



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.02.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.19714 of 2020

Jainnullavudeen

... Petitioner

Vs.

1.The Chief Executive Officer,
Tamil Nadu Waqf Board,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai - 600001.

2.The Superintendent of Waqf,
Tamil Nadu Waqf Board,
Superintendent of Waqf Office,
27, Diwan Nagar, Court Road,
Opp. Jumma Pallivasal,
Thanjavur.

3.The Inspector of Waqf,
Tamil Nadu Waqf Board,
Superintendent of Waqf Office,
27, Diwan Nagar, Court Road,
Opp. Jumma Pallivasal,
Thanjavur.

4.M.S.Mohamed Ali

5.Kader Batcha @ Sait

6.Muthalif

7.Jalaludeen

... Respondents

Prayer :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondent No. 1 to 3 to take over the Mohaideen Andavar @ Thaqwa Pallivasal situated at Vellalapasupathikoil, Papanasam Taluk, Thanjavur District in the light of proceeding issued by the respondent No.3 in Na.Ka.No. 786/Va.Aa./Thanjai/2020 dated 19.11.2020 by considering the petitioner's representation dated 15.12.2020.

For Petitioner : Mr.Jinnah.S.M.A

For Respondents : Mr.Mohideen Basha for R1 to 3
Mr.M.Mahaboob Athiff,
For M/s.Ajmal Associates for R4 to R7.



ORDER

Heard the learned counsel for the writ petitioner, the learned standing counsel for respondents 1 to 3 and the learned counsel appearing for the respondent 4 to 7.

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2.The writ petitioner is permanent resident of Vellalapasupathikoil in Papanasam Taluk. He wants Waqf board to take over the petition mentioned Mohaideen Andavar @ Thaqwa Pallivasal. The petitioner has already given a representation in this regard. The petitioner is also placing reliance on the reports submitted by the Inspector of Waqf, Thanjavur.

3.Per contra, the learned counsel for the respondents 4 to 7 would go the extent of claiming that the property in question has not even been permanently dedicated as a Wakf. He would also strongly contend that the issue raised in the writ petition will have to be resolved only before the Waqf Tribunal.

4.The petitioner's counsel drew my attention to the notice board affixed out side the mosque in which, it is stated that one Zahir Hussain has been ex-communicated. When I indicated to the learned counsel for the private respondents that any act of excommunication would be unconstitutional, it is fairly submitted by him that this Court can disregard the language in which the notice has been couched. It should be construed that the petitioner cannot be member of the congregation but it would not have any bearing on the civil rights of the said Zahir Hussain. In other words, Zahir Hussain can very well come to the Pallivasal in question and offer his prayer. The same is placed on record.

5.As rightly contended by the learned counsel for the private respondents, an issue of this nature will have to be necessarily ventilated and resolved only before the Waqf Tribunal. Section 85 of the Waqf Act, 1995 reads as follows:-

"85. Bar of jurisdiction of civil courts.—No suit or other legal proceeding shall lie in any 2[civil court, revenue court and any other authority] in respect of any dispute, question or other matter relating to any 1[waqf], 1[waqf] property or other matter which is required by or under this Act to be determined by a Tribunal."

6.The Hon'ble Supreme Court in the decision reported in **(2010) 14 SCC 588 (Board Of Wakf, West Bengal vs Anis Fatma Begum & Anr)** held as follows:-

"10. In our opinion, all matters pertaining to Wakfs should be filed in the first instance before the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995



and should not be entertained by the Civil Court or by the High Court straightaway under Article 226 of the Constitution of India.

11. It may be mentioned that the Wakf Act, 1995 is a recent parliamentary statute which has constituted a special Tribunal for deciding disputes relating to Wakfs. The obvious purpose of constituting such a Tribunal was that a lot of cases relating to Wakfs were being filed in the courts in India and they were occupying a lot of time of all the Courts in the country, which resulted in increase in pendency of cases in the Courts. Hence, a special Tribunal has been constituted for deciding such matters.

12. Section 84 of the Act states, "84. Tribunal to hold proceedings expeditiously and to furnish to the parties copies of its decision - Whenever an application is made to a Tribunal for the determination of any dispute, question or other matter relating to a Wakf or Wakf property it shall hold its proceedings as expeditiously as possible and shall as soon as practicable on the conclusion of the hearing of such matter give its decision in writing and furnish a copy of such decision to each of the parties to the dispute".

13. Thus, the Wakf Tribunal can decide all disputes, questions or other matters relating to a Wakf or Wakf property. The words "any dispute, question or other matters relating to a Wakf or Wakf property" are, in our opinion, words of very wide connotation. Any dispute, question or other matters whatsoever and in whatever manner which arises relating to a Wakf or Wakf property can be decided by the Wakf Tribunal. The word 'Wakf' has been defined in Section 3 (r) of the Wakf Act, 1995 and hence once the property is found to be a Wakf property as defined in Section 3 (r), then any dispute, question or other matter relating to it should be agitated before the Wakf Tribunal."

7. In view of the authoritative decision of the Hon'ble Supreme Court, I am of the view that the petitioner has to necessarily knock the doors of the said forum.



8. Leaving open the rights of the petitioner, the writ petition is dismissed. In other words, the petitioner is at liberty to move the Waqf Tribunal for ventilation of his grievances. No costs.

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Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO:

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W.P (MD) No.19714 of 2020

NA (CO)

NR (11/02/2021) 4P : 4C

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