



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:12.12.2018

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P (MD) Nos.24115 & 24125 of 2018
and

W.M.P (MD) Nos.21815, 21816, 21822 & 21823 of 2018

1.W.P (MD) No.24115 of 2018:-

S.Sahul Hameed

... Petitioner

Vs.

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

2.The Wakf Superintendent,
Wakf Superintendent Office,
No.1, Town Hall Road,
Mosque 2nd Floor,
Madurai - 625 001.

3.M.Kadhar Oli
4.I.Kadar Sulthan
5.S.Shahul Hameed
6.S.Siddick
7.Y.Sulthan Mydeen
8.N.Syed Sulthan
9.N.Peer Mohammed
10.S.Mohammed Yusuf
11.P.Yasin
12.S.Shajahan
13.A.Sheik Sulthan

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the second respondent to recount the ballot votes pertaining to Madurai Goripalayam Muslim Melakara Jamath Election held on 01.12.2018 and consequently to restrain the respondents 3 to 13 from functioning as Administrative Committee Members in the light of the results announced in the said election.

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For Petitioner : Ms.P.Yasim Begum

For RR 1 & 2 : Mr.S.A.S.Alaudeen



For RR 5 to 10 : Mr.J.M.Abdul Rahman

2.W.P(MD)No.24125 of 2018:-

M.Abdullah

... Petitioner

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Vs.

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... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the second respondent to recount the ballot votes pertaining to Madurai Goripalayam Muslim Melakara Jamath Election held on 01.12.2018 and consequently to restrain the respondents 3 to 13 from functioning as Administrative Committee Members in the light of the results announced in the said election and by considering the representation of the petitioner, dated 03.12.2018 within the period that may be stipulated by this court.

For Petitioner : Ms.P.Yasim Begum
For RR 1 & 2 : Mr.S.A.S.Alaudeen
For RR 5 to 10 : Mr.J.M.Abdul Rahman

COMMON ORDER

These writ petitions are filed seeking a Writ of Mandamus, to direct the second respondent to recount the ballot votes pertaining to Madurai Goripalayam Muslim Melakara Jamath Election held on

01.12.2018 and further restrain the respondents 3 to 13 from functioning as Administrative Committee Members in the light of the results announced in the said election.

2. The case of the petitioners is that there are 670 members in the Association, namely Madurai Goripalayam Melakara Jamath Association and the petitioners are one of the members of the Jamath and the election held on 01.12.2018. The said Jamath is a private wakf, which is registered under Societies Registration Act, 1860 and as such, it has own bye-laws and its aim is to assist and help the members and their family members in education, business and marriage. Every month subsidy has been collected to the Jamath Association and all the members are bound to follow the Bye-laws created by the Association. As per the said bye-laws, 11 members will be selected through ballot voting in every three years for managing the Association as "Administrative Committee", which consists of President, Secretary, Treasurer, Assistant President, Assistant Secretary - 1, Assistant Secretary - 2 and five Executive Committee Members will be selected and general body meeting will be conducted on 31st March of every month as per bye-laws.

3. The petitioners and other members of the Jamath, after the expiry of the existing body of members, took steps to approach the respondents 1 and 2 to conduct election, but no steps have been taken on the side of the respondents 1 and 2. Hence, the petitioner/Abdullah in W.P(MD)No.24125 of 2018 has filed a writ petition in W.P(MD)No.18124 of 2016 before this Court to direct the respondents 1 and 2 therein to conduct election in the said Jamath, wherein on the date of admission, it was informed on the side of the Wakf Board that a direction has been issued by the first respondent to the second respondent to conduct election of the Jamath within a period of three months viz., 23.06.2016 and in view of the same, this Court disposed of the said writ petition on 22.09.2016.

4. By the proceedings of the second respondent, dated 30.06.2013, election was conducted and elected members had functioned from 30.06.2013 to 29.06.2016. Thereafter, the second respondent issued election notice on 21.10.2016 and granted time to submit the application till 04.11.2016, but no steps have been taken to conduct election. In the interregnum period, the said Jamath was divided into two groups, wherein the respondents 3 to 13 taken the Jamath administration and named themselves as 'Muslim Melakara Jamath Youngsters wing' and encroached one of the land property of the Jamath for conducting meetings of their own and also performed 'Namaz' in that place. The sixth respondent herein filed a Writ Petition in W.P(MD)No.13097 of 2017 and this Court, by order dated 09.08.2017, directed the second respondent to consider the representation of the petitioner therein, dated 29.06.2017 and the said matter was listed 'for compliance' on 23.08.2017. When the matter was listed 'for compliance', it is stated that the respondent Wakf Board has not initiated any steps for conducting election, hence, this Court, on 08.09.2017, had appointed Advocate



Commissioners to conduct election in the Jamath and fixed remuneration and posted the matter on 13.09.2017. Pursuant to the said direction, neither the respondents nor the Advocate Commissioners appointed by the Court took any steps to declare and conduct election in the Jamath. Without any consent from the respondents or by conducting general body meeting, the sixth respondent along with 10 members of youngsters wing has formed an administrative body of members and has designated as Secretary of the Jamath and he along with other members started threatening the tenants of the Jamath building and demanded them to pay rent and locked the premises.

5. A complaint has been lodged by the previous elected secretary and based on the same, F.I.R has been registered against the said persons in Crime No.179 of 2018 under Sections 147, 294(b), 341 and 506(ii) I.P.C. Without election, the Jamath was not able to function, hence, the petitioner has filed a writ petition in W.P(MD) No.9308 of 2018 and as per the order of this Court, dated 31.07.2018, the second respondent collected the members list and fixed date for nomination as 13.11.2018 and thereafter, election results were published on 01.12.2018.

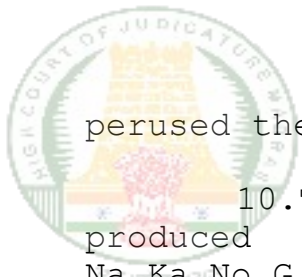
6. From the date of election, the respondents 3 to 13 indulged in disturbing the voters by threatening them to vote for them, otherwise they will face dire consequences. The second respondent was not patient enough in counting the votes and was hurry in declaring the respondents 3 to 13 as the winners of the election and the second respondent did not give an opportunity to other candidates to mark their number of votes. The petitioners and other contested candidates are not permitted to submit their complaints before the Advocate Commissioners or the second respondent.

7. As per the bye-laws, the contesting candidate of the election should not be the tenant of the Jamath premises, but the ninth respondent herein is one of the tenant in the Jamath premises and the same has also been intimated through proper representation to the second respondent while filing nomination itself, but still the same was not taken into consideration. Hence, the act of the second respondent amounts in collusion with the respondents 3 to 13 and has not conducted fair and genuine election as per the order of this Court.

8. It is further stated that due to unfair election conducted on 01.12.2018 nearly 40 to 50 valuable members votes are not counted properly and some of the members votes are also made bogusly by unknown persons. In the said circumstances, recounting of ballot votes of election, dated 01.12.2018 is just and necessary for fair election results. Hence, the petitioner has approached this Court by way of filing this writ petition.

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9. Heard the learned counsel appearing for the parties and



perused the materials available on record.

10. The learned counsel appearing for the petitioner has produced the proceedings of the second respondent in Na.Ka.No.G.S.92/V.K/Madurai/The.A/18, dated 01.12.2018, wherein 670 voters were eligible and to be polled. Out of 670 votes, 441 votes were registered and polled and 422 votes were valid votes and 19 votes were invalid one. The learned counsel further submitted that the second respondent has colluded with other members, namely Muslim Melakara Jamath Youngsters wing and conducted election.

11. As per Chapter 8 of the Wakf Act, 1995, Section 83 deals with Constitution of Tribunals wherein it is stated as follows:-

"(1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunal.

(2) Any mutawalli person interested in a wakf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the wakf."

12. In view of the above stated facts and circumstances, the petitioners have an alternative remedy to approach the Wakf Tribunal for redressing their grievance and the conduct of the election can be challenged only before the Tribunal and not before the writ Court and it is also made clear that the petitioners cannot invoke jurisdiction under Article 226 of the Constitution of India, since there is an alternative remedy available to them and the facts with regard to the conduct of the election cannot be gone into by this Court by invoking its writ jurisdiction. Accordingly, these Writ Petitions are dismissed. However, it is left open to the petitioners to approach the concerned forum. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(co)

/True Copy/

Sub Assistant Registrar(cs-III)

To

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Tamil Nadu Wakf Board,



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No.1, Town Hall Road,
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+2cc to Mr.P.Yasim Begum Advocate in SR.No.99837,99838
+2cc to Mr.S.A.S.Alaudeen Advocate in SR.No.99894,99895
+1cc to Mr.J.M.Abdul Rahman Advocate in SR.No.99986

W.P(MD)Nos.24115 & 24125 of 2018
12.12.2018

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