

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2018

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD) No.4316 of 2013
and M.P.No.1 of 2013 & CMP No.21151 of 2017

The Tamil Nadu Wakf Board
Represented by its Chief Executive Officer
No.1, Jaffr Syrang Street,
Vallal Seethakadhi Nagar,
Chennai – 600 001.

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Petitioner

Vs

1.Syed Ahmed

2.Syed Aqil

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Respondents

Civil Revision Petition is filed under Article 227 of the
Constitution of India to set aside the order dated 27.09.2013 passed
by the Wakf Tribunal (1st Assistant City Civil Court, Chennai) in
O.A.No.9 of 2013.

For Petitioner : Mr.Mohammed Fayaz Ali

For Respondents : Mr.N.A.Nissar Ahmed

ORDER

This Civil Revision Petition is filed to set aside the order dated 27.09.2013 passed by the Wakf Tribunal (1st Assistant City Civil Court, Chennai) in O.A.No.9 of 2013.

2. The petitioner is the respondent in O.A N.9 of 2013 on the file of Wakf tribunal (I Asst. Judge, City Civil Court), Chennai. The respondents filed the said OA against the petitioner for permanent injunction restraining the petitioner from interfering with his right for performance of annual sandal and urs and turn management entitling them to collect and receive the gifts, offerings and hyundial collection during the period mentioned therein. According to the respondents, as per the judgment of this Court in C.S. No.116 of 1909 confirmed by the Division Bench of this Court in OSA No.34 of 1910, they are entitled to perform the religious rights and is entitled to the hyundial collection during that period by turn management. The period of muthawali appointed by the petitioner by order dated 01.01.1991 expired in the year 1996. Subsequently no muthawalli was appointed. The respondents sought permission of the petitioner to discharge their duties of mujavar during their turn period for which the petitioner, by letter dated 12.09.2012 directed the

respondents to send a request through Syed Moinuddin. Therefore, the respondents filed W.P.No.17054 of 2012 before this Court.

2(a) The petitioner informed before this Court that hyundial collection will be deposited with the Wakf board and subsequent to the decision by competent court, it will be handed over to the respondents. Recording the same, the writ petition was disposed of and not being satisfied with the said order, the respondent filed W.A. No.1793 of 2012. By order dated 23.08.2012, the Division Bench of this court dismissed the Writ Appeal confirming the order of this court made in W.P.No.17054 of 2012. In view of the dismissal of Writ Appeal, the respondents filed OA No.9 of 2013 before the wakf tribunal. The respondents also filed application for interim order. According to the petitioner, they filed counter in the application and reserved their right to file counter in the main OA stating that O.A is not maintainable. According to the petitioner, under Section 83, an application can be filed only if a party is aggrieved by any of the order passed by the petitioner. In the present case, the respondents are not challenging any of the order of the petitioner. In view of the same only, the suit is maintainable for the relief of permanent injunction and the OA filed by the respondent is not maintainable before the Wakf Tribunal.

3. The Wakf Tribunal, considering the rival contentions, documents and judgments relied on by the parties, allowed the OA holding that the Tribunal has got power of the Civil Court and hence OA No.9 of 2013 is maintainable.

4. Against the said order dated 27.09.2013 made in O.A.No.9 of 2013, the petitioner has filed the present Civil Revision Petition.

5. The learned counsel for the petitioner reiterated the averments made in the petition and contentions raised in the grounds of revision. He further contended that the petitioner filed counter affidavit only in the IA raising the issue of maintainability. The petitioner has reserved their right to file counter in the main OA. The Tribunal, while considering the interim application and objection of the petitioner with regard to maintainability, ordered the OA itself.

6. Per contra, the learned counsel for the respondents contended that the Tribunal has properly appreciated all the materials on record, law and judgments relied on by the respondents and allowed the OA by giving valid reason and prayed for dismissal of the Civil Revision Petition.

7. Heard the learned counsel for the petitioner as well as respondents and perused the materials available on record.

8. From the materials available on record, it is seen that the petitioner has filed counter affidavit in the interim application reserving their right to file counter in the main OA. The learned Judge has failed to consider this aspect. Having held that the OA is maintainable, the learned Judge ought to have given an opportunity to the petitioner to file counter in the main OA and contest the same on merits.

9. In view of the failure to give opportunity to the petitioner to contest the OA on merits, the impugned order of the learned Judge is liable to be set aside and it is hereby set aside. Therefore, OA No.9 of 2013 is remitted back to the Tribunal to decide the same afresh on merits and in accordance with law. The petitioner is directed to file their counter statement within a period of three weeks from the date of receipt of a copy of this order. The Tribunal is directed to dispose of the OA within a period of three months thereafter.

10. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

05.02.2018

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To

The 1st Assistant Judge,
City Civil Court,
Chennai.



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V.M.VELUMANI, J.

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