

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2019

CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P.No.11169 of 2010

The Management Committee,
rep. by its President,
Mr. A.Jainulabdin,
Amanusha Fakkir Dargah,
Srivilliputtur,
Virudhunagar District.

.... Petitioner

/vs/

1. The Tamil Nadu Wakf Board,
rep. by its Chief Executive Officer,
No.1, Jaffar Serang Street,
Vallal Seethakathi Nagar,
Chennai 600 001.

2. Syed

3. Syed Pakkir

4. Syed Ibrahim

5. Syed Shahid

6. Deewan Basha

7. Syed Yacub Sahib

8. Syed Abubacker

9. Syed Mohideen

.... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent comprised in Na.Ka.13166/Aa17/02/Virdhu dated 19.04.2010 arising from the application dated 28.11.2007 to quash the same and consequently direct the first respondent to enforce the order of this Court dated 16.08.1996 made in W.P.11043 of 1996 and order dated 28.06.2007 in C.R.P.862 of 2007 in the matter of hereditaryship succession for the post of Muthavalliship of Amanusha Fakkir Dargah, Srivilliputtur in due compliance with the order of this Court dated 28.01.2010 under in W.P.No.445

For Petitioner : Mr. M.N.S. Mohameed Habeeb Raja

For Respondents : Mr. Hasan Fizal,
for R1

: Mr. Nissar Ahmed,
for R2 to R6.

: Mr. G.R.M.Palaniappan
for R7 to R9

O R D E R

This writ petition has been filed challenging the notice issued by the first respondent Wakf Board directing the petitioner to appear for enquiry for appointment of Muthavalli in respect of one Amanusha Fakkir Dargah at Srivilliputtur.

2. According to the petitioner, the Dargah is surveyed and notified as a Public Wakf, and the first respondent Board has got supervisory control over the administrative affairs of the Dargah, under the Wakf Act. In the month of June 1987, the Wakf Board Appointed a Management Committee of 11 members for a period of five years. Thereafter, the Management Committee has been appointed by the Wakf Board periodically. In the year 2009, the Wakf Board appointed the petitioner Management Committee for a period for 3 years and the petitioner was in charge of the administration of the Dargah and also managing the day to day administration of the Dargah. Thereafter, the respondents 7 to 9 herein filed a petition before the first respondent Board for appointing them as hereditary Muthavalli of the Dargah. The first respondent Wakf Board passed a resolution dated 20.06.2007 rejecting their claim. The above resolution passed by the Wakf Board has been upheld in various judicial proceedings and the respondents 2 to 6 can not claim any hereditary right of succession. Thereafter, in the year 2010, the second respondent filed a writ petition before this Court in W.P.No.445 of 2010 seeking a direction to the first respondent Wakf Board to consider his representation and this Court by an order dated 28.01.2010, directed the first respondent to consider his application and pass orders on merits and in accordance with law. Now, pursuant to the above order, the impugned notice has been issued to the petitioner. According to the petitioner, the right of succession is already decided and finalized. Now, once again, the Wakf Board cannot conduct an enquiry on the said issue and appoint a hereditary Muthavalli.

3. The learned counsel appearing for the petitioner would vehemently contend that, the Wakf Board has no jurisdiction to issue a notice for appointment of Muthavalli based on the

application filed by the respondents 2 to 9 as the issue relating to appoint them as muthavalli by hereditary succession has already been decided and finalized, and the respondents have no power to conduct any enquiry regarding the same. The learned counsel would further contend that the judicial orders passed by the competent Court will bind upon the Wakf Board. Without considering all those judgments, the second respondent has mechanically issued the impugned notice.

4. I have considered the rival submissions and perused the materials available on record.

5. The order impugned in the writ petition is only a notice issued by the first respondent Wakf Board for conducting an enquiry regarding the appointment of Muthavalli. Admittedly, the Wakf Board only has power to appoint Muthavalli under the Wakf Act and the enquiry is being conducted pursuant to the order passed by this Court. If at all the petitioner has any grievance that the respondents 2 to 9 are not entitled to be appointed as muthavalli on the basis of hereditary succession, it is always open to them to appear before the Wakf Board and raise his objection. It is for the Wakf Board to consider those objections and pass any suitable orders. If the respondents 2 to 9 have no right to claim hereditary succession of Muthavalli, it is for the Wakf Board to decide the issue, and it is always open for the petitioner to appear before the Board and raise his objection and without doing so, the petitioner cannot challenge the impugned notice and this Court find no merit in the writ petition.

6. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

mrp

To

The Tamil Nadu Wakf Board,
rep. by its Chief Executive Officer,
No.1, Jaffar Serang Street,
Vallal Seethakathi Nagar,
Chennai 600 001.

+1cc to Mr.L.S.M.Hasan Fizal, Advocate Sr.87416

+1cc to Mr.N.A.Nissar Ahmed, Advocate Sr.87130

+2cc to Mr.M.N.S.Mohamed Habeeb Raja, Advocate Sr.86989

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Sig 13/11/2019