



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. (MD) No.4921 of 2020

in

W.M.P(MD)No.4290 to 4293 of 2020

M.A.S.E.Nasar

... Petitioner

/vs./

1.The Tamil Nadu Wakf Board,
Represented by its Chairman,
No.1, Jawfar Srirang Street,
Vallal Seethagathi Nagar,
Behind Customs Office,
Chennai- 600 001.

2.The Superintendent of Wakf,
Office of the Superintendent of Wakf,
Madurai and Ramnad District (I/C),
No.159/3,Therpasayanam Road,
Vellipattinam,
Ramanathapuram - 623 504.

3.A.Chandra Kumar

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the impugned order passed by the 3rd respondent vide his proceedings in Ref:Nil dated 02.03.2020 and quash the same as illegal.

For Petitioners : Mr.D.Senthil

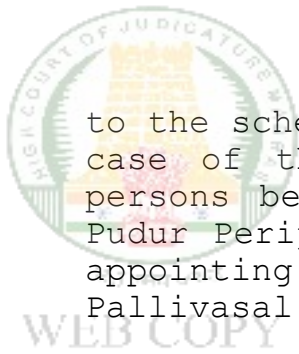
For R1 & R2 : Mr.S.A.Ajmal Khan
Standing Counsel

For R3 :Mr.A.Chandrakumar
Advocate Commissioner

ORDER

The writ petition has been filed by the petitioner to countermand the election held on 01.03.2020 and consequently to quash the order passed by the 3rd respondent in his proceedings bearing Ref.Nil dated 02.03.2020.

2.The case of the petitioner is that the election conducted by the 3rd respondent/Election Officer/Advocate Commissioner pursuant to an interim direction of this Court in W.P.(MD) Nos.23265 and 23266 of 2019, which was today dismissed as infructuous, was held contrary



to the scheme decree in O.S.No.31 of 1945. It is the specific case of the petitioner that as per the scheme decree, only the persons belonging to the Jamath as defined in Clause 1(b) of the Pudur Periya Pallivasal scheme were entitled to cast their vote for appointing the members of the managing committee of the said Pallivasal.

3.It is submitted that the Board earlier had prepared a voters list consisting of 926 members with their address and the street names, whereas the 3rd respondent/Election Officer appointed by this Court pursuant to an interim order dated 05.11.2019 in W.P.(MD) Nos.23265 and 23266 of 2019 had about 1179 names and that there were repetitions of 24 names and that in the absence of proper address and the street names of the respective voters, there was a possibility of several other names being included in the voters list, which would have been contrary to Clause 1(b) of the scheme decree. It is therefore submitted that the petitioner is entitled to challenge the election held on 01.03.2020, pursuant to the aforesaid order of this Court.

4.It is submitted that though the petitioner has an alternate remedy under Section 83 of the Wakf Act, 1995, since the election was conducted pursuant to the orders passed by this Court in the above mentioned writ petitions, the petitioner is entitled to move this writ petition for countermanding the election held on 01.03.2020.

5.Opposing the prayer, the learned Standing Counsel for the respondents 1 and 2 submits that the petitioner himself participated in the election and secured about 453 votes. It is submitted that the petitioner is one of the elected members and therefore, it is not open for the petitioner to challenge the election conducted by the 3rd respondent.

6.That apart, the learned Standing Counsel for the respondents 1 and 2 has drawn attention to the decision of the Hon'ble Supreme Court in the case of **Board of Wakf, West Bengal and another Vs. Anis Fatma Begum and another** reported in **2011 (1) CTC 636**, wherein the Hon'ble Supreme Court clarified that a party can approach the Wakf Tribunal, even if no order has been passed under the Act, against which the party is aggrieved. A reference was made to paragraph No.15 from the said decision, which reads as under:-

"15.Under Section 83(5) of the Wakf Act, 1995, the Tribunal has all powers of the Civil Court under the Code of Civil Procedure, and hence it has also powers under Order 39, Rules 1, 2 and 2-A of the Code of Civil Procedure to grant temporary injunctions and enforce such injunctions. Hence, a full-fledged remedy is available to any party if there is any dispute, question or other matter relating to a Wakf or Wakf property."



7.The learned counsel for the 3rd respondent submits that a sum of Rs.4,50,000/- was collected towards election expenses and that a sum of Rs.3,50,000/- was spent for holding the election.

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8.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Standing Counsel for the respondents 1 and 2 and the learned counsel for the 3rd respondent and I have also perused the report, which was filed by the 3rd respondent appointed as Election Commissioner in W.P.(MD) Nos.23265 and 23266 of 2019, vide order dated 05.11.2019.

9.The election has been conducted by the 3rd respondent/Election Officer, pursuant to the directions of this Court. Whether the voters list prepared by the Election Officer was in accordance with the scheme decree in O.S.No.31 of 1945 or not and whether there was any duplication of names are a disputed question of fact, which can be decided only by the Tribunal, which has been constituted specially for dealing with the issues arising out of management of the Wakf/Pallivasal. Merely because W.P.(MD) Nos.23265 and 23266 of 2019 were filed by the petitioners therein, namely, Abdul Rahim and T.Khaja Moideen and an interim order came to be passed on 05.11.2019, would not mean that this Court would become an appellate Court in the place of the Tribunal under Section 83 of the Wakf Act. The fact that the Court had intervened, allowed and had made certain directions would not mean that the election held pursuant to the direction of this Court will have to be tested before this Court. The petitioner has an alternate remedy before the Tribunal under Section 83 of the Wakf Act, 1995.

10.In view of the above, I find no merits in this writ petition and therefore, the writ petition is liable to be dismissed. However, since the petitioner is raising serious questions regarding the duplication of names in the electoral list/voters list, I direct the 3rd respondent/Election Officer to furnish the details to the petitioner to workout appropriate remedy against the election held on 01.03.2020. It is open for the petitioner to approach the Tribunal challenging the election held on 01.03.2020 within a period of 60 days from the date of receipt of a copy of this order. If such application under Section 83 of the Wakf Act is filed before the Tribunal within such time, the Tribunal shall entertain the same and dispose of the same on merits and in accordance with law as expeditiously as possible. The certified copy documents filed by the 3rd respondent are directed to be given to the Superintendent of Wakf, who shall call upon the petitioner and furnish the details as required by the petitioner to workout the remedy before the Tribunal.



11.The writ petition stands dismissed, in terms of the above observations and directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note : Registry is directed to xerox the copy of the documents given by the 3rd respondent herein for the purpose of giving the same to the 2nd respondent herein.

W.P. (MD) No.4921 of 2020
02.03.2022

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