

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.06.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

**CRP (NPD) No.1657, 1659, 1660, 1661, 1662, 1663,
1664, 1665 and 1666 of 2010.**

Masjide ea Mukathas Sunnath-Val Jamath
Rep. by its Secretary P.S.Abdul Lathif,
s/o Shahul Hameed,
Shanmugham Road, Tambaram West,
Chennai-45.
petitions

.... Petitioner in all revision

Vs.

Haji T.Syed Ibrahim

... Respondent in CRP (NPD)
No.1657 of 2010

Janab Abdul Razak

... Respondent in CRP (NPD)
No.1659 of 2010

M.A.Hussain Abdul Khader

... Respondent in CRP (NPD)
No.1660 of 2010

Janab Ismail Mujeeb

... Respondent in CRP (NPD)
No.1661 of 2010

1. Khaja Fakir
2. Ismail Mujeeb

... Respondents in CRP (NPD)
No.1662 of 2010

K.Abdul Razaak

... Respondent in CRP (NPD)
No.1663 of 2010

1. G.Nirmala (deceased)
2. T.M.G.Gruseo

... Respondents in CRP (NPD)
No.1664 of 2010

Naina Mohammed

... Respondent in CRP (NPD)
No.1665 of 2010

Janab Abdul Wahab

... Respondent in CRP (NPD)
No.1666 of 2010

PRAYER in CRP NPD No.1657 of 2010: Civil Revision Petition filed under Section 83(9) of the Wakf Act 1995 against the order dated 18.09.2009 passed in O.S.No.78 of 1999 by the Principal Subordinate Judge, Wakf Tribunal, Chengalpet.

PRAYER in CRP NPD No.1659 of 2010: Civil Revision Petition filed under Section 83(9) of the Wakf Act 1995 against the order dated 18.09.2009 passed in O.S.No.84 of 1999 by the Principal Subordinate Judge, Wakf Tribunal, Chengalpet.

PRAYER in CRP NPD No.1660 of 2010: Civil Revision Petition filed under Section 83(9) of the Wakf Act 1995 against the order dated 18.09.2009 passed in O.S.No.83 of 1999 by the Principal Subordinate Judge, Wakf Tribunal, Chengalpet.

PRAYER in CRP NPD No.1661 of 2010: Civil Revision Petition filed under Section 83(9) of the Wakf Act 1995 against the order dated 18.09.2009 passed in O.S.No.82 of 1999 by the Principal Subordinate Judge, Wakf Tribunal, Chengalpet.

PRAYER in CRP NPD No.1662 of 2010: Civil Revision Petition filed under Section 83(9) of the Wakf Act 1995 against the order dated 18.09.2009 passed in O.S.No.81 of 1999 by the Principal Subordinate Judge, Wakf Tribunal, Chengalpet.

PRAYER in CRP NPD No.1663 of 2010: Civil Revision Petition filed under Section 83(9) of the Wakf Act 1995 against the order dated 18.09.2009 passed in O.S.No.87 of 1999 by the Principal Subordinate Judge, Wakf Tribunal, Chengalpet.

PRAYER in CRP NPD No.1664 of 2010: Civil Revision Petition filed under Section 83(9) of the Wakf Act 1995 against the order dated 18.09.2009 passed in O.S.No.76 of 1999 by the Principal Subordinate Judge, Wakf Tribunal, Chengalpet.

PRAYER in CRP NPD No.1665 of 2010: Civil Revision Petition filed under Section 83(9) of the Wakf Act 1995 against the order dated 18.09.2009 passed in O.S.No.79 of 1999 by the Principal Subordinate Judge, Wakf Tribunal, Chengalpet.

PRAYER in CRP NPD No.1666 of 2010: Civil Revision Petition filed under Section 83(9) of the Wakf Act 1995 against the order dated 18.09.2009 passed in O.S.No.86 of 1999 by the Principal Subordinate Judge, Wakf Tribunal, Chengalpet.

For Petitioner : Mr.N.A.Nissar Ahmed in all petitions
 For Respondent : No appearance in all petitions

COMMON ORDER

The revision petitioner is the plaintiff in all the original suits on the file of the Wakf Tribunal/Principal Subordinate Judge, Chengalpet. He filed the suits for recovery of money from the respective respondents/tenants being the arrears of rent. The respondents filed their respective counters and both the parties went for trial. The learned Wakf Tribunal/Principal Subordinate Judge, after framing necessary issues dismissed the suit, mainly on the ground that the dispute arising between the landlord and tenant cannot be decided by the Wakf Tribunal. Aggrieved over the same, the plaintiff filed the present civil revision petitions.

2. At the outset it may be observed that the suit property belongs to Wakf Board and the plaintiff had filed the suit claiming arrears of rent from the respondent/defendant. In the decision in ***Ramesh Gobindram (dead) through LRs Vs. Sugra Humayun Mirza Wakf reported in 2010(8) Supreme Court Cases 726***, it has been held that the crucial question that shall have to be answered in every case where a plea regarding exclusion of the jurisdiction of the civil court is raised is whether

the Tribunal is under the Act or the Rules required to deal with the matter sought to be brought before a civil court. If it is not, the jurisdiction of the civil court is not excluded. But if the Tribunal is required to decide the matter the jurisdiction of the civil court would stand excluded.

3. It is to be noted that Section 85 of the Wakf Act clearly bars jurisdiction of civil courts to entertain any suit or proceedings in relation to orders passed by or proceedings that may be commenced before the Tribunal. So long as the question or the question raised before the civil court does not fall within the powers vested in the tribunal, the jurisdiction of the civil court to entertain a suit or proceedings in relation to any such question cannot be said to be barred.

Section 83 of the Wakf Act reads 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 Tribunals.

(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.

(3) Where any application made under sub-section (1) relates to any wakf property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of the wakf actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter: Provided that the State Government may, if it is of opinion that it is expedient in the interest of the wakf or any other person interested in the wakf or the wakf property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question

or other matter relating to such wakf or wakf property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the Tribunal is of opinion that it is necessary in the interests of justice to deal with the application afresh.

(4) Every Tribunal shall consist of one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, and the appointment of every such person may be made either by name or by designation.

(5) The Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, or executing a decree or order.

(6) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), the Tribunal shall follow such procedure as may be prescribed.

(7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a civil court.

(8) The execution of any decision of the Tribunal shall be made by the civil court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal: Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit.

4. It is noteworthy that the expression "for the determination of any dispute, question or other matter relating to a wakf or wakf property" appearing in Section 83(1) also appears in Section 85 of the Act

and Section 85 of the Act does not, however, exclude the jurisdiction of the civil courts merely because the dispute is relating to Wakf or Wakf property. However, It is relevant to point out that the Wakf Act, 1955 was amended in the year 2013 and further amended in the year 2015 and the civil court's jurisdiction is totally taken away as far as the Wakf Board property is concerned. However, the present suits were initially filed before the Wakf Tribunal, before the amendment made in the Wakf Act and as per the decision in *Ramesh Gobindram (dead) through LRs Vs. Sugra Humayun Mirza Wakf reported in 2010(8) Supreme Court Cases 726*, (cited supra), only the civil court has got jurisdiction. The said judgment was recently followed by the Honourable Supreme Court in *Punjab Wakf Board Vs. Sham Singh Harike reported in 2019 SCC On line SC 142* wherein, in paragraph No.73, it has been held thus.

" Now coming to civil appeal No.93 of 2019 (Punjab Wakf Board V. Teja Singh), the suit was filed by Wakf Board for possession of suit property and injunction in the Tribunal. The above suit was fully covered by the ratio laid down by this court in Ramesh Gobindram (supra). The High Court relying on Ramesh Gobindram case has allowed revision petition filed by the defendant. We do not find any error in the order of the High Court allowing the revision

petition filed by the defendant directing the plaint along with documents was returned to be presented before the appropriate court i.e. civil court. We uphold the above order of the High Court. In the result, this appeal deserves to be dismissed."

5. As per the decision rendered in **Ramesh Gobindram** case (cited supra), only the civil court has got jurisdiction as on the date of passing of decrees and hence the decrees and judgments passed by the Wakf Tribunal on 18.09.2009, dismissing the claim made by the revision petitioner are perfectly in order and I do not see any reason to interfere with the same.

6. In the result, the civil revision petitions in CRP (NPD No.1657, 1659, 1660, 1661, 1662, 1663, 1664, 1665 and 1666 of 2010 are dismissed. No costs. The decrees and judgments passed by the trial court are upheld.

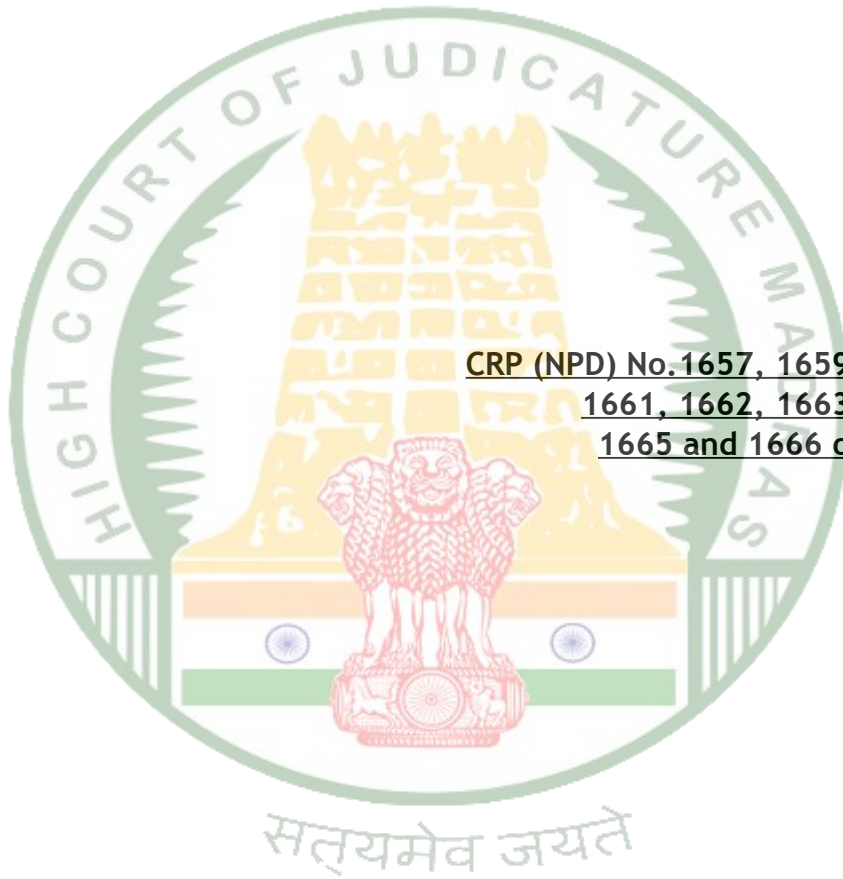
17.06.2019

Index : Yes/No
Internet : Yes/No
Speaking/non-speaking order
mst

To

1. The Principal Subordinate Judge, Wakf Tribunal, Chengalpet.

R.HEMALATHA,J.
mst



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