



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.11.2019

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

C.R.P. (PD) (MD)No.443 Of 2011
and M.P. (MD) No.1 of 2011

R.Doulath Hussain Khan ... Petitioner/Petitioner/Plaintiff
Vs.

1.The Tamilnadu Wakf Board,
Rep. By its Chief Executive Officer,
Tamilnadu Wakf Board,
Chennai.

2.Jumma Big Mosque
(Sevalur Mosque)
Rep. By its Jammath Adhoc Committee
President
Katcheri Road,
manapparai,
Trichy District

(The second respondent was set exparte in W.O.P.
Therefore notice necessary to him and hence the second
respondent given up) ... Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition is filed under Section 83(9) of WAKF Act, 1995 against the fair and decreetal order dated 13.09.2010 made in Wakf O.P.No. 4 of 2006 on the file of the Principal Subordinate Judge, Tiruchirappalli.

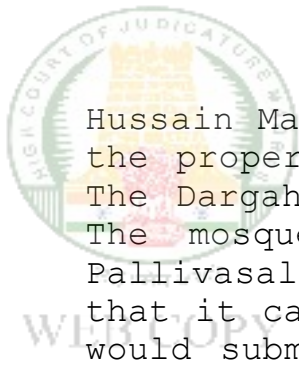
For Petitioner : Mr.A.Arumugam
For R1 : Mr.Mohideen Basha
For R2 : Given up

O R D E R

The plaintiff in the Wakf O.P is the revision petitioner is the revision petitioner before this Court. Challenge is to the fair and decreetal order passed in Wakf No. 4 of 2006 on the file of the learned Principal Subordinate Judge, Trichirappalli.

2. The facts in brief necessary for disposing of the Civil Revision Petition are as follows:

<https://hcservices.eCourts.gov.in/hcservices/> The plaintiff claims to be the hereditary Muthavalli of



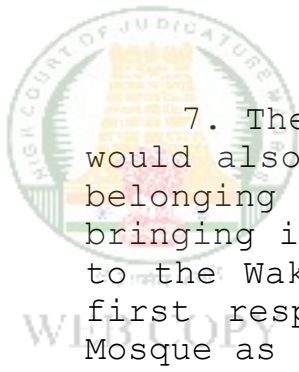
Hussain Masthan Dargah situated in S.F.No.569/1, Manapparai within the property in which mosque is situated and Kabrasthan as well. The Dargah is very ancient and dates back to roughly 1000 years. The mosque is also ancient and is known as Hussain Masthan Pallivasal. It appears from the inscription on the stone embedded that it came into existence during 12th Century A.D. The plaintiff would submit that over a period of time, the mosque in question was ruined and it became dilapidated. Now the same has been renovated by collecting funds from the general public during 1999.

3. According to the petitioner, the Mosque and Dargah are named after His Holiness, Hazarath Husain Masthan, who is the one of the 900 followers of his Holiness, Hazarath Natharshwvali whose Dargah is situated in Trichy. The proforma report of the Jumma Mosque (which is filed under Ex.A.1) would show that the rule of succession to the office of Muthavalli is hereditary and the proforma also recognized the existence of the Mosque and Dargah in the very same survey field.

4. The petitioner would submit that there was another Wakf called as Sevallur Mosque Wakf in Manapparai Town situated in a different survey number which is also a notified Wakf. In the Mosque coming under the Hussain Masthan Dargah Jumma Mosque Wakf prayers were not conducted for long time and it was in highly dilapidated stage, therefore, Sevallur Mosque was the Mosque to which the devotees were going for the prayers. Thereafter, the Jumma Mosque was re-built with public contribution.

5. The petitioner would submit that as per the proceedings of the first respondent in R.C.597/01/92/Try, dated 20.12.1999, he was appointed as hereditary Muthavalli for managing the said Dargah and the property belonging to the Dargah and he was also obligated to recover the properties illegally alienated. Since the order was silent about the Mosque and Kabrasthan, the petitioner had made a request to the first respondent to include him as Muthavalli for the Kabrasthan and the Jumma Mosque. By order dated 17.04.2001, the first respondent had rejected the said request. Challenging the same, the petitioner had filed Wakf.O.P.No.4 of 2006 on the file of the learned Principal Subordinate Judge, Trichy.

6. The said order was challenged on the ground that the first respondent Board which had recognized that the Jumma Mosque (Hussain Masthan Mosque), Kabrasthan which is situated by the said of Dargah and also having recognized that the appointment of Muthavalli as a hereditary Trustee had completely misdirected itself by rejecting the request of the petitioner to be appointed as Muthavalli to the Mosque and Kabrasthan.



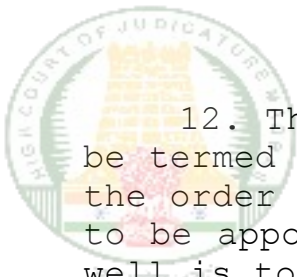
7. The petitioner would further submit that the proforma order would also recognize the Kabrasthan and the Mosque in question as belonging to the Hazarath Husain Masthan Dargah and therefore bringing in persons belonging to another Wakf as Committee Members to the Wakf in question is contrary to the proforma given by the first respondent itself. The petitioner had impleaded Sevallur Mosque as the second respondent.

8. The first respondent had filed a counter *inter alia* contending that the petitioner has not requested in his original petition that he be appointed as Muthavalli to Kabrasthan, but has only chosen to be appointed as Muthavalli of Dargah and therefore, the claim is belated. Further the first respondent would contend that the second respondent had taken on the duty of renovating the Mosque by spending huge sums of money and they had also taken a stand that the legal heir of the previous Muthavalli need not necessarily be appointed as the Muthavalli since under Section 32 (2)(g) of the Wakf Act the Wakf Board had the power to appoint Muthavalli or to form the management committee in any Waft. Therefore, exercising this right the first respondent had appointed a committee for managing Jumma Mosque and Kabrashthan.

9. The second respondent had not chosen to file a counter to the said application. The Wakf Tribunal by order dated 12.09.2019 was pleased to dismiss the Wakf O.P filed by the petitioner. The main ground on which the Principal Subordinate Judge had rejected the claim of the petitioner was that the petitioner had done nothing to renovate the dilapidated Mosque and it was only general public had given it the face lift.

10. The learned Judge has further held that the petitioner had accepted it when the second respondent had taken the efforts to renovate the mosque and further, the entry in the proforma report has not recorded the petitioner to be entitled to a hereditary right. The learned Judge has held that if the petitioner was the descendent of the original ancestor, he would not have permitted the second respondent to take up the responsibility to have renovated the Mosque. Therefore, having kept quiet, the petitioner cannot be permitted to take over the management of the Mosque. The said order is the subject matter in the present revision petition.

11. The learned counsel appearing on behalf of the petitioner would submit that under Ex.A.1, the Wakf Board had recognized not only the fact that the succession to the post of Muthavalliship was hereditary and it also recognized the fact that the Wakf in question consisted of not only the Dargah but also Kabrasthan and the Mosque and reading of a proforma would clearly prove the above.



12. Therefore having recognized the right of the petitioner to be termed as hereditary Muthavalli insofar as Dargah is concerned, the order of Wakf Board in rejecting the request of the petitioner to be appointed as Muthavalli to the Kabrasthan and the Mosque as well is totally in contradiction to the above.

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13. Per contra, Mr.Mohideen Basha, learned counsel appearing on behalf of the Wakf Board would submit that the entire exercise of putting up the construction of the mosque had been only due to the efforts of the second respondent and therefore, recognizing the efforts of the second respondent, the Wakf Board has appointed the Committee for managing the Mosque. He would further submit that the petitioner having allowed the Mosque to fall into the dilapidated state cannot be entrusted with the management of the Mosque and the Kabrasthan. He would therefore submit that there is no error in the order passed by the Wakf Tribunal.

14. Heard the learned counsels and perused the papers.

15. From a perusal of Ex.A.1, it is clear that Wakf Board has recognized the fact that Wakf consists not only Dargah but also Kabrasthan and Mosque. However, the Board has recognized the succession to Muthavalliship as hereditary only with reference to the Dargah. The Board having recognized the petitioner as the Muthavalli in respect of one portion of the suit property has committed a grave error in rejecting the claim in respect of the other two structures namely Mosque and Kabrasthan. The Wakf Board has further committed a grave mistake in totally ousting the petitioner from the management of Kabrasthan and Mosque totally ignoring the fact that he is descendant of the original ancestor and therefore, the person, having an interest in the suit property as well as structures upkeep thereupon. By entrusting the management to a committee consisting of persons belonging to a different Wakf, the Board has in effect set at naught the original Wakf by restricting it only to Dargah when they have themselves recognized the rights of the Wakf to the Kabrasthan and the Mosque. If the Board had felt that the petitioner is not acting in the interest of the Wakf, they could have removed him from Muthavalliship instead of him bringing a person from a different Wakf to manage the petitioner's Wakf. Therefore, the order passed by the Tribunal below requires to be interfered with and accordingly the same is set aside.

16. However, this Court has taken note of the submissions made by the learned counsel appearing for the Wakf Board that the petitioner should be put on notice that he shall maintain Kabrasthan and the Dargah in a good state of upkeep and maintenance and also render accounts to the Board as and when requested. In the event of failure on the part of the petitioner



to comply with the above directions, it is well open to the Board to take further action.

17. In fine, this Civil Revision Petition is allowed. No costs.* Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

CM

To

The Principal Subordinate Judge, Tiruchirappalli.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-98340[F] dated 14/11/2019)

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