

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.4816 of 2012

Janab S.Phyloor Rahaman ...Petitioner
(Janab S.Phyloor Rahaman is substituted in the place of late Janab V.K.Abdul Khader as per the order dated 17.10.2019 made in M.P.No.1 of 2013 in C.R.P.No.4816 of 2012)

Vs.

The Chief Executive Officer,
Tamil Nadu Wakf Board,
Chennai - 600 001.

...Respondent

PRAYER: Civil Revision Petition filed under Section 89 of the Wakf Act r/w Article 227 of the Constitution of India, to set aside the judgment and decree dated 12.3.2012 in Wakf O.S.No.1 of 2009 on the file of the Principal Subordinate Judge (Wakf Tribunal), Chengalpattu.

For Petitioner : Mr.R.Mubarak Basha

For Respondents : Mr.V.Lakshminarayanan

ORDER

The Civil Revision Petition arises against the judgment and decree made in Wakf O.S.No.1 of 2009 on the file of the Principal Subordinate Judge (Wakf Tribunal), Chengalpattu.

2. The plaintiff filed the suit in Wakf O.S.No.1 of 2009 to declare that the suit Kancheepuram Olimammedpet Labbai Jumma Mosque is a denomination mosque, consequentially the provisions of the Wakf Act 43/1995 are not applicable to the suit Mosque in the matter of administration of the suit Mosque and for a permanent injunction restraining the defendant from in any manner invoking any provisions of the Wakf Act for interference in the plaintiff's peaceful administration of the suit Mosque.

3. According to the plaintiff, the properties of the Mosque are not notified Wakf properties and the accounts of the suit Mosque is subjected to the examination of the local fund audit and the annual contributions were paid to the defendant. Further he would contend that the suit Mosque being a denominational Mosque, the control in the matter of administration of the suit Wakf would totally vest with the Executive Committee and General Body.

4. The defendant contended that the suit Mosque in question is governed by the Wakf Act, which was notified in the year 1958. As per Section 5 of the Act, if there is any difference of opinion, the person aggrieved has to file the suit within one year thereafter as per Section 6 of the Wakf Act. According to the defendant, the Wakf Board has got powers

for administration of the suit Mosque and it has also got powers to remove and appoint Muthawallis. During the audit of the accounts of the Mosque, certain irregularities were found and hence, notice was issued to rectify the same. But, Abdul Khader has not given any tenable explanation. The Wakf being a notified one, a person disputing it, must institute a suit before the Tribunal within one year from the date of publication of the list of Wakfs. In these circumstances, the defendant prayed for dismissal of the suit.

5. Before the Wakf Tribunal, on the side of the plaintiff, two witnesses were examined and 18 documents viz., Exs.A1 to A18 were marked and on the side of the defendant, one witness viz., D.W1 was examined and two documents viz., Exs.B1 to B3 were marked. The Tribunal, after taking into consideration the oral and documentary evidences made by the parties, dismissed the suit. Aggrieved over the same, the Civil Revision Petition has been filed.

6. Though the plaintiff contended that the suit Mosque is excluded from the operation of Wakf Act, 43/1995, Ex.B2 produced by the defendant, would nullify the contention of the plaintiff. Ex.B2 dated 17.12.1958 is Gazette notification issued by the Government of Madras.

7. As per Section 2 of the Wakf Act, 1995, the Act would apply to

all Wakfs whether created before or after commencement of the Act. In view of Ex.B2 Gazette notification dated 17.12.1958 and Section 2 of the Wakf Act and in the absence of any evidence or documents being produced on the side of the plaintiff, it would establish that the Mosque was not excluded from the operation of the Wakf Act. Therefore, the contention of the petitioner cannot be accepted and the same is liable to be rejected.

8. It is also pertinent to note that the plaintiff has not challenged the Gazette notification issued on 17.12.1958. As per Section 6 of the Wakf Act, the plaintiff should have challenged the notification within one year from the date of notification. The Wakf Tribunal, taking into consideration all these aspects, rightly dismissed the suit.

9. In these circumstances, I do not find any error or irregularity in the judgment and decree passed by the Wakf Tribunal. The Civil Revision Petition is dismissed. No costs.

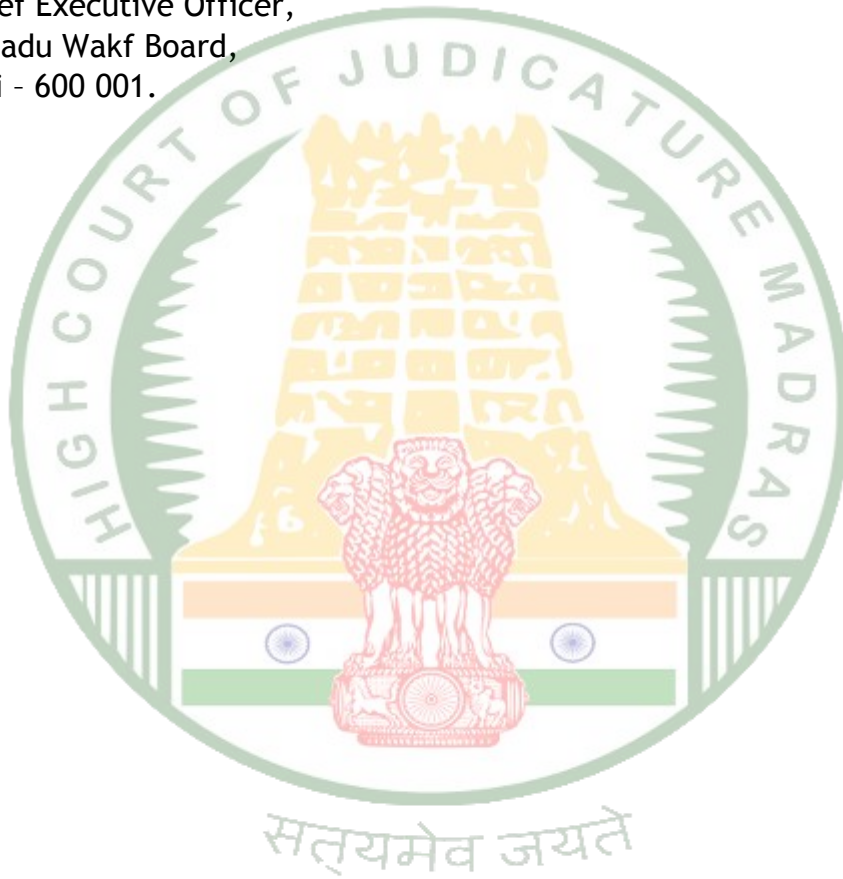
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17.10.2019

Index : Yes / No
Internet : Yes
Speaking order / Non Speaking Order
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To

1. The Principal Subordinate Judge (Wakf Tribunal),
Chengalpattu.
2. The Chief Executive Officer,
Tamil Nadu Wakf Board,
Chennai - 600 001.

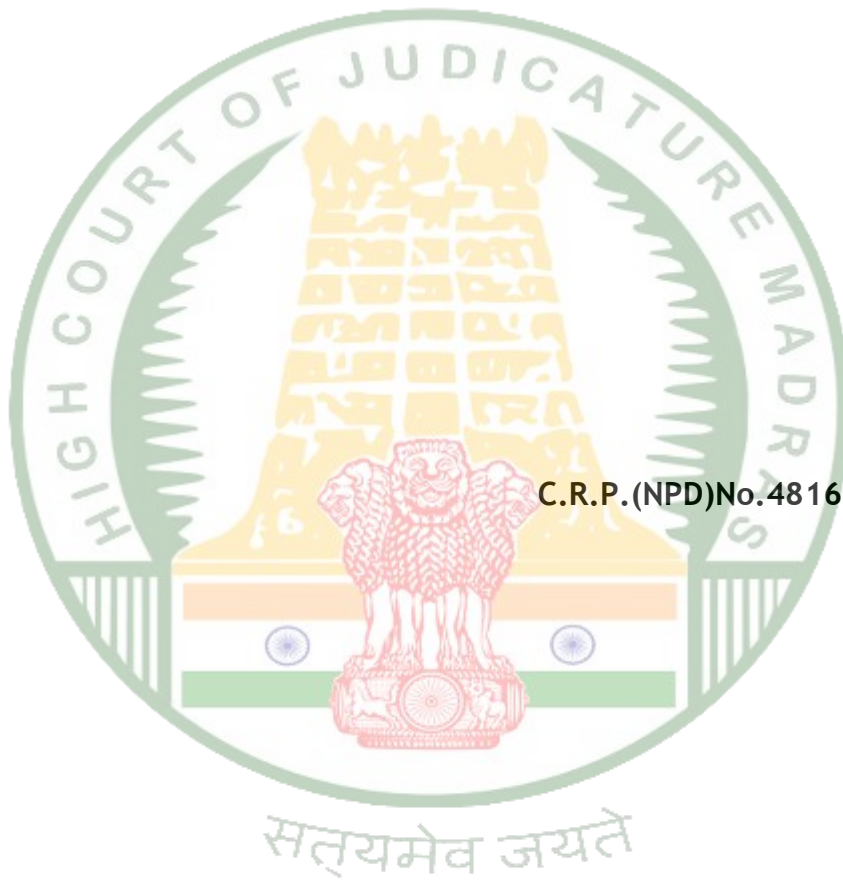


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M.DURAIWAMY, J.

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