

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2019

CORAM:

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

C.R.P.PD.No. 2781 of 2014

and M.P.No.1 of 2014

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

.... Petitioner

Vs.

1. George V Arabic Madrasa
Rep by its President Jeelani Basha

2. George V Arabic Madrasa Committee,
Rep by its Secretary
N.A. Majeeth
Having their Administrative Office
at Old No.6/57, No.1/1-15,
Majeeth Road,
Senthamangalam Road,
Namakkal - 637 001.

3. The Central Wakf Board,
New Delhi.

4. The District Collector,
Collector Office,
Namakkal District - 637 001.

5. The Superintendent,
Tamil Nadu Wakf Board,
No.4A & 5A, Tippu Sulthan,

Commercial Complex 1st Floor,
First Agraharam,
Salem - 636 001.

6. The Inspector,
Tamil Nadu Wakf Board,
No.4 A & 5A, Tippu Sulthan,
Commercial Complex 1st Floor,
Choolai,
Chennai - 600 112.

.... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 02.06.2014, passed in I.A.No.10101 of 2013 in O.A.No.14 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 & R4 : No appearance

For R2 : Not ready in notice

For R3 : Given up

For R5 & R6 : Mr.N.A.Nissar Ahmed

ORDER

Aggrieved over the order dated 02.06.2014, passed in I.A.No.10101 of 2013 in O.A.No.14 of 2012, on the file of the I Assistant City Civil Court (Wakf Tribunal), Chennai, the petitioner, who is the second respondent in the above referred Original Application filed this Civil Revision Petition.

2. Before the Tribunal, the respondents 1 & 2 in this Civil Revision Petition filed an Original Application in O.A.No.14 of 2012 for the relief of deletion of the property bearing Old Door No.6/57, 4/58 and 2/59, New No.1/1-15, Majeeth Road, Senthamangalam, Namakkal - 637 001, from the list of Wakf maintained by the petitioner herein and for the relief of injunction restraining the petitioner and the respondents 5 & 6 from interfering with the management and administration of the property and for the cost.

3. When the Original Application pending for enquiry, on 29.04.2013, the petitioner has been filed an application 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 respondents 1 & 2/petitioner, by an order dated 02.06.2014, dismissed the application filed by the revision petitioner by observing as the question of territorial jurisdiction has to be decided during the time of trial and thereby, the application filed by the petitioner is premature. Challenging the same, the petitioner is before this Court and pleaded to set aside the said impugned order and to allow the application filed before the Wakf Tribunal.

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 also been constituted. In the said circumstances, 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 the application was presented by the petitioner, the learned I Assistant City Civil Court, Chennai, is having jurisdiction, now as per the amendment made in Section 83(1) of Wakf Act, 1995, the Tribunal constituted is only having jurisdiction.

6. In this aspect, the learned counsel appearing for the respondents 5 & 6 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 respondents 1 & 2. So, it is the duty of the learned Presiding Officer, I Assistant City Civil Court, Chennai, to return the Original Application filed by the respondents 1 & 2, 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 under Section 14(1) of C.P.C., has wrongly observed as the question of territorial jurisdiction can be decided only at the time of trial. 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

02.06.2014, passed in I.A.No.10101 of 2013 in O.A.No.14 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.14 of 2012 to the respondents 1 & 2 with a direction to present the same before the appropriate Forum within a period of one month from the date of return. Consequently, connected miscellaneous petition is closed. No costs.

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. George V Arabic Madrasa
Rep by its President Jeelani Basha

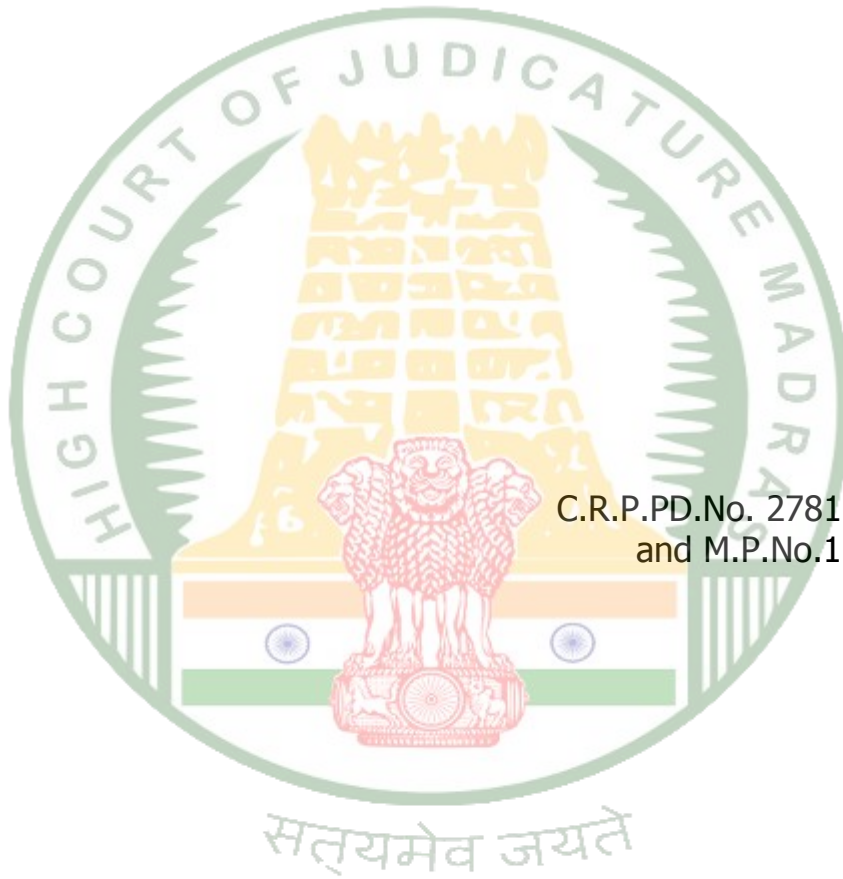
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R.PONGIAPPAN, J.

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