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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2021

CORAM

THE HONOURABLE MR.JUSTICE R. MAHADEVAN

Writ Petition No.18450 of 2013

1.S.A.Syed Abdul Khader
2.S.A.Khaja Mohideen

.. Petitioners

Versus

1. S.M.S.Bucary Wakf-Al-Aulad
Represented by Muthavalli
S.M.S.Kalvath Syed Abdul Khader
No.87/42, Swamy naicken street
Chintadripet, Chennai-600 002.
2. S.M.S.Abdul Khader
3. S.M.S.Kalvath Syed Abdul Khader
4. M/s.Doshi Constructions
Represented by its partner Harshad V.Doshi
3-H, Century plaza
560, Anna salai, Teynampet
Chennai-600 018.
5. Tamil Nadu Wakf Board
Represented by its Secretary
No.1, Jaffer Syrang street
Vallal Seethakathi nagar
Chennai-600 001.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 5th respondent to initiate appropriate action on the notice dated 30.10.2012 issued by the petitioners requiring the 5th respondent to enquire into the affairs of the 1st respondent Wakf and to restore the properties of the 1st respondent illegally sold/converted by the respondents 2 to 4.

For Petitioner : Mr. T.M. Hariharan



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For R1 & R3	:	Mr.K.M.Vijayan Senior Counsel for M/s.K.M.Vijayan Associates
For R2	:	No appearance
For R4	:	Mr. Zaffarullah Khan
For R5	:	Mr. Mohammed Fayaz Ali

ORDER

This writ petition is filed praying to issue a Writ of Mandamus, directing the fifth respondent to initiate appropriate action on the notice dated 30.10.2012 issued by the petitioners with respect to the affairs of the 1st respondent Wakf and to restore the properties of the 1st respondent illegally sold/converted by the respondents 2 to 4.

2. According to the petitioners, they are the sons born through Alima Bi, one of the daughters of S.M.S. Bucary, who established the first respondent S.M.S. Bucary Wakf-Al-Aulad. The petitioners would state that their grand father had endowed several movable and immovable properties to the first respondent Wakf with the avowed object of conferring benefit to his family and also to render religious, pious and charitable activities. It is further stated that the eldest son S.M.S. Mohammed Ghouse, born to his grand father, was the first Muthavalli and after his death, the respondents 2 and 3 have become Muthavallis of the first respondent Wakf. As grand sons of the founder, the petitioners are also the beneficiaries of the first respondent Wakf and are having interest in the maintenance and upkeep of the first respondent Wakf.

3. The grievance of the petitioners is that the respondents 2 to 4 did not discharge their obligations as Muthavallis or taken any steps for the beneficial interest of the first respondent Wakf. On the other hand, they have acted against the interest of the first respondent Wakf by abusing their position as Muthavallis and amazed properties worth several crores. It is also the grievance of the petitioners that the properties dedicated to the first respondent Wakf have been alienated and encumbered by the respondents 2 to 4 for their private interest. The petitioners therefore issued a notice dated 09.04.2012 to the respondents 2 to 4 requiring them to furnish true and proper accounts regarding the sale of the Wakf Properties, but there was no reply. Thereafter, the petitioners submitted a representation dated 30.10.2012 to the fifth respondent to enquire into the affairs of the first



respondent Wakf and to restore the properties which were converted by the respondents 1 to 4. As there was no response to the representation dated 30.10.2012 submitted by the petitioners, the present writ petition is filed.

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4. The learned Senior Counsel appearing for the respondents 1 and 3, by placing reliance on the counter affidavit filed by the third respondent, would contend that only the male descendants would be entitled to the benefits of the 1st respondent Wakf. The properties of the first respondent, which were sold in the year 2006, are now questioned by the petitioners. A representation was submitted by the petitioners on 30.10.2012 after six years of lawful sale of the properties. Further, the petitioners have received exgratia payment from the 4th respondent and they have suppressed this material fact. The 1st respondent is a private Wakf and it will not come under the purview of the Wakf Board. Therefore, the 5th respondent Board has no jurisdiction to enquire into the private Wakf and he prayed for dismissal of this writ petition.

5. Reiterating the averments made in the counter affidavit, the learned counsel appearing for the fourth respondent made his submissions. According to him, the 4th respondent has been recognised as a bonafide agreement holder by this Court and they have complied with the directions given by this Court in C.S.No.112 of 2000.

6. The learned counsel appearing for the 5th respondent, Tamil Nadu Wakf Board, filed a detailed counter affidavit stating that the 5th respondent has no jurisdiction to enquire the private Wakf which was created solely for the benefit of the family members. The religious charity is contemplated only in the event of the descendants of the Wakif becoming extinct. In view of the above, the relief as claimed in this writ petition cannot be granted to the petitioners.

7. Heard the counsel on either side and perused the documents produced in the form of typed set of papers.

8. It is apparent that the petitioners have submitted representation on 30.10.2012 to the fifth respondent, alleging certain irregularities committed by the respondents 2 to 4. The fifth respondent, has not so far conducted any enquiry in such representation. Even though the fifth respondent has stated that they have no jurisdiction over the affairs of a private



Wakf such as the first respondent, yet, the fifth respondent can conduct an enquiry and go into the question of it's jurisdiction also while passing an order. Therefore, it would be appropriate to direct the fifth respondent Board to pass appropriate orders on the representation dated 30.10.2012 of the petitioner, on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioners as well as the respondents 2 to 4, within a period of six weeks from the date of receipt of a copy of this order. Accordingly, this writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kj/rsh

To

Secretary
Tamil Nadu Wakf Board
No.1, Jaffer Syrang street
Vallal Seethakathi nagar
Chennai-600 001.

+1CC to Mr.Zafrullah khan, Advocate, Sr.No.31033/2021
+1CC to Mr.T.M.Hariharan, Advocate, Sr.No.31045/2021

WP No. 18450 of 2013

AK (CO)
K.RK. (01.09.2021)