



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.09.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

WEB COPY

C.R.P. (MD) (PD) Nos.976 of 2016 and 1411 of 2017
and

CMP (MD) Nos.4870 and 6591 of 2016
and

CMP (MD) No.7079 of 2017

C.R.P. (PD) No.976 of 2016:

Appapallivasal,
rep. by its President Kadhar Sahib,
No.186/97, Appapalli Street,
Kayalpattinam,
Tuticorin,
Tuticorin District.

... Revision Petitioner/3rd respondent

Vs

1.M.M.Meera Sahib
2.S.A.Meera Sahib
3.M.A.S.Jarook

... Respondents 1 to 3/Petitioners

4.The Tamil Nadu Wakf Board,
rep. by its Chief Executive Officer,
Chennai.

5.The Superintendent of Wakf,
15/54, Wakf Board Office,
S.N.High Road, Tirunelveli

... Respondents 1&2/Respondents 1&2

C.R.P. (PD) No.1411 of 2017:

1.M.M.Meera Sahib

2.S.A.Meera Sahib

3.M.A.S.Jarook ... Revision Petitioners/Petitioners
(Petitioners 1 to 3 for themselves and
also represented on behalf of the
General Body Members (Jamath Members)
of the Appa Pallivasal)

-Vs.-

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



2.Wakf Superintendent,
Tamil Nadu Wakf Board,
No.15/54, 2nd Floor,
S.N.H.Road,
Tirunelveli-627 001.

3.Appa Pallivasal,
rep. by its Unrecognized
Executive Committee by its
President Khader Sahib Maraikayar,
No.186/97, Appa Pillai Street,
Kayalpattinam - 628 204
Tuticorin District.

.. Respondents/Respondents

(The 3rd respondent for himself and
also represented on behalf of the
unrecognized members of the
Executive Committee)

Civil Revision Petition No.976 of 2016 filed under Article 227 of
Constitution of India seeking to strike of the Wakf Original
Petition in W.O.P.No.29 of 2016 on the file of the Wakf Tribunal-
cum-Sub Court, Tuticorin.

Civil Revision Petition No.1411 of 2017 filed under Article 227 of
Constitution of India against the order dated 9.3.2016 passed in
I.A.No.37 of 2016 in W.O.P.No.29 of 2016 on the file of the Wakf
Tribunal (Subordinate Judge), Tuticorin.

For Petitioner in	:	Mr.M.Mahaboob Athiff
CRP.No.976/2016		for M/s.Ajamal Associates
& 3 rd Respondent in		
CRP.No.1411/2017		
For Respondent No.1		Mr.N.Subramanian
in CRP.No.976/2016	:	
and petitioners in		
CRP.No.1411/2017		
For Respondent No.4	:	Mr.K.K.Senthil
in CRP.No.976/2016		
& 1 st Respondent in		
CRP.No.1411/2017		
For R2, R3 & R5	in :	No Appearance
CRP.No.976/2016		
For R5	in :	No Appearance
CRP.No.1411/2017		

**COMMON ORDER**

While C.R.P.(MD)No.976 of 2016 has been filed by Appa Pallivasal to struck off W.O.P.No.29 of 2016 on the file of the Wakf Tribunal (Sub-Court), Tuticorin, C.R.P.(MD)No.1411 of 2017 has been filed against the order dated 09.03.2016 in I.A.No.37 of 2016 in W.O.P.No.29 of 2016 on the file of the Wakf Tribunal (Sub-Court), Tuticorin.

2. The petitioners in C.R.P.No.1411 of 2017 are the original petitioners before the Wakf Tribunal and they filed W.O.P.No.29 of 2016 for declaration and for permanent injunction. In W.O.P.No.29 of 2016, the Wakf Board, the Wakf Superintendent, Tirunelveli and Appa Pallivasal have been arrayed as respondents 1 to 3.

3. By consent, both revisions were heard together and disposed of by this common order.

4. For the sake of convenience, the parties are referred to as per their array in W.O.P.No.29 of 2016.

5. Along with W.O.P.No.29 of 2016, the petitioners have filed I.A.No.37 of 2016 under Order 39, Rule 1 and 2 of C.P.C. seeking an ad-interim injunction restraining the respondents and their men and agents from demolishing third respondent Pallivasal building and Durgah building till the disposal of W.O.P.No.29 of 2016.

6. Upon consideration of the rival submissions, by an order dated 09.03.2016, the Wakf Tribunal, partly allowed I.A.No.37 of 2016, thereby restrained the respondents from demolishing the Durgah building till the disposal of O.P. In respect of Pallivasal, the Wakf Tribunal dismissed the petition. Being aggrieved, the petitioners have preferred C.R.P.No.1411 of 2017. It is seen from the records that after the disposal of I.A.No.37 of 2016, the third respondent filed C.R.P.(MD)No.976 of 2016 on 20.04.2016 seeking to struck off W.O.P.No.29 of 2016.

7. I heard Mr.M.Mahaboob Athiff, learned counsel for the petitioner in CRP(MD)No.976 of 2016 and the 3rd Respondent in CRP(MD) No.1411 of 2017, Mr.N.Subramanian, learned counsel for the 1st respondent in CRP(MD)No.976 of 2016 and the petitioners in CRP(MD) No.1411 of 2017 and Mr.K.K.Senthil, learned counsel for the 4th respondent in CRP(MD)No.976 of 2016 and the 1st respondent in CRP(MD) No.1411 of 2017 and perused the materials available on record.

8. According to the petitioners, the Wakf, called as Appa Pallivasal has got its origin some 600 years back and the property for which the said Wakf was created in S.No.471/1 to an extent of 2 acres and 50 cents. The Durgah was in existence in the above land and the said Wakf was registered under the Wakf Act. The object of the said Wakf was for conducting five times prayers in a day, daily congregation etc. The management of the said Wakf was as per the



election by the Jamath, according to customs, but after the introduction of the Wakf Act, the provisions contained under the Wakf Act alone have to be followed up, regarding the election as well as the recognition by the Wakf Board.

9. According to the petitioners, the members of the third respondent Pallivasal shall be the residents of Appa Palli street living there, ancestrally and all men above the age of 18 years and offering prayers in the Jamath and the petitioners are the residents of Appa Palli street.

10. The case of the petitioners is that as per the customary practice, right from time immemorial, a member in one Jamath cannot be a member in any other Jamath. Since the self-styled office bearers of the Executive Committee of the Wakf in question, particularly, Khader Sahib Maraikayar were trying to pull down the entire ancient Durgah building as well as the Pallivasal and to construct a new one, the petitioners have filed the petition.

11. The grievance of the petitioners is that there was no election conducted to the said Wakf after 2010 and Khader Sahib Maraikayar and his men sought to deviate and compel the members from adopting and following the five time prayers, as per the custom as well as under the proforma issued by the Wakf Board. Though with the intervention of other members of the Wakf, Khader Sahib Maraikayar and his men managed to demolish the entire prayer hall in the middle and only the Durgah is remaining in the front portion and the washing area in the rear side.

12. According to the petitioners, they have also lodged a complaint to the Wakf Superintendent, Tirunelveli narrating the entire episode. The Wakf Superintendent, Tirunelveli post was vacant and the Wakf Superintendent, Madurai was discharging the functions of Wakf Superintendent, Tirunelveli. By the proceedings dated 25.02.2016, the Wakf Superintendent, Madurai requested the District Collector and the Superintendent of Police, Tuticorin to maintain law and order situation. While issuing proceedings dated 25.02.2016, the Wakf Superintendent, Madurai made it clear that no one had any right to keep the Durgah under lock and key and that without permission of the Wakf Board, no one has got any right to keep under lock and key the Durgah and the Pallivasal buildings and a request was made to open the Durgah without affecting the rights to offer prayers.

13. According to the petitioners, since Khader Sahib Maraikayar and his men acted in an illegal manner in demolishing the ancient mosque and other buildings without any sanction and permission from the Wakf Board and the demolition of the building itself was unholy, the petitioners have filed the petition before the Wakf Tribunal.



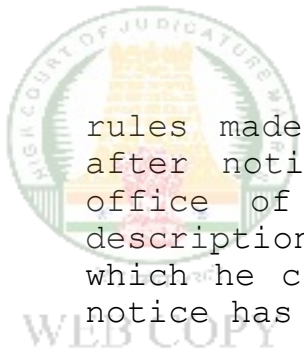
14. The case of the third respondent is that the Executive Committee was a recognised one and in the General Body meeting, a resolution was passed to demolish the Pallivasal and construct a new one and pursuant to the resolution only Pallivasal building was demolished and there was no proposal to demolish the Durgah buildings.

15. it is pertinent to point out that in its order under revision in C.R.P.(MD)No.1411 of 2017, the Wakf Tribunal recorded that the Wakf Board and the Wakf Superintendent have not filed the counter-affidavit and only the third respondent has filed the counter. On a perusal of the counter-affidavit of the third respondent, it is seen that since the Pallivasal building was in a dilapidated condition, a resolution was taken to demolish the same and to construct a new one. Accordingly, Pallivasal buildings were demolished and new construction activities were going on. It was also contended that no statutory notice under Section 89 of the Wakf Act has been issued before filing the petition and in the absence of statutory notice, the petition filed by the petitioner is not maintainable. According to the third respondent, in order to prevent the Committee members from carrying out their acts, the petitioners have filed the petition.

16. It appears from the order under revision, this Court finds that qua the issue raised by the third respondent that no statutory notice was issued before institution of the main petition, the Wakf Tribunal has not discussed anything about the said aspect in its order in I.A.No.37 of 2016. On the other hand, the Wakf Tribunal, recorded that most part of the Pallivasal building was demolished and only a small portion left out and that the entire Durgah building was not demolished. The Wakf Tribunal also recorded that the said position was accepted by the petitioners. Further, the third respondent stated that they are not going to demolish the Durgah building. From the order, this Court finds that in order to preserve the Durgah, the Wakf Tribunal granted interim injunction restraining the respondents from demolishing the Durgah building.

17. When the party to the proceeding raises a plea that the petition is not maintainable as no statutory notice under Section 89 of the Wakf Act before filing the petition, it is the duty of the Wakf Tribunal to deal with the said aspect. But in the case on hand, the Wakf Tribunal has failed to deal with the said aspect. In the case on hand, the Wakf Board and Wakf Superintendent have been arrayed as party respondents. On a perusal of the copy of the petition being W.O.P.No.29 of 2016 annexed to C.R.P.(MD)No.976 of 2016, this Court finds that in the list of documents, no such notice was shown and petition averments also silent.

18. No doubt, Section 89 is mandatory and in the negative form as it comes to be revealed from the language of Section which reads, "No suit shall be instituted against the Board in respect of any Act purporting to be done by it in pursuance of this Act or any



rules made thereunder, until their expiration of two months next after notice in writing has been delivered to, or left at, the office of the Board, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims and the plaint shall contain a statement that such notice has been so delivered or left.

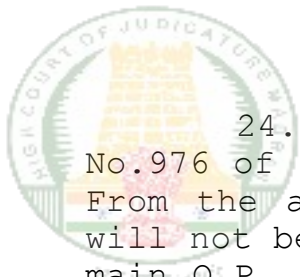
19. The tenor of the language employed in Section 89 leaves no room for any misinterpretation to the effect of dispensing with the notice under Section 89 and therefore, so far as the warranting Section 89 is concerned, the only conclusion that the Court could arrive at is that no suit shall lie without compliance of Section 89 and in fact such a suit, as it has been instituted in the form of Wakf Original Petition should not have been entertained and taken on file by the Tribunal.

20. On a perusal of the main petition, it is seen that allegations were made against the Wakf Board and Wakf Superintendent that despite complaint lodged by the petitioners against the Executive Committee members of the third respondent Pallivasal, the respondents 1 and 2 have not taken any action against the Executive Committee members of the third respondent Pallivasal. As stated supra, the Wakf Board and the Wakf Superintendent have been arrayed as respondents 1 and 2 respectively in the main petition. On a reading of the petition, it is seen that no averments made in the petition that prior to the filing of the petition before the Wakf Tribunal, the petitioners have complied with the provisions of Section 89 of the Wakf Act.

21. It appears from the order of the Wakf Tribunal in I.A.No.37 of 2016 that though the Wakf Tribunal heard the submissions of the counsel for the Wakf Board, it has not discussed the submissions advanced by the counsel appearing for the Wakf Board and it has only recorded the submissions of the petitioners and the third respondent Pallivasal and proceeded the matter, thereby partly allowed the petition.

22. Normally, Wakf Tribunal should raise a specific issue regarding issuance of statutory notice and permit the petitioner to produce notice issued by him before filing the original petition and/or suit. When it was urged for the third respondent that no notice was issued before filing the petition, nothing has been produced by the petitioners to show that such a notice has been issued and copy as well as acknowledgements of receipt of the same were produced.

23. The issue of a notice under Section 89 is a condition precedent to the institution of the suit and/or petition itself. Cases where suits/petitions have been instituted without the issue of a notice in accordance with Section 89 as in the instant case, are cases which clearly fall under the provisions of the Code of Civil Procedure.



24. The third respondent Pallivasal has filed C.R.P.(MD) No.976 of 2016 before this Court to struck off W.O.P.No.29 of 2016. From the available papers on record before this Court, this Court will not be in a position to deal with the aspect of striking of the main O.P. and the maintainability of main petition qua non-issuance of statutory notice, as both parties have failed to produce material papers before this Court. Therefore, in the interest of justice, it would be appropriate to remit the matter to the Wakf Tribunal to find out whether the statutory notice which is mandatory was issued under Section 89 of the Wakf Act before filing of the main O.P. and decide the matter afresh.

25. Without expressing any opinion on the merits of the matter, this Court hereby remits the matter to the Wakf Tribunal, Tuticorin to find out whether the statutory notice, which is mandatory, was issued under Section 89 of the Wakf Act before filing of the main petition and decide the matter afresh within a period of one month from the date of receipt of a copy of this order. The Wakf Tribunal, before giving finding on the other issues, if any, should give a finding with regard to issuing of statutory notice under Section 89 of the Wakf Act. It is made clear that only in the interest of justice, this Court remitted the matter to the Wakf Tribunal. In the interest of both parties and also in the interest of members of the Muslim community to have the daily prayers, the interim order granted by the Wakf Tribunal, Tuticorin in I.A.No.37 of 2016, dated 09.03.2016 shall continue till the disposal of the main O.P. The Wakf Tribunal, Tuticorin is directed to list the matter on day-to-day basis and dispose of the matter in terms aforesaid. Both parties are directed to co-operate the Wakf Tribunal for early disposal of the main O.P.

26. With the above observations, both the Civil Revision Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-I)

To
The Subordinate Judge,
Wakf Tribunal (Sub Court), Tuticorin.

+2CC to M/s.P.JESSI JEEVA PRIYA, Advocate, SR.Nos.82378,82379

C.R.P. (MD) (PD) Nos.976 of 2016 and 1411 of 2017 and
CMP(MD) Nos.4870 and 6591 of 2016 and
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