

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.A.No.985 of 2018 and
C.M.P.Nos.8404 and 8405 of 2018

The Managing Committee,
Magdoo Pallivasal,
Kayalpattinam. ... Appellant

-vs-

1.L.K.K.Labbai Thamby

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

Appeal filed under Clause 15 of the Letters Patent, against
the order passed by this Court in W.P.No.8090 of 2017 dated
10.04.2017.

WP.NO.8090/2017:

Writ Petition filed under Article 226 of the Constitution of
India praying for the issuance of a Writ of Mandamus, directing
the 1st respondent to conduct elections by Secret ballot to
Magdoo Pallivasal Kayalpattinam as sought by the petitioner
vide representation dated 17.1.2017,

For Appellant :: Mr.Perumbulavi Radhakrishnan

For Respondents:: Mr.N.A.Nissar Ahmed for R1

Ms.Priya for Mr.V.Raghavachari
for R2

JUDGMENT

(Delivered by HULUVADI G.RAMESH, J.)

The first respondent herein filed a writ petition in W.P.No.8090 of 2017 praying for a direction to the Chief Executive Officer, Tamil Nadu Wakf Board, Chennai to conduct elections by secret ballot to Maqdoom Pallivasal, Kayalpattinam as sought for by him vide representation dated 17.01.2017. This Court passed an order on 10.04.2017 directing the Tamil Nadu Wakf Board to conduct election by secret ballot to the Maqdoom Pallivasal, Kalaypattinam in accordance with law, within a period of four weeks.

2.Challenging the order passed in the writ petition, the present appeal has been filed by the Managing Committee, Maqdoom Pallivasal, Kayalpattinam, who is the second respondent in the writ petition, contending that the only endeavour of the appellant-Wakf is to see that the new Committee is formed as per the custom and usage as mentioned in the proforma, which has been directed to be followed as per the provisions of the Wakf Act, ie., by unanimous selection by Jamath. He further submitted that the present Committee has been allowed by the Tamil Nadu Wakf Board to be in office till a fresh Committee is selected and hence the allegation of the first respondent herein/writ petitioner that the present Committee is an unauthorised one is false. The learned counsel further submitted that the secret ballot directed to be conducted by the learned single Judge is against the custom and usage and prayed for setting aside the impugned order and to pass a considered order taking note of the above contentions raised by the appellant.

3.We have also heard the learned counsel for the first respondent and the learned counsel for the second respondent on the submissions made by the learned counsel for the appellant and perused the materials available on record.

4.The first respondent herein has sought for a direction to conduct election to the Maqdoom Pallivasal, Kayalpattinam by way of secret ballot and the same was granted by the learned single Judge. Relying upon Section 32 of the Wakf Act, 1995, which relates to powers and functions of the Board, the learned counsel for the appellant submits that the election has to be conducted as per the custom and usage as mentioned in the proforma, which has been directed to be followed as per the provisions of the Wakf Act. But in so far as conducting election is concerned, no such Rules are framed. There is nothing on record to show as to what is the custom and usage, except oral statements.

5. Since the counsel for the Tamil Nadu Wakf Board consented that a direction may be given to the Board to conduct the election in four months time and the Chief Executive Officer of the Board was holding the additional charge and having the powers to conduct the election under Section 25(1)(c) of the Wakf Act, 1995, the learned single Judge directed the Chief Executive Officer, Tamil Nadu Wakf Board, to conduct election by secret ballot to Maqdoom Pallivasal, Kayalpattinam. But there is nothing on record to show as regards the manner in which the election has to be conducted, whether it be a secret ballot or by raising hands.

6. In the absence of any specific Rules, we leave it to the discretion of the Tamil Nadu Wakf Board, the second respondent herein, to conduct election to the Maqdoom Pallivasal, Kayalpattinam, either by secret ballot or otherwise, as contemplated under Section 52 of the Wakf Act, 1995, however ***after holding enquiry, the Election be conducted in a fair manner within a period of two months from today.** The second respondent shall conduct the election in a proper manner to see that no prejudice would be caused to either of the parties.

7. The writ appeal is disposed of with the above modification in the impugned order passed by the learned single Judge. No costs. Consequently the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VII)

Dated:20/06/2018

*Corrected vide order of
this Court dated 03/07/2018

Sd/-

Assistant Registrar(CS-II)

Dated:14/08/2018

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//True Copy//

Sub Assistant Registrar

KM

To

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

To be substituted to the order
despatched on 27/06/2018

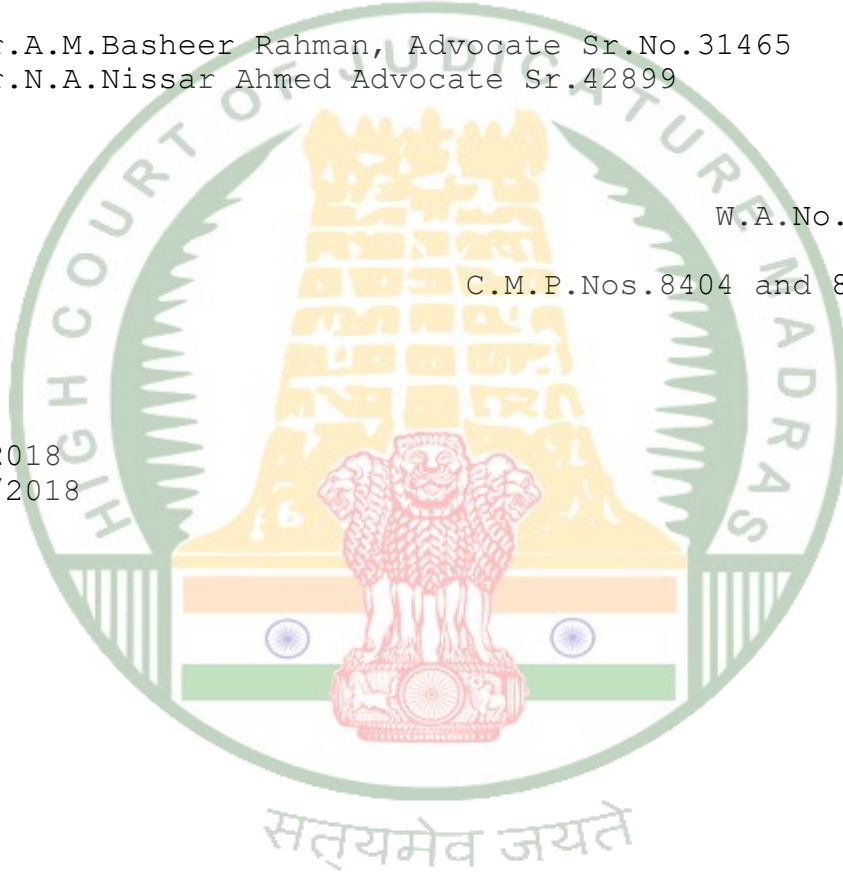
+1cc to Mr.A.M.Basheer Rahman, Advocate Sr.No.31465

+1cc to Mr.N.A.Nissar Ahmed Advocate Sr.42899

W.A.No.985 of 2018
and

C.M.P.Nos.8404 and 8405 of 2018

vba (co)
nr 21/06/2018
srg 16/08/2018



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