

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.06.2019

PRONOUNCED ON : 11.07.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P (NPD).No. 1079 of 2015

and

M.P.No. 1 of 2015

1.H.Shafikhan
2.Mohammed Rafi
3.M.Akbar Ali
4.S.A.Syed Mazhar Hussain

.. Petitioners

vs

The Election Officer/Wakf Superintendent,
Salem Town Jamia Masjid,
4A/5A, Tippu Sultan Complex,
1st Agraharam, Salem.

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the Docket Order dated 07.02.2015 passed in I.A.S.R.No.1769 of 2015 in O.S.No.36 of 1941 on the file of Principal Sub-Court, Salem.

For Petitioners : Mr.Haja Nazirudeen
standing counsel for
Mr.P.Hari babu

For Respondent : Mr.M.Mohammed Fayaz Ali

ORDER

The present Civil Revision Petition has been filed to set aside the Docket Order dated 07.02.2015 in I.A.SR.No. 1769 of 2015 in O.S.No. 36 of 1941 passed by the Principal Subordinate Court, Salem.

2. By the impugned order, the Principal Subordinate Court, Salem has dismissed the application filed by the petitioners to stay the electioneering process and conduct of election of the Jamia Masjid, Salem Town by the respondent.

3. The petitioners challenged election notice dated 23.09.2014 issued by the Secretary of the Salem Jamia Masjid Trust, Salem on the ground that the notice was contrary to the scheme decree framed by the Learned Subordinate Judge, Salem in O.S.No. 36 of 1941. The petitioners prayed to stay all the electioneering process and conduct of election of Jamia Masjid, Salem Town by the respondent.

4. Earlier, a section of persons members of the Board of Trustees of Jamia Masjid Trust Board, Salem and petition under Section 83 of the Waqf

Act. They challenged the election process of the aforesaid Trust, by making the Chairman of the Tamil Nadu Waqf Board, The Chief Executive Officer, the Tamil Nadu Waqf Board, and the Superintendent of Waqf Board as respondents in W.O.P.No 14 of 2014 before the Principal Subordinate Judge Salem.

5. In the aforesaid proceeding I.A.No. 20 of 2014 was filed for an interim injunction to restrain the respondents from in any manner adding new members conducting elections against the scheme decree passed in O.S.No. 36 of 1941 pending disposal of W.O.P.No. 14 of 2014.

6. I.A.No. 20 of 2014 was dismissed with costs by an order dated 03.12.2014. While dismissing the above I.A.No. 20 of 2014, apart from other observations the court had also observed that by an order dated 17.02.2011 in W.P.No. 3392 of 2011 court had already passed an order for conduct of election within a specified period and therefore there was no merits in the application filed by the petitioners is wherein.

7. After the aforesaid order came to be passed, representation was sent to the chief executive officer on 02.02.2015. Since the said

representation did not evoke desired results, the petitioner herein filed a petition vide I.A.SR.No. 1769 of 2015 in O.S.No. 36 of 1941 before the the Principal Sub- Court, Salem.

8. The said Interlocutory Application was filed to stay the conduct of the election by the respondents herein. By the impugned Docket Order the Court has dismissed the application on the ground that the election was completed for 19 mosques and elected members list was filed.

9. Mr.Haja Nazirudeen, Learned senior counsel for the petitioners submits that notwithstanding passing of the Waqf Act, 1954, the Salem Town Jamia Masjid will be governed by the scheme decree passed in O.S.No. 36 of 1941. He therefore submits that the lower court erred in dismissing the Interlocutory Application. In this connection the learned senior counsel drew my attention to the decision of the courts in the following decisions:

(i) It was held in the decision of the Honourable Supreme Court in the case of **Mohammad Gouse Sahib and others Vs Muhammad Kuthubudin Sahib and Others**,1985 1 SCC 628.

“The Provisions of Sections 55, 57(1) and (3) and 59 of the Wakfs Act make it clear that a suit under Section 92 of C.P.C instituted prior to the coming into

force of the Wakf Act does not abate on the coming into force of the Act. On the other hand the Court is required to issue notice of such a suit to the Board and in the absence of a notice it would be open to the Board to have the decree declared void within one month of the Board's knowledge of the decree. In the present case the decree passed in the suit under Section 92 of C.P.C in 1961 having not been questioned by the Board, the defendants cannot object to the execution of the decree”

(ii) It was held in the case of **Sri Radhakrishna Rice Mill Company and others Vs The Jumma Masjid**, AIR 2003 Andhra Pradesh 70.

“The right of any one to act as Mutawalli, till appointed by the Court, has to be treated as disputed. Moreover, even after the 1954 Act came to be enacted. Sections 92 and 93 of C.P.C continued to be available for the aggrieved persons to get schemes framed in relation to religious institutions including wakfs. Similarly, though separate machinery is provided for adjudication of disputes Sections 92 and 93 of C.P.C for the repeal of which an abortive attempt was made in 1954 Act, are not repealed under this Act.”

(iii) It was held in **Mohammed Jacoo Sait Vs Collector of Trichur District and others**, AIR 1962 Kerala 343 (V 49 C 100) (1).

“ The Administration of wakfs was concerned, inclusive of the power to bring a suit without complying with Section 92 of the Code, is good reason for thinking that, so far as suits by private parties are concerned, Section 55 of the Wakf Act was intended to supplement and not to replace Section 92 of the Code. In other words, the entire subject-matter of Section 92 of the code is not taken away by Section 55 of the Wakf Act.”

10. Mr.Mohammed Fayaz Ali, the Learned Counsel for the respondent submitted that civil court would have no jurisdiction after passing of the Waqf Act,1954. Learned Counsel relied on the decision of the Honourable Supreme Court in the case of **H.Mohamed Ghouse Vs The Chief Executive Officer, Tamil Nadu Waqf Board** reported in 2015 (4) CTC 736.

11. The learned counsel for the respondent Waqf Board further submitted that, explanation to section 32 of Waqf Act, 1995 makes it clear that the Waqf includes a Waqf in relation to which any scheme has been made by any Court of law, whether before or after commencement of the Act and therefore, in terms of sub Section 2 under Section 32 of the Act, only the Waqf Board has jurisdiction to issue appropriate orders as is directed under Section 32 (2) of the Act.

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12. I have considered rival submissions advanced on behalf of the petitioners and the respondent. I.A.SR.No. 1769 of 2015 in O.S.No. 36 of 1941 filed by the petitioners was infructuous even on the date it was filed before the Principal Subordinate Court, Salem. Therefore, the exercise in

this Civil Revision Petition at this point of time is an academic exercise. Therefore, I do not find reason to interfere with the order passed by the learned Principal Subordinate Court.

13. Thus, the present Civil Revision Petition is liable to be dismissed and is hereby dismissed while leaving all the issues open to be decided as and when appropriate opportunity arises. Consequently, the Connected Miscellaneous Petition is also closed. No cost.

11.07.2019

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Index : Yes/No

Internet : Yes/No

To

The Principal Sub-Court,
Salem.

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C.SARAVANAN,J.

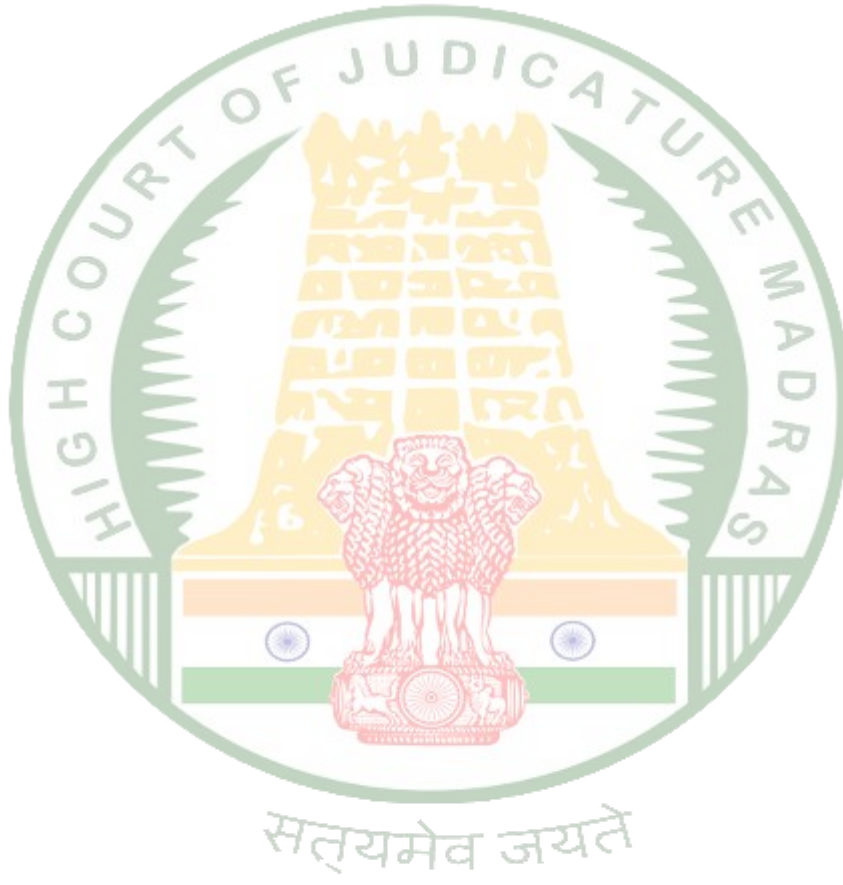
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**Pre-delivery order made in
C.R.P (NPD).No. 1079 of 2015
and
M.P.No. 1 of 2015**

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