

In the High Court of Judicature at Madras

Dated : 22.3.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Writ Appeal No.885 of 2019 & CMP.No.6814 of 2019

Mr.K.M.MohideenKunhi

...Appellant/Petitioner

Vs

1.The Government of Tamil Nadu, rep.
By its Secretary, Backward and Most
Backward Minority Welfare
Department, Fort.St. George,
Chennai-9.

2.Tamil Nadu Wakf Board, rep.by
its Chairman, No.1, Jaffer Syrang
Street, Vallal Seethakathi Nagar,
Chennai-1.

3.Tamil Nadu Wakf Board,rep.by
its Chief Executive Officer, No.1,
Jaffer Syrang Street, Vallal
Seethakathi Nagar, Chennai-1.

4.The Superintendent of Wakfs
(South Chennai), Tamil Nadu
Wakf Board, Dr.Besant Road,
Triplicane, Chennai-5.

...Respondents/Respondents

APPEAL under Clause 15 of the Letters Patent against the
order dated 27.2.2019 passed in W.P.No.3429 of 2019.

W.P.No.3429/2019:

Writ Petition filed under Article 226 of the Constitution of
India to issue a Writ of certiorarified Mandamus to call for the
records in respect of the order from the 2nd Respondent in
Na.Ka.No.12933/11 / B6 / chennai dated 21.7.2018 and pronounced
on 10.10.2018 and quash the same and direct the 2nd Respondent
to approve the members of the committee submitted by the
petitioner.

For Appellant :Mr.M.S.Krishnan, SC for
Mr.T.Velumani
For Respondent-1 :Mr.R.P.Prathap Singh, GA
For Respondents 2-4 : Mr.V.Lakshminarayanan

For Respondent-5 in
WP.No.27498 of 2018 :Mr.M.J.Jaseen Mohamed

For Respondent-6 in
WP.No.27498 of 2018 :Mr.N.A.Nissar Ahmed

Judgment was delivered by T.S.SIVAGNANAM, J

This appeal is directed against the order dated 27.2.2019 made in W.P. No.3249 of 2019, which was disposed of along with W.P.No.27498 of 2018.

2. We have heard Mr.M.S.Krishnan, learned Senior Counsel appearing on behalf of Mr.T.Velumani, learned counsel on record for the appellant, Mr.R.P.Prathap Singh, learned Government Advocate accepting notice for the first respondent, Mr.V.Lakshminarayanan, learned counsel appearing for respondents 2 to 4, Mr.M.J.Jaseen Mohammed, learned counsel appearing for the fifth respondent in WP.No.27498 of 2018 and Mr.N.A. Nissar Ahmed, learned counsel appearing for the sixth respondent in WP.No.27498 of 2018.

3. The appellant herein challenged the order passed by the third respondent herein appointing the Superintendent of Wakf as an Executive Officer of the subject wakf by filing the said writ petitions. The learned Single disposed of the said writ petitions on the ground that the appellant has got an effective alternate remedy under the provisions of the Wakf Act, 1995 (for short, the Act).

4. It is the endeavour of the learned Senior Counsel appearing on behalf of the appellant to convince us that the order impugned in the said writ petitions was wholly unsustainable as it was passed without affording sufficient opportunity and that it was full of inconsistencies.

5. We have heard the learned counsel for the respondents on the above submission.

6. Mr.N.A.Nissar Ahmed, learned counsel appearing for the sixth respondent in the other writ petition namely W.P.No.27498 of 2018, would contend that the appellant has no independent jurisdiction because it is the committee headed by the sixth respondent in the other writ petition, who is nominated by the appellant, has got the power and that the appellant can have no

better right than the sixth respondent. It is further stated that the committee is already before the Wakf Tribunal challenging the order passed by the Executive Officer to manage the affairs of the wakf.

7. The learned Senior Counsel appearing on behalf of the appellant submits that the order impugned in the said writ petitions is, in effect, an order under Section 67 of the Act.

8. We do not agree with the said submission. Since Section 67 of the Act deals with supervision and super session of the committee of management, which has not been done in the order impugned in the said writ petitions The order impugned in the said writ petitions has been passed under Section 65(5) of the Act, which commences with a non obstante clause and it gives power to the Wakf Board to take over the administration of a wakf, if the wakf Board has evidence before it to prove that management of the waqf has contravened the provisions of the Act.

9. The correctness of the order impugned in the said writ petitions cannot be tested by the learned Single Judge since there is an effective alternate remedy provided under the Act namely under Chapter VIII of the Act. Section 83 of the Act deals with constitution of Tribunals and the State Government, by a Notification, has to constitute tribunals for determination of any dispute, the question or other matter relating to a wakf or wakf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals. Admittedly, the State Government has issued a Notification and the tribunals have been constituted. In terms of Sub-Section (5) of Section 83 of the Act, the Tribunal so constituted by the State Government to deal with the disputes referred above, shall have the same power as may be exercised by a civil court under the Civil Procedure Code, 1908 (CPC) while trying a suit or executing a decree or order. Sub-Section (6) of Section 83 of the Act states that notwithstanding anything contained in the CPC, the Tribunal shall follow such procedure as may be prescribed.

10. In the light of the above legal position, the learned Single Judge is perfectly right in not entertaining the said writ petitions and has rightly relegated the appellant to avail the alternate remedy provided under the Act, which is not only an effective remedy, but also an efficacious remedy, as the appellant will be before a Tribunal constituted in terms of Section 83 of the Act. Therefore, we find no error in the order passed by the learned Single Judge.

11. Accordingly, the writ appeal is dismissed. No costs. Consequently, the above CMP is also dismissed.

12. The learned Senior Counsel appearing on behalf of the appellant submits that the learned Single Judge granted liberty to the appellant to approach the Tribunal and fixed a time frame of two weeks from the date of receipt of the impugned order. It is his further submission that the learned Single Judge further directed that till the appeal is filed by the appellant before the Tribunal within the time stipulated, the order of status quo already granted should continue. He further states that the appellant will approach the Tribunal within a period of two weeks and the order of status quo may be directed to be continued.

13. In our considered view, the order of status quo will always result in conflicting opinion, which may ultimately precipitate the issue and the issue will get escalated.

14. Mr.V.Lakshminarayanan, learned Standing Counsel appearing for the Wakf Board submits that the Superintendent of Wakf, who has been appointed as the Executive Officer, has already taken over the respondent Wakf.

15. If such is the situation, then obviously granting an order of status quo would mean that the Executive Officer can continue to be in administration of the wakf.

16. Accordingly, while dismissing the writ appeal, we grant liberty to the appellant to approach the Tribunal within a period of three weeks from the date of receipt of a copy of this judgment. Till the appellant approaches the Tribunal within the time stipulated fixed in this judgment and seeks appropriate relief, whatever status quo prevailing as on date i.e. 22.3.2019, which, according to the learned Standing Counsel for the Wakf Board is that the Superintendent of Wakf is already in control of the wakf, shall be maintained. In the event the appellant fails to adhere to the time schedule, the benefit of this order would not enure to the parties.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

To

1.The Secretary to Government of Tamil Nadu, Backward and Most Backward Minority Welfare Department, Fort.St. George, Chennai-9.

2.The Chairman, Tamil Nadu Wakf Board, No.1, Jaffer Syrang Street,

Vallal Seethakathi Nagar, Chennai-1.

3.The Chief Executive Officer, Tamil Nadu Wakf Board, No.1, Jaffer Syrang

Street, Vallal Seethakathi Nagar, Chennai-1.

4.The Superintendent of Wakfs (South Chennai), Tamil Nadu Wakf Board,

Dr.Besant Road, Triplicane, Chennai-5.

+1 CC to The Govt. Pleader sr 28587.

+1 CC to Mr.V.Raghavachari, Advocate sr 27776.

+1 CC to Mr.J.Jaseem Mohamed Advocate sr 27748.

+1 CC to Mr.T.Velumani, Advocate sr 27595.

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CMP.No.6814 of 2019

KK(CO)

SP(12/04/2019)