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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. Nos. 4786 and 2504 of 2021
and

W.M.P. Nos. 5412, 5417, 5421, 5423, 5424,
2822, 2824, 2825, 2829 & 2831 of 2021

W.P. No. 4786 of 2021
and

W.M.P. Nos. 5412, 5417, 5421, 5423 & 5424 of 2021

The Association of Worshippers and
Well Wishers of "Masjid-e-MogdooMi"
Rep by its Secretary Mr.K.E.M. Segu Mohammed
No.83, Sembudoss Street
Chennai - 600 009

.. Petitioner

Versus

1. The Principal Secretary to the Government
Backward Class, Most Backward Classes
and Minorities Welfare (T1) Department
Secretariat
Chennai - 600 009
2. The Secretary to the Government
Backward Class, Most Backward Classes
and Minorities Welfare (T1) Department
Secretariat
Chennai - 600 009
3. The Chairman
Tamil Nadu Wakf Board
No.1, Jaffer Syrang Road
Vallalseethakathi Nagar
Chennai - 600 001
4. The Chief Executive Officer
Tamil Nadu Wakf Board
No.1, Jaffer Syrang Road
Vallalseethakathi Nagar
Chennai - 600 001



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5. The Superintendent of Waqf
Poonamallee Zone
Big Mosque Complex
Poonamallee
Chennai - 600 056

6. Mohammed Safiullah
Executive Officer/Superintendent of Waqf
Trust Estate of M.K.P. Maracayar and
Masjid Moqdoomi Waqf
Mecca Masjid Compound
No.822, Anna Salai
Chennai - 600 002

7. The Administrative General and
Official Trustee of Madras
High Court Campus, Chennai - 600 104

8. S. Majid

.. Respondents

W.P. No. 2504 of 2021

and

W.M.P. Nos. 2822, 2824, 2825, 2829 & 2831 of 2021

1. I.S. Ibrahim

2. M. Basheer Ahamed

.. Petitioner

Versus

1. The Principal Secretary to the Government
Backward Class, Most Backward Classes
and Minorities Welfare (T1) Department
Secretariat, Chennai - 600 009

2. The Secretary to the Government
Backward Class, Most Backward Classes
and Minorities Welfare (T1) Department
Secretariat, Chennai - 600 009

3. The Chairman
Tamil Nadu Wakf Board
No.1, Jaffer Syrang Road
Vallalseethakathi Nagar
Chennai - 600 001

4. The Chief Executive Officer
Tamil Nadu Wakf Board
No.1, Jaffer Syrang Road
Vallalseethakathi Nagar
Chennai - 600 001



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5. The Superintendent of Waqf
Poonamallee Zone
Big Mosque Complex
Poonamallee
Chennai - 600 056
6. Executive Officer/Superintendent of Waqf
Trust Estate of M.K.P. Maracayar and
Masjid Moqdoomi Waqf
No.139, Dr.Annie Besant Road
Ice House, Triplicane
Chennai - 600 005
7. The Administrative General and
Official Trustee of Madras
High Court Campus
Chennai - 600 104
8. The Association of Worshippers and
Well Wishers "Masjid-e-Moqdoomi"
Rep by its President
No.83, Sembudoss Street
Chennai - 600 001

.. Respondents

Prayer in W.P. No. 4786 of 2021: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the Impugned Orders of the respondents i.e., (i) Proceeding of the 3rd respondent in Serial No.1, Inam No.12/20 in Na.Ka.No.12765/16/B9/Chennai dated 07.10.2020, (ii) G.O.No.46 (No.VI-3(a)/97/2020) dated 11.11.2020 issued by the 1st respondent (iii) Proceedings of the fourth respondent in R.C.No.12765/16/B9/Chen dated 19.11.2020 (iv) Proceedings of the fourth respondent in R.C.No.No.12765/16/B9/Chen dated 18.12.2020 (v) Importance Notice of the 6th respondent dated 19.11.2020, (vi) Importance Notice of the 6th respondent datd 19.11.2020 issued to the Tenants and (vii) Importance Notice of the 6th respondent dated 16.12.2020 and quash the same and consequently direct the respondents 1 to 6 not to interfering in any of the administration of the 7th respondent in the Trust Estate of M.K. Periyathambi Maracayar Trust in pursuance of Scheme Decree dated 02.05.1939 in C.S. No. 314 of 1930 of this Hon'ble Court.

Prayer in W.P. No. 2504 of 2021: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the Impugned Orders of the respondents i.e., (i) Proceeding of the 3rd respondent in Serial No.1, Inam No.12/20 in Na.Ka.No.12765/16/B9/Chennai dated 07.10.2020, (ii) G.O.No.46



(No.VI-3(a)/97/2020) dated 11.11.2020 issued by the 1st respondent (iii) Proceedings of the fourth respondent in R.C.No.12765/16/B9/Chen dated 19.11.2020 (iv) Proceedings of the fourth respondent in R.C.No.No.12765/16/B9/Chen dated 18.12.2020 (v) Importance Notice of the 6th respondent dated 19.11.2020, (vi) Importance Notice of the 6th respondent datd 19.11.2020 issued to the Tenants and (vii) Importance Notice of the 6th respondent dated 16.12.2020 and quash the same and consequently direct the respondents 1 to 6 not to interfering in any of the administration of the 7th respondent in the Trust Estate of M.K. Periyathambi Maracayar Trust in pursuance of Scheme Decree dated 02.05.1939 in C.S. No. 314 of 1930 of this Hon'ble Court.

W.P. No. 4786 of 2021

For Petitioners : Mr.E.Sathiyaraj
For Respondents : Mr.C.Sangamithirai for R1 & R2
Special Government Pleader
Mr.Haja Mohideen Gisthi for R3 - R5
Mr.K. Seetharam for R7
Mr.Nissar Ahmed for R8

W.P. No. 2504 of 2021

For Petitioners : Mr.A.Ilayaperumal
For Respondents : Mr.C.Sangamithirai for R1 & R2
Special Government Pleader
Mr.Haja Mohideen Gisthi
for R3 - R5
Mr. C. Shankar for R6
Mr.K. Seetharam for R7
Mr.Nissar Ahmed for R8

COMMON ORDER

Since, the issues involved in both these writ petitions are similar. These writ petitions are clubbed together, heard and disposed of through this common order.

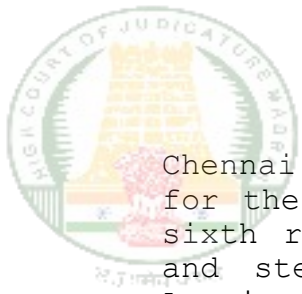
2. These Writ Petitions have been filed to issue a Writ of Certiorarified Mandamus to call for the records relating impugned orders of the respondents i.e.(1) Proceeding of the 3rd respondent in Serial No.1 Inam No.12/20 in Na.Ka.No.12765 /16 B9 / Chennai dated 07/10/2020 (ii) G.O.No.46 (No.VI -3 (a) / 97 /2020 dated 11/11/2020 issued by the 1st respondent (iii) proceedings of the 4th respondent in R.C.No.12765 /16 /B9 /Chen



dated 19/11/2020 (iv) Proceedings of the 4th respondent in R.C.No.12765 /16 /B9 / CHN dated 18/12/2020 (V) Importance Notice of the 6th respondent dated 19/11/2020 (vi) importance Notice of the 6th respondent dated 19/11/2020 issued to the Tenants and (vii) importance Notice of the 6th respondent dated 06/12/2020 and quash the same and consequently direct the respondents 1 to 6 not to interfering in any of the administration of the 7th respondent in the Trust estate of M.K.Periyathambi Maracayar Trust in pursuance of Scheme Decree dated 02.05.1939 in C.S.No.314 of 1930 of this Hon'ble court.

The brief facts of the case in W.P.No.4786 of 2021 are as follows:

3. One Mr. K. Periathambi Maracayar, out of benevolence has endowed his properties through a settlement deed dated 25.04.1919 for the purpose of charity and welfare of the poor. Pursuant to the demise of the late Mr. K.Periathambi Maracayar, due to difference of opinion between the legal descendants and the trustees, a Scheme Suit was filed before this court in C.S.No.314 of 1930. This Court granted Scheme Decree vide Decree dated 02.05.1939 by appointing the Administrative General and Official Trustee of Tamil Nadu, Chennai - 104, the seventh respondent herein as the official trustee for the purpose of administering by the entire estate of the the aforesaid endowed properties. To which, this Court by order dated 16.04.1999 appointed several trustees and petitioner was one among the Trustee in the aforesaid Trust. In regard to the appointment of Trustee, one Mr.Majid, who was not appointed as a Trustee to the Trust had filed writ petitions in W.P. No. 8333 of 2019 and W.P. No. 32025 of 2019 seeking to take over the entire estate of the Trust properties by the Waqf Board suppressing the fact that the seventh respondent is the official trustee as per the Decree dated 02.05.1939 made in C.S. No. 314 of 1930. Nevertheless, the seventh respondent was never impleaded in the aforesaid writ petitions. Consequent to the orders passed in the aforesaid writ petitions, the waqf authorities vide a letter dated 09.03.1961 in W.B. No. 5468/59 has sought the seventh respondent with regard to direct control over the waqf properties and the said letter was stoutly rejected by the seventh respondent in its Proceedings in R.O.C. No. 942/61/O.T.1 dated 29.03.1961. In regard to the rejection, the third respondent ought to have challenged the rejection instead has passed a resolution in Inam No.12/2020 and in Na.Ka.No.12765/16/89/CH dated 07.10.2020 stating that the Trust estate of M.K.P. Maracayar and Maqdoomi Masjid George Town, Chennai District will be under the direct management of Tamil Nadu Waqf Board and the said was approved through G.O. No. VI/3 (a)/97/2020 dated 11.11.2020 without having regard to the Scheme Decree passed by the seventh respondent in C.S. No. 314 of 1930. In furtherance, the fourth respondent herein has appointed the Superintendent of Waqf,



Chennai Zone as Executive Officer, the sixth respondent herein for the aforesaid Trust. In pursuance to the appointment of the sixth respondent as Executive Office, the said Trust is sealed and steps are being taken to commence the waqf operations. Aggrieved against such deplorable action by the respondents Nos. 1 to 6 without having regard to the Decree Order dated 02.05.1939 passed in C.S. No. 314 of 1930 and Rejection Order passed by the seventh respondent in its Proceedings in R.O.C. No. 942/61/0.T.1 dated 29.03.1961, the petitioner association had sent several representation to the respondents Nos. 1 to 6 and the same is kept pending without consideration heretofore. Hence, this writ petition.

The brief facts of the case in W.P.No.2504 of 2021 are as follows:

4. One Mr. K. Periathambi Maracayar, out of benevolence has endowed his properties through a settlement deed dated 25.04.1919 for the purpose of charity and welfare of the poor. Pursuant to the demise of the late Mr. K.Periathambi Maracayar, due to difference of opinion between the legal descendants and the trustees, a Scheme Suit was filed before this court in C.S.No.314 of 1930. This Court granted Scheme Decree vide Decree dated 02.05.1939 by appointing the Administrative General and Official Trustee of Tamil Nadu, Chennai - 104, the seventh respondent herein as the official trustee for the purpose of administering by the entire estate of the the aforesaid endowed properties. While so, the third respondent in view of taking over the entire estate under the direct control of Tamil Nadu Waqf Board has passed a resolution in Inam No.12/2020 and in Na.Ka.No.12765/16/89/CH dated 07.10.2020 stating that the Trust estate of M.K.P. Maracayar and Maqdoomi Masjid George Town, Chennai District will be under the direct management of Tamil Nadu Waqf Board and the said was approved through G.O. No. VI/3 (a)/97/2020 dated 11.11.2020 without having regard to the Scheme Decree passed by the seventh respondent in C.S. No. 314 of 1930. In furtherance, the fourth respondent herein has appointed the Superintendent of Waqf, Chennai Zone as Executive Officer, the sixth respondent herein for the aforesaid Trust. In pursuance to the appointment of the sixth respondent as Executive Office, the said Trust is sealed and steps are being taken to commence the waqf operations. Aggrieved against such deplorable action by the respondents Nos. 1 to 6 without having regard to the Decree Order dated 02.05.1939 passed in C.S. No. 314 of 1930 and Rejection Order passed by the seventh respondent in its Proceedings in R.O.C. No. 942/61/0.T.1 dated 29.03.1961, the petitioners had sent several representation to the respondents Nos. 1 to 6 for furnishing several documents, however, the same is kept pending without consideration heretofore. Hence, this writ petition.



5. The learned counsel for the petitioners in both the writ petitions, in unison, contended that the third respondent ought to have taken cognizance before passing a resolution in Inam No.12/2020 and in Na.Ka.No.12765/16/89/CH dated 07.10.2020; with regard to Decree Order dated 02.05.1939 passed in C.S. No. 314 of 1930 and Rejection Order passed by the seventh respondent in its Proceedings in R.O.C. No. 942/61/0.T.1 dated 29.03.1961, but failed to reckon with. Further, the respondents Nos. 1 to 2 have also affirmed the same and conclusively, the respondents Nos. 1 to 6 have sealed the entire premises which has curbed the petitioner from utilising funds for managing the day to day affairs of the Trust. Further, the learned counsel submitted that under Section 4 of the Waqf Act, 2013, the respondents Nos. 1 to 2 ought to have appointed the Survey Commissioner to survey any of the waqf properties to decide whether the Estate should be under the control of the Tamil Nadu Waqf Board. In lieu, the respondent Nos. 1 and 2 have approved the same through G.O. No. VI/3 (a)/97/2020 dated 11.11.2020.

6. Heard both sides and perused the materials available on record. Upon perusal, this court is of the view of that under Section 65(2) of the Waqf Act, 1995, if any, having nexus, aggrieved, may file an appeal for the purpose of satisfying as to the correctness, legality or propriety of the notification issued by the Board before the State Government. For better appreciation, the relevant extracts of Section 65(2) of the Waqf Act, 1995 is extracted below:

"...

(2) The State Government may, on its own motion or on the application of any person interested in the [waqf], call for the records of any case for the purpose satisfying itself to the correctness, legality or propriety of the notification issued by the Board under sub-section (1) and pass such orders as it may think fit and orders so made by the State Government shall be final and shall be published in the manner specified in sub-section (1)"

7. In view of the above, this court without going into merits, directs the petitioners in both the writ petitions to file an appeal before the respondents 1 & 2, if such an appeal is filed, the State Government viz., respondents Nos. 1 and 2 shall take up the matters and the requisite orders shall be passed on merits as expeditious as possible.



8. Accordingly, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to the Government
Backward Class, Most Backward Classes
and Minorities Welfare (T1) Department
Secretariat, Chennai - 600 009
2. The Secretary to the Government
Backward Class, Most Backward Classes
and Minorities Welfare (T1) Department
Secretariat, Chennai - 600 009
3. The Chairman
Tamil Nadu Wakf Board
No.1, Jaffer Syrang Road
Vallalseethakathi Nagar
Chennai - 600 001
4. The Chief Executive Officer
Tamil Nadu Wakf Board
No.1, Jaffer Syrang Road
Vallalseethakathi Nagar
Chennai - 600 001
5. The Superintendent of Waqf
Poonamallee Zone
Big Mosque Complex
Poonamallee, Chennai - 600 056
6. The Executive Officer/Superintendent of Waqf
Trust Estate of M.K.P. Maracayar and
Masjid Moqdoomi Waqf
No.139, Dr.Annie Besant Road
Ice House, Triplicane
Chennai - 600 005



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7. The Administrative General and
Official Trustee of Madras
High Court Campus
Chennai - 600 104.

8. The Executive Officer/Superintendent of Waqf
Trust Estate of M.K.P. Maracayar and
Masjid Moqdoomi Waqf
Mecca Masjid Compound
No.822, Anna Salai
Chennai - 600 002.

+1cc to Mr.A.Ilayaperumal, Advocate, S.R.No.65969
+1cc to Mr.E.Sathiyaraj, Advocate, S.R.No.65968
+1cc to Mr.Nissar Ahmed, Advocate, S.R.No.66303
+1cc to the Government Pleader, S.R.No.66135

WP Nos. 4786 & 2504 of 2021

VG-II[co]
NSK 21/01/2022