

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[ORDERS RESERVED ON : 11.12.2020]

[ORDERS PRONOUNCED ON : 29.01.2021]

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP (NPD).No.2111 of 2020

and

C.M.P.No.13351 of 2020

The President,
Big Kancheepuram Sunnath Jammath Jumma Masjid,
No.22, Salai Street,
Kancheepuram - 631 502.

....Petitioner

...Vs...

1. The Tamil Nadu Waqf Board,
Rep by its Chief Executive Officer,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai - 1.

2. A.Ayub Khan

....Respondents

PRAYER: Petition filed under Section 115 of C.P.C, to set aside the fair and decretal order dated 09.11.2020 and made in I.A.No.627/2019 in O.A.No.360 of 2019 on the file of the Tamil Nadu Waqf Tribunal at Chennai.

For Petitioner

: Mr.N.A.Nissar Ahmed

For R2

: Mr.L.Gavaskar, for caveator

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ORDER

Mr.L.Gavaskar, learned counsel for the Caveator takes notice on behalf of R2 and the matter is taken up for final disposal.

2. The second respondent in O.A.No.360 of 2019, before the Tamil Nadu Wakf Tribunal is the revision petitioner herein.

3. The factual matrix leading to file above case are as under:-

(i) As per the scheme framed by the Sub-Court, Chengalpet under decree dated 08.11.1923 in O.S.No.40 of 1922, the Big Kancheepuram Sunnath Jammath Jumma Masjid at No.22, Salai Street, Kancheepuram - 631 502 has to be administered. Under the scheme the Masjid should be administered by a Supervisory Board consisting of 7 members and 5 Muthavallis (Trustees) to be elected from among the Jamaththars. The first set of 7 members of the Supervisory Board and the 5 Muthavallis (Trustees) were nominated under the scheme Decree itself. After the expiry of their term the members of the Supervisory Board and the Muthavallis have to be elected from among the Jamaththars.

(ii) One among the five Muthavallis of Big Kancheepuram Sunnath Jammath Jumma Masjid, representing the Hanafi sect and was declared as elected as Muthavalli on 27.03.2016 and the term of office will expire only on 26.03.2021.

(iii) The petitioner herein issued a show cause notice vide letter No.NIL/2017 dated 23.09.2017 alleging R2 have misused the muthavalliship and that he has brought disrespect to the post of muthavalli and called upon him to reply within 15 days from the date of receipt of notice and further stated that in the event of failure to submit his explanation appropriate further proceedings will be taken. The above said notice was received by R2 on 01.10.2017.

(iv) On 06.10.2017, he has sent his reply explaining that the allegations made in the notice were all false and concocted stories and that the notice itself is motivated by ill-will and malice and with a view to harass him and cause hardship to him.

(v) Another detailed reply on 31.10.2017 also submitted by him. As per petition, before Wakf Tribunal thereafter no further correspondence was received from the respondent in this regard. No enquiry was ever conducted by the petitioner herein till date based on the show cause notice.

(vi) Further, as per petition, it is alleged that the petitioner seems to have recorded, as if he passed impugned order dated 26.10.2018, removing him as Muthavalli in the Big Kancheepuram Sunnath Jammath Jumma Masjid, alleging that the R2 herein acted against the objects of the Big Kancheepuram Sunnath Jammath Jumma Masjid.

4. On the above background the second respondent herein has filed W.P.No.11167/2019 whereby by an order dated 11.04.2019, this Court has directed the petitioner therein to approach the Wakf Board for appropriate orders. Subsequently he has filed O.A.No.360/19 before the Tamil Nadu Wakf Board Tribunal for the relief that Wakf Board may be please to direct the 1st respondent herein to allow the 2nd respondent herein to continue and function as a Muthavalli till applicant's tenure expires on 26.03.2021 pending disposal of the above appeal.

5. Before the Wakf Tribunal, the first respondent-Wakf Board has filed a counter stating that:-

(i) show cause notice was issued to the second respondent and he was removed from the post of Muthavalli and the Administrative Committee has passed a resolution on 28.10.2017. The petitioner herein (who was the second respondent before the Wakf Board Tribunal) has filed a counter inter-alia alleged that for the said show cause notice dated 23.09.2017, the R2 has also given reply dated 06.10.2017. As the reply given by the R2 is not convinced, this petitioner herein has removed the 2nd respondent from Muthavalli in pursuance of the resolution passed in the Administrative/Executing Meeting held on 28.10.2017 and the same was duly approved in the General Body Meeting and the same was duly communicated to the R2 on 01.11.2017 by registered post with acknowledgement due. The

petitioner herein submit that since the R2 has already been removed from Muthavallis, the R2 is not entitled to ask for any relief.

(ii) On 21.09.2017, the resolution passed by the Administrative/Executive Committee of Masjid and Muthavallis to discuss about the complaints against the applicant and sought for explanation from the applicant and after getting explanation from him, to take necessary action against him through administration. The proceedings containing the resolution passed by Executive Committee of the Masjid was duly sent to the applicant dated 23.09.2017 through courier which was acknowledged by the petitioner. The petitioner given a reply dated 06.10.2017 with false and untenable allegations. His reply not convinced the administrative/executive committee. After receipt of the reply, the administrative committee passed a resolution dated 28.10.2017 and removed the applicant from his post as Muthavalli, as per Rule 10 of Bye law of Big Kancheepuram Sunnath Jammath Masjid and also passed resolution to bring it to the notice of Jammath as per Rule 11.

6. Heard the learned counsel for the petitioner and the learned counsel for the Wakf Board and for the second respondent/caveator.

7. An additional typed set of papers are filed containing copy of the Bye Law and resolution dated 28.10.2017 along with the communication of order of removal and its acknowledgement issued by the Postal Department. There is no dispute with regard to the nature of the scheme and

the Bye Law framed thereunder.

8. The learned counsel for the petitioner herein Mr.Nissar Ahmed could contend that the administration of the Masjid is vested with the Supervisory Board cum Administrative Committee and any decision taken thereon is final.

9. The main contention of the contesting respondent No.2 herein Mr.Gavaskar is that the order of termination terminating the second respondent herein from Muthavalliship is passed in gross violation of principles of natural justice and in violation of Bye Law 10 & 11.

10. In reply, the learned counsel for the petitioner could contend that the second respondent herein has not challenged the order of termination and the present O.A has been filed before the Wakf Tribunal after the lapse of two years from the order of termination and hence the main O.A itself is not maintainable. Further could contend that in the absence of any challenge as to the impugned order of termination, the prayer for such a direction is not at all maintainable.

11. I have given anxious consideration to the submissions of the rival party and also perused the documents filed in the additional typed set of papers filed by both the parties.

12. a) At the outset, I find that whether the O.A, as filed, before the Wakf Tribunal is maintainable, is under cloud. The same as a preliminary

point that has to be gone into by the Wakf Tribunal before issuing order of any stay namely the impugned order herein.

b) The prayer in the main O.A 360/19 is to the effect that the second respondent herein (who is the petitioner before the Wakf Tribunal) has sought for a direction to the respondent for permission to continue to act and function as Muthavalli.

13. Admittedly, after perusing the copy of the petition filed in the above said O.A and the prayer in the said O.A, I find that the second respondent herein has not challenged his order of termination for the reasons best known to him and when there is no challenge as to the order of termination there cannot be any direction in the nature as prayed in the main O.A.

14. With the above observation, this Court finds that the Wakf Tribunal has to be diligent enough in future to deal with this kind of fatal flaw in law, touching upon the point of maintainability of petition.

15. The direction now sought for in the main O.A is to the effect that to grant permission to a person (who is already terminated on 28.10.2017) till the expiry of period of his office namely 26.03.2021. Admittedly, this petition is filed only in the year 2019 (viz almost two years after the termination order) assumes significance.

16. According to the second respondent herein (petitioner before Wakf Tribunal), he was not terminated as such, he has not served with any copy of the termination order. However to dismay the additional typed set of papers filed before this Court demonstrate the fact that he was duly served with the termination order.

17. It appears that the Wakf Tribunal has come to the conclusion that dismissal order has to be based upon the order of suspension only on interpreting Rule 10 and Rule 11 under this scheme. Since the main O.A is pending before the Wakf Tribunal, I am not inclined to elaborate further except to say that such a interpretation given by the Wakf Tribunal is against the interpretation of recital as stated in the interpretation of statute and General Class Act as held in the various decision as pronounced by the Hon'ble Apex Court.

18. From the documents filed in the typed set of papers and on a combined reading of Rule 10 and 11, I am of the considered view that the observations made by the Wakf Tribunal at Page No.13 in connection with the order of termination is liable to be vacated. Accordingly, such a finding of the Wakf Tribunal is hereby stands vacated.

19. The other observation made by the Wakf Tribunal as to the non-compliance of the principles of natural justice and not placing the matter

regarding removal of Muthavalliship before the Executive Committee and interpretation as to the resolution to the second respondent are all falls to ground in view of the documents filed in the typed set of papers.

20. Hence, I find that with regard to the directions sought for in the main O.A itself is maintainable or not is the primary question and issue that has to be decided by the Wakf Tribunal. In the absence of the fact that the second respondent herein (petitioner before the Wakf Tribunal) has not challenged the order of termination and hence I find that the Wakf Tribunal is hereby directed to decide whether the main O.A is maintainable in respect of the prayer sought for therein.

21. Accordingly, an order of interim stay i.e., filed after two years of the termination order and grant of interim stay without there being a challenge to the order of termination cannot be allowed to operate and accordingly, the interim order granted by the Trial Court namely the Wakf Tribunal is liable to be suspended.

22. In the interest of justice, the following order is passed:-

(i) The order dated 09.11.2020 made in I.A.No.627/19 in O.A.No.360/19 is hereby set aside.

(ii) The matter is remitted back to the Wakf Tribunal to go through the records with regard to communication and Administrative Committee resolution dated 28.10.2017 and letter of termination order dated 01.11.2017

served on the contesting respondent on 08.11.2017 and thereafter to pass the order. Furthermore, the Tribunal is hereby required to formulate the preliminary point for consideration as to the maintainability of the main O.A.

(iii) In view of fact that the period which is to expiry on 26.03.2021, the Tribunal is directed to pass the order within a period of four weeks from the date of receipt of a copy of this order.

(iv) It is open to the both sides to file and mark the documents at their possession.

(iv) This Civil Revision Petition is allowed. No costs. Consequently, connected C.M.P is closed.

29.01.2021

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Index: Yes/No

Internet :Yes / No

Speaking Order : Yes/No

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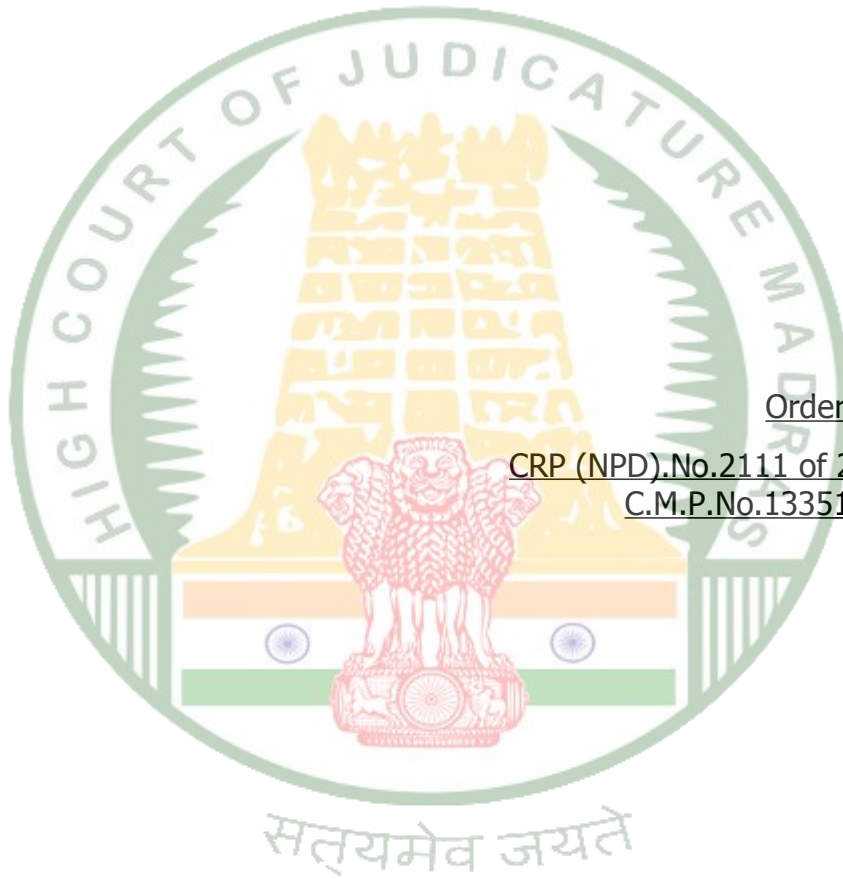
To

The Tamil Nadu Waqf Tribunal at Chennai.

CRP(NPD).No.2115 of 2020

RMT.TEEKAA RAMAN, J.

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Order made in
CRP (NPD).No.2111 of 2020 and
C.M.P.No.13351 of 2020

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