

CRP.NPD.No.3788 of 2015

**G.K.ILANTHIRAIYAN, J.**

At the instance of the learned counsel for the petitioners, today this matter has been posted under the caption "for being mentioned".

2. The learned counsel for the first respondent would submit that the first petitioner died long back. Even then, the legal heirs of the deceased first petitioner did not take any step to implead them as party to the proceedings.

3. Considering the submission of the learned counsel for the first respondent, it is ordered that paragraph 7 to 9 of the order dated 18.02.2021 passed in CRP.NPD.No.3788 of 2015 by this Court shall read as follows:

*"7. Therefore, for determination of any dispute, question or other matter relating to a Wakf or Wakf property, the Tribunal has got jurisdiction to try the same. Further, the said issue is open to the parties before the Wakf Tribunal in*

*respect of its jurisdiction and as such it cannot be rejected on its threshold.*

*8.In view of the above discussion, the order passed by the Court below dated 02.07.2015 in I.A.No.96 of 2013 in W.O.P.No.1 of 2012 on the file of the Wakf Tribunal Nagapattinam, in the Court of Subordinate Judge, Nagapattinam, is perverse and illegal and also liable to be set aside.*

*9.Accordingly, the Civil Revision Petition is allowed and the Wakf Tribunal is directed to conduct enquiry on the petition i.e.,I.A.No.96 of 2013 in W.O.P.No.1 of 2012 on the file of the Wakf Tribunal Nagapattinam, in the Court of Subordinate Judge, Nagapattinam, and dispose of the same within a period of four months from the date of receipt of a copy of this order. The legal heirs of the first respondent are at liberty to file necessary petition before the trial court to*

*implead themselves as party within a period of two weeks  
from the date of receipt of copy of this order. No costs.  
Consequently connected miscellaneous petition is closed.*

4. It is also ordered that the learned counsel for the first respondent shall be shown as Mr.Palani Swamy in stead of *Mr.Desinghu Natesan for Mr.Palani Swamy* in the cause title of the order dated 18.02.2021 passed in CRP.NPD.No.3788 of 2015 by this Court.

5. Accordingly, the Registry is directed to issue a fresh order copy in CRP.NPD.No.3788 of 2015 dated 18.02.2021 after making necessary corrections.

01.03.2021

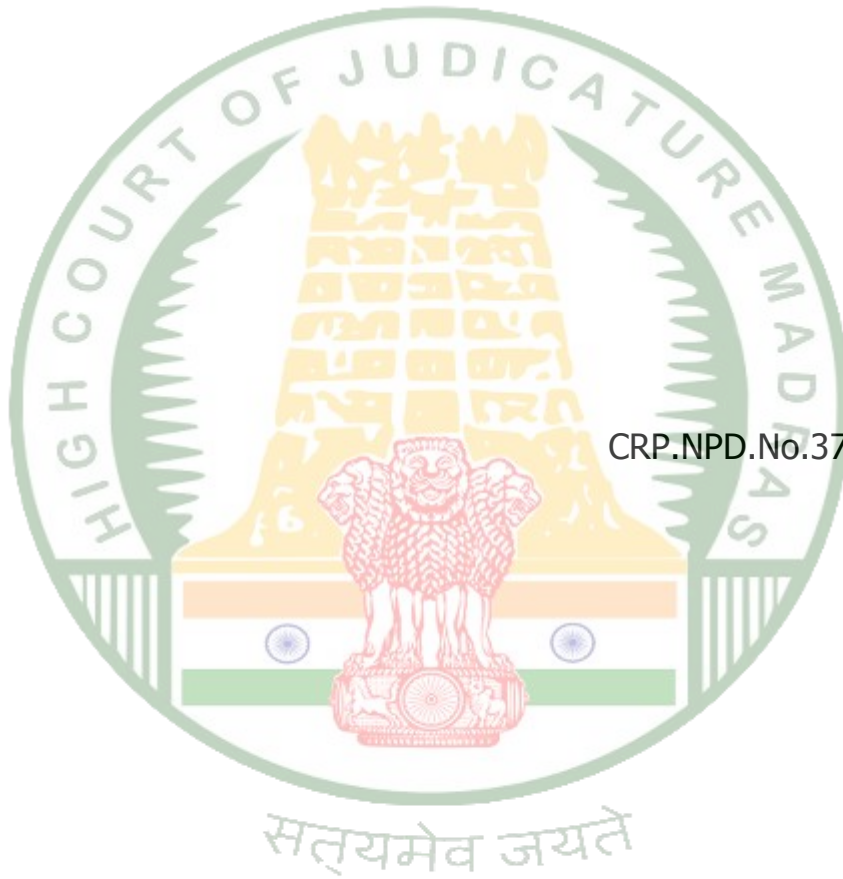
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**G.K.ILANTHIRAIYAN, J.**

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CRP.NPD.No.3788 of 2015

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01.03.2021

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 18.02.2021**

**CORAM:**

**THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN**

**C.R.P.(N.P.D).No.3788 of 2015**  
**and M.P.No.1 of 2015**

1.S.Mohammed Ansari  
2.M.M.Ismail

...Petitioners

Vs

1.K.M.Jahabar Nachiyar  
2.Tamil Nadu Wakf Board  
Represented by its Chief Executive Officer  
1, Jaffar Seran Street  
Vallal Seethakathi Nagar  
Chennai - 600 001.  
3.K.Balu

...Respondents

**Prayer:** Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 02.07.2015 in I.A.No.96 of 2013 in W.O.P.No.1 of 2012 on the file of the Wakf Tribunal Nagapattinam, in the Court of Subordinate Judge, Nagapattinam.

For Petitioners : Mr.K.Ashok Kumar  
For Respondents : Mr.Desinghu Natesan  
for Mr.Palani Swamy for R1

Ms.J.B.Abitha Banu for R2

**ORDER**

The Civil Revision Petition is directed as against the order dated 02.07.2015 in I.A.No.96 of 2013 in W.O.P.No.1 of 2012 on the file of the Wakf Tribunal Nagapattinam, in the Court of Subordinate Judge, Nagapattinam, thereby allowing the petition filed under Order 7 Rule 11 of CPC and the W.O.P.No.1 of 2012 is objected as not maintainable before the Wakf Tribunal.

2.The petitioners filed a petition before the Wakf Tribunal for declaration declaring that the sale deed executed by the 1st respondent in favour of the 3rd respondent herein in respect of the C schedule property is null and void and further direction directing the 1st and 3rd respondent herein to restore the possession of B and C schedule properties to the petitioners. On perusal of the petition, the petitioners alleged that their grandfather was a pious religious muslim and endowed a wakf through a registered wakf deed dated 28.03.1933, registered as document No.550 of 1933, thereby endowing large extent of properties belonging to him as described in A to C schedule properties.

3.The C Schedule property was allotted to his third son and after his

demise, the 1st respondent, as the only daughter of the deceased, who is in possession, with the consent of the petitioners. While being so, the 1st respondent executed sale deed in respect of the C schedule property in favour of the 3rd respondent herein. In fact the petitioners have cautioned general public by making a publication in the tamil daily, by highlighting the character of the wakf properties and cautioned the public not to purchase any of the items from the 1st respondent. In spite of the publication, the 3rd respondent herein purchased the suit property on 20.12.2011. That apart for selling the wakf property, both the respondents 1 and 3 have not obtain any permission either from the Court or from the Wakf. Therefore, the sale is liable to be set aside. While pending the petition, the respondents also filed their counter. Thereafter they filed a petition for rejection of the plaint under Order 7 Rule 11 of CPC on the ground that the suit property is not a wakf property and as such the Wakf Tribunal has no jurisdiction to try the petition. The trust created by the deceased grandfather is a family trust under the document dated 28.03.1933. The respondents 1 and 3 also filed their written arguments. In support of his objections, the petitioners also filed detailed counter. On perusal of the written arguments submitted by the respondents 1 and 3 herein and also Judgments

cited by them, the Wakf Tribunal rejected the petition on the ground that the suit schedule property is not a wakf property and as such the petition is not maintainable before the Wakf Tribunal and the Civil Court only has got the jurisdiction to try the issues.

4.The learned counsel for the petitioners relied upon the following Judgments in support of his contentions:

(i) in the case of ***C.Natarajan Vs. Ashim Bai and another.*** Relevant paragraphs are extracted hereunder:-

*"6.Order VII Rule 11(d) of the Code of Civil Procedure reads as under :*

*11.Rejection of plaint.The plaint shall be rejected in the following cases :*

*(a) to (c) ...*

*(d) where the suit appears from the statement in the plaint to be barred by any law;*

*(e) to (f) ...*

*7. An application for rejection of the plaint can be filed if the allegations made in the plaint even if given face value and taken to be correct in their entirety appear to be*

*barred by any law. The question as to whether a suit is barred by limitation or not would, therefore, depend upon the facts and circumstances of each case. For the said purpose, only the averments made in the plaint are relevant. At this stage, the court would not be entitled to consider the case of the defence."*

(ii) in the case of ***Popat and Kotecha Property Vs. State Bank of India Staff Association***, relevant paragraphs are extracted here:-

*"Rule 11 of Order VII lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word 'shall' is used clearly implying thereby that it casts a duty on the Court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13.*

*The above position was highlighted in [Sopan Sukhdeo Sable](#)*

*and Ors. v. Assistant Charity Commissioner and Ors. (2004 (3) SCC 137).*

*When the averments in the plaint are considered in the background of the principles set out in Sopan Sukhdeo's case (supra), the inevitable conclusion is that the Division Bench was not right in holding that Order VII Rule 11 CPC was applicable to the facts of the case. Diverse claims were made and the Division Bench was wrong in proceeding with the assumption that only the non-execution of lease deed was the basic issue. Even if it is accepted that the other claims were relatable to it they have independent existence. Whether the collection of amounts by the respondent was for a period beyond 51 years need evidence to be adduced. It is not a case where the suit from statement in the plaint can be said to be barred by law. The statement in the plaint without addition or subtraction must show that is barred by any law to attract application of Order VII Rule 11. This is not so in the present case.*

*We do not intend to go into various claims in detail as disputed questions in relation to the issue of limitation are involved.*

*The appeal is accordingly allowed with no order as to costs. We make it clear that we have not expressed any*

*opinion on the merits of the case which shall be gone into in accordance with law by the Trial Court."*

5. In the above Judgments the Hon'ble Supreme Court of India has held that to consider the rejection of plaint under Order 7 Rule 11 and only the averments made in the plaint are relevant. In the case on hand, the learned Wakf Tribunal without letting evidence, came to the conclusion only on the basis of the written arguments submitted by the respondents 1 and 3 and concluded that the property is purely a private family property and it was created under the family trust under the document dated 28.03.1933. As stated supra the petitioners made specific averments that the suit properties which were endowed through the suit property, dedicated to the Wakf. Therefore, the Wakf filed the document No.550 of 1993. When it being so, the parties concerned have to obtain necessary permission from the Court or from the Wakf. These are all the issues have to be tried with a fullfledged trial.

6. In so far as the jurisdiction of the Wakf Board is concerned, it is relevant to extract the provisions under Section 83 of the Wakf Act.

**"83. Constitution of Tribunals, etc.,- (1)** The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a Waqf or Waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals."

7. Therefore, for determination of any dispute, question or other matter relating to a Wakf or Wakf property, the Tribunal has got jurisdiction to try the same. Therefore, the Wakf Tribunal has got the jurisdiction to try the petition filed by the petitioners and it cannot be rejected on its threshold.

8. In view of the above discussion, the order passed by the Court below dated 02.07.2015 in I.A.No.96 of 2013 in W.O.P.No.1 of 2012 on the file of the Wakf Tribunal Nagapattinam, in the Court of Subordinate Judge, Nagapattinam, is perverse and illegal and also liable to be set aside.

9. Accordingly, the Civil Revision Petition is allowed and the Wakf Tribunal is directed to conduct enquiry on the petition i.e., I.A.No.96 of 2013 in W.O.P.No.1 of 2012 on the file of the Wakf Tribunal Nagapattinam, in the Court of Subordinate Judge, Nagapattinam, and dispose of the same within a period of six months from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petition is closed.

**18.02.2021**

Index: Yes/No  
Internet: Yes/No  
Speaking Order: Yes/No  
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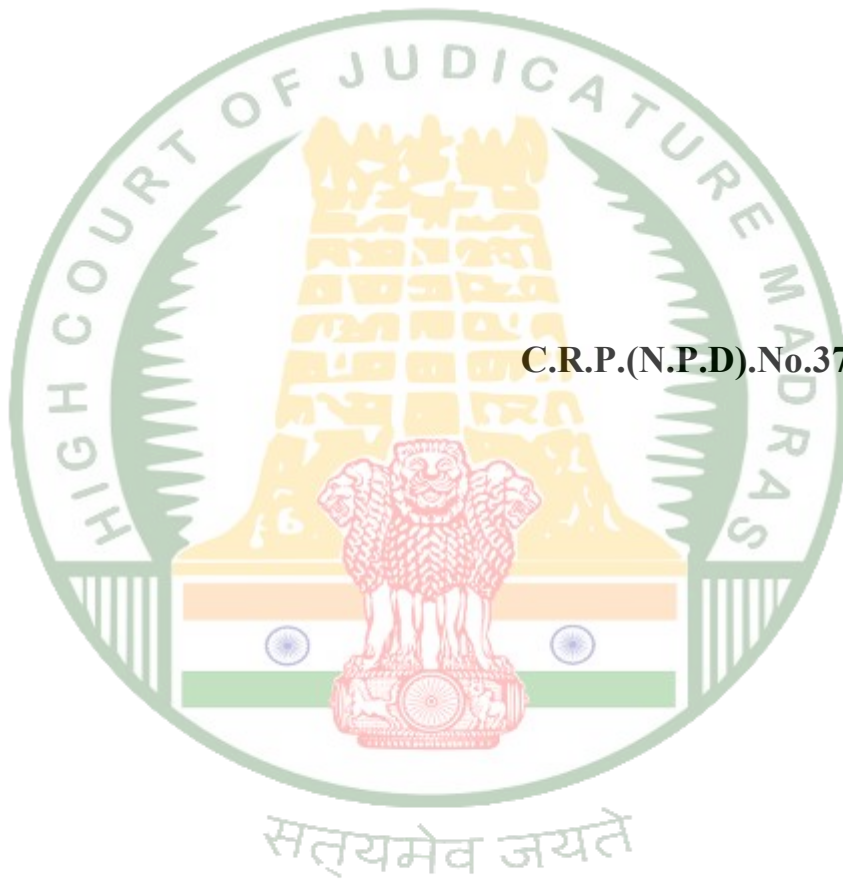
1. The Wakf Tribunal Nagapattinam.
2. The Subordinate Judge, Nagapattinam.



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**G.K.ILANTHIRAIYAN.J,**

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**C.R.P.(N.P.D).No.3788 of 2015**

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**18.02.2021**