



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:06.06.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P(MD).No.11686 of 2018 and
W.M.P(MD).Nos.10632 and 10633 of 2018

M.Abdul Hameed

... Petitioner

vs.

1. The State of Tamil Nadu
Rep. by its Secretary to Government,
Department of Back Ward Classes and Wakf,
Fort St. George, Chennai - 600 009.
 2. The Tamil Nadu Wakf Board,
Through its Chairman,
Mannadi, Chennai.
 3. The Chief Executive Officer,
Tamil Nadu Wakf Board,
Chennai - 1.
 4. The Executive Officer,
Zonal Superintendent of Wakf,
Thanjavur.
 5. Janab. Mohammed Haneeb
 6. Janab. P.Kuthpudin
 7. Janab. Lalkhan
 8. Janab. Sathik Batcha
 9. Janab. P.S.Rabik Ahammed
- ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining the impugned order in Se.Mu.Order Na.Ka.No.5708/15/Aa7/Thanjai dated 23.05.2018 passed by the 3rd respondent and quash the same and consequently direct the respondents 1 to 3 to continue the 4th respondent to manage the Majid of Bahar Sha Oliyulla Mosque at Mahilambu Thaikkal, Rajagiri, Papanasam Taluk, Thanjavur District.

For Petitioner : Mr.P.Muthusamy
For Respondents 1 : Mr.V.R.Shanmuga Nathan
Special Government Pleader
For Respondents 2 to 4 : Mr.K.K.Senthil
Standing Counsel

ORDER

The order under challenge is the appointment of five members of the Majid of Bahar Sha Oliyulla Mosque at Mahilambu Thaikkal, Rajagiri, Papanasam Taluk, Thanjavur District, for the limited purpose of the work of distributing the Ramzan kanji and the related functions for a period of 30 days.

2.The learned counsel for the petitioner, by relying upon the orders of the second respondent, dated 18.01.2016, and notice issued by the fourth respondent, dated 28.03.2016, submitted that the present members, who have been selected for regulating the Ramzan work in the said Majid, indulged in misappropriation of funds earlier and during the Ramzan festival in the year 2017, these five persons did not contribute for the Ramzan kanji.

3.On a perusal of the order passed by the second respondent, dated 18.01.2016, as well as the notice issued by the fourth respondent, dated 28.03.2016, it does not evidence any such misappropriation on the part of the members appointed by the second respondent herein. Furthermore, the submission of the learned counsel for the petitioner that these five persons did not contribute for the Ramzan kanji in the year 2017, will not be a disqualification for them to be the part of the organization committee for the festival. The petitioner herein is not vested with the authority of the third respondent herein for appointing the five members as a part of the organization committee for the Ramzan festival.

4.It is the further submission of the learned counsel for the petitioner that these five members are causing disturbances in the Majid and even interfering with the administration of the Majid. On a perusal of the impugned order, it is seen that the five members have been appointed for a limited purpose of organization and regulating the Ramzan festival and that the administration of the Majid has not been handed over to them. Furthermore, there is no material on record to show that these five persons are indulged in any such disturbances in the majid.

5.At this juncture, the learned counsel for the first and second respondents submitted that even otherwise the present writ petition is not maintainable, in view of Section 83 of the Wakf Act 1995, since there is an alternative remedy available before the Wakf Tribunal. In support of their contention, they relied upon the judgment reported in **Board of Wakf, West Bengal & another Vs. Anis Fatma Begum & another** reported in **2011 (1) CTC 636**. The relevant portion of the said order reads as follows:

"10.In our opinion, all matters pertaining to Wakfs should be filed in the first instance before the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995 and should not be entertained by the Civil Court or by the High Court straightaway under Article 226 of the



Constitution of India.

.....

14. Thus, the Wakf Tribunal can decide all disputes, questions or other matters relating to a Wakf or Wakf property. The words "any dispute, question or other matters relating to a Wakf or Wakf property" are, in our opinion, words of very wide connotation. Any dispute, question or other matters whatsoever and in whatever manner which arises relating to a Wakf or Wakf property can be decided by the Wakf Tribunal. The word 'Wakf' has been defined in Section 3(r) of the Wakf Act, 1995 and hence once the property is found to be a Wakf property as defined in Section 3(r), then any dispute, question or other matter relating to it should be agitated before the Wakf Tribunal.

15. Under Section 83(5) of the Wakf Act, 1995 the Tribunal has all powers of the Civil Court under the Code of Civil Procedure, and hence it has also powers under Order 39, Rules 1, 2 and 2-A of the Code of Civil Procedure to grant temporary injunctions and enforce such injunctions. Hence, a full-fledged remedy is available to any party if there is any dispute, question or other matter relating to a Wakf or Wakf property."

The above observation of the Honourable Supreme Court is self explanatory.

6. As rightly pointed out by the learned Standing counsel for the respondents, the proper remedy open to the petitioner would be to approach the Wakf Tribunal under Section 83 of the Wakf Act and present the appeal before the Wakf Tribunal. Hence, this Court may not be justified in entertaining the writ petition when an alternate remedy is already provided under the Wakf Act. For all the forgoing reasons, I do not find any merit in this writ petition.

7. Accordingly, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

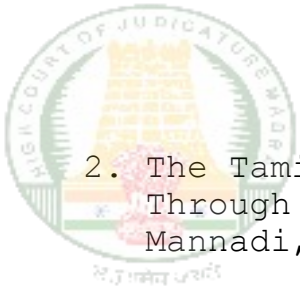
Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
State of Tamil Nadu,
Department of Back Ward Classes and Wakf,
Fort St. George, Chennai - 600 009.



2. The Tamil Nadu Wakf Board,
Through its Chairman,
Mannadi, Chennai.

3. The Chief Executive Officer,
Tamil Nadu Wakf Board,
Chennai - 1.

4. The Executive Officer,
Zonal Superintendent of Wakf,
Thanjavur.

- + 1 CC TO Mr.P.MUTHUSAMY, ADVOCATE IN SR No. 67512
- + 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 67138
- + 1 CC TO Mr.K.K.SENTHIL, ADVOCATE IN SR No. 67210

TM

TE/SB/SAR-2 : 19/06/2018 : 4P/8C

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