

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2019

CORAM:

THE HONOURABLE MR. JUSTICE **R.PONGIAPPAN**

C.R.P.PD.No.1357 of 2014
and M.P.No.1 of 2014

The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffar Syrang Street,
Vallal Seethakadhi Nagar,
Chennai - 600 001.

.... Petitioner

Vs.

1. A.S.Abdul Naser
2. K.Musthafa
3. B.Nazar Ali
4. Haji H.Md.Afzal

5. The District Collector,
Karur District
Karur.

6. The Chairman,
Tamilnadu Wakf Board,
No.1, Jaffar Syrang Street,
Vallal Seethakadhi Nagar,
Chennai - 600 001.

7. The Superintendent,
Tamil Nadu Wakf Board,
No.12 Kiledhar Street,
Trichy - 2.

8. The Inspector,
Tamil Nadu Wakf Board,
No.12 Kiledhar Street,
Trichy - 2.

.... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 06.12.2013 passed in I.A.No.2763 of 2013 in O.A.No.13 of 2012, on the file of the I Assistant City Civil Court (Wakf Tribunal), Chennai.

For Petitioner : Mr.Mohammed Raya Ali

For Respondents

For R1 to R5 : No appearance

For R6 : Mr.V.Lakshminarayana

For R7 & R8 : Mr.N.A.Nissar Ahmed

ORDER

Aggrieved over the order dated 06.12.2013 passed in I.A.No.2763 of 2013 in O.A.No.13 of 2012, on the file of the I Assistant City Civil Court (Wakf Tribunal), Chennai, the petitioner, who is the first respondent in the above referred Original Application filed this Civil Revision Petition.

2. Before the Tribunal, the first respondent in this Civil Revision Petition filed an Original Application in O.A.No.13 of 2012 for the following reliefs:-

(i) for mandatory injunction against the respondents 7 & 8 to conduct physical check of the atrocities, activities of the second and third respondent when their post is terminated and ceased with immediate effect from 19.07.2011 and submit the report to the sixth respondent

being the head of the Tamilnadu Wakf Board Committee take necessary action against the second and third respondent their men and agents

(ii) for direction to the petitioner to retain the construction Committee appointed by the sixth respondent for better appreciation of the management of Aththar jamath Eidgah Maasjid Mosque, Karur in the interest and welfare of the Muslim community at large and oblige

(iii) to declare the functioning of the present committee run by the respondents 2 & 3 in fraudulent manner as null and void

(iv) for permanent injunction restraining the respondents 2 & 3 from collecting donations

(v) for costs.

3. When the Original Application pending for enquiry, the petitioner has been filed an application in I.A.No.2763 of 2012 under Order VII Rule 10(1) of C.P.C. 1908, and prayed to return the Original Application for presenting before the Court, which is having jurisdiction to try the Original Application. The learned Presiding Officer, Wakf Tribunal, after affording opportunities to the first respondent/petitioner, by an order dated 06.12.2013, dismissed the application filed by the revision petitioner by observing as both the Courts situated at Chennai as well as Trichy are having jurisdiction to entertain the Original Application, further it was held

that the issue of jurisdiction will be decided in the O.A. itself. Challenging the same, the petitioner is before this Court and pleaded to set aside the said impugned order and to allow the application.

4. Today when this petition is taken up for hearing, both the learned counsel appearing for the petitioner and the respondents are present.

5. The learned counsel appearing for the petitioner made a submission that as of now, as per the direction given by our Hon'ble Apex Court, the Section 83(1) of the Wakf Act, 1995 was amended and thereafter Tribunal for the entire State has been constituted for trying these type of petitions. Further added as the Tribunal constituted under the notification dated 22.02.2018 in No.70 of Tamil Nadu Government Gazette, is only having the jurisdiction. Though when at the time the application was presented before the learned I Assistant City Civil Court, Chennai, the said Tribunal is having jurisdiction, now as per the amendment made in Section 83(1) of Wakf Act, 1995, only the Tribunal now constituted is having jurisdiction.

6. In this aspect, the learned counsels appearing for the respondents 6 to 8 would fairly concede that the argument advanced by the learned counsel appearing for the petitioner is correct.

7. The submissions made by the learned counsel on either side are considered.

8. It is true that as of now, a Tribunal was constituted under the head of a Chairman and two Members and thereafter most of the cases were transferred to the said Tribunal. In the said circumstances, I am of the considered opinion that after the constitution of new Tribunal under Section 83(1) of Wakf Act, the I Assistant City Civil Court, Chennai, is not having any jurisdiction to try the Original Application filed by the first respondent. So, it is the duty of the learned Presiding Officer, I Assistant City Civil Court, Chennai, to return the Original Application filed by the first respondent for presenting the same before the appropriate Forum, which is having the jurisdiction.

9. It is also seen that in the impugned order, the learned Presiding Officer, I Assistant City Civil Court, Chennai, without following the procedure held under Section 14(1) of C.P.C., has wrongly observed as

it will be appropriate to decide the issue of jurisdiction in the O.A. itself. In this aspect, it is the duty of the Court below to frame preliminary issues in respect to jurisdiction. Without framing preliminary issues, the learned Presiding Officer, I Assistant City Civil Court, Chennai, has committed grave error by passing the order as above. Hence, the impugned order is having material irregularity and thereby the interference of this Court is very much necessary in the order dated 06.12.2013 passed in I.A.No.2763 of 2013 in O.A.No.13 of 2012 by the learned Presiding Officer, I Assistant City Civil Court (Wakf Tribunal), Chennai.

10. In the light of the above discussions, this Civil Revision Petition is allowed and the learned Presiding Officer, I Assistant City Civil Court (Wakf Tribunal), Chennai, is directed to return the Original Application in O.A.No.13 of 2012 to the first respondent with a direction to present the same before the appropriate Forum within a period one month from the date of return. Consequently, connected miscellaneous petition is closed. No costs.

WEB COPY

06.11.2019

Internet : Yes / No

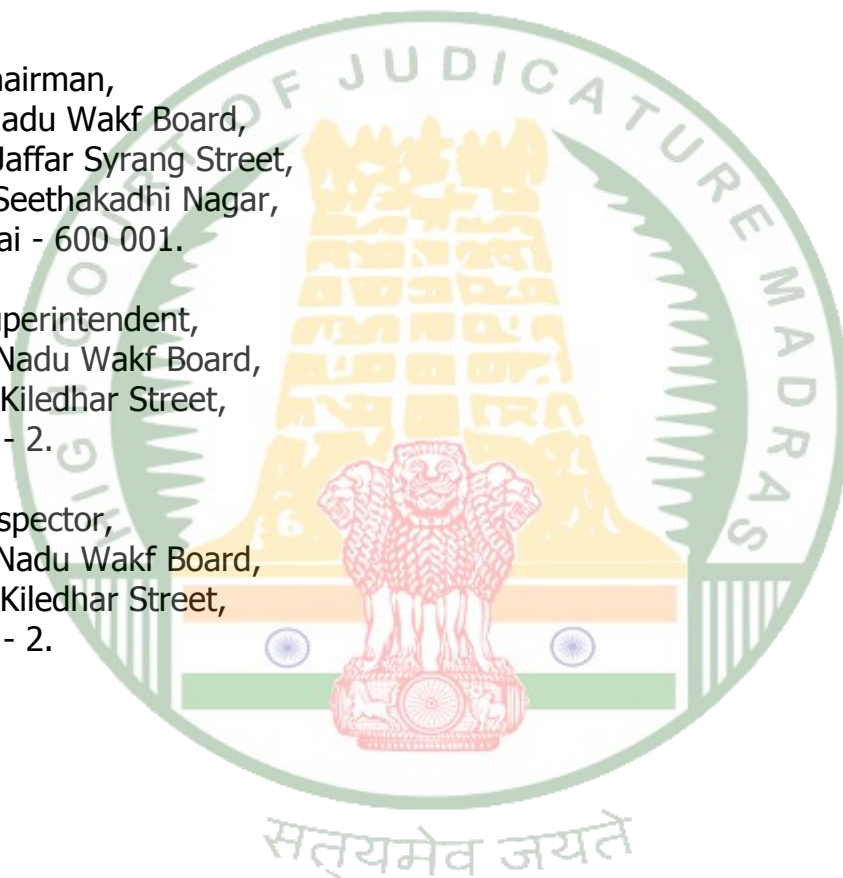
Index : Yes / No

Speaking / Non Speaking order

rts

To

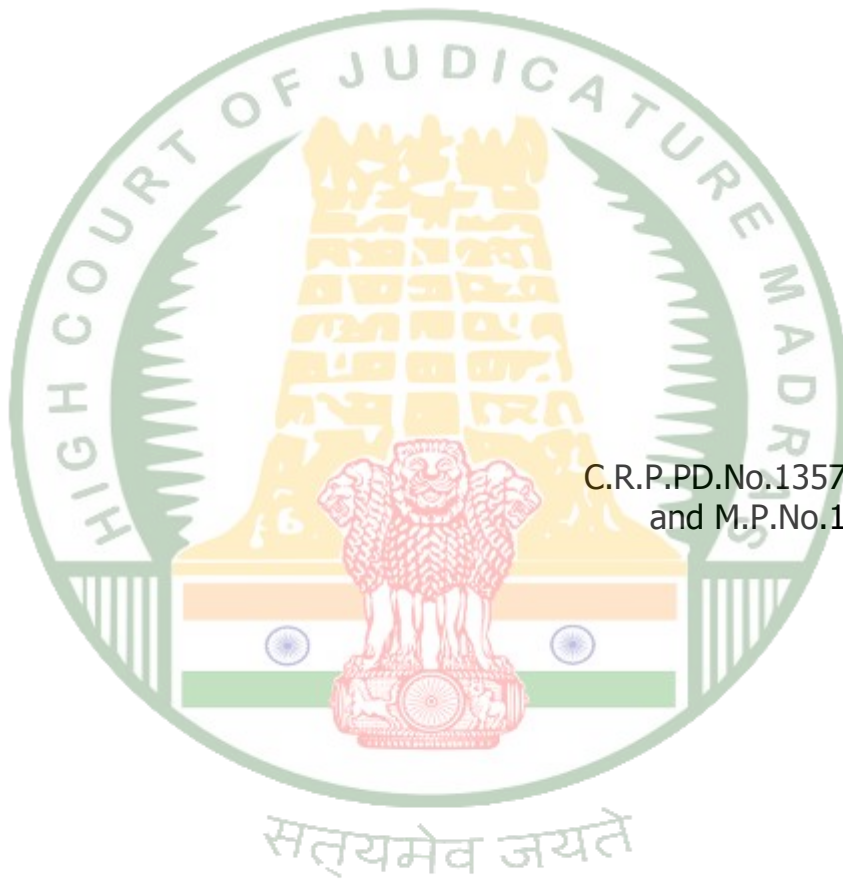
1. The I Assistant City Civil Court
(Wakf Tribunal), Chennai.
2. The District Collector,
Karur District
Karur.
3. The Chairman,
Tamilnadu Wakf Board,
No.1, Jaffar Syrang Street,
Vallal Seethakadhi Nagar,
Chennai - 600 001.
4. The Superintendent,
Tamil Nadu Wakf Board,
No.12 Kiledhar Street,
Trichy - 2.
5. The Inspector,
Tamil Nadu Wakf Board,
No.12 Kiledhar Street,
Trichy - 2.



WEB COPY

R.PONGIAPPAN, J.

rts



C.R.P.PD.No.1357 of 2014
and M.P.No.1 of 2014

WEB COPY

06.11.2019