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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED: 18.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE **K.RAVICHANDRABAABU**  
AND  
THE HONOURABLE MRS.JUSTICE **T.KRISHNAVALLI**

W.A[MD].No.1309 of 2017  
and  
C.M.P.(MD)No.9098 of 2017  
in  
W.P.(MD)No.14351 of 2017

Z.Abdulla .. Appellant/Petitioner  
Vs.

1.The Chief Executive Officer,  
Tamil Nadu Wakf Board, No.1,  
Jaffer Sirang Street,  
Seethakadhi Nagar, Chennai - 1.

2.The Superintendent,  
The Tamil Nadu Wakf Board, No.12,  
Kilothar Street, Tiruchirappalli 2.

3.The Inspector,  
The Tamil Nadu Wakf Board,  
Tiruchirappalli District.

4.O.S.M.Shiek Mohamed .. Respondents/Respondents

**PRAYER:** Appeal is filed under Clause 15 of Letters Patent, to set aside the order of the learned single Judge of this Court, dated 20.09.2017 in W.P.(MD)No.14351 of 2017, by allowing this Writ Appeal.

**Prayer in WP(MD). 14351/ 2017 :**

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified mandamus calling for the records relating to the proceedings in Na.Ka.Gs No.156 & 212/thiru/vk/2017 dated 25/05/2017 on the file of the superintendent of wakfs, tiruchirappalli region, the 2nd respondent herein and quash the same.

For Appellant : Mr.A.V.Arun

For R1 to R3 : Mr.K.K.Senthil  
standing counsel

For R4 : Mr.J.M.Hassanul Bazari

**JUDGEMENT**

[Judgement of the Court was delivered  
by K.RAVICHANDRABAABU, J]

This writ appeal is directed against the order passed in W.P. (MD)No.14351 of 2017 in dismissing the writ petition filed by the appellant herein. The challenge made in the writ petition was against the proceedings of the second respondent, dated 25.05.2017, through which, the subject-matter Mosque was directed to prepare voters list to conduct election to the administrative/executive committee for administering the same. It is the claim of the writ petitioner that he is holding the post of Muthavalli by way of hereditary and therefore, there is no reason or ground to conduct election to the administrative/executive Committee of the Wakf in question. In other words, it is the claim of the petitioner that when the Wakf is registered under Section 37 of the Wakf Act, 1995 and the Rule of Succession is also recorded as hereditary one, the second respondent is not having jurisdiction to conduct election for administering the Wakf.

2.The learned Judge dismissed the writ petition without going into the merits of the matter only on the sole reason that the petitioner has to approach the Wakf Tribunal for appropriate relief in the manner known to law. In support of such conclusion the learned Judge relied on the decision of the Hon'ble Supreme Court in a case reported in 2011 (1) CTC 636 [BOARD OF WAKF, WEST BENGAL v. ANIS FATMA BEGUM]. Challenging the said order of the learned single Judge, the present writ appeal is filed before this Court.

3.Heard both sides.

4.The appellant as the writ petitioner questions the proceedings of the Tamil Nadu Wakf Board for conducting the election to the Administrative/Executive Committee for the subject-matter Wakf. The basic contention of the appellant is that he is holding the position of Muthavalli by way of hereditary right and such right is also registered by the Wakf Board under Section 37 of Wakf Act, 1995. If the appellant is aggrieved against the action of the Tamil Nadu Wakf Board in conducting the election for administration of the subject-matter Wakf, it is for him to approach the first fact finding Forum, in this case, the Tribunal constituted under the Wakf Act and seek appropriate relief. The Hon'ble Supreme Court in a case reported in 2011 (1) CTC 636, has dealt with the issue as to whether a party can straight away approach this Court and file writ petition under Article 226 of the Constitution of India, without approaching the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995. While answering the said issue, the Hon'ble Supreme Court has observed at paragraph Nos.9 to 17, 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.

11. It may be mentioned that the Wakf Act, 1995 is a recent parliamentary statute which has constituted a special Tribunal for deciding disputes relating to Wakfs. The obvious purpose of constituting such a Tribunal was that a lot of cases relating to Wakfs were being filed in the courts in India and they were occupying a lot of time of all the Courts in the country, which resulted in increase in pendency of cases in the Courts. Hence, a special Tribunal has been constituted for deciding such matters.

12. Section 83 (1) of the Wakf Act, 1995 states, "83. Constitution of Tribunals, etc. - (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 or such Tribunals."

13. Section 84 of the Act states, "84. Tribunal to hold proceedings expeditiously and to furnish to the parties copies of its decision - Whenever an application is made to a Tribunal for the determination of any dispute, question or other matter relating to a Wakf or Wakf property it shall hold its proceedings as expeditiously as possible and shall as soon as practicable on the conclusion of the hearing of such matter give its decision in writing and furnish a copy of such decision to each of the parties to the dispute".

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.

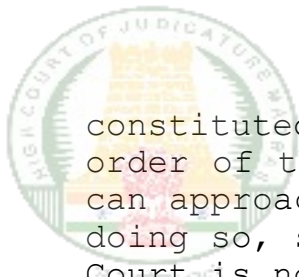
15. Under Section 83 (5) of the Wakf Act, 1995 the Tribunal has all powers of the Civil Court under the Code of Civil Procedure, and hence it has also powers under Order 39 Rules 1, 2 and 2A of the Code of Civil Procedure to grant temporary injunctions and enforce such injunctions. Hence, a full-fledged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

16. We may further clarify that the party can approach the Wakf Tribunal, even if no order has been passed under the Act, against which he/she is aggrieved. It may be mentioned that Sections 83 (1) and 84 of the Act do not confine the jurisdiction of the Wakf Tribunal to the determination of the correctness or otherwise of an order passed under the Act. No doubt Section 83 (2) refers to the orders passed under the Act, but, in our opinion, Sections 83 (1) and 84 of the Act are independent provisions, and they do not require an order to be passed under the Act before invoking the jurisdiction of the Wakf Tribunal. Hence, it cannot be said that a party can approach the Wakf Tribunal only against an order passed under the Act. In our opinion, even if no order has been passed under the Act, the party can approach the Wakf Tribunal for the determination of any dispute, question or other matters relating to a Wakf or Wakf property, as the plain language of Sections 83 (1) and 84 indicates.

17. We may clarify that under the proviso to Section 83 (9) of the Wakf Act, 1995 a party aggrieved by the decision of the Tribunal can approach the High Court which can call for the records for satisfying itself as to the correctness, legality or propriety of the decision of the Tribunal. This provision make it clear that the intention of Parliament is that the party who wishes to raise any dispute or matter relating to a Wakf or Wakf property should first approach the Tribunal before approaching the High Court."

5. In fact, the learned Judge while dismissing the writ petition, has relied on the above decision of the Hon'ble Supreme Court.

6. Perusal of the above said decision of the Hon'ble Apex Court would undoubtedly indicate that a party, who is aggrieved in respect of matters pertaining to Wakf, has to first approach the Tribunal



constituted under Section 83 of the Wakf Act, 1995 and only when an order of the Tribunal itself is sought to be challenged, such party can approach this Court and file appropriate proceedings. Instead of doing so, straight away coming and filing writ petitions before this Court is not proper course of action.

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7. At this juncture, the learned counsel appearing for the appellant submitted that the three member Tribunal, Constituted in pursuant to the amendment, has not taken charge so far and therefore, the petitioner is not in a position to approach the Tribunal. To the said submission, the learned counsel for the respondent Wakf Board, submitted that the very same issue was also considered and answered by the Hon'ble Apex Court in the decision reported in (2015) 17 SCC 65 [LAL SHA BABA DARGAH TRUST v. MAGNUM DEVELOPERS], wherein at paragraph Nos.20 and 26, it is observed as follows:-

"20. The only question, therefore, that arises for consideration is as to whether till a three member tribunal is constituted by the State Government by issuing notification one member tribunal as constituted under 1995 Act shall continue functioning or it ceases to have any jurisdiction to entertain disputes and decide it in accordance with the provisions of Act.

26. As per the amendment, the three members Tribunal is to be constituted by the State Government by notification in the Official Gazette. However, the State has not done its mandatory duty as provided under Section 83 of the Act (as the Section 83 uses the word "shall"). Then the question is should any party suffer due to the inaction of the State. We should keep in mind that it is common practice that the old institution/member continues to exercise duty till the time any new institution/member takes charge of that duty. In the present case also, the one member tribunal will continue to exercise jurisdiction till the time the State constitutes three members tribunal by notification in the Official Gazette. The High Court erred in holding that the civil court will exercise jurisdiction in such situation as it is manifest by the intention of the legislature that they do not want any other authorities to exercise over the Waqf property matter under the Act."

8. Considering the above stated facts and circumstances and the order passed by the Hon'ble Apex Court in (2015) 17 SCC 65, it is clear that if three member Tribunal is yet to take charge, it is open to the parties to approach the single member and file petition, who in turn shall continue to exercise duty till the time, the new committee takes charge, as observed by the Hon'ble Supreme Court in the above said decision. We make it very clear that we are not expressing any view on the merits of the claim made by the appellant/petitioner, as it is for him to agitate the same before the Tribunal.



9. With the above observations, the writ appeal is disposed of accordingly. Consequently, connected Miscellaneous Petition is also closed. No costs.

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Sd/-

Assistant Registrar (P&A)

Sub Assistant Registrar

To

1. The Chief Executive Officer,  
Tamil Nadu Wakf Board, No.1,  
Jaffer Sirang Street,  
Seethakadhi Nagar, Chennai - 1.
2. The Superintendent,  
The Tamil Nadu Wakf Board, No.12,  
Kilothar Street, Tiruchirappalli 2.
3. The Inspector,  
The Tamil Nadu Wakf Board,  
Tiruchirappalli District.

+1cc to Mr.K.K.Senthil, Advocate, SR.No.62087.

W.A[MD].No.1309 of 2017  
18.04.2018

RJ2

RAM/SV MMS/SAR 2/08.05.2018/6P/5C