

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.02.2020

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.Nos.17469 and 34295 of 2018
and

W.M.P.Nos.22164, 39867, 20747 of 2018 and 11196 of 2019

Syed Shah Vajiuddi Avulya Darga Masjid and
Burial Ground Waqf, Rep by Muthavalli,
S.Y.Sowkath Ali,
S/o.Mohammed Yahoob,
No.12/5, Bade Sahib Street,
Thalayatham, Gudiyatham,
Vellore District. ...Petitioner in W.P.No.17469 of
2018

Syed Mynuddin
S/o.Syed Shah Vajjiuddin @
Hazarath Peeran,
Trustee & Muthavalli for Hazarth Syed,
Shah Vajjiuddin Avulya, Mosque & Darge,
No.2D, Bade Sahib Street,
Thalayatham,
Gudiyatham,
Vellore District. ...petitioner in W.P.No.34295 of 2018

..Vs..

1.The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Zafer Sharan Street,
Vallal Setherkechi Nagar,
Chennai 600 001.

2.The Superintendent,
Tamil Nadu Wakf Board,
No.8, Bahadhusha Masgith Campus,
Sainathapuram, Vellore.

3.Syed Nymuddin

4.Syed Mynuddin

5.The Superintendent of Police,
Vellore, Vellore District.

6.The Commissioner,
Gudiyatham Municipality,
Vellore District.

(R5, R6 impleaded as per order dated 30.09.2019
in WMP.No.22164/2018 in W.P.No.14769/2018)by PDAJ

...Respondents in W.P.No.17469 of 2018

1.The District Revenue Officer/
Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffar Sahib Street,
Vallai Seethakkathi Nagar,
Chennai-600 001.

2.The Superintendent,
Tamil Nadu Wakf Board,
Vellore.

3.The Inspector of Wakf,
Tamil Nadu Wakf Board,
Vellore.

4.S.Y.Mohammed Ali ...Respondents in W.P.No.34295 of 2018

Prayer in W.P.No.17469 of 2018: Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the first respondent and second respondent to implement the order in Proc.No.8389/95/B7/VLR, dated 28.10.2016 thereby for bearing the third respondent and fourth respondent from in any manner claiming right and interfering in the property to an extent of acre 17.83 cents in T.S.No.792 and to an extent of acre 10.45 cents in T.S.No.792/6 along with burial ground acre 2.55 cents and is a duly notified and registered Wakf Thalayatham, Gudiyatham, Vellore District.

Prayer in W.P.No.34295 of 2018: Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings dated 19.06.2018 issued in Na.Ka.No.8389/95/D7/Ve on the fie of the first respondent herein, quash the same and consequently forbear the respondents 1 to 3 herein from interfering with the affairs and administration of the petitioner's Private Trust and the Properties measuring an extent of 10.45 acres together with a mosque, Darga and Burial Ground, etc, situate in T.S.No.792/6, Ward No.5, Gudiyatham, Vellore District.

For Petitioner : Mr.K.Mohanamurali
(In W.P.No.17469 of 2018)

For Petitioner : Mrs.Hema Sampath
(In W.P.No.34295 of 2018) for Ajimath Beham

For Respondents : Mr.R.Lakshmi Narayanan for
R1 and R2

(In W.P.No.17469 of 2018) : Mr.M.Marudhachalam for R3 and R4

For Respondents : Mr.Mohammed Aseef for R1 to R3
(In W.P.No.34295 of 2018)

COMMON ORDER

The writ petition in W.P.No.17469 of 2018 has been filed by Syed Shah Vajiuddi Avulya Darga Masjid and Burial Ground, Wakf, Rep. by Muthavalli, S.Y.Sowkath Ali, S/o.Mohammed Yahooob, No.12/5, Bade Sahib Street, Vallal Setherkechi Nagar, Chennai 600 001, seeking a Mandamus, directing the first and second respondent namely the Executive Officer, Tamil Nadu Wakf Board and the Superintendent, Tamil Nadu Wakf Board, to implement the order in Proc.No.8389/95/B7/VLR, dated 28.10.2016 thereby forbearing the third respondent and fourth respondent namely Syed Nymuddin and Syed Munuddin, from in any manner claiming right and interfering in the property to an extent of acre 17.83 cents in T.S.No.792 and to an extent of acre 10.45 cents in T.S.No.792/6 along with burial ground acre 2.55 cents and is a duly notified and registered Wakf Thalayatham, Gudiyatham, Vellore District.

2.The writ petition in W.P.No.34295 of 2018 has been filed calling for the records relating to the impugned proceedings dated 19.06.2018 issued in Na.Ka.No.8389/95/D7/Ve on the file of the first respondent herein, quash the same and consequently forbear the respondents 1 to 3 herein from interfering with the affairs and administration of the petitioner's Private Trust and the Properties measuring an extent of 10.45 acres together with a mosque, Darga and Burial Ground, etc, situate in T.S.No.792/6, Ward No.5, Gudiyatham, Vellore District.

3.The learned senior counsel appearing for the third and fourth respondents state that the third respondent unfortunately expired.

4.The Said writ petition has been filed pursuant to the order passed by the Chief Executive Officer of the Tamil Nadu

Wakf Board, Chennai-600 001 dated 28.10.2016 in proceedings No. 8389/95/B7/VLR, wherein Janab S.Y.Mohammed Ali, President of the Syed Sha Vajiuddin Aulia Dargah, Pallivasal and Burial Ground filed a writ petition No.17369 of 2016, on 01.06.2016. This Court had directed the first respondent to consider and dispose of the representation dated 24.03.2016 of the petitioner. In that case the first respondent herein had examined the various litigations, which had been instituted over the Wakf particularly by the fourth respondent herein, who is the brother of the third respondent and who is nowhere connected to wakf Board. The Executive Officer had directed that the third and fourth respondents are no longer Muthawalli or custodian of the wakf Board properties and one of the wakf Board property was demolished by the above persons.

5.The Committee has been formed by the Tamil Nadu Wakf Board by the order dated 30.03.2015 for a period of three years.

6.A Memo has been filed by the first and second respondents stating that they would comply with the impugned order.

7.It is stated that the interim order also been granted in the writ petition.

8.It is the contention of the learned senior counsel for the writ petitioner in W.P.No.34295 of 2018 and for the fourth respondent in W.P.No.17469 of 2018 that the suits were filed against the tenants of Wakf before the Civil Court suppressing the fact that the suit properties are Wakf Board properties and that Tamil Nadu Wakf Board has appointed a Committee for the Management of the Wakf. It is stated that the Tamil Nadu Wakf Board has filed a Suit in O.S.No.1077/1979 on the file of Principal District Munsif Court, Vellore. The learned Principal District Munsif held that the suit properties are not a wakf property and held that the wakf board cannot claim the property and that the suit property belongs to a private trust and the suit was dismissed. The petitioner has filed a writ petition in W.P.No.12957 of 2001 and the same was dismissed on the ground of availability of an alternate remedy. Thereafter, the petitioner filed a Writ Appeal in W.A.No.3840 of 2019, on 08.01.2020. The learned Counsel for the respondents submit that the matter has become infructuous.

9.The learned senior counsel states that the third respondent unfortunately expired and that fact was not brought to the notice of the Writ Appeal Court.

10.The Tamil Nadu Wakf Board and the first respondent appointed the Management Committee headed by Janab. S.Y.Mohamed Ali and 16 members. It is stated in the petitioner's affidavit

that his Wakf is a private Wakf and administered by his family members. Hence the question of title and nature of Wakf can be decided only by the Wakf Tribunal which is the appropriate forum.

11.The writ petition No.17469 of 2018 is dismissed on the ground that a direction cannot be given to the Wakf and if at all any further proceedings are initiated, the petitioners will have to approach the Wakf tribunal seeking further direction.

12.Writ Petition No.34295 of 2018 is disposed of on the ground that since a Committee has been formed it would not be appropriate to decide the rights of the writ petitioner. This Court can only issue a direction to the petitioner herein to approach the Wakf Tribunal. Further orders are passed in this writ petition. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Zafer Sharan Street,
Vallal Setherkechi Nagar,
Chennai 600 001.

2.The Superintendent,
Tamil Nadu Wakf Board,
No.8, Bahadhusa Masgith Campus,
Sainathapuram, Vellore.

3.The Superintendent of Police,
Vellore, Vellore District.

4.The Commissioner,
Gudiyatham Municipality,
Vellore District.

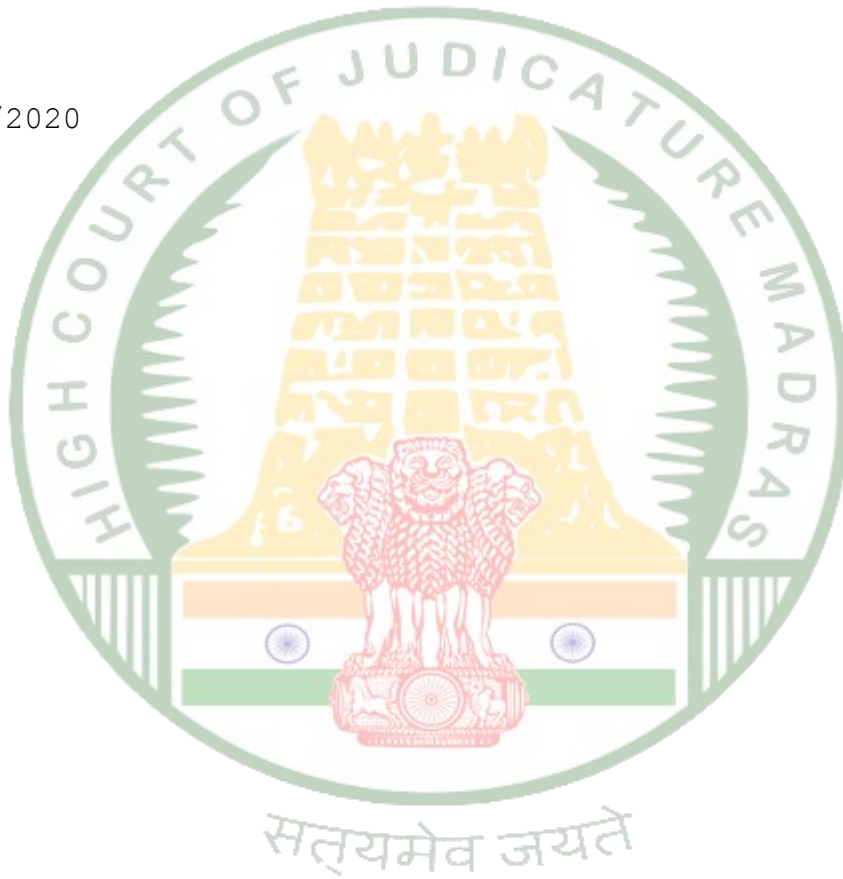
5.The District Revenue Officer/
Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffar Sahib Street,
Vallai Seethakkathi Nagar,
Chennai-600 001.

6.The Inspector of Wakf,
Tamil Nadu Wakf Board,
Vellore.

+2ccs to Mr.K.Mohana Murali, Advocate, S.R.No.11703
+10cc to M/s.A.Ajimath Begam, Advocate, S.R.No.11887,11888
+1cc to Mr.V.Raghavachari, Advocate, S.R.No.11937
+1cc to Mr.G.Mohammed Aseef, Advocate,S.R.No.13126

W.P.Nos.17469 and 34295 of 2018

NR(CO)
KKV/20/07/2020



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