

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.12.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

WA.No.2763/2018 & CMP.No.22808/2018

Mr.Abdul Azeez ... Appellant/3rd party

Versus

- 1 M.A.Khader ... 1st Respondent/
Petitioner in
WP.No.16655/2018
- 2 Tamil Nadu Wakf Board
represented by its Chief Executive
Officer, Vallal Seethakathi Nagar
Chennai 600 001.
- 3 Superintendent of Wakfs
Tamil Nadu Wakf Board
No.14-15, Mosque Buildings
Avinashi Road, Coimbatore-18.
- 4 Vadakovai Ahlay Sunnath Jama-ath
rep.by its Secretary Haji M.I.Mohammed Ali
Sanganur Kabarasthan Masjid,
238, Mettupalayam Road
Coimbatore 641 043. ... Respondents /
Respondents 1 to 3 in WP

Prayer:- Writ Appeal filed under clause 15 of the Letters Patent, 1865, to set aside the order passed in WP.No.16655/2018 dated 05.07.2018.

Prayer in W.P.NO.16655 of 2018:-

Writ Petition filed Under Article 226 of the Constitution of India, praying for the issue a writ of Mandamus directing the respondents 1 and 2 herein to forthwith conduct an election to elect a new set of office bearers for the third respondent's administration and management.

For Appellant : Mr.M.Imtiaz, for
Mr.I.Abdul Basith
For R1 : Mr.A.S.Vijaya Raghavan
For RR 2 & 3 : Mr.V.Lakshmi Narayanan

JUDGMENT

[Judgment of the Court was made by M.SATHYANARAYANAN, J.,]

By consent, the writ petition is taken up for final disposal. Mr.A.S.Vijaya Raghavan, learned counsel accepts notice on behalf of the 1st respondent and Mr.V.Lakshmi Narayanan, learned Standing counsel accepts notice on behalf of the respondents 2 and 3.

2 The appellant is the third party and aggrieved by the impugned order dated 05.07.2018 made in WP.No.16655/2018, has filed the present writ appeal.

3 It is the case of the appellant that he is the President of Vadakovai Ahlay Sunnath Jama-ath and he was elected along with other Members, in the ''Maha Sabai'' [Supreme Body] by Jama-athdars of the said Jama-ath on 13.12.2015 for a period of three years, which expired on 13.12.2018. According to the appellant, the said election was conducted in a free and fair manner and strictly in accordance with the by-laws of the said Jama-ath and while so, the 1st respondent/writ petitioner, with an oblique motive, filed the writ petition in WP.No.16655/2018 praying for issuance of a writ of mandamus, directing the respondents 2 and 3 herein to forth with conduct the election to elect a new set of office bearers for the administration and management of the 4th respondent.

4 Mr.M.Imtiaz, learned counsel appearing for the appellant would submit that in the light of the fact that the appellant was the President of the said Jama-ath till 13.12.2018, the 1st respondent / writ petitioner in all fairness, should have arrayed him as a party in the writ petition ; but he has deliberately failed to do so. It is his further submission that the election process should have been commenced after the expiry of his term and whereas, it was commenced long back and unfortunately, the respondents 2 and 3 are also colluding with the 1st respondent / writ petitioner. Learned counsel for the appellant has also drawn the attention of this Court to the decree dated 25.07.2008 made in OS.No.64/2007 on the file of the Court of Principal Sub Judge, Coimbatore and would submit that the said suit was filed by North Covai Ahlay Sunnath Jama-ath represented by the Secretary, Haji M.Mohammed Ali, Coimbatore against the Tamil Nadu Wakf Board and their officials, praying

for permanent injunction restraining the defendants from not to interfere with the election and not to ask for the production of the documents for the period between 1989 and 2006 and the said suit, came to be decreed and admittedly, no challenge has been made to the said judgment and decree and it has become final and in the subsequent proceedings in IA.No.138/2016 in OS.No.90/2016, the said decree has also been taken note of and ad-interim injunction was granted and aggrieved by the same, the Tamil Nadu Wakf Board had also filed CRP.No.No.3336/2017 on the file of this Court and the same is pending without any interim orders and would further contend that in the light of the said materials, the Tamil Nadu Wakf Board has no jurisdiction to conduct election ; but however, admittedly, they have not superintendence over the affairs of the said Wakf Board and hence, prays for setting aside the impugned order.

5 Mr.V.Lakshmi Narayanan, learned Standing counsel appearing for the respondents 2 and 3 would submit that the election Notification came to be issued on 27.11.2018 and the Electoral Roll was prepared and was also finalised and published and the election will be conducted on 23.12.2018 and the results will be declared on the same day and on instructions, would submit that the election process being undertaken, is strictly in accordance with the by-laws of the said Jama-ath.

6 The learned Standing counsel appearing for the respondents 2 and 3 / Wakf Board, on a legal plea, made a submission that since the election process had already commenced, this Court may not interfere with the same and the remedy open to the appellant, if any, is to challenge the declaration of the results and the election of Members, in accordance with law before the competent Forum.

7 Mr.A.S.Vijaya Raghavan, learned counsel appearing for the 1st respondent/writ petitioner would submit that the learned Judge has merely ordered for conducting of election and therefore, the appellant cannot be seriously aggrieved by the same.

8 This Court has carefully considered the rival submissions and also perused the materials placed before it.

9 Admittedly, the term of the appellant as President of the Jama-ath got expired on 13.12.2018 and though it is the vehement and forceful submission of the learned counsel for the appellant that the election process should have commenced only after the expiry of his term, this Court is of the considered view that the said submission lacks merit and substance. Once the term of the office bearers expire, there will be only vacuum and therefore, there is nothing wrong on the part of the Tamil

Nadu Wakf Board to initiate election process, which according to the learned Standing counsel got commenced by means of issuance of an Election Notification on 27.11.2018 and the election is to be held on 23.12.2018. It is a well settled position of law that once the election process had commenced, this Court cannot normally interfere with the same and the remedy open to the concerned authority, if any, is to challenge the results and the subsequent events before the competent Forum in accordance with law. This Court is also of the considered view that the points urged by the learned counsel for the appellant would revolve around adjudication of disputed questions of fact and the same cannot be done by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

10 In the result, the writ appeal is dismissed confirming the impugned order dated 05.07.2018 made in WP.No.16655/2018. If the appellant is aggrieved by the results of the election, he is always at liberty to work out his remedy in accordance with law before the competent Forum. No costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

AP

To

- 1 The Chief Executive Officer,
Tamil Nadu Wakf Board,
Vallal Seethakathi Nagar, Chennai 600 001.
- 2 Superintendent of Wakfs
Tamil Nadu Wakf Board
No.14-15, Mosque Buildings,
Avinashi Road, Coimbatore-18.

+1 cc to Mr.I.Abdul Basith, Advocate SR.No.87877
+1 cc to Mr.A.S.Vijayaraghavan, Advocate SR.No.86950
+1 cc to Mr.V.Raghavachari, Advocate SR.No.86853

WA.No.2763/2018

SSD(CO)
CSL/22.01.2019