

HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : **29.01.2020**

PRONOUNCED ON : **11.03.2020**

CORAM:

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

C.R.P(NPD)No.61 of 2013

Sultan Abdul Kadhar ... Petitioner / 2nd Respondent

Vs.

1.M.Ali Hussain ... 1st respondent / applicant

2.Tamil Nadu Wakf Board,
Rep. by its Chief Executive Officer,
Jaffar Syrang Street,
Vallal Seethalakshmi Nagar,
Chennai – 600 001. ... 2nd respondent / first respondent

PRAYER: This Civil Revision Petition is filed under Section 83(9) of the Wakf Act, 1995 r/w Article 227 of the Constitution of India, to allow this Civil Revision Petition for setting aside the judgment and decree dated 11.07.2012 passed by the Wakf Tribunal (Principal Sub-Judge) at Cuddalore in O.A.No.1 of 2009.

For Petitioner : Mr.T.Velumani

For R-1 : Mr.S.Parthasarathy,
learned Senior Counsel for
Mr.J.Ramakrishnan

For R-2 : Mr.Lakshmi Narayanan

for Mr.V.Raghavachari

ORDER

This Civil Revision is filed under Section 83(9) of the Wakf Act 1995 r/w Article 227 of the Constitution of India.

2. This CRP is filed under Section 83(9) of the Wakf Act, 1995 r/w Article 227 of the Constitution of India.

3. The first respondent in O.A.No.1 of 2009, before the Wakf Tribunal(Principal Sub-Judge), Cuddalore, is the revision petitioner herein.

4. The first respondent is a complainant before the Wakf Tribunal and the second respondent herein is Wakf Board.

5. The chequered history of this case are as under:

(i)(a) In the year 1968, the first respondent herein was appointed as the Muthavalli of Vadhiapalli alias Syed Ali Mosque, Parangipettai. On 25.10.1980, Various charges were framed against the first respondent by the Tamil Nadu Wakf Board and Enquiry was conducted. As the allegations were proved against the first respondent, the Wakf Board has appointed a Five

Members Committee for management of the Mosque. Pursuant to the formation of the said Committee, a Five Members Committee was constituted and appointed on 28.03.1981.

(b) Aggrieved against the formation of the said Committee, the first respondent herein challenged the said order passed by the Wakf Board in W.P.No.6149 of 1981, which was dismissed by observing that the Committee so constituted shall function for the management and administration of the Mosque.

(c) It is also seen from the records that the first respondent herein also filed O.S.No.93 of 1983 to declare the first respondent herein as a hereditary Muthavalli of the Wakf and to declare the appointment of Committee as null and void. Subsequently, the same was withdrawn and dismissed. In the year 1984, a new Committee was appointed and in the year 1986.

(d) Another Committee also replaced the same. The first respondent herein filed a Writ Petition in W.P.No.16082 of 1990 challenging the order of appointment by the Tamil Nadu Wakf Board and the same was dismissed. Again, a fresh Committee was constituted in the year 1992 and from the said

Committee, the first respondent was excluded and hence, aggrieved by the exclusion from the Committee, the first respondent filed W.P.No.15266 of 1992 and no stay has been granted by this Court.

(e) Subsequently, in the year 1997, another Committee has been formed by the Wakf Board and hence, again the first respondent challenged the formation of the said Committee in W.P.No.9046 of 1998 and the same was dismissed and hence, in the year 1998, Crl.M.P.No.145 of 1998 was filed before the Additional Judicial Magistrate, Cuddalore for production of records as per Section 68 of the Wakf Act.

(f) After enquiry, the said Crl.M.P.No.145 of 1998 was dismissed and hence, a revision has been filed before the High Court in Crl.R.C.No.1270 of 1998. When the above Crl.R.C.No.1270 of 1998 was pending, the Tamil Nadu Wakf Board after furnishing notice to the first respondent, has framed another Scheme and hence, the first respondent filed a suit to declare the property belonging to the Mosque as his property. In the meanwhile, the Crl.R.C, pending before the High Court viz., Crl.R.C.No.1270 of 1998 was allowed and the first respondent was directed to produce the records and the same was complied with.

(ii) Aggrieved against the order passed in Crl.R.C.No.1270 of 1998, the first respondent preferred S.L.P before the Honourable Supreme Court and the same was allowed wherein it is specifically observed that unless by an express order of removal of the first respondent from the Post of Muthavalli, he cannot be deemed to have been relieved from the said Post and mere appointment of a Committee alone will not tantamount to removal of the first respondent from the post of Muthavalli. On the above background, the present application seems to have been filed before the Wakf Tribunal.

(iii) (a) Before the Wakf Tribunal, the Committee so constituted as stated supra filed an application before the Wakf Board to remove the first respondent from the Post of Muthavalli for alleged commission and omission as stated in Section 64 of the Wakf Act in the year 2002. Pursuant to the order passed by the Division bench in W.A.No.3459 of 2003, the petition was numbered and taken on file by the Wakf Board in W.E.A.No.13/2002/U5/Cuddalore.

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(b) Pursuant to the order passed in W.A.No.3459 of 2003, the Tamil Nadu Wakf Board passed a detailed order in the said W.E.A.No.13 of 2002/U5/Cuddalore, whereby the first respondent was removed from the Post of Muthavalli.

(iv) Aggrieved against the said order passed by the State Wakf Board, the first respondent filed C.R.P.No.(NPD)No.3559 of 2008 and the said C.R.P., was also dismissed with liberty to move before the Wakf Tribunal and to treat the application as original application and thus, the above O.A.No.1 of 2009 was filed by the first respondent herein on 05.01.2009.

(v) The first respondent herein Ali Hussain filed O.A.No.1 of 2009 before the Wakf Tribunal (Principal Sub-Judge), Cuddalore under Section 83(2) of the Wakf Act 1995, wherein he has challenged the order of Tamil Nadu Wakf Board passed under Section 64 (k) of the Act removing the first respondent herein from Muthavalliship.

(vi) Before the Wakf Tribunal, the first respondent examined himself as P.W.1 and marked Ex.A1, the impugned order passed by the Wakf Board in W.E.A.No.13/2002/U5/Cuddalore, dated 16.10.2008 and Ex.A2, certified copy of the order, dated 17.12.2008 in C.R.P.No.3559 of 2008 on the file of the High Court, Madras, E.A3, Certified Copy of the judgment in A.S.No.50/86, dated 30.04.2007, Ex.A4, order copy of criminal appeal No.796/2001 before the Supreme Court of India, dated 10.08.2001, Ex.A5, the judgment in W.A.No.3459/2003 on the file of the High Court of Madras, dated 01.10.2007,

Ex.A6, certified order copy of W.A.No.3/67 dated 20.04.1988 and Ex.A7, certified copy of the Registration. On the side of the respondents, four witnesses were examined as R.Ws.1 to 3 and 47 documents were marked as Ex.R1 to R47.

6. As stated supra, as per the orders passed by this Court at the instance of the first respondent herein in C.R.P.No.3559 of 2008, the Wakf Tribunal treated the application filed by the first respondent herein under original jurisdiction and held that both two allegations levelled against the first respondent under Sections 64(k) of the Wakf Act are not made out in view of the admission made by R.W1, R.W.2 in the cross-examination coupled with Ex.A.3 and Ex.A4 and accordingly, allowed the original application and set aside the order of removal of Muthavalliship passed by the second respondent-Wakf Board.

7. It remains to be stated that the impugned order passed by the Wakf Board was set aside by the Wakf Tribunal. However, the Wakf Board has not filed any revision or appeal challenging the said order and this CRP is filed by one of the members of Committee.

8. Before proceeding with the rival contentions advanced by the respective senior counsel, it is pertinent to extract the relevant orders passed by the Honourable Apex Court and by this Court in the earlier round of litigation before the order of removal of Muthavalliship is passed against the first respondent herein.

9. In Crl.A.No.796/2001 filed by the first respondent herein, the Honourable Apex Court has observed as under:

“.. The appellant was appointed as a Muthavalli of the Mosque by an order dated 20th April 1968 and under the terms of the deed, the Muthavalli was to be appointed on hereditary basis. While the Muthavalli was so continuing, a set of allegations were made against him regarding mismanagement of the property, and therefore in exercise of power under sub-section (2) of Section 43 of the Wakf Act, 1954, the competent authority by order dated 28th March 1981 appointed a committee of management and directed that the said Committee of management and the Muthavalli would continue to manage the affairs of the Wakf...

...The right of Muthavalli under the Act cannot be nullified until and unless an order of removal is passed from the post of Muthavalliship as required under Section 64 of the Wakf Act, 1995. It may be stated that 1954 Act has been repealed and 1995 Act has come into force....

...Suffice it to say that the right of Muthavalli in the management of the Wakf can be nullified only when an order of removal is passed under the provisions of the Wakf Act, and in absence of such order of removal, it is difficult for us to conclude that the constitution of management by order dated 29.12.1997 itself would tantamount to an order of removal of Muthavalli...

..It is open for the parties to seek appropriate relief before the appropriate forum taking into account any subsequent development including challenging the so-called framing of a scheme..."

10. In C.R.P.No.339 of 2008, vide order dated 17.12.2008, this Court has observed as follows:

"22. Moreover, it may be seen from the Tabular Form, given in paragraph-6 above, that wherever there was a dispute with regard to property, the Act prescribed original proceedings before the Tribunal as the remedy. Sections 6 and 7 conferred powers upon the Tribunal to try such disputes by way of a suit. Similarly, the power to issue directions for the administration of wakf and to settle Schemes for the Management of the Wakf, though conferred under Section 32 upon the Board, the Tribunal was conferred powers under Section 35(3) to decide a Challenge to the Scheme so settled by the Board. Likewise, the question as to whether a property is a Wakf property or not, decided under Section 40(1) by the

Board was made subject to the decision of the Tribunal under Section 40(2). In short, the Tribunal is conferred even with original powers, wherever the disputes related to wakf properties. Therefore, when a Mutawalli is removed on a charge of misappropriation, the same would naturally relate to a property of the Wakf. Consequently, the interpretation entitling such a person to invoke the jurisdiction of the Tribunal under Section 83(2) would be consistent with the other provisions and the entire Scheme of the Act.

23. The fear that in an original application under Section 83(2), a person will have more scope and more space, is to some extent, allayed by sub section (6) of Section 83. As stated earlier, sub section (6) contains a non obstante clause and says that the Tribunal can follow such procedure as may be prescribed. It is upto the State Government to frame rules in exercise of the power conferred by Section 109(2) (xxiii) of the Act, prescribing a procedure that is summary in nature, for the Tribunal to follow. While the procedure to be followed by a Civil Court cannot be curtailed by the State Government (except by way of amendments to CPC), the procedure to be followed by a Tribunal constituted under Section 83(1), can always be restricted by issuing rules under Section 109.

24. In the light of the above discussion, I hold that a person who is removed from the office of Mutawalli, under Clauses (a), (b) or (k) of sub-section (1) of Section 64, though not entitled to file an appeal under Section 64(4), will be

entitled to file an application before the Tribunal, under Section 83(2). Hence, this Civil Revision Petition is dismissed.”

11. Heard the argument of the learned counsel for the petitioner and heard the argument of Mr.S.Parthasarathy, learned Senior Counsel for the first respondent and Mr.Lakshmi Narayan, learned Counsel for the second respondent Wakf Board.

12. It is seen from the records that the above C.R.P. is directed against the order of the Wakf Tribunal (Principal Sub-Court, Cuddalore) dated 11.07.2012 passed in O.A.1 of 2009, which set aside the order of the Wakf Board, dated 28.08.2008, removing M.Ali Hussain, first respondent herein from Muthavalliship of Vathiappali @ Syed Ali Mosque, Parangipettai.

13. The above Wakf is governed by the Muthavalli in which the petitioner's mother was functioning as Muthavalli. The suit mosque is an age old Mosque and the property comprised in R.S.No.13/3 measuring 67.5 hectares, Portnovo Villge, was granted for the Mosque by a title deed in T.D.No.2043 and 2055 in Parangipettai and Ariyaghosti villages. Apart from the above property, the above wakf is also possessed of other properties as

follows:

“Survey No.7/8 measuring 38 cents, Portnovo village and Survey No.13/2 measuring 6.79 acres, Portnovo Village, comprised in Survey No.13/3 measuring 1.69 acres consisting of Mosque and Graveyard (4) Survey No.158/1 measuring 6.84 acres, Ariyaghosti Villalge.”

14. In the year 1968, the Tamil Nadu Wakf Board had appointed the first respondent as Hereditary Muthavalli of the Vathiapalli @ Syed Ali Mosque. Thereafter, the first respondent as Muthavalli of the Wakf had misused the Wakf properties and sold an extent of 38 cents comprised in Survey No.7/8, Portnovo Village, without obtaining any sanction from the Tamil Nadu Wakf Board and further, he also obtained loan of Rs.1,500/- from the Government and failed to pay contribution to the Tamil Nadu Wakf Board and also mortgaged the Wakf property for purchasing electrical motor engine for the Mosque and also failed to pay contribution payable to the Tamil Nadu Wakf Board.

15. Further, the petitioner herein was not a respondent in O.A.1 of 2009 but he got himself impleaded as 2nd respondent in the said

O.A.No.1 of 2009. It is pertinent to note that the Wakf Board ie., whose order was set aside by the Wakf Tribunal, has not challenged the order of the Tribunal, but it is the one member of the Committee has filed the present CRP.

16. The Wakf Board removed the Muthavalli only on two grounds viz., that he sold 38 cents of Wakf Land without the prior permission of the Wakf Board and that he borrowed a sum of Rs.1500/- from the Government without prior permission of the Wakf Board. It is pertinent to note that R.W.1-Wakf Inspector has also admitted in his evidence that the Muthavalli was removed only on two grounds.

17. The learned Senior Counsel for the first respondent submitted that both the grounds on the basis of which the Wakf Board removed the first respondent from Muthavalliship are non-existent and untenable both on facts and in law. He further contended that in A.S.No.50 of 1986 on the file of the Sub-Court, Chidambaram filed by the Wakf Board for recovery of the above said 38 cents of land, the learned Subordinate Judge, Chidambaram by judgment dated 30.04.1987 has held that the Wakf Board has failed to prove that the said 38 cents of land is Wakf property. The Court further held that even if the said 38 cents of land is Wakf property, the same has been sold by the

Muthavalli for recovering 6.84 acres of wet land belonging to Vathiappalli @ Syed Ali Mosque in Ariagosti Village, which was illegally alienated by the former Muthavalli, and hence, the said 38 cents of land was sold for legal necessity and that the said sale is binding on the Wakrf Board. It is pertinent to note that the Wakf Board has not preferred any appeal against the said judgment and decree and the same has become final and conclusive.

18. On perusal of lower Court records, in the cross-examination, R.W1-Wakf Inspector has also admitted that the Sub-Court,Chidambaram has declared that the said 38 cents of land is not Wakf property and that the Wakf board has not preferred any appeal against the said judgment and decree. Moreover, R.W.1 - the Wakf Inspector has also admitted that the Muthavalli has done a good job by recovering 6.84 acres of wet land illegally alienated by former Muthavalli and thus, this Court finds under these stated circumstances, that the Wakf Board has no factual ground to invoke power U/s.64 of Wakf Act to remove the Muthavalli on this ground. Hence, based on the above factual position, it appears that the Wakf Tribunal held that the Wakf Board cannot act against the judgment and decree in A.S.No.50 of 1986 dated 30.04.1987 and nor can hold that the Muthavalli has improperly dealt with the Wakf property since the same is held to be not a wakf property. This point is dealt with in

detail infra.

19. (a) With regard to second ground for removal, the learned Senior Counsel for the first respondent/Muthavalli submitted that the first respondent alleged to have availed loan of Rs.1,500/- granted by the Government to all the agriculturists without encumbering the Wakf property and he has already discharged the said loan amount.

(b) In the cross-examination, R.W.1-Wakf Inspector has admitted that the Muthavalli has not encumbered the Wakf property for availing the said loan . Hence, the second ground so alleged also falls to ground. Thus, the Wakf board has no power U/s.64 of the Wakf Act, to remove the Muthavalli on this ground. Hence, the Tribunal rightly held that this alleged act of availing agricultural loan cannot be considered as improper in dealing with the Wakf Property. This point is discussed in detail, infra.

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20. Though the learned counsel for the petitioner has made submissions in threefold, this Court finds it hard to accept the same for multiple reasons, which are discussed infra.

21. The first and foremost contention of the petitioner that there was a Scheme framed by the Wakf Board and hence removal of Muthavalliship is justified and without challenging the Committee, the first respondent cannot resume to Muthavalliship. However, the same was already rejected by the Honourable Supreme Court since any scheme alleged to have been framed by the Wakf Board cannot tantamount to an order of removal of the Muthavalli. The Wakf Board can remove a Muthavalli only on the grounds enumerated in Section 64 of the Wakf Act. Moreover, the alleged Scheme has not been served on the first respondent Muthavalli till this date in spite of several requests made by the first respondent Muthavalli. Hence, the alleged Scheme is not binding on the first respondent Muthavalli nor the same will make the prayer in this petition as infructuous.

22. Secondly, during the course of argument, the learned counsel for the petitioner argued that the first respondent leased out the wakf land for a period exceeding one year without prior permission of Wakf Board. The petitioner in W.E.A.No.13 of 2002 has not whispered anywhere that the Muthavalli has leased out the Wakf land for more than one year. It is pertinent to note that the Wakf Board by its order dated 28.08.2008 also has not removed the first respondent from the office of Muthavalliship on the ground now alleged as

stated supra. Neither this allegation of alleged lease was never raised before the Wakf Tribunal also assumes _significance. Hence, it is not, now, open to the petitioner to raise any allegation regarding alleged lease before this High Court in the stage of civil revision petition.

23. Yet another point contended by the petitioner is that the first respondent/Muthavalli has not informed the Wakf Board about the recovery of 6.84 acres of Wakf land and the same cannot stand to reason because, the suit O.S.No.194 of 1967 (District Munsif Court, Chidambaram) was filed both by the Muthavalli and the Wakf Board. The petitioner himself has admitted in W.E.A.13 of 2002 that the Wakf Board and the Muthavalli jointly filed O.S.194 of 1967. Moreover, R.W.1-Wakf Inspector has admitted that the first respondent/Muthavalli has recovered 6.84 acres of Wakf land and has done a good job for the Wakf. Thus, this clearly demonstrate that the Wakf Board is fully aware of the recovery of 6.84 acres of Wakf land by the first respondent Muthavalli.

24. Though an allegation has been levelled against the first respondent as to selling of wakf property without permission, from the records namely Ex.A2, judgment and decree dated 30.04.1987 made in A.S.No.50 of 1986, it is

seen that the civil Court of competent jurisdiction has categorically gave a finding that the said extent of 38 cents of land is not a wakf property and that being so, in the absence of any appeal, the judgment has become final and hence, it is not open to the revision petitioner herein to allege that the 38 cents of land was wakf property and the first respondent herein has sold the said land and thereby invited a disqualification as contemplated under Section 65(k) of the Wakf Act and hence, the said contention also falls to ground.

25. The next ground that was agitated by the learned counsel for the petitioner is that the first respondent has borrowed Rs.1500/- by mortgaging the Wakf property. However, as rightly pointed out by the Wakf Tribunal, R.W.1- Wakf Inspector has categorically admitted in the cross-examination that 38 cents of land is not a wakf property and the first respondent herein has not encumbered the wakf property for borrowing Rs.1500/- and hence, the finding rendered by the Land Tribunal that the alleged misappropriation of Rs.1500/- and mortgaging of the Wakf property without prior permission of the Wakf Board and also alleged selling of 38 cents of Wakf land also falls to ground, in view of the admitted factual position by virtue of the judgment and decree in A.S.No.50 of 1986 and admission of R.W.1- Wakf Inspector and the said finding rendered by the Wakf Tribunal does not suffer from any irregularity or

illegality warranting interference at this revisional stage.

26. The another allegation levelled by the revision petitioner is that the first respondent Muthavalli had misappropriated the wakf property (Rs.60,000/-) and in this regard, the evidence of P.W.1 is clear and categorical to the effect that the first respondent had received Rs.60,000/- awarded by the Court as a mense profit in O.S.No.194 of 1968 filed by him for recovery of illegally alienated wakf property.

27. The Muthavall received Rs.60,000/- awarded by the Court as mense profits in O.S.No.194 of 1967 filed by him for recovering the illegally alienated wakf property and he has clearly stated that he paid Rs.4,500/- by way of Court fees, that he paid Rs.5,500/- towards his Advocate's fees and repaid Rs.50,000/- borrowed by him for conducting the case from District Munsif Court up to the High Court for recovering and safeguarding the Wakf Property namely 6.84 acres of Wet Land in Ariagosti Village and thereby, he had rendered true account therefor.

28. It is pertinent to note that R.W.1-Wakf Inspector has categorically admitted that he never alleged that the Muthavalli misappropriated any Wakf

money. R.W.2 Sultan Abdul Khadar has also admitted that he has not alleged that the Muthavalli misappropriated any Wakf money and thus, all the three grounds raised by the petitioner with regard to removal of the first respondent as a Muthavalli of the said Wakf falls to ground as they have no legal grounds to stand. Furthermore, this Court finds that as a Muthavalli, the first respondent has protected the property of the Wakf and he has not made any personal gain from and out of wakf properties. As a Muthavalli, he is spending money only for the Wakf and it is not proved that he has made any personal gain.

29. It is to be stated that the petitioner cannot disown the findings in A.S.No.50 of 1986 on the file of the Sub-Court, Chidambaram which has become final as against the Board. The Committee has no independent existence and it is only a creature of the Board and even in these proceedings, it is not established that S.No.7/8 Portnovo village is wakf property and the fact remains that the two grounds enumerated by the Board are factually erroneous and the Board has clearly erred in disqualifying the first respondent. Therefore, the order of the Wakf Tribunal is in accordance with both law and facts.

30. Though there is no income for the Wakf, the first respondent recovered 6.84 cents of Wet land by conducting litigation up to the High Court

namely O.S.No.194 of 1967, A.S.No.73 of 1971 and S.A.No.485 of 1987 by spending more than 1 lakh of rupees with the help of his sons and daughters. The Muthavalli also evicted three persons namely Arif, Bibi and Shaik Abdul Khader from the Wakf property by filing O.S.No.638 of 1985. The Muthavalli is also in possession and enjoyment of all the Wakf properties by paying kist regularly. Thus, the Muthavalli has acted in the best interest of the Wakf and recovered and safeguarded the wakf properties. The first respondent Muthavalli continues to be the Muthavalli of Vathiyapalli @ Syed Ali Mosque till this date.

31. The Wakf Tribunal, after taking into consideration all the documentary and oral evidence, has held that the order of the Wakf Board removing the Muthavalli is not proper and not in accordance with the procedure and set aside the order of the Wakf Board. Hence, there is no infirmity in the order of the Tribunal and there is no merit in the above Civil Revision Petition and thus, from the above discussion this Court holds that the Wakf Board has passed a well considered order and in view of the discussion in the preceding paragraphs, this Court also finds that all the three grounds alleged by the petitioner are all baseless and on the contrary it is found that the first respondent Muthavalli has recovered 6.84 acres of wet land by conducting the

suit from year 1967 to 1987 in all three forums and also evicted three persons from the wakf property by filing an appeal and suit and he has taken care to protect the properties of the Wakf and hence, the order passed by the Wakf Tribunal(Principal Sub-Judge), Cuddalore in O.A.No.1 of 2009 dated 11.07.2012 reversing the order passed by the Tamil Nadu Wakf Board in W.E.A.No.13/2002/U5/Cuddalore, dated 16.10.2008, is hereby confirmed and the Civil Revision Petition is dismissed. No Costs.

11.03.2020

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Internet :Yes
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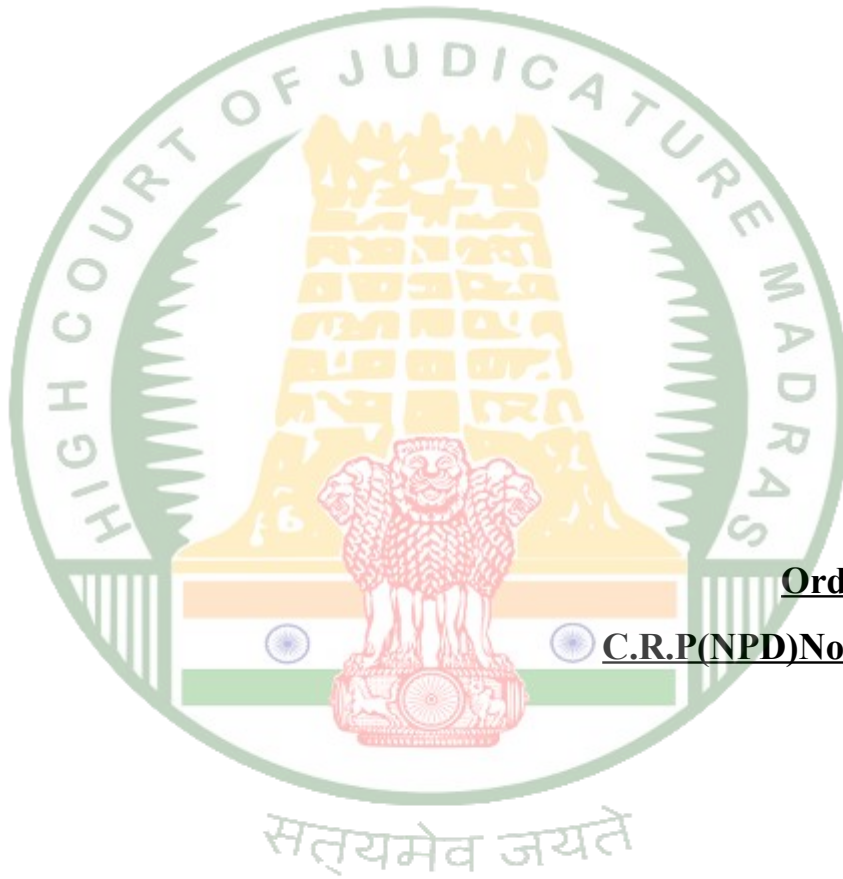
To

TheWakf Tribunal (Principal Sub-Judge) at
Cuddalore.

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RMT. TEEKAA RAMAN, J.
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Order made in
C.R.P(NPD)No.61 of 2013

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