

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

C.R.P.(NPD).No.506 of 2016

A.Sulthan Khan

... Petitioner/Appellant

Vs.

1.The Presiding Officer,
Wakf Tribunal,
Chennai – 600104.
(1st Assistant City Civil Court at Madras)

2.Tamil Nadu Wakf Board,
Rep. by its Chief Secretary,
No.1, Jafar Sirang Street,
Seethakadhi Nagar,
Chennai – 600001.

3.The Superintendent of Wakf,
No.12, Kiledar Street, Near Chauk,
Trichy – 620008.

4.A.Mehboob Khan

5.Dr.M.A.Ansar
Khan Milan Mosque,
Palakkarai,
Thiruchirappalli.

... Respondents

[Respondents 4 & 5 given up in C.R.P. since no relief is claimed.]

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India to call for the records in O.A.No.12 of 2011 on the file of the Wakf Tribunal/1st Assistant City Civil Court, Chennai and to set aside the fair and decretal order dated 20.06.2014 passed in the said matter.

For Petitioner : Dr.S.N.Amarnath

For Respondents : R1 – Tribunal

Mr.Mohamed Fayaz Ali – R2

R3 – No Appearance

R4 & R5 – Given up

ORDER

(Heard through video conferencing)

This Civil Revision Petition has been filed to call for the records in O.A.No.12 of 2011, on the file of Wakf Tribunal /1st Assistant City Civil Court, Chennai and to set aside the fair and decretal order passed on 20.06.2014 in the said matter.

2. Heard the submissions of the learned counsel for the petitioner and the learned counsel for the respondents 1 & 2.

3. Earlier, the Civil Revision Petitioner has filed a writ petition in W.P.No.8789 of 2011 for directing the Wakf Board to pass an order in the

proceedings in Na.Ka.No.13148/08/B-12 Trichy dated 23.07.2010 for appointment of Muthavalli for Hazarath Khanmiyan Shahith Waliyaullah Durga Palakkarai and Mosque and to direct the second and third respondents to pay the compensation for acquiring the land for Railways, Highways and Housing Board. In the said writ petition, the following order has been passed:-

“2. In the light of the submission of the counsel for the petitioner that the first respondent already conducted an enquiry in which the petitioner as well as the fifth and sixth respondents have participated and the enquiry also completed, without expressing any opinion on merits, the first respondent is directed to pass appropriate orders pursuant to the enquiry said to have been conducted by him, on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

3. With the above direction, the writ petition is disposed of. No costs.”

4. Consequent to the said order, the matter was taken up and after an enquiry, the claim of the petitioner was dismissed. While passing the said order, it is observed by the Wakf Board that as per the performa report pertaining to the subject Wakf, the order of succession for the Muthavalli is only through nomination by the Muslims of the locality. This petitioner claims himself as the

successor of S.M Khan and challenged the above said order by stating that the impugned order of the Board was passed without relying the materials which would show that the subject Wakf is a private trust and the muthavalliship is only through hereditary among the male descendants and that the Muthavallis have a right to hold and disburse 4/5 share of the properties. It is further submitted that a suit has been filed by the then Muthavalli against S.M Khan in O.S.No.39 of 1963 and in the suit it was held that S.M Khan is eligible to claim Dastik allowance and the said suit filed by the Muthavalli was dismissed.

5. The learned counsel for the petitioner has submitted that his father Thurab Ali Khan is the son of S.M Khan and he was the Muthavalli of the subject Wakf. It is claimed by the petitioner that the property belongs to a private trust and its income has to be shared in accordance with the scheme provided by the Founders. It is further submitted that the said S.M Khan – Muthavalli has been acting as Muthavalli and he was receiving the Dastik allowance for the property for quite long time. While the learned counsel for the petitioner claims that the Muthavalliship for the subject Wakf is through hereditary succession, the learned counsel for the respondent would submit that it is only as per the nomination made by the local Muslims and as how it has

been shown in the performa report.

6. It is seen in the performa report that Muthavalli has to be appointed only through nomination. However, the learned counsel for the petitioner attracted the attention of this Court to a Government Order Gazette notification dated 10.12.1958 and claimed that in the Government Gazette notification itself, the rule of succession is mentioned as hereditary and further, the method in which the apportionment of income has to be appropriated is also mentioned.

7. Way back in the year 1963, a suit had been filed against the deceased S.M Khan for the relief of declaration and permanent injunction. The plaintiff wanted to declare himself as the Muthavalli and trustee of the subject Wakf and consequently for an injunction against S.M Khan that he should not interfere with the affairs of the Wakf. The said suit was dismissed by making an observation that the income of the Wakf has been received by S.M Khan and that was without any objection for a long time.

8. The petitioner has submitted that the Khanmiyan Mosque is a private one and that is borne by the Government document itself. He has further

claimed that the petitioner is one of the descendant of the original Muthavalli – S.M Khan and son of another Muthavalli by name Thurab Ali Khan and hence, he is entitled to retain the hereditaryship. However, his above prayer before the Wakf Board and thereafter before the Wakf Board Tribunal, has been dismissed.

9. It is apparent that many of the documents which have been now produced by the petitioner before this Court were not produced before Board or the Tribunal. It is to be noted that there is variation in entries in the proforma report filed by the respondents and the Government Order Gazette notification produced by the petitioner. Since lot of factual aspects have to be gone into and findings to be recorded, I feel it is appropriate to remit the matter back to the Wakf Board itself, by leaving all issues of facts and law open. The petitioner can have the liberty to file the documents on which he wishes to strengthen his claim before the Wakf Board.

10. In the result, this Civil Revision Petition is allowed and the Order dated 20.06.2014 passed by the Wakf Tribunal (1st Assistant City Civil Judge, Madras) in O.A.No.12 of 2011 is set aside and the matter is remanded back to the Wakf Board in order to give a fresh disposal of the petition without getting

influenced by the earlier orders passed and also by considering all the relevant materials placed before it. In view of the same, all questions of facts and law are left open, for the parties to contest it before the Wakf Board. The parties are at liberty to produce any additional evidence and make their submissions. No costs.

15.07.2021

Speaking/Non-speaking
Index: Yes/No

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To

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No.12, Kiledar Street, Near Chauk,
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4.The Section Officer,
V.R.Section,
High Court, Madras.

R.N.MANJULA,J.

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