



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on :19.12.2017

Pronounced on: 25.10.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(PD) (MD) Nos.1681 of 2016 and 1685 of 2016

and

C.M.P. (MD) Nos.8188 and 8191 of 2016

C.R.P. (MD).No.1681 of 2016

- 1.M.S.Mohammed Yousoof
- 2.S.Mohammed Abdul Kadar
- 3.S.Abdhul Pathavar
- 4.V.A.Mohammed Abdul Kadar
- 5.M.Seyed Sali

... Petitioners/Petitioners/Plaintiffs

Vs

- 1.Janab.Syed Mohamed
- 2.Janab.Abdul Salam
- 3.Janab.Abdul Lathiff
- 4.F.Abdul Azeez (Fithrathullah)
- 5.S.Rafeek Ali
- 6.P.Abubucker Siddiq
- 7.A.Shaik Mohideen
- 8.A.Mohammed Abubucker
- 9.F.Abdul Kadar
- 10.A.Basheerudeen
- 11.V.B.Jahafer Ali
- 12.A.Mohamed Ali Jinnah
- 13.A.Abdul Aleem

... Respondents/Respondents/Defendants

PRAYER: C.R.P. (MD).No.1681 of 2016 has been filed under Article 227 of the Constitution of India, against the order passed in E.A.No.346 of 2015 in O.S.No.119 of 1956 on the file of First Additional Subordinate Judge, Nagercoil, dated 04.12.2015.

For Petitioners : Mr.T.Arul

<https://hcservices.ecourts.gov.in/hcservices/>

For Respondents : No appearance



C.R.P. (MD).No.1685 of 2016

1.Janab.Syed Mohamed
2.Janab.Abdul Lathiff

... Petitioners/Petitioners/Plaintiffs

Vs.

1.F.Abdul Azees(Fithrathullah)
2.S.Rafeek Ali
3.P.Abubucker Siddiq
4.A.Shaik Mohideen
5.A.Mohammed Abubucker
6.F.Abdul Kadar
7.A.Basheerudeen
8.V.B.Jahafer Ali
9.A.Mohamed Ali Jinnah
10.A.Abdul Aleem
11.M.Musthafa
12.S.Jainual Abdeen
13.P.Mohamed Ibrahim
14.Janb.Abdul Salam
(Name deleted after filing
memo to that effect in
E.A.No.334 of 2015)

... Respondents/Respondents/Defendants

PRAYER: C.R.P. (MD).No.1685 of 2016 has been filed under Article 227 of the Constitution of India, against the order passed in E.A.No.334 of 2015 in O.S.No.119 of 1956 on the file of First Additional Subordinate Judge, Nagercoil, dated 04.12.2015.

For Petitioners : Mr.M.P.Senthil

For R.1 to 4, 6, : Mr.A.Arumugam for
7&8 to 13 M/s.Ajmal Associates

For R.5&14 : No appearance

COMMON ORDER

The Civil Revision Petition in C.R.P. (MD).No.1681 of 2016 has been filed against the order passed in E.A.No.346 of 2015 in O.S.No.119 of 1956 on the file of First Additional Subordinate Judge, Nagercoil, dated 04.12.2015. Similarly, C.R.P. (MD).No.1685 of 2016 has been filed against the order passed in E.A.No.334 of 2015 in O.S.No.119 of 1956 on the file of First Additional Subordinate Judge, Nagercoil, dated 04.12.2015.



2. Since the issue involved in both the Civil Revision Petitions are interrelated to each other, they are taken up together and disposed of by a common order. For the sake of convenience, the parties are referred to as per the rank mentioned in the present Civil Revision Petitions.

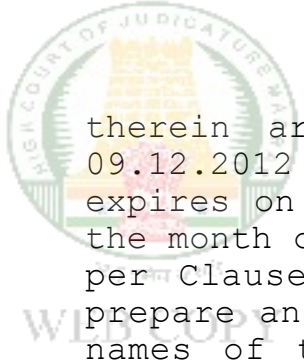
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3. The brief facts stated in C.R.P.(MD).Nos.1681 and 1685 of 2016 which are necessary for the disposal of the Civil Revision Petitions are as follows:-

3.1. The petitioners would aver among other things that the Civil Revision Petition in C.R.P.(MD).No.1681 of 2016 has been filed against the order passed in E.A.No.346 of 2015 in O.S.No.119 of 1956 on the file of First Additional Subordinate Judge, Nagercoil, dated 04.12.2015. The said E.A. was filed by the petitioners herein to appoint an Advocate Commissioner for the purpose of conducting election as per the Scheme Decree and prepare voters list and conduct the election after the approval of the voters list by this Court and then conduct the election to elect new committee members for the management of Elangadai Muslim Samuthayam Trust. (herein after referred to as 'the Trust'). Similarly, C.R.P.(MD).No.1685 of 2016 has been filed against the order passed in E.A.No.334 of 2015 in O.S.No.119 of 1956 on the file of First Additional Subordinate Judge, Nagercoil, dated 04.12.2015. The said E.A. was filed to intervene in the management of the affairs of the trust by the respondents, by appointing an advocate commissioner for the purpose of conducting election as contemplated in the Scheme Decree in this case and to prepare voters list and then to conduct the election and to elect new committee members for the effective management of the Trust. Yet another E.A.No.333 of 2015 was also moved by the petitioner in E.A.No.334 of 2015 before the Court below seeking order of temporary injunction restraining the respondents and their men from conducting the election of the Trust on 06.12.2015 or any other date.

3.3. The main grievance and crux of the applications before the Court below was that without following the Scheme Decree of the trust, the respondents therein conducted the election by including the non-eligible voters in the voting list and therefore, they wanted an Advocate Commissioner to be appointed to prepare the voters list and subsequently, wanted to conduct the election. All the three applications were heard together by the Court below and after appreciating evidence on record and the materials placed before it, the Court below dismissed all the applications preferred by the petitioner. Aggrieved over the same, the petitioners are before this Court with the present Civil Revision Petitions for the relief stated supra. Though three E.A.Nos.333,334 and 346 of 2015 were preferred by the petitioners, but, no CRPs were filed against the said E.A.No.333 of 2015.

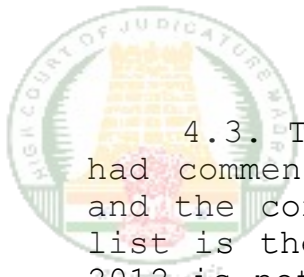
4. The learned counsel appearing for the petitioners in Civil Revision Petitions submit that the respondents 4 to 13



therein are the elected Committee members who were elected on 09.12.2012 and as per the Scheme Decree, the term of the committee expires on 09.12.2015 and that they have to conduct the election in the month of December 2015. But, they have not done so. Further, as per Clause 7 (a) of the Scheme Decree, the respondents have to prepare an electoral roll for all the sects of people showing the names of the persons qualified shall be prepared and published before two months of the date of of the general election and the roll so prepared and published shall be revised and the list of amendments and corrections thereto shall in like manner be prepared and published by the Committee one month before the date of every general body meeting. As per Clauses 3 and 4 of the Scheme, the members from the 13 wards alone are eligible to become voters, but in gross violation of the scheme decree, the respondents have included many non-members from 29 streets in the wards 8 to 13 who are not eligible to become voters of the Trust and are also the strangers to the trust. He also pointed out that in an earlier occasion, this Hon'ble Court in C.R.P.No.3013 of 1991 dated 25.11.1998 had clearly held that the Court being the custodian of the Trust property and if the office bearers are not following the procedure contemplated in the Scheme, the Court has to rectify the same in the interest of the trust and that has been done by the Court while appointing an advocate commissioner to prepare the voters list and conduct the election.

4.1. It is further averred that the respondents additionally included the strangers and non-members in the trust in order to gain in the election and if they are actually the members of the trust, their names would have been found in the eligible voters list in the year 2012, but it is not found in the previous list. As per Clause 6 of the Scheme Decree, all Muslim members of the trust who had attained the age of 18 years are eligible to vote, but they have not been included.

4.2. It is further stated that the total number of voters in many wards were increased beyond the actual limit available over there. In short, the non-members and non-eligible voters were included by the respondents to gain in the election. Similarly, many eligible voters are also not included in the 2015 voters list though they are eligible members entitled to vote. The petitioners also submit that they have roughly indicated about 11 members in the typed set of papers who were illegally not included in the voters list though they had paid subscription and their names were also found in the voter list of the year 2012. It is pertinent to note that even after the gap of 9 years from 2003 to 2012, only 94 new members were included in the year 2012 voters list. The Resolution passed by the Respondents on 1.11.2015 in condoning the delay in publishing of voters list prior to one month of convening of general body itself is illegal and the general body never approved the conduct of the respondents not publishing the final voters list prior to two months of date of conduct of election.



4.3. The findings of the Lower Court that the election process had commenced in the month of February 2015 is without any basis and the contention of the respondents that the year of 2015 voters list is the same and ditto of the previous voters list of the year 2012 is not true.

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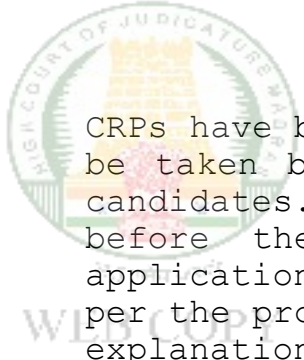
4.4. In support of their contentions, they relied on the followings judgment of the Supreme Court as well as this Court:-

- (1) (2010) 2 MLJ 1057, R.J.Paul Vs. S.N.Kulasekaran ;
- (2) (1994) 1 SCC 1, S.P.Chengalvaraya Naidu (dead) by Lrs Vs. Jagannath (dead) by Lrs and Others;
- (3) (2010) 7 MLJ 693(SC), N.Meghmala and Others Vs. G.Narasimha Reddy and Others and
- (4) 2007-2-L.W.810, S.Krishnan Vs Rathinavel Naicker and Others.
- (5) C.R.P. (NPD).No.569 of 2008, dated 11.11.2010, Syed Thajuddin Vs Syed Mohideen
- (6) (2001) 1 M.L.J.101, reported in Bakthavatsalam Vs. Anjapuli and Others.

4.5. For the foregoing reasons and in the facts and circumstances of the case coupled with the decisions relied on by them, they pray for setting aside the impugned order passed by the learned 1st Additional Subordinate Judge, Nagercoil dated 04.12.2015 in E.A.Nos.334 & 346 of 2015 in O.S.No.119 of 1956 and allow the Civil Revisions Petitions.

5. Per contra, the learned counsel appearing for the respondents through his written argument in C.R.P.(MD).Nos.1681 & 1685 of 2015 would submit that the C.R.Ps became infructuous for the reason that already the election was over on 06.12.2015 itself. The election was held under the immediate supervision of Wakf Board representatives. Therefore, the CRPs filed against the order of refusing the appointment of commissioner has admittedly become infructuous.

5.1. He would further contend that the prayers in all the I.As are more or less the same. The validity of the election held on 06.12.2015 was not the subject matter of E.A.Nos.334 & 346 of 2015 before the trial court. The validity or otherwise of election is a separate cause of action after the disposal of E.As, out of which



CRPs have been filed. Now legal proceedings before WAKF Board has to be taken by the aggrieved parties after impleading the successful candidates. The documents filed in the typed set have not been filed before the trial court at the time of enquiry. No separate application has been filed for reception of additional evidence. As per the provision contained in Section 32 of Wakf Act, 1995, and the explanation thereof, any dispute regarding any scheme made even before the said Act came into existence, the petitioners have to approach only the Wakf Board and he cannot approach either the Civil court or Tribunal. Therefore, even E.A.Nos.334 & 346 of 2015 before the trial court are not maintainable.

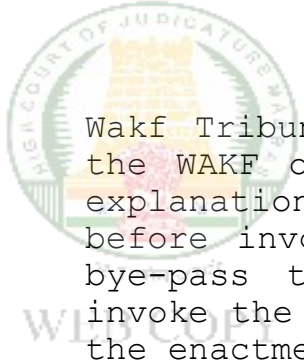
5.2. After Wakf Act 1995, as per Section 32 of said Act, the Wakf Board is alone having the power to settle the disputes relating the Wakf, even though there is a Scheme Decree. In support of his contentions, he relied on a judgment of the Supreme Court reported in 2011 (6) CTC 397, Mohamed Mujeebur Rahman Vs. The State of Tamil nadu. Therefore, the trial court after considering all the facts and material available on record considered the case and dismissed the applications of the petitioners on merits. Therefore, he prays for the dismissal of the Civil Revision Petitions.

6. Notice as well as private notice was ordered by this Court on 30.08.2016.

7. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents and perused the materials available on record.

8. The crux of the point to be decided in both the Civil Revision Petitions is whether the order impugned is sustainable in the eye of law?

9. A perusal of the impugned orders passed by the Court below would show that wayback in the year 2012 itself, the election was held by the Commissioner appointed by the Court and it was supervised by the WAKF Board of Tirunelveli. Therefore, the contention of the petitioners that 29 streets were included only in the year 2015 does not merit acceptance and no materials have been placed to substantiate the contention of the petitioners on this aspect. Hence, this Court has no option but to reject the said contention. Further, in the case on hand, the petitioners make an attempt to mark some additional evidence by way of typed set of papers. As far as Civil Revision Petitions are concerned, under Article 227 of the Constitution of India, additional evidence cannot be received before this Court and it should be done only before the Court concerned. Further, it is pertinent to mention here that subsequent to the enactment of the Wakf Act, 1995, the Wakf Board has been empowered to decide all the matters arising out of the Schemes evolved by the Civil Court. The main objection of the said Act is to provide for a better management of WAKF and also appointment of a



Wakf Tribunal to consider all questions and disputes pertaining to the WAKF or WAKF property. The petitioners have not offered any explanation as to why they have not approached the Wakf Tribunal before invoking jurisdiction of this Court. The petitioners cannot bye-pass the remedy available under the WAKF Act and directly, invoke the jurisdiction of this Court or else, the purpose for which the enactment was enacted would be diluted.

10. Yet another contention of the petitioners that the date of general election was not given due notice as per Clause No.7 also cannot be accepted because the process had started from 09.02.2015 followed by a final date on 29.10.2015. Further, the delay in approval was condoned by the general body meeting which is evidence from Ex.R.3 which is the copy of the resolution held in the General Body Meeting on 01.11.2015. Admittedly, as per the attendance register-Ex.R.1, the petitioners have not participated in the said General Body Meeting and therefore, they cannot contend that the resolution passed by the General Body Meeting is not true and valid.

11. That apart, the Court below has rightly pointed out the fact that non-filing of the petitions against the respondents in the official capacity but the filing of the petitions against the respondents individually who are the President, Secretary and Treasurer of the trust is the procedural flaw. Therefore, this Court is of the considered view that the respondents had not violated the provisions of the Scheme Decree formulated by the Court. The election was held on 06.12.2015 and the petitioners preferred both the CRPs in the month of July 2016 and notice as well as private notice were ordered on 30.08.2016, there was no interim stay at the time of admission and admittedly, the period of the members would have completed by then and in otherwords, virtually, due to efflux of time, this CRPs have become infructuous. To sum up, there is no reason for interfering with the orders of the Court below made in E.A.No.334 and 346 of 2015 in O.S.No.119 of 1956 on the file of First Additional Subordinate Judge, Nagercoil, dated 04.12.2015.

12. In the light of the factual position of the matter, both the Civil Revision Petitions are dismissed. Consequently, connected miscellaneous petitions are closed. However, there will be no order as to costs.

Sd/-

Assistant Registrar

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The First Additional Subordinate Judge,
Nagercoil.

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- 1 CC TO Mr.M.P.SENTHIL , ADVOCATE IN SR No. 92099.
- + 1 CC TO Mr.T.ARUL , ADVOCATE IN SR No.92120.
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CRP(PD) (MD) Nos.1681 of 2016 and 1685 of 2016

25.10.2018