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W.P. No. 16126 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 16126 of 2022

Janab Y.Allah Baksh

... Petitioner

-VS-

1. The Chairman,
Tamil Nadu Waqf Board,
No. 1, Jaffer Sarang Street,
Vallal Seethakathi Nagar,
Chennai – 600 001.
2. The Chief Executive Officer,
Tamil Nadu Waqf Board,
No. 1, Jaffer Sarang Street,
Vallal Seethakathi Nagar,
Chennai – 600 001.
3. The Superintendent of Waqfs,
Vellore Division,
Vellore.
4. Arapakkam Mosque and Kabrasthan Waqf,
Rep. by its President & Secretary of Adhoc Committee,
Wallajah Taluk,
Vellore District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Proceedings No. 13363/15/B7/Vlr dated 16.02.2022 on the file of the Second Respondent herein and to quash the same and to direct the First Respondent to pass appropriate orders permitting the Petitioner to put



W.P. No. 16126 of 2022

up a new Mosque in Arapakkam Village, Wallajah Taluk, Vellore District for the Fourth Respondent Waqf subject to the reasonable terms and conditions and to obtain appropriate permission from the local authorities within a time frame as may be fixed by the Court.

For Petitioner : Mr. S.Subbiah,
Senior Counsel for
M/s.W.M.Abdul Majeed

For Respondents : Mr. C.Shankar (for R1 to R3)
Mr. M.M.I.Khaleel (for R4)

ORDER

Heard Mr. S.Subbiah, Learned Senior Counsel appearing for the Petitioner, Mr. C.Shankar, Learned Counsel for the First to Third Respondents and Mr. M.M.I. Khaleel, Learned Counsel for the Fourth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. It is the case of the Petitioner that Arapakkam Mosque belonging to Khabristhan Waqf in Walajah Taluk, Vellore District is in dilapidated condition and the Petitioner in his representation dated 11.02.2021 made to the Second Respondent, viz., Tamil Nadu Waqf Board, had sought permission for construction of a new Mosque there by contributing for the same along with his relatives, but it was rejected by Order in Proc. No. 13363/15/B7/Vlr dated



W.P. No. 16126 of 2022

16.02.2021 passed by the Second Respondent, which is impeached in this Writ Petition.

3. At this juncture, it must be noticed that Section 83 of the Waqf Act, 1995 (hereinafter referred to as 'the Act' for short), entitles any person aggrieved by an order made under that Act to make an application for the determination of any dispute, question or other matter relating to a Waqf before the Waqf Tribunal. Instead of resorting to that alternative remedy provided under the statute, the Petitioner has filed this Writ Petition without any acceptable explanation for the same.

4. It must, at once, be emphasized that the Hon'ble Supreme Court of India in *Assistant Collector of Central Excise -vs- Dunlop India Limited* [(1985) 1 SCC 260] has succinctly explained the legal position relating to the exercise of discretionary powers under writ jurisdiction, in the following words:-

"3. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and



W.P. No. 16126 of 2022

WEB COPY

the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to by-pass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged.”

The law has been restated by the Hon'ble Supreme Court of India in ***Radha Krishan Industries -vs- State of Himachal Pradesh*** [(2021) 6 SCC 771] as extracted below:-

“27.1. *The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.*

27.2. *The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to*



the aggrieved person.

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27.3. *Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.*

27.4. *An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.*

27.5. *When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.*

27.6. *In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ*



W.P. No. 16126 of 2022

WEB COPY

petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”

Learned Senior Counsel appearing for the Petitioner has not been able to demonstrate from the facts of this case as to how it would fall under any of the exceptional circumstances mentioned therein or that the Petitioner has been impeded from canvassing what is sought to be agitated in this Writ Petition in an application under Section 83 of the Act, and the affidavit filed in support of the Writ Petition is also bereft of any details in that regard.

5. Viewed from that perspective, this Court is not inclined to delve into the merits of the controversy involved in this case which touches upon disputed questions of fact for effectual and complete adjudication of the matter.

6. In the result, the Writ Petition, which cannot be entertained, is dismissed.

No costs.

17.11.2022

vjt

Index: Yes/No

Note: Issue order copy by 21.11.2022.



W.P. No. 16126 of 2022

To

WEB COPY

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W.P. No. 16126 of 2022

P.D. AUDIKESAVALU, J.

vjt

W.P. No. 16126 of 2022

17.11.2022