



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.07.2021

Coram

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

Writ Petition Nos. 30528, 31768 and 34634 of 2014
and
Writ Petition No. 22 of 2015

WP No. 30528 of 2014

1. K. Kaja Mohameed Shayeith
2. S. Jahir Hussein
3. I. Malikkan
4. R. Kaja Jamel Ahamed
5. K.H. Shanawas
6. A. Prakash

.. Petitioners

Versus

1. The Principal Secretary
Tamil Nadu Wakf Board
No.1, Jabar Sirang Street
Vallal Seethakadhi Nagar
Chennai - 600 002.
2. The Superintendent
Tamil Nadu Wakf Board
Coimbatore.
3. The Inspector
Tamil Nadu Wakf Board
Coimbatore.
4. Tiruppur Khaderpet Ahela Sunnath Jamath Masjith
represented by its President
Salim @ A. Abdul Rahman
Khader Pet, Tiruppur -1.

.. Respondents

WP No. 31768 of 2014

M/s. Tiruppur Kaderpet Ahela Sunnath Jamath
Masjid and Madharasa Paribalana Sabai
represented by its Secretary
Mr. S. Majeed
Kaderpet, Tiruppur - 1.

.. Petitioner

Versus



WEB COPY

1. The Tamilnadu Waqf Board
represented by its Secretary
having office at No.1
Jafer Sarang Street
Vallal Seethakathi Nagar
Chennai - 600 001.
2. The Superintendent of Wakfs
The Tamil Nadu Wakf Board (Coimbatore Region)
Uppilipalayam, Avinashi Road
Coimbatore.
3. The Commissioner of Police
Tiruppur District
having his office at Commissioners Office
Kaveripalayam, Pudur, Tiruppur.
4. The Assistant Commissioner of Police
Tiruppur North, Tirumurugan Poondi
Tiruppur.

.. Respondents

WP No. 34634 of 2014

Tirupur Khaderpet Ahle Sunnath Jamath
Masjid & Madarasa Paribalana Sabai
represented by its General Secretary
Mr. S.Majeed
No.25, Khaderpet, Tirupur.

.. Petitioner

Versus

1. The Government of Tamil Nadu
represented by its Secretary
Home Department, Fort St. George
Chennai - 600 009.
2. The Director General of Police
Office of the Director General of Police
Mylapore, Chennai - 600 004.
3. The District Collector
Office of the Collectorate
Tirupur, Tirupur District.
4. The Commissioner of Police
Tirupur Town, Kaveri Palayam Pudur
Tirupur.
5. Mr. Thirunavukarasu
Deputy Commissioner of Police
Tirupur Town, Tirupur.



6. Mr. Senthil Raj
Sub-Collector, Office of the Collectorate
Tirupur, Tirupur District.

7. Mr. Jayachandran
Assistant Commissioner of Police
Tirupur Town.

8. Mr. Rajasekaran
Inspector of Police
Tirupur North Police Station
Tirupur.

9. The Chief Executive Officer
The Tamil Nadu Wakf Board
No.1, Jaffar Syrang Street
Vallal Seethakathi Nagar
Chennai - 600 001.

.. Respondents

WP No. 22 of 2015

Tirupur Khaderpet Ahle Sunnath Jamath
Masjid & Madrasa Paribalana Sabai,
Represented by its General Secretary,
Mr. S. Majeeth,
No.25, Khaderpet, Tirupur

.. Petitioner

Versus

1.The Government of Tamil Nadu
Rep. by its Secretary,
Department of Minorities Welfare,
Backward and Most Backward Classes,
Fort St. George,
Chennai - 600 009.

2.The Chairman,
The Tamil Nadu Wakf Board,
No.1, Jaffer Syrang Street,
Vallai Seethakathi Nagar,
Chennai - 600 001.

3.The Chief Executive Officer,
The Tamil Nadu Wakf Board,
No.1, Jaffer Syrang Street,
Vallai Seethakathi Nagar,
Chennai - 600 001.



4.Executive Officer cum Wakf Inspector, Tirupur,
Poorviga Palli Mosque Compound,
Pollachi Road, Udumalai
Tirupur District

.. Respondents in
WP No. 22 of 2015

Prayer in WP No.30528 of 2014:- Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing the respondents to stop illegal insisting to vacate the shops rented by the fourth respondent as per the order of the first respondent in favour of the petitioners herein of the land in T.S. No. 197 (Wakf Property) Shop Numbers New-II G10, UG2, UG5, UG1, UG3, G5 situated between Ghouse Sahip Street and Work Shop Street, Khader Pet, Tiruppur Town, Tiruppur Taluk, Tiruppur, Tiruppur District.

Prayer in WP No. 31768 of 2014:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records from the first respondent in so far as it relates to the order passed in their proceeding in Na.Ka.No.7488/106/Aa-3/Tiruppur dated 15.07.2014 in so far as it relates to newly constructed shops bearing numbers U-1 to U-12 (basement), G-1 to G-12 (Ground Floor) and F-1 to F-16 (First Floor) in the Shopping Complex situated in T.S. No. 197 bearing Door No.23, 24/21,22, Ghouse Sahib Street, Khaderpet, Tiruppur Taluk and District, quash the said order as void and unenforceable and without jurisdiction and forbear the respondents, their men, agents and subordinates or any one acting on their behalf from in any manner interfering with the possession, enjoyment and running of business, by the petitioners and their tenants in the shops bearing numbers U-1 to U-12 (basement), G-1 to G-12 (Ground Floor) and F-1 to F-16 in the Shopping Complex situated in T.S. No. 197 bearing Door No.23, 24/21,22, Ghouse Sahib Street, Khaderpet, Tiruppur Taluk and District

Prayer in WP No. 34634 of 2014:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents 5 to 8, from interfering with the management and administration of the petitioner Wakf and its properties, without a judicial order being passed by competent Court in respect of the affairs of the petitioner Wakf.

Prayer in WP No. 22 of 2015:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records from the respondents pertaining to Gazette Notification No.VI-3(a)/119/2014 dated 08.12.2014 and quash the same.



WP No. 30528 of 2014

For Petitioner : Mr. M. Easan
For Respondents : No Appearance for RR1, 3 & 4
Mr. V. Raghavachari for R2

WP No. 31768 of 2014

For Petitioner : Miss. Thenmozhi
Respondents : Mr. V. Ragavachari for RR1 and 2
Mr. Stalin Abimanyu,
Government Advocate RR3 and 4

WP No. 34634 of 2014

For Petitioner : Mr. N. Chandrasekaran
For Respondents : Mr. Stalin Abhimanyu
Government Advocate for RR1 to 4
Mr. V. Raghavachari for R9

WP No. 22 of 2015

For Petitioner : Mr. A. Abdul Rahman
For Respondents : Mr. Stalin Abimanyu,
Government Advocate for R1
: Mr. V. Ragavachari for R2
: Mr. Mohammed Fayaz Ali for R3

COMMON ORDER

The issues involved in these four writ petitions are identical and common. Therefore, all these writ petitions are clubbed together and taken up for joint hearing.

2. For the purpose of disposal of these writ petition, appreciating certain factual aspects of the case is necessary.

3. Tiruppur Kaderpet Ahela Sunnath Jamath Masjid and Madharasa Paribalana Sabai, Petitioner in WP No. 31768 and 34634 of 2014 as well as WP No. 22 of 2015 is a public and religious wakf established for the purpose of running the mosque for the Mohalla people to offer prayers and also to impart religious instructions to Muslim Children. The administration of the Wakf



is vested with the Committee members duly elected through a process of election. According to the petitioner, the properties of the Wakf were earlier attempted to be encroached upon by the encroachers and therefore, it was decided to put up a commercial construction. For the purpose of funding the project, the existing tenants were requested to pay certain amount as donation with an assurance to confer them tenancy in the newly constructed commercial complex on first come first serve basis. In fact, the commercial construction was put up after obtaining approval from the Chief Executive Officer, Tamil Nadu Wakf Board, Chennai. However, certain disgruntled elements, unable to digest the developments taken place, have filed an application under Section 69 of The Wakf Act before the Chief Executive Officer, Tamil Nadu Wakf Board, Chennai for framing a scheme decree, in which the petitioner has filed a counter affidavit opposing the prayer. While so, after the orders were reserved in the petition filed under Section 69 of the Act, the Chief Executive Officer has sent a letter dated 15.07.2014 informing the petitioner not to lease out the newly constructed Commercial Complex to the tenants since it is against the provisions of the amendments made to The Wakf Act. According to the petitioner, the lease of the Commercial Complex was taken up before the amendments were made. In spite of the same, the Chief Executive Officer of the Wakf Board issued a suo motu show cause notice dated 05.09.2014 under Sections 46, 50, 61, 64 and 72 of The Wakf Act to explain as to why the lease granted to various interested persons, including the employees of the office of the Chief Executive Officer, Wakf Board without conducting auction, be cancelled and as to why certain payments received by the Wakf were not accounted of. The petitioner submitted an explanation denying the averments made in the show cause notice dated 05.09.2014. The petitioner also participated in the enquiry conducted by The Chief Executive Officer, Wakf Board on 26.11.2014. During the course of argument, it is alleged that The Chief Executive Officer, Wakf Board expressed his intention to pass an order under Section 65 of The Wakf Act to order direct management. Aggrieved by the same, the petitioner filed O.A. No. 15 of 2014 before the Tribunal along with an I.A. no. 18242 of 2014 for interim injunction. By an order dated 28.11.2014, the Tribunal granted interim injunction restraining the respondents therein from interfering with the affairs of the Petitioner Wakf, without following due process of law, pending disposal of the Original Application.

4. It is contended by the petitioner that in order to circumvent the order of interim injunction passed by the Tribunal, the officials of The Chief Executive Officer, Wakf Board, Chennai instigated the police officials namely respondents 5 to 9 in WP No. 34634 of 2014 and were interfering with the day to day affairs of the petitioner Wakf and also



disturbing the tenants in the newly constructed commercial complex under the guise of initiating proceedings under Section 145 of the Code of Criminal Procedure. As against the same, the petitioner has also filed Crl.R.C. No. 1243 of 2014 before this Court in which notice was ordered on 22.11.2014. The petitioner also filed WP No. 31768 of 2014 in which this Court granted an order of interim injunction on 04.12.2014 restraining the respondents therein from interfering with the conduct of business in the commercial complex. In spite of the same, the respondents 5 to 9 in WP No. 34634 of 2014 were interfering with the right of the tenants to conduct business in the newly constructed commercial complex by sealing the complex on 03.12.2014 and when it was questioned, it was assured that the seal will be removed after ten days. However, as the police officials refused to remove the seal even after ten days, the petitioner removed the seal on 18.12.2014 and taken possession of the commercial complex. However, the respondents 5 to 9 have once again locked the premises and restrained the petitioner and others from entering into the commercial complex. It is in those circumstances, the petitioner has filed WP No. 34634 of 2014 before this Court.

5. WP No. 30528 of 2014 has been filed by the tenants, in whose favour, lease deeds have been executed by the petitioner Wakf in the newly constructed commercial complex. The averments made in WP No. 30528 of 2014 is verbatim the same as in the other three writ petitions.

6. A counter has been filed by the Commissioner of Police, Tirupur Town, Tirupur, fourth respondent in WP No. 34634 of 2014 contending inter alia that the police officials did not interfere with the affairs of the petitioner, as alleged. The police officials were only concerned with the peace and tranquillity in the locality inasmuch as there is a simmering dispute between the members of the petitioner mosque and the Muslims who are conducting prayer in the Jamath with reference to renting the newly built shops in the commercial complex. In spite of the police officials attempting to resolve the dispute, both sides resorted to violent protest against the other. Further, complaint and counter-complaints were given by both the factions for which CSR Nos. 1097/2014, 913/2014 and 1098/2014 were registered and ultimately, a case in Crime No. 1451 of 2014 was registered under Section 145 of the Code of Criminal Procedure. Pending the proceedings, the shops in the newly constructed Commercial Complex have been locked. While so, the petitioner has filed WP No. 30528 of 2014, WP No. 31768 of 2014 and WP No. 22 of 2015 apart from filing a Contempt Petition in Contempt Petition No. 3415 of 2014 before this Court. Pending these writ petitions, in CMP No. 1 of 2014, this Court granted interim injunction restraining the police



7. In the counter affidavit, it was further stated that there are 42 shops in the commercial complex administered by the petitioner Jamath. The shops are located in a busy market area and there is every possibility of disturbance of peace and tranquillity among the general public. The Sub-Divisional Magistrate and the Sub-Collector, Tirupur have also conducted an inquiry and during the pendency of the inquiry, the petitioner's faction has locked the shops with their own locks which sensationalised the issue. Considering the grim situation, the Sub-Divisional Magistrate, Tirupur passed an order dated 28.11.2014 in Na.Ka.No.5809/2014/A1 directing the Tahsildar, Tirupur, to take possession of the premises by locking the premises using new locks. However, the Tahsildar, Tirupur was prevented from doing so. Ultimately, as per the order of the Superintendent of Wakf, Tirupur District, the Tamil Nadu Wakf Board, Coimbatore, the Wakf Inspector, Tirupur have locked the premises and sealed the shops on 16.11.2014. Thus, it is submitted that it was the petitioner and the tenants in the commercial complex have taken law into their own hands and the respondents/police have followed all the due process of law in this matter. Therefore, the respondents/police prayed for dismissal of these writ petitions.

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it was not followed. Therefore, the Tamil Nadu Waqf Board sent a letter dated 15.07.2014 not to lease out the newly constructed Wakf property to any one. However, the properties were leased out to persons who are interested in the affairs of the Wakf. Therefore, the Tamil Nadu Waqf Board conducted a suo motu enquiry on 26.11.2014 and passed an order for taking over the management of the petitioner Waqf. Challenging the same, the petitioner filed O.A. No. 15 of 2014 which is not maintainable inasmuch as the petitioner ought to have approached the State Government under Section 65 (2) of the Waqf Act, 1995. The entire proceedings in O.A. No. 15 of 2014 on the file of the Waqf Tribunal also has been stayed by this Court. The Chief Executive Officer of the Tamil Nadu Wakf Board would contend that O.A. No. 15 of 2014 filed before the Waqf Tribunal, Chennai is hit by the principles of 'Corum non-judice' and any order passed by the Tribunal will be a nullity. Therefore, the Tamil Nadu Waqf Board prayed for dismissal of these writ petitions.

9. Heard the learned counsel appearing for the respective parties and perused the materials placed. The petitioner - M/s. Tiruppur Kaderpet Ahela Sunnath Jamath Masjid and Madharasa Paribalana Sabai is a religious mosque and it comes under the administrative control of the Tamil Nadu Waqf Board. The Board, finding that the election to the petitioner mosque has not been conducted in a transparent manner and that the newly constructed commercial complex have been leased out to various tenants without resorting to open auction, has suomotu conducted an enquiry and came to a conclusion that direct management of the petitioner Waqf is inevitable. Aggrieved by the same, the petitioner has filed O.A. No. 15 of 2014 before the Waqf Tribunal and the proceedings before the Tribunal were stayed by this Court on 26.11.2014.

10. It is apparent that there are several disputes between the members of the Petitioner Mosque on the one hand and other Muslims members who have questioned the allotment of the shops to the members of the petitioner mosque. Apprehending disturbance of peace and tranquillity, proceedings under Section 145 of Cr.P.C. has been initiated and the shops have been locked and sealed. The petitioner also raised various allegations as against the police officials and also impleaded them in their personal capacity as respondents 5 to 9 in WP No. 34634 of 2014, but those allegations were denied by the respondents 5 to 9 by stating that they have only attempted to pacify the simmering dispute between two factions and they have followed all the due process of law.

11. Be that as it may. The disputes involved in the present writ petitions require evidence, both oral and documentary. The Wakf Tribunal is seized of the matter and O.A.



No. 15 of 2014 is pending before the Tribunal as against the order passed by the Chief Executive Officer of the Tamil Nadu Waqf Board. It is contended by the Chief Executive Officer of the Tamil Nadu Waqf Board that the Tribunal has no jurisdiction to decide the issues before it and that an application under Section 65 (2) of The Waqf Act ought to have been filed before the State Government and thus the Tribunal lacks jurisdiction. Thus, it is evident that the petitioner as well as the Chief Executive Officer of the Tamil Nadu Waqf Board subjected themselves to the enquiry conducted by the Tribunal. Furthermore, the disputes, which are purely factual in nature cannot be gone into by this Court in these writ petitions. While so, it would be appropriate to direct the Tribunal to take up O.A. No. 15 of 2014 and dispose of the same after affording sufficient opportunity to the petitioner and other parties concerned in the case. The aforesaid exercise shall be completed by the Tribunal within a period of eight weeks from the date of receipt of a copy of this order. Till the disposal of O.A. No. 15 of 2014, interim order passed by this Court shall continue.

12. With the above direction, all the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

mrr/rsh

To

1. The Secretary,
The Government of Tamil Nadu
Home Department
Fort St. George
Chennai - 600 009
2. The Secretary,
The Government of Tamil Nadu
Department of Minorities Welfare,
Backward and Most Backward Classes,
Fort St. George,
Chennai - 600 009.



3. The Director General of Police
Office of the Director General of Police
Mylapore, Chennai - 600 004
4. The District Collector
Office of the Collectorate
Tirupur, Tirupur District
5. The Principal Secretary
Tamil Nadu Wakf Board
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6. The Superintendent of Wakfs
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7. The Inspector
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8. The Commissioner of Police
Tiruppur District
having his office at Commissioners Office
Kaveripalayam, Pudur, Tiruppur
9. The Assistant Commissioner of Police
Tiruppur North, Tirumurugan Poondi
Tiruppur
10. The Chairman,
The Tamil Nadu Wakf Board,
No.1, Jaffer Syrang Street,
Vallai Seethakathi Nagar,
Chennai - 600 001.
11. The Chief Executive Officer
The Tamil Nadu Wakf Board
No.1, Jaffar Syrang Street
Vallal Seethakathi Nagar
Chennai - 600 001
12. Executive Officer cum Wakf Inspector, Tirupur,
Poorviga Palli Mosque Compound,
Pollachi Road, Udumalai
Tirupur District



13.The Superintendent,
Tamilnadu Wakf Board,
Coimbatore.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.35438
+1cc to Mr.N.A.Nissar Ahmed, Advocate, S.R.No.36003
+1cc to the Special Government Pleader, S.R.No.35972

WP Nos. 30528, 31768
& 34634 of of 2014
and
WP No.22 of 2015

RP (CO)
GN (20/09/2021)