

C.M.P.No.27629 of 2019
in
L.P.A. SR. No.158573 of 2019

M. SATHYANARAYANAN, J.
and
N. SESHASAYEE, J.

(Order of the Court was made by M.SATHYANARAYANAN, J.)

This petition is filed to grant leave to the petitioner to file Letters Patent Appeal against the order dated 03.12.2019 in Cont.P.No.3107 of 2016.

2.Mr.V.Selvaraj, learned counsel appearing for the petitioner has drawn the attention of this Court to the affidavit filed in support of this petition and would submit that the petitioner is arrayed as 10th respondent in W.A.No.1640 of 2016 as well as 6th respondent in C.R.P.(PD) No.74 of 2015.

3.The same Division Bench of this Court has passed a common judgment dated 08.06.2018 in W.A.No.1640 of 2016, W.P.Nos.7809 of 2010, 27431 and 27595 of 2014, C.R.P.(PD) Nos.73, 74 of 2015, 938 of 2010, W.A.Nos.144, 145, 271 and 272 of 2017, along with miscellaneous petitions and the result portion of the said common judgment is extracted hereunder :

"THE RESULT :

I

Sl. No.	Case No.	Status of the case
1.	WP.No.27431 of 2014 and W.P.No.27595 of 2015	Allowed. The Wakf Tribunal, Nagapattinam is prohibited by a Writ of Prohibition not to proceed with WOP.3 of 2014
2.	W.A.No.272 of 2017	Allowed. The order of this Court dated 06.02.2017 made in M.P.No.3 of 2015 in W.P.No.27341 of 2014 is set aside.
3.	W.A.No.1640 of 2016 and W.A.No.145 of 2017	Dismissed. The order of this Court dated 22.11.2016 in W.P.No.33181 of 2016 is hereby confirmed.
4.	W.A.271 of 2017 and W.A.No.144 of 2017	Dismissed.
5.	CRP (PD) No.73 of 2015 and CRP (PD) No.74 of 2015	Dismissed. The order of the Sub Court, Nagapattinam dated 21.11.2014, rejecting IA (unfiled) IACFR No.4908/2014 and IACFR No.4872/2014, is confirmed.

II

Sl. No.	Case No.	Status of the case
1.	CRP (PD) No.938 of 2010	Partly allowed and the order dated 07.08.2009 in I.A.No.109 of 2008 in O.S.No.30/1946 on the file of District Judge, Nagapattinam is set aside to the extent that the revision petitioner will replace the

<i>Sl. No.</i>	<i>Case No.</i>	<i>Status of the case</i>
		<i>District Court, Nagapattinam in overseeing the administration of the Wakf Nagoor Durgah in terms of the schemed framed in O.S.No.30 of 1946.</i>
2.	<i>WP No.7809 of 2010</i>	<i>Dismissed."</i>

4.The learned counsel appearing for the petitioner would further submit that, as against the common order passed in C.R.P.No.938 of 2010, W.P.No.7809 of 2010 and W.A.No.1640 of 2016, a Special Leave Petition in S.L.P.(Civil) Diary No.39558 of 2018 was preferred before the Hon'ble Supreme Court of India and vide order dated 30.11.2018, the Hon'ble Supreme Court had condoned the delay in filing the Special Leave Petition, as well as granted exemption from filing official translation and while issuing notice, has granted an order of *status quo* as on 30.11.2018 until further orders, to be maintained by the parties.

5.It is the further submission of the learned counsel appearing for the petitioner that, Mr.Haja Noorden Sahib @ Alhaj S.Syed Kamil Sahib, who is also the 1st respondent in W.A.No.1640 of 2016, 6th respondent in W.P.No.27431 of 2014, 2nd respondent in W.P.No.27595 of 2014, 1st respondent in C.R.P.(PD) No.73 of 2015, 3rd respondent in C.R.P.(PD) No.74 of 2015 and 1st respondent in W.P.Nos.271 and 272 of 2017, filed contempt petition in Cont.P.No.3107 of 2016 against Hazi.Kazi S.A.Shaik Hasan Sahib, who is the 7th respondent in

W.P.No.27431 of 2014, alleging wilful disobedience and non compliance of the order dated 22.11.2016, made in W.P.No.33181 of 2016, and it was entertained by the learned Single Judge and pending disposal of the same, a Mediation Committee, consisting of Hon'ble Mr. Justice Fakkir Mohamed Ibrahim Kalifulla, Retired Judge of Hon'ble Supreme Court of India, Hon'ble Mr. Justice K.N.Basha and Hon'ble Mr. Justice G.M.Akbar Ali, Retired Judges of Madras High Court, was appointed to iron out the differences and solve the disputes between Mr.Haja Noordeen Sahib @ Alhaj S.Syed Kamil Sahib, Haja Najumudeen Sahib, Sulthan Kalifa Sahib and H.Syed Yusif Sahib, in the presence of the official of Tamil Nadu Waqf Board, and the said committee mediated and the terms of the Mediation were also reduced into writing, based on which, the contempt petition in Cont.P.No.3107 of 2016, along with Sub.A.(OS) Nos.696 of 2016 and 658 of 2018 in W.P.No.33181 of 2016, came to be disposed of vide order dated 03.12.2019, and in Para No.5 of the order, this Court, apart from making it clear that the memorandum of terms of settlement arrived at among the parties to the Mediation on 29.10.2019 shall form part of the order, also observed that in the light of the development, the apology tendered by the contemnor, Hazi.Kazi S.A.Shaik Hasan Sahib, was accepted and he was also discharged.

6.It is submitted by the learned counsel appearing for the petitioner that

Clause No.XIII of the said terms of settlement reads : *"the parties agree to withdraw all the pending proceedings initiated by them before the Courts below as well as this Hon'ble Court and before all the other forums as having been settled in accordance with this Memorandum of terms of Settlement and seek for necessary orders in terms of this Settlement"*. It is pointed out by the learned counsel appearing for the petitioner, by drawing the attention of this Court to the plaints in O.S.No.31 of 2014 as well as in O.S.No.26 of 2016 on the file of the Sub Court, Nagapattinam, that, in O.S.No.31 of 2014, Haja Najumudeen Sahib is the plaintiff and the petitioner in Cont.P.No.3107 of 2016/1st respondent in W.A.No.1640 of 2016 is arrayed as 3rd defendant and the petitioner herein is arrayed as 7th defendant and the petitioner also filed O.S.No.26 of 2016 and the relief in both suits pertain to declaration that the respective plaintiffs are the legal heirs of the deceased 8th hereditary trustee, namely, Haji Muhali Haja Vanjur Packiri Sahib @ Chinnathambi Sahib and for a consequential direction and though it is claimed that O.S.No.31 of 2014 came to be withdrawn, in the light of the said settlement, the petitioner herein, who is arrayed as 7th defendant, was not put on notice and taking advantage of the order dated 03.12.2019 passed in Cont.P.No.3107 of 2016, his civil right to be declared as the legal heir of Haji Muhali Haja Vanjur Packiri Sahib @ Chinnathambi Sahib will be affected and it may have a bearing on the pending suit in O.S.No.26 of 2016 filed by him on the file of the Sub Court, Nagapattinam.

7.Earlier, this Civil Miscellaneous Petition was listed before the Division Bench of Hon'ble Mr. Justice N.Kirubakaran and Hon'ble Mr. Justice P.Velmurugan. The said Division Bench, having found that the matter in issue has been dealt with by this Division Bench and a common judgment dated 08.06.2018 has already been made in W.A.No.1640 of 2016, etc., directed the Registry to post the matter before this Bench after obtaining appropriate orders. Accordingly, the Registry had put an office note before the Hon'ble Chief Justice and vide orders dated 20.12.2019, the Hon'ble Chief Justice has directed the Registry to place the matter before the Division Bench presided by Hon'ble Mr. Justice M.Sathyanarayanan and accordingly, this Civil Miscellaneous Petition is listed before this Bench.

8.Mr.Haja Mohideen Gisthi, learned counsel appearing for the 1st respondent would submit that, through the settlement proceedings, the petitioner is well aware of the settlement talks that are going on and having given his implied consent to the said proceedings as well as to the terms of the said settlement, the petitioner cannot take a complete turn around and make a challenge to the same and prays for some accommodation to come out with further instructions.

9.Mr.V.Lakshminarayanan, learned counsel appearing for the Tamil Nadu Waqf Board, seeks permission of this Court to intervene in this matter and would submit that, though in the said settlement, it has been stated that the Superintendent of Wakfs, Thanjavur Zone, was cited as witness, admittedly he is not the authority and drawing the attention of this Court to Para Nos.11 and 12 of the order dated 27.06.2019 made in Sub-Application No.658 of 2018 in Cont.P.No.3107 of 2016, the learned counsel would submit that the submission made on behalf of the Tamil Nadu Wakf Board by participating in the settlement talks requires the approval of the Chief Executive Officer and it is yet to be obtained and taking note of the same, in Para No.12 of the order, the Hon'ble Judge has directed the Chief Executive Officer to authorise the Superintendent to appear for the Mediation not as a consenting party to the dispute that will be resolved by the Mediation, but for the reason that if ultimately, consensus is arrived at and an agreement is entered into, it is the Wakf Board which has to implement the same and accordingly, has directed the presence of Superintendent of Wakfs and in order to comply with the said direction, the Superintendent was present and the Tamil Nadu Wakf Board was never a consenting party to the said terms of settlement and as a result of the disposal of the contempt petition, the scheme itself cannot be amended and in terms of Section 32(2)(g) of the Wakf Act, any statutory right cannot be taken away in the light of the order passed in the Contempt Petition and also by virtue of the order

of *status quo* passed by the Hon'ble Supreme Court in S.L.P.(Civil) Diary No.39558 of 2018.

10.This Court has considered the submissions and also perused the affidavit filed in support of the petition as well as the order dated 03.12.2019 passed in Cont.P.No.3107 of 2016. Though the petitioner is arrayed as 7th defendant in O.S.No.31 of 2014 on the file of the Sub Court, Nagapattinam, which was stated to be withdrawn, the proceedings of settlement would disclose that he was not a party and that apart, he is also the plaintiff in pending suit in O.S.No.26 of 2016 pending on the file of the very same Court. Thus, leave as prayed for by the petitioner to prefer a Letters Patent Appeal is granted.

11.In the result, this Civil Miscellaneous Petition is ordered. The petitioner is granted leave to file Letters Patent Appeal against the order dated 03.12.2019.

12.If the papers are otherwise in order, Registry is directed to number L.P.A. SR No.158573 of 2019 as well as the connected miscellaneous petitions in L.P.A. SR No.158573 of 2019.

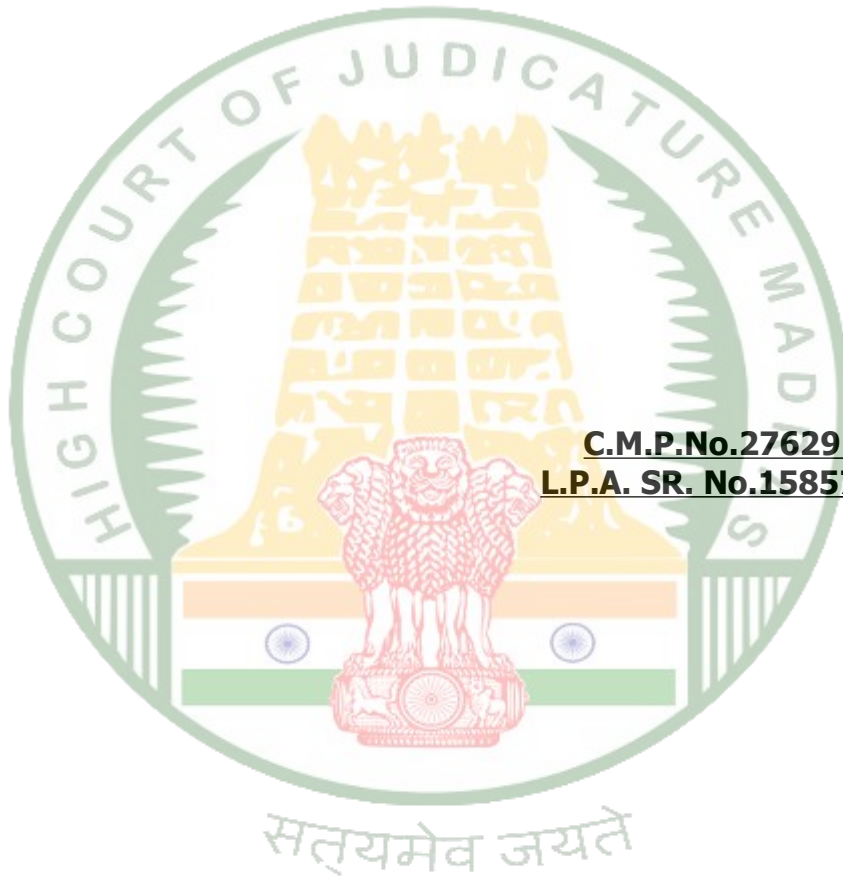
(M.S.N., J.) (N.S.S., J.)
20.12.2019

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