

IN THE HIGH COURT OF JUDICATURE AT MADRAS

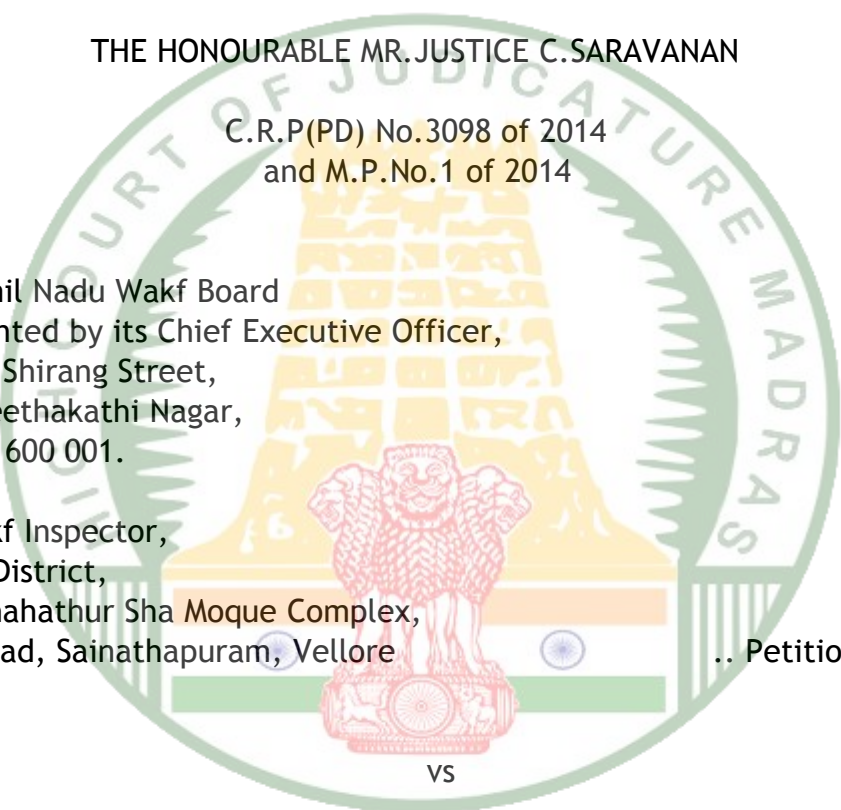
RESERVED ON : 21.02.2019

PRONOUNCED ON : 04.03.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(PD) No.3098 of 2014
and M.P.No.1 of 2014

- 
- 1.The Tamil Nadu Wakf Board
Represented by its Chief Executive Officer,
1,Jaffar Shirang Street,
Vallal Seethakathi Nagar,
Chennai 600 001.
- 2.The Wakf Inspector,
Vellore District,
No.8, Bhahathur Sha Moque Complex,
Arani Road, Sainathapuram, Vellore .. Petitioner

VS

Hazarat Muthuzavwali Masthan Dharga,
Vellore Town, represented by its Muthavali,
Janab Maqbul Basha .. Respondent

WEB COPY

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the impugned order dated 06.01.2014 passed in C.M.A.No.04 of 2010 on the file of the District Wakf Tribunal (Sub Court) Vellore .

For Petitioner : M/s.V.lakshmi Narayanan

For Respondent : M/s.Vedavallikumar

ORDER

The Petitioners herein have preferred this revision against the Fair and Decretal order dated 06.01.2014 in C.M.A.No.4 of 2010 passed by the Waqf Tribunal, Vellore (Sub-Court), Vellore.

2.Janab Maqbool Basha, was appointed by the Petitioner Board as a Muthavalli of the Hazarat Muthuzawali Masthan Dharga for a period of three years i.e., 2003 to 2006.

3.However, since no other Muthavalli was appointed, Janab Maqbool Basha was allowed to continue as Muthavalli. At the end of the said term, Janab Maqbul Basha claimed that he was elected to continue to hold the office of the Muthavalli of the said Waqf.

4.The Petitioner Board in its order dated 08.12.2009, has recorded reasons to the effect that during the tenure of the Janab Maqubool Basha as a Muthavalli, a tenant had put up an illegal construction in the Waqf property and therefore there was a need for assuming direct management under Section 65(1) of the Act. Thus, by the aforesaid order dated 08.12.2009, the

Petitioner-Waqf Board took over the direct management of Waqf under Section 65(1) of the Tamil Nadu Waqf Act, 1995. However, the said decision was notified later by the Board under Section 65(1) of the Act.

5. Aggrieved by the order dated 08.12.2009, Janab Maqbul Basha filed an appeal before the Waqf Tribunal in C.M.A.No.4 of 2010 under Section 83(2) of the Act in his capacity as the Muthavalli of the 1st respondent herein.

6. The appeal was allowed by the Waqf Tribunal. Aggrieved by the same, the Petitioner-Waqf Board has preferred this revision petition before this Court.

7. Mr. V. Lakshmi Narayanan, the learned counsel appearing for the Petitioner Waqf Board submitted that the Waqf Tribunal erroneously entertained and allowed the appeal under Section 83(2) of the Act and therefore the petitioner Waqf Board has challenged the same on the ground that neither the respondent could continue to have lien over the office nor the Waqf Tribunal had the jurisdiction to entertain the appeal.

8. It is submitted that the only remedy that was available to Janab Maqbul Basha claiming to be the Muthavalli of the 1st respondent was to

file an application under Section 65(2) Waqf Act, 1995.

9. In this connection he cites decision of this Court in **Tamil Nadu Waqf Board rep. by its Chairman, The Chief Executive Officer, Tamilnadu Waqf Board, The Waqf Superintendent and the Waqf Inspector vs. Janab K.S.M.A. Mohamed Mansoor**, 2010 (2) CTC 699 wherein it was held that a revision ought to have been filed under similar circumstances under section 65 (2) of the Act and it was not open to file an appeal before the Tribunal under section 83 (2) of the Act.

10. The Court held that an aggrieved person can invoke the jurisdiction of the Tribunal only when no other remedy by way of appeal or revision is provided in the Act. The reasoning of the Court is extracted below:-

12. According to me, Section 83(2) of the Waqf Act gives wide power to the Tribunal to decide any dispute. Under Section 83(2), the Tribunal is entitled to decide any dispute, question or other matter relating to the Waqf. It is in the nature of general superintendence over the Waqf and its properties. It is made clear under Section 83(1) that the Tribunals are constituted for the determination of any dispute, question or other matter relating to a Waqf or Waqf property under this Act. Therefore, a conjoint reading of Section 83(1) and (2) made it clear that the Tribunal was constituted to decide all the disputes, question or other matters relating to a Waqf property and in my opinion, the Tribunal has been given the general superintendence power to decide all disputes and question in relation to Waqf. The

Petitioner is entitled to invoke the jurisdiction of the Tribunal when no other remedy by way of appeal or revision is provided in the Act. When the Act provides any appeal or revision against the order passed under the Act, the same has to be exhausted before approaching the Tribunal under Section 83(2) of the Act. Under the Act, Section 65(2) deals with the revisional power given to the State Government to satisfy itself as to the correctness, legality or propriety of the notification issued by the Board under Sub-Section (1) of Section 65. As per Section 65(2), the State Government may, on its own motion or on the application of any person interested in the Waqf can scrutinies the notification issued by the Board under Section 65(1) of the Act. Therefore, an inbuilt machinery is provided under the Act to find out the correctness, legality, or propriety of the notification and hence, without resorting to that provision, it is not open to the respondent to apply to the Tribunal under Section 83(2) for challenging the notification under Section 65(1) of the Act. This has been made clear by the Honourable Supreme Court in the judgment reported in 2006 10 SCC 696 (M.P. Waqf Board v. Subhan Shah), by holding that, "where a statute creates different authorities to exercise their respective functions thereunder, each of such authority must exercise the functions within the four corners of the statute."

11. The learned counsel for the Petitioner-Waqf Board further submitted that the above cited decision was also followed in yet another decision of this Court in **Tamil Nadu Waqf Board v. A.Sadhik Ali** [2011(3) CTC 673], wherein the Court has held that any party aggrieved over the said action of the Waqf Board can approach the State Government by filing a revision and cannot invoke the provision of Section 83 of the Act by approaching the Waqf

Tribunal.

12.The Court there in observed as follows:-

“.....While considering the said issue, I am of the considered view that to challenge the action of the Wakf Board in assuming direct management of any wakf as contemplated under [Section 65\(1\)](#) of the Act, anybody who is aggrieved over such order of the Wakf Board has to prefer an appeal before the State Government as provided under [Section 65\(2\)](#) of the Act. In such circumstances, I am of the considered view that the respondents 1 and 2, if at all aggrieved over the order of the Wakf Board in assuming direct management of the wakf, have to approach the State Government by filing an appeal as envisaged under [Section 65\(2\)](#) of the Act.”

13.In that case, the aggrieved person had himself filed an appeal before the Government as envisaged under [Section 65\(2\)](#) of the Act. The respondents 1 and 2 therein, styling themselves as worshippers of the pallivasal in question, tried to challenge the action of the Board by instituting proceedings before the Tribunal.

14.The Court therefore assumed that the reliefs sought for by respondents 1 and 2 therein before the Wakf Tribunal amply established that they are trying to circumvent the entire proceedings initiated by the Wakf Board and are trying to help the trustees who were holding the management of the pallivasal. The Court therefore held as follows:-

When the aggrieved party himself has approached the Government by way of filing an appeal, respondents 1 and 2, so styling themselves as worshippers, cannot initiate proceedings before the Tribunal.

15. The learned counsel further submitted that the 1st respondent also could not arrogate upon himself to continue as the Muthavalli of the Waqf after his office had come to an end pursuant to the take over of the direct management by the Board.

16. In this connection, the learned counsel drew attention to an unreported judgment of this Court in W.P.Nos.2170 and 6457 of 2011 wherein by an order dated 25.07.2012, the Court has held that :

"24. But the said doctrine cannot be extended to the extent of placing the Trustees who continue to discharge the functions beyond the period of their tenure on par with those whose tenure has not expired. Persons whose tenure of office has not expired, have a vested right to continue till the expiry of the tenure. It is that right which gets violated when they are removed from the office. But persons whose tenure had already come to an end, have no right to continue. Every minute of their continuance is at the mercy of the Board which appointed them. The moment another set of persons is appointed or the moment direct management is assumed, the Trustees who continue after the expiry of the tenure, may have to go out. It is on account of this distinction that I think the Petitioners were not entitled to any notice or opportunity before the second part of the impugned order assuming direct

management was passed."

17.Per contra, the learned counsel for the respondent Mr.Vedavallikumar reiterated that the order passed by the Waqf Tribunal was proper and the same cannot be challenged.

18.Learned counsel for the respondent submitted that the grounds raised in the present Civil Revision Petition were not the grounds raised before the Waqf Tribunal and therefore not available under a revision under 115 of the CPC. Learned Counsel for the respondent submitted that the assumption of power under Section 65(1) was abuse of the proceeding and therefore the Tribunal's order cannot be challenged based on the submissions of the learned counsel for the petitioner.

19.In reply, the learned counsel for the Petitioner Board referred to the decision of the Hon'ble Supreme Court in **Kiran Singh versus Chaman Paswan**(1995) 1 SCR 117 wherein it was held that it is a well-established fundamental principle that a decree passed by a court without jurisdiction is a nullity and that it's invalidity could be set up whenever and wherever it is sought to be enforced, even at the later stage of execution.

20.There the Hon'ble Supreme Court held that a defect in

jurisdiction, whether pecuniary or territorial, or whether it is in respect of the subject matter of action, strikes at the very authority of the court to pass any degree and such a defect cannot confer jurisdiction even by consent of the parties.

21.I have examined, the records and considered rival submissions in the light of the case laws submitted by the learned counsel for the petitioner.

22.Though, learned counsel made submissions on merits of the dispute, I am refraining from giving my views as the same ought to be decided either before the Government under Section 65(2) as was canvassed in support of the present Civil Revision Petition or as has been decided by the Tribunal. Scope of enquiry is very limited here.

23.Before dealing further, it may be useful to refer to the decision of the Hon'ble Supreme Court in **Ramesh Gobindram v. Sugra Humayun Mirza Waqf**, (2010) 8 SCC 726 wherein it was held as follows:-

31.It is clear from sub-section (1) of Section 83 above that the State Government is empowered to establish as many Tribunals as it may deem fit for the determination of any dispute, question or other matter relating to a Waqf or Waqf property under the Act and define the local limits of their jurisdiction. Sub-section (2) of Section 83 permits

any mutawalli or other person interested in a Waqf or any person aggrieved of an order made under the Act or the Rules framed thereunder to approach the Tribunal for determination of any dispute, question or other matter relating to the Waqf. What is important is that the Tribunal can be approached only if the person doing so is a mutawalli or a person interested in a Waqf or aggrieved by an order made under the Act or the Rules. The remaining provisions of Section 83 provide for the procedure that the Tribunal shall follow and the manner in which the decision of a Tribunal shall be executed. No appeal is, however, maintainable against any such order although the High Court may call for the records and decide about the correctness, legality or propriety of any determination made by the Tribunal.

24. Therefore, prima facie the Janab Maqbool Basha had a right to approach the Tribunal and the views expressed in Tamil Nadu Waqf Board rep. by its Chairman, The Chief Executive Officer, Tamilnadu Waqf Board, The Waqf Superintendent and the Waqf Inspector vs. Janab K.S.M.A. Mohamed Mansoor, 2010 (2) CTC 699 and followed in Tamil Nadu Waqf Board v. A. Sathik Ali [2011(3) CTC 673] are in variance with the ratio of the Hon'ble Supreme Court.

WEB COPY

25. The assumption of direct management by the Petitioner Board under section 65(1) is an administrative Act and has to be for reasons to be recorded. It however comes into force only after a notification is issued. The decision of the Waqf Board comes into force only after issue of such notification. In that

sense the issue of notification is a ministerial act which can give a cause of action before the State Government under Section 65(2) of the Act which reads as under:-

*(2) The State Government may, on its own motion or on the application of any person interested in the (Waqf), call for the records of any case for the purpose of satisfying itself as to the **correctness, legality or propriety of the notification issued by the Board** under sub-section(1) and pass such orders as it may think fit and the orders so made by the State Government shall be final and shall be published in the manner specified in sub-section(1).*

26.The State Government can either suo motto revise the order passed under Section 65(1) by the Waqf Board or on an application made in that behalf by any “person interested in the Waqf”. The order of the Government under Section 65 (2) is final.

27.However, the scope of enquiry before the Government is limited and circumscribed by the language contained in it. It is confined to test the **correctness, legality or propriety of the notification** issued by the Waqf Board.

28.On the other hand, under Section 83(2) of the Act, **any Muthavalli, person interested in a Waqf or any other person aggrieved** by an order made under the Act, or rules made thereunder, may make an application within the

time specified in the Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for determination of any dispute, question or other matter relating to the Waqf. Section 83(2) of the Act reads as under:-

(2) Any mutawalli, person interested in a wakf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the wakf.

29.Scope of interference in Section 83(2) is wider. A choice is available to a person either to file a revision before the State Government as “person interested” under Section 65(2) or before the Tribunal as a mutawalli, person interested in a wakf or any other person aggrieved under Section 83(2) of the Act.

30.The Government exercises revisionary power under Section 65(2) of the Act to correct any mistakes that may have been committed by the Board while issuing notification as is evident from a reading of Section 65(2) of the Act.

31.If a person wishes to challenge the order on merits, only the

Tribunal is competent to consider the same. However, if a person interested in the waqf wishes to merely challenge the *correctness, legality or propriety of the notification issued by the Board*, State Government can be approached under Section 65(2). There the State Government acts as a revisional authority.

32. Thus, there appears to be no overlapping in the jurisdiction in Section 65 (2) and Section 83 (2).

33. It may be also useful to refer to the decision of the Hon'ble Supreme Court in **Hindustan Petroleum Corpn. Ltd. v. Dilbahar Singh**, (2014) 9 SCC 78 rendered in the context of Section 25 of the Rent Control Acts. The Hon'ble Supreme Court observed as under:

28. Before we consider the matter further to find out the scope and extent of revisional jurisdiction under the above three Rent Control Acts, a quick observation about the “appellate jurisdiction” and “revisional jurisdiction” is necessary. Conceptually, revisional jurisdiction is a part of appellate jurisdiction but it is not vice versa. Both, appellate jurisdiction and revisional jurisdiction are creatures of statutes. No party to the proceeding has an inherent right of appeal or revision. An appeal is continuation of suit or original proceeding, as the case may be. The power of the appellate court is coextensive with that of the trial court. Ordinarily, appellate jurisdiction involves rehearing on facts and law but such jurisdiction may be limited by the statute itself that provides for the appellate jurisdiction. On the other hand,

revisional jurisdiction, though, is a part of appellate jurisdiction but ordinarily it cannot be equated with that of a full-fledged appeal. In other words, revision is not continuation of suit or of original proceeding. When the aid of Revisional Court is invoked on the revisional side, it can interfere within the permissible parameters provided in the statute. It goes without saying that if a revision is provided against an order passed by the Tribunal/appellate authority, the decision of the Revisional Court is the operative decision in law. In our view, as regards the extent of appellate or revisional jurisdiction, much would, however, depend on the language employed by the statute conferring appellate jurisdiction and revisional jurisdiction.

29.1. The ordinary meaning of the word “**legality**” is lawfulness. It refers to strict adherence to law, prescription, or doctrine; the quality of being legal.

29.2. The term “**propriety**” means fitness; appropriateness, aptitude; suitability; appropriateness to the circumstances or condition conformity with requirement; rules or principle, rightness, correctness, justness, accuracy.

29.3. The terms “**correctness**” and “**propriety**” ordinarily convey the same meaning, that is, something which is legal and proper. In its ordinary meaning and substance, “**correctness**” is compounded of “**legality**” and “**propriety**” and that which is legal and proper is “**correct**”.

Finally, the Court held as under:-

43. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate court/first appellate authority because on reappreciation of the evidence, its view is different from the court/authority below. *The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.*

34.The scope of enquiry is limited under Section 65(2) of the Act and is akin to what has been discussed above in the context of the Rent Control Acts. However, the scope of the enquiry under Section 83(2) is much broader.

35.The Act provides both appellate remedy before the Tribunal and revisional remedy before the State Government. Both the remedy are available one as “person interested” *simplicitor* and the other in the capacity of muthavalli, as an aggrieved person and as a person in interested in the waqf.

36.Therefore, to restrict the remedy by way of review under Section 65(2) of the Act would be unfair especially when the Act itself does not contemplate restriction.

37.Therefore, the views expressed in Tamil Nadu Waqf Board rep.by its Chairman, The Chief Executive Officer, Tamilnadu Waqf Board, The Waqf Superintendent and the Waqf Inspector vs. JanabK.S.M.A.Mohamed Mansoor, 2010 (2) CTC 699 is no longer applicable in the light of the observation of the Hon’ble Supreme Court in Ramesh

Gobindram v. Sugra Humayun Mirza Waqf, (2010) 8 SCC 726.

38. Janab Maqbool Basha was allowed to continue as the muthavalli of the respondent Waqf beyond the period of three years. Despite the claim of Janab Maqbool Basha that he was elected by the members, Petitioner Board assumed direct management.

39. Therefore, he was entitled to have his grievance redressed before the Tribunal as a person aggrieved. Janab Maqbool Basha had the choice to approach the Waqf Tribunal under Section 83(2) of the Act and also under Section 65(2) of the Act.

40. Therefore, the Civil Revision Petition is dismissed without prejudice to the rights of the petitioner to remove Janab Maqbool Basha in accordance with law. No costs. Consequently, connected Miscellaneous Petition is also closed.

WEB COPY

04.03.2019

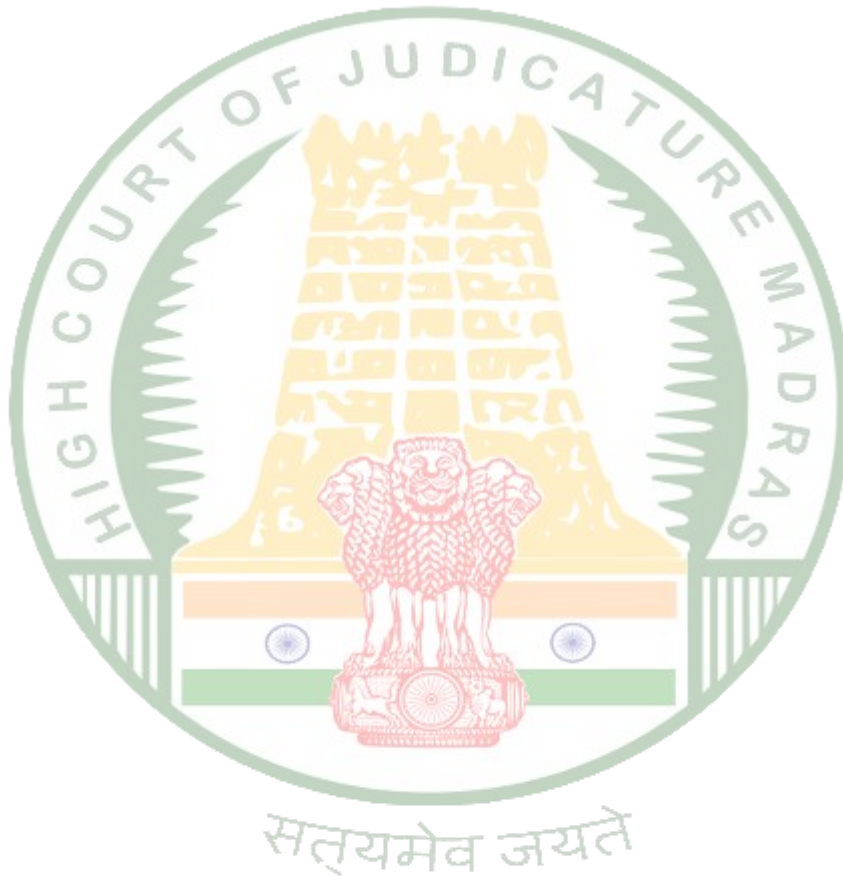
Speaking : Non-speaking order

Index : Yes/No

Internet : Yes/No

kkd/ssn

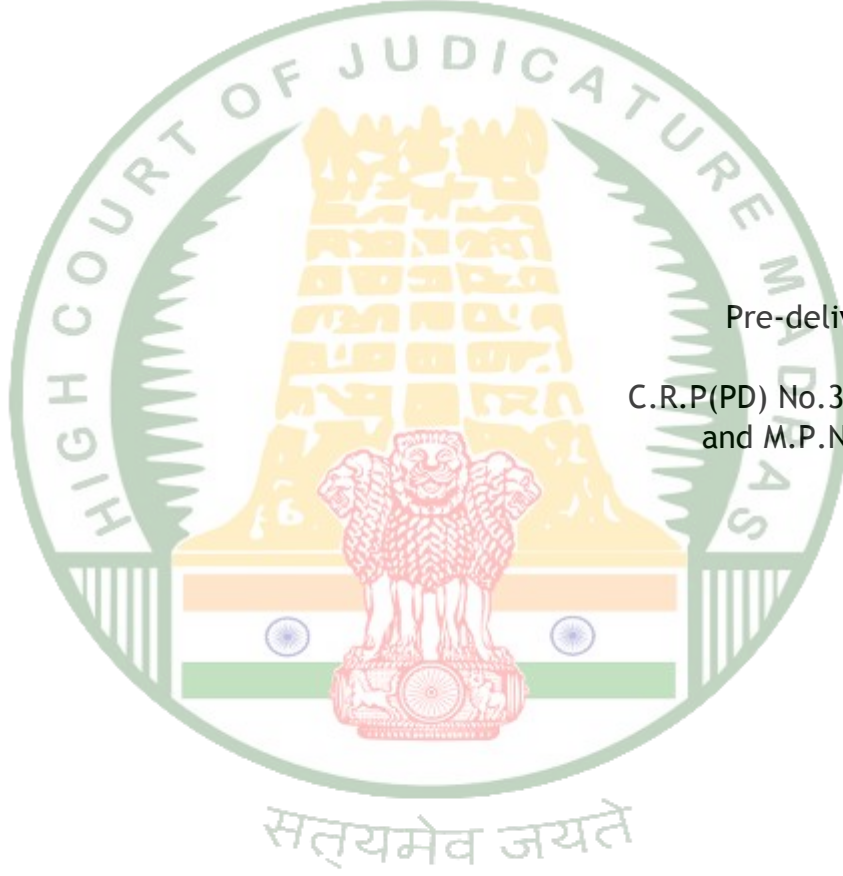
To
The District Wakf Tribunal
(Sub Court) Vellore.



WEB COPY

C.SARAVANAN,J.

kkd



Pre-deliver order in

C.R.P(PD) No.3098 of 2014
and M.P.No.1 of 2014

WEB COPY

04.03.2019