

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.27498 of 2018 & 3429 of 2019
and

W.M.P.Nos.32008 & 32013 of 2018
and W.M.P.Nos.3722 & 3723 of 2019

K.M.Mohideen Kunhi

...Petitioner
in both W.Ps.

Vs.

1.The Government of Tamil Nadu,
Rep. by its Secretary,
Back Ward and Most Back Ward
Minority Welfare Department,
Fort St. George, Chennai - 600 009.

2.Tamil Nadu Wakf Board,
Rep. by its Chairman,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai - 600 001.

3.Tamil Nadu Wakf Board,
Rep. by its Chief Executive Officer,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai - 600 001.

4.The Superintendent of Wakfs,
(South Chennai)
Tamil Nadu Wakf Board,
Dr. Besant Road, Triplicane,
Chennai - 600 005.

...Respondents 1 to 4
in both the W.Ps.

5.The Mylapore Juma Mosque
Managing Committee,
Rep. by its Executive Committee Member,
F.Javeed Basha,
No.178, Kutcheri Road,
Mylapore, Chennai - 600 004.

6.Syed Maskoor Mohideen
(The 5th & 6th respondents are impleaded
as per the order made in W.M.P.No.35256 of 2018
W.M.P.No.761 of 2019 dated 27.02.2019)

...5th & 6th respondents
in W.P.No.27498/2018

Common Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in respect of the order from the 3rd respondent in Na.Ka.No.12933/11/B6/Chennai dated 21.07.2018 and pronounced on dated 11.10.2018, 10.10.2018 respectively and quash the same and direct the 2nd respondent to approve the members of the committee submitted by the petitioner.

For Petitioner : Mr.L.Chandra Kumar
in both W.Ps. for Mr.T.Velumani

For Respondents
in W.P.27498/2018 : Mr.V.Kadhiruvelu,
Special Government Pleader for R1

Mr.G.Mohammed Aseef
for R2 & R3

Mr.Shazad for R4
Mr.Jaseem Mohamed for R5

Mr.N.A.Nissar Ahmed for R6

For Respondents
in W.P.3429/2019 : Mr.J.Purushothaman,
Government Advocate for R1

Mr.V.Lakshminarayanan,
for R2 to R4

COMMON ORDER

W.P.No.27498 of 2018 is filed challenging the proceedings of the 3rd respondent dated 11.10.2018, wherein and whereby, the Superintendent of Wakfs was directed to take the subject Wakf under Direct Management immediately and report compliance with further direction to the Executive Officer of the Wakf to propose a draft scheme for the administration of the Wakf.

2. It is seen from the said impugned proceedings that the same came to be passed as a consequential action of the order

passed by the Wakf Board dated 21.07.2018. W.P.No.3429 of 2019 was filed challenging the above said order of the Wakf Board dated 21.07.2018.

3. Heard Mr.L.Chandra Kumar, learned counsel appearing for the petitioner in both the writ petitions and Mr.V.Lakshminarayanan, learned counsel appearing for the Wakf Board.

4. Perusal of the order passed by the Wakf Board, impugned in W.P.No.3429 of 2019, would show that the Direct Management was ordered by the Wakf Board by observing that the Scheme Decree drafted in C.S.No.89 of 1910 by this Court and the terms set out therein are contrary to the provisions of Wakf Act, 1995 regarding the appointment and removal of Muthavalli, sanction for alienation, sale, transfer, lease and exchange etc., of Wakf properties. Therefore, the Wakf Board, by placing reliance on Section 108(A) of the Wakf Act, passed the impugned order, removing the Muthavalli and also taking the management of the Wakf directly by the Wakf Board.

5. Perusal of Section 64 of the Wakf Act, 1995, which deals with the removal of the Muthavalli would show that an appeal against the order removing Muthavalli lies before the Tribunal. The petitioner herein in both the writ petitions is the Muthavalli removed by the Board.

6. Mr.L.Chandra Kumar, learned counsel appearing for the petitioner contended that while the notice was issued under Section 64 for removal of Muthavalli, the respondent Board is not entitled to pass orders under Section 65 to assume Direct Management. Therefore, he contended that this Court can consider the merits of the matter in these writ petitions.

7. A careful perusal of the order passed by the Board would show that it has not been passed only to remove the Muthavalli but also by exercising the power under Section 65 to take Direct Management. Admittedly, the persons affected by the Direct Management have not challenged the said order before this Court and on the other hand, it is submitted by the learned counsel appearing for the impleaded parties that they have already approached the Tribunal challenging the very same order dated 21.07.2018 and that the Tribunal has reserved the same for orders. Under such circumstances, I do not find any reason to entertain these writ petitions any further on the ground of very maintainability, since the petitioner is having an effective alternative remedy to file an appeal before the Tribunal as against his removal.

8. Since the order put to challenge in W.P.No.27498 of 2018 is only a consequential order arising out of the order passed by the Wakf Board dated 21.07.2018, I am not inclined to entertain the above writ petition as well. Accordingly, both these Writ Petitions are disposed of by granting liberty to the petitioner to approach the Tribunal and file appropriate appeal against the said order within a period of two weeks from the date of receipt of a copy of this order. Till an appeal is filed by the petitioner before the Tribunal within the time stipulated in this order, the order of status quo granted by this Court already in these matters shall continue. Thereafter, it is for the petitioner to work out his remedy before the Tribunal for seeking appropriate interim relief, if any. No costs. Consequently, the connected miscellaneous petitions are closed.

gsi/vsi

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

To

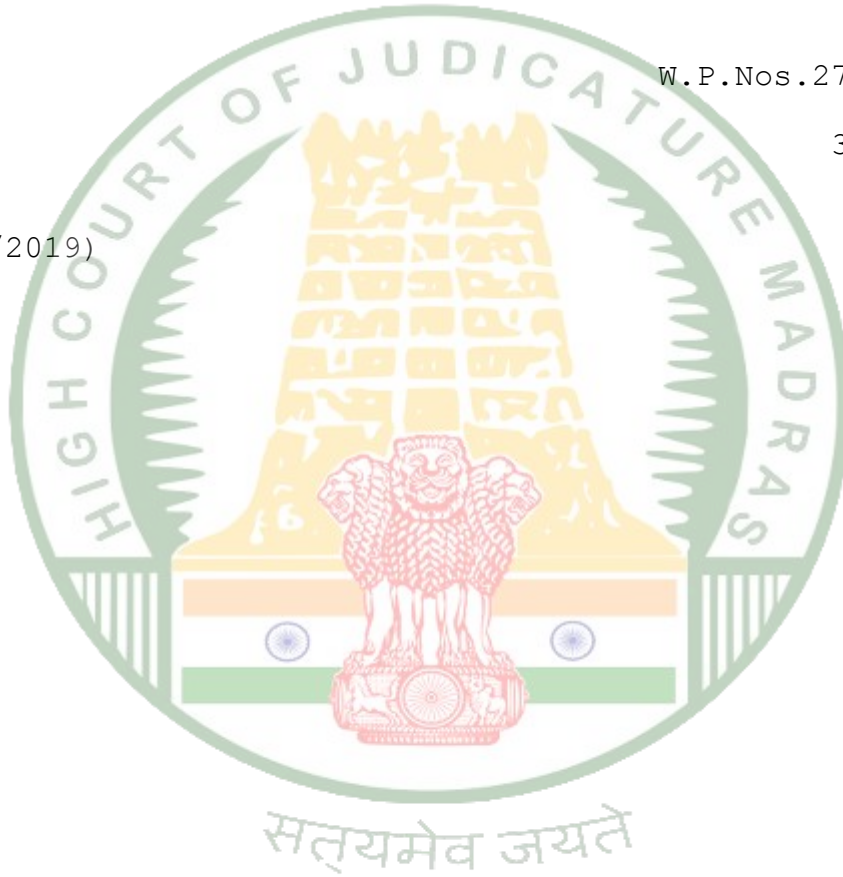
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Dr. Besant Road,
Triplicane, Chennai - 600 005.

5. Executive Committee Member,
The Mylapore Juma Mosque Managing Committee,
No.178, Kutchery Road,
Mylapore, Chennai - 600 004.

+1cc to Mr.T.Velumani, Advocate, S.R.No.18337/19
+1cc to Mr.N.A.Nissar Ahmed, Advocate, S.R.No.18130/19
+1cc to Mr.J.Jaseem Mohammed, Advocate, S.R.No.18116/19
+1cc to the Government Pleader, S.R.No.18924/19

W.P.Nos.27498 of 2018
and
3429 of 2019

SR(CO)
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