga

Senkzhuneerodai Street,

Big Kancheepuram, Kancheepuram District.

.... Appellant

versus

1. Tamil Nadu Wakf Board,
Rep. By its Chief Executive Officer,
No.1, Jaffer Syrong Street,
Chennai 1.

2. Wakf Inspector, Kanchipuram,
Having Office at Big Mosque,
Poonamallee, Pin 600 056.

.... Respondents

Appeal filed against the order passed by this Court dated
11.09.2014 passed in W.P.No.33705 of 2013.

Prayer in W.P.No.33705 of 2013:-

Petition under Article 226 of the Constitution of India
praying for issue of a Writ of certiorari to call for all the
records pertaining to the case relating to Item No.83/13 in RC
No.10588/10/B4/KPM dated 12/09/2013 including the order
purported to have been passed under section 65 of the Wakf Act
1995 and to quash the consequential Notification dated
13/11/2013 published in Part-VI-Sec.3(a) of the Tamilnadu
Gazette No.45 dated 20th November 2013 assuming the direct
management of the petition-Wakf Hazrat Hameed Awliya Darga at
Big Kanchipuram and appointing the second respondent as its
Executive Office by virtue of the resolution passed therein and
quash the said notification.

For Appellant : Mr.M.K.Hidayathullah
for Mr.K.H.M.Afzal

For Respondents : Mr.V.Lakshmi Narayanan
for M/s.V.Raghavachari

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The Challenge in this Intra Court Appeal is to the order of the learned Single Judge dated 11.09.2014 made in WP No.33705 of 2013, dismissing the said Writ Petition.

The facts that led to the filing of the Writ Petition are as follows:

2. The appellant was appointed as a Mutawalli of Hazrath Hameed Awliya Darga, Kancheepuram, for the period of three years on 03.11.2010. He had also taken charge as a Mutawalli. While he was functioning as a Mutawalli, the 1st respondent issued a show cause notice dated 13.02.2013 making certain charges and seeking his explanation thereto. The appellant sent a reply on 08.03.2013 and a notice of hearing was issued on 14.08.2013, calling upon the appellant to appear before the Chief Executive Officer of the 1st respondent, viz. the Tamil Nadu Wakf Board. The Appellant subsequently challenged the show cause notice in WP No.25149 of 2013.

3. Even during the pendency of the said Writ Petition, the second respondent herein, issued hand bills claiming that the 1st respondent Wakf Board has taken over the Management of Darka in question, by its order dated 13.11.2013. The order taking over the Management of the Wakf in question was published in Tamil Nadu Government Gazette dated 20.11.2013. It is stated that on 30.11.2013, the Wakf Inspector cum Executive Officer called upon the appellant to handover charge to the officers of the Wakf Board. The appellant had challenged the order passed by Wakf Board dated 13.11.2013 made in exercise of the powers under Section 65 of the Wakf Act, 1995, in the Writ Petition in WP No.33705 of 2013.

4. The said Writ Petition was resisted by the Tamil Nadu Wakf Board. The main contention that was raised on behalf of the appellant, before the Writ Court, was that since the Wakf in question is governed by the Scheme Decree framed by the District

Court, Chengalpattu, the Tamil Nadu Wakf Board cannot exercise its power under Section 65 of the Wakf Act. It is only the State Government, which is competent to take over the Management under Section 66 of the Wakf Act. Therefore, according to the appellant, the proceedings of the Wakf Board initiated under Section 65 are beyond the jurisdiction of the Wakf Board.

5. The Wakf Board had filed an application in IA. No.159 of 2011 in the Scheme Suit, viz. OS No.11 of 1934, before the Principal District Judge, Chengalpattu, under Section 32 of the Wakf Act, for transferring and vesting the administration and general superintendence of suit Wakf and its properties including the appointment of Trustees, as per the Scheme Decree to the Wakf Board. The said application came to be allowed by the Scheme Court with certain conditions. The said order was challenged before this Court in CRP (NPD) Nos.1816 & 2164 of 2012. This Court after considering the nature of the powers of the Wakf Board, under Section 32 of the Wakf Act, held that the statutory Authority, viz. the Wakf Board has been vested with the power to deal with Wakfs of all kinds, including the ones already covered by any Court judgment or Scheme Decree. While disposing of the Civil Revision Petition, this Court had observed as follows:

"16. The cumulative reading of those maxims and the above general interpretation of statutes would amply and unequivocally, pellucidly and palpably highlight the point that once the statutory authority, namely Wakf Board, has been vested with the power to deal with the Wakfs of all kinds, including the ones already covered by any Court judgement or scheme decree, then such statutory authority, namely, the Wakf Board is not enjoined to go before the Court and seek permission to take over the control from the Court to that of itself. But this basic principle has not been considered by the lower Court.

17. The lower Court, in the above judgement cited supra, simply assumed and presumed as though despite passing of the Wakf Act, 1995, it had jurisdiction and could give directions as contained in the impugned order. Such a course would be totally antithetical to the object of the Wakf Act and no more elaboration in this regard is required."

6. After the disposal of the above Civil Revision Petitions, the appellant had again had approached the Scheme Court, viz. The Principal District Judge, Chengalpattu with a prayer for directing the superintendent of Police, Kancheepuram District to provide Police protection to remove unauthorised and illegal

encroachments in the Wakf properties. The said application came to be dismissed by an order dated 25.02.2013.

7. Aggrieved the appellant had filed Civil Revision Petitions in CRP (NPD) Nos.3316, 3317, 1755 & 3024 of 2013 in this Court. The said Civil Revision Petitions also were dismissed granting liberty to the petitioners to approach the Wakf Tribunal, there was also further direction to the Chief Executive Officer of the Wakf Board to take necessary action for removal of encroachments.

8. Considering all the above facts as well as the conduct of the appellant, the learned Single Judge dismissed the Writ Petition holding that the tenure of the appellant had expired and as such he cannot continue. The contention based on Section 66 of Wakf Act, was also negatived by the learned Single Judge, in view of the fact that the power to manage the Wakfs vested in the Wakf Board, after coming into the force of the Wakf Act 1995.

9. Aggrieved the appellant has come forward with this intra Court Appeal.

10. We have heard Mr.M.K.Hidayathullah, learned counsel appearing for Mr.K.H.M.Afzal, for the appellant and Mr.V.Lakshmi Narayanan learned counsel appearing for the respondents.

11. Mr.M.K.Hidayathullah, learned counsel appearing for the appellant would vehemently contend that the Wakf Board has no power to take over Management of Wakfs which are governed by a Scheme Decree. He would rely upon Section 66 of the Wakf Act, which reads as follows:

66. Powers of appointment and removal of mutawalli when to be exercised by the State Government.-

Whenever a deed of waqf or any decree or order of a court or any scheme of management of any waqf provides that a court or any authority other than a Board may appoint or remove a mutawalli or settle or modify such scheme of management or otherwise exercise superintendence over the waqf, then, notwithstanding anything contained in such deed of waqf, decree, order or scheme, such powers aforesaid shall be exercisable by the State Government:

Provided that where a Board has been established, the State Government shall consult the Board before exercising such powers.

12. Per contra, Mr.V.Lakshmi Narayanan, learned counsel

appearing for the Wakf Board would contend that in view of the explanation to Section 32 of the Wakf Act, Section 32 would apply even in relation to works for which a Scheme has been made by Court of Law, whether before or after the commencement of the Wakf Act, 1995. He would also further contend that what has been done is assumption of Direct Management of Wakf and not removal of a Trustee or a Mutawalli. Mr.V.Lakshmi Narayanan would further contend that the period for which the appellant was appointed as Mutawalli is over and even, as per the Section 66 of the Wakf Act, it is only the powers of appointment and removal of Mutawalli that are to be exercised by the State Government in cases where a Scheme of Management of the Wakf is framed by a Court and it provides that Court or any Authority other than the Board to appoint or remove of Mutawalli or settle or modify such scheme of Management or otherwise exercise Superintendence over the Wakf. Therefore, according to Mr.V.Lakshmi Narayanan Section 66 would have no application to the present case, inasmuch as, the Wakf Board has only taken over direct management of the Wakf in terms of Section 65 of the Act. Section 65 of the Wakf Act, 1995, reads as follows:

"65. Assumption of direct management of certain auqafs by the Board.-

(1) Where no suitable person is available for appointment as a mutawalli of a waqf, or where the Board is satisfied, for reasons to be recorded by it in writing, that the filling up of the vacancy in the office of a mutawalli is prejudicial to the interests of the wakf, the Board may, by notification in the Official Gazette, assume direct management of the waqf for such period or periods, not exceeding five years in the aggregate, as may be specified in the notification.

(2) The State Government may, on its own motion or on the application of any person interested in the waqf, call for the records of any case for the purpose of satisfying itself as to the correctness, legality or propriety of the notification issued by the Board under sub-section (1) and pass such orders as it may think fit and the orders so made by the State Government shall be final and shall be published in the manner specified in sub-section (1).

(3) As soon as possible after the close of every financial year, the Board shall send to the State Government a detailed report in regard to every waqf under its direct management, giving therein-(a) the details of the income of the waqf for the year immediately preceding the year under report; (b) the steps taken to improve the management and income of

the waqf (c) the period during which the waqf has been under the direct management of the Board and explaining the reasons as to why it has not been possible to entrust the management of the waqf to the mutawalli or any committee of management during the year; and (d) such other matters as may be prescribed.

(4) The State Government shall examine the report submitted to it under sub-section (3), and after such examination, issue such directions or instructions to the Board as it may think fit and the Board shall comply with such directions or instructions on receipt thereof.

(5) Notwithstanding anything contained in sub-section (1), the Board shall take over the administration of a waqf, if the waqf Board has evidence before it to prove that management of the waqf has contravened the provisions of this Act."

13. In view of the clear language of Section 65 of the Wakf Act, it is open to the Wakf Board to take over Management of the Wakf, where no suitable person is available for appointment as a Mutawalli or when the Board is satisfied that the filling up of the vacancy in the office of the Mutawalli is prejudicial to the interest of the Wakf. Such direct management is also restricted only to a maximum of 5 years in aggregate. Therefore, the exercise of power by the Wakf Board taking over direct Management of the Wakf in question, cannot be faulted, as a same does not amount to removal of the appellant from the post of Mutawalli as such Section 66 of Wakf Act, will not stand attracted

14. Therefore, we do not see reason to interfere with the order of the learned Single Judge in dismissing the Writ Petition. Hence, the Writ Appeal is dismissed. There will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

jv

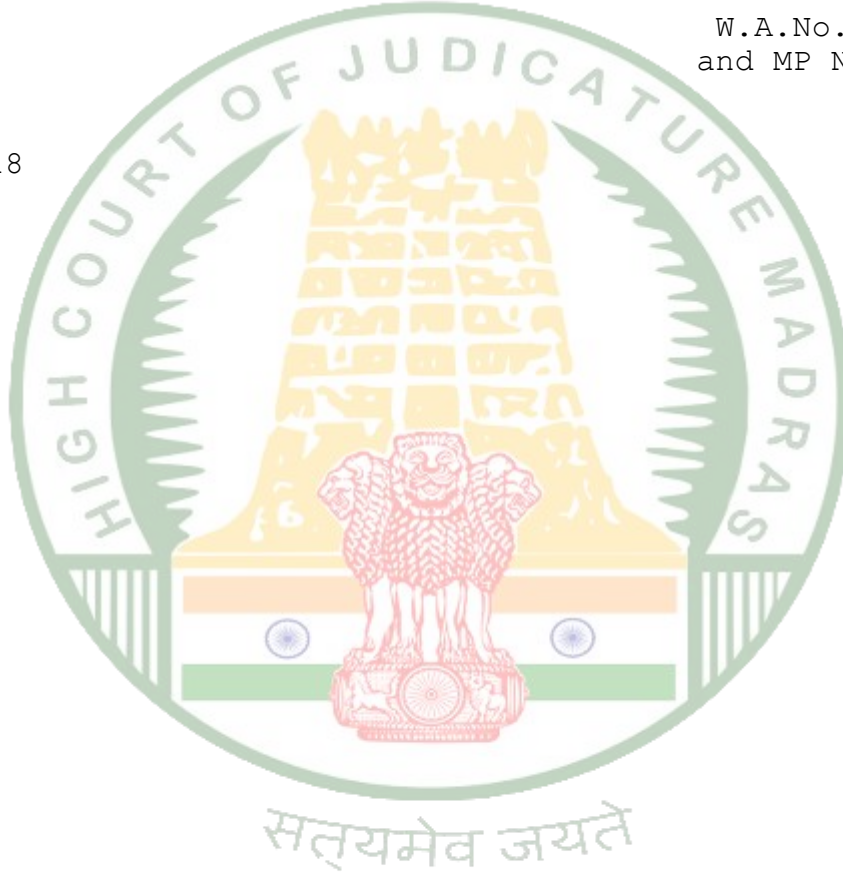
To

1. The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffer Syrong Street,
Chennai 1.
2. Wakf Inspector, Kanchipuram,
Having Office at Big Mosque,
Poonamallee, Pin 600 056.

+lcc to M/s.V.Raghavachari, Advocate, S.R.No.43470

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SVN(CO)
CS/07/08/18



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