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CRP.No.660 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2023

CORAM:

THE HONOURABLE MRS.JUSTICE **T.V.THAMILSELVI**

CRP.No.660 of 2023 and
CMP.No.5185 of 2023

H.Siraj Ali

... Petitioner

Vs.

- 1.Syd Latheef
- 2.G.M.Syed Fasi Mohammed
- 3.Shabana Ayisha
- 4.Fathima Begum
- 5.Syed Thula Basha
- 6.S.A.Rahman
- 7.Syed Faizullah
- 8.Syed Akthar Hussain
- 9.Habeebunnissa Begum
- 10.The Tamilnadu Waqf Board,
Rep. by its Chief Executive Officer,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai-1
- 11.The Election Officer / Superintendent of Waqfs,
Chennai Zone, No.139, Dr.Besant Road,
Ice House, Triplicane, Chennai-5
- 12.Syed Mazhar Hussain
- 13.H.Mohammed Sajath
- 14.Syed Kasim Sakaaf
- 15.Syed Ajaz Ahmed
- 16.H.W.Shanaaz
- 17.H.Gayaz Ali
- 18.Mubeen Aamina
- 19.Haseena Bi
- 20.Syeda Ghousia Begum



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21.Showkath Jahan

22.Dadasha Makkan Wakf,

Rep. by the Present Committee,

Rep. by the present Secretary,

No.5, Dargah Street,

Dadashamakkan,

Chennai-12

... Respondent

PRAYER: Civil Revision petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 20.02.2023 and made in I.A.SR.No.346 of 2023 in OA.No.79 of 2022 on the file of the Tamilnadu Waqf Tribunal at Chennai.

For Petitioner : Mrs.Hema Sampath,
Senior Counsel
for Mr.A.Masood Ahmed

For Respondents
For R1 & 2 : Mr.Y.Kajanavas

ORDER

This civil revision petition has been filed to set aside the fair and decretal order dated 20.02.2023 made in I.A.SR.No.346 of 2023 in OA.No.79 of 2022 on the file of the Tamilnadu Waqf Tribunal at Chennai.

2. The respondents 1 to 9 herein filed OA.No.79 of 2022, wherein the proposed 14th respondent filed application to implead himself in the said proceedings as 14th respondent. The contention of the petitioner is that O.A.



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had been filed to declare the election conducted by the second respondent as

null and void and contrary to the bye-law and for a declaration that selection of 5th respondent is contrary to bye-law as he is not a descendant of dadashs as per clause 11 of the bye-law and to declare the selection of the office bearers/applicants 1 to 4 and the respondents 3 to 12 by the respondent as null and void. The second respondent herein suppressed the fact of his unlawful occupation in the above said Wakf property and contested in the election held on 03.10.2021 and got elected as a committee member of the wakf which attracts disqualification. It is understood that the 13th respondent wakf initiated proceedings against the second respondent herein for eviction of unauthorized occupants under the Tamilnadu Public Premises Act in PP41/CHE/22 and also to pay the damages of Rs.7,20,000 for his unlawful use and occupation from 2017 to October 2022 and when the matter came up for final hearing on 18th October 2022, joint memo was filed by the Wakf and the building owner of second respondent before the Estate Officer stating that he let out the above said Wakf property to the second respondent herein without the knowledge of Wakf lease rules and that he vacated him and hand over the Wakf property to the above Wakf and the same was recorded and the PP 41/CHE/2022 came to be closed.



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3. Based on the said facts, this petitioner contended that as per Clause 11 of bye-law, if any member who has been in occupation and possession of wakf land, is not eligible to contest the election. Therefore, he want to implead himself as 14th respondent. The said application was rejected by the Wakf Tribunal holding that under Order I Rule 10 of the Code of Civil Procedure the petitioner can seek impleadment only if his presence is absolutely necessary to effectually and completely adjudicate upon and settle all the questions involved in OA.No.79 of 2022. Whereas, the petitioner has baldly made allegations against the second respondent herein who is the second applicant in the main OA.No.79 of 2022 without any material to substantiate the same. Moreover the petitioner who claims that he is one of the beneficiary of the waqf has not chosen to raise any of the allegations which he has now made against the second respondent herein at the time of election which has been held as early as on 03.10.2021 and his affidavit is totally silent in this regard. The petitioner who also resides in Chennai has not convincingly explained the reasons for raising such objections and allegations against the second respondent belatedly. As discussed above even the second respondent has only challenged the election process though he has been successful in the



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election. The entire affidavit of the petitioner only reveals that he has been instigated by some of the litigants of the above said OA.Nos.31 of 2022 and 79 of 2022 pending before this Tribunal to somehow hinder the disposal of the same and this Tribunal has every reason to believe that the petitioner has been a tool for the same. The presence of the petitioner is absolutely not necessary to dispose of OA.No.79 of 2022 and the provisions of Section 151 of the Code of Civil Procedure also cannot be used in favour of the petitioner in this regard so as to implead him. This petitioner not raised any objection at the earliest point of time. At the instigation of some of the litigants in OA.No.31 of 2022, he filed this application. Accordingly, the provision of Section 151 of CPC also not applies to the petitioner to implead him. Hence, the petition was rejected. Furthermore, he also observed that under Order I Rule 10 of CPC, the petitioner can seek impleadment if his presence is necessary. By invoking Section 151 of CPC, it is not maintainable. Challenging the said findings, the petitioner filed this revision.

4. The learned Senior Counsel appearing for the revision petitioner argues that already some of the individuals preferred writ petitions in WP.Nos.15977 of 2021 and 12442, 14935 & 15779 of 2022 before this Court



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wherein liberty was given to all the parties to file appeal before the Wakf Tribunal. Accordingly, those petitioners filed OA.No.79 of 2022 challenging the election. The said appeal is pending before the Wakf Tribunal. Now the petitioner also raised objection with regard to the election of the second respondent. The learned Senior Counsel further submits that since already the election was challenged in the said OA.No.79 of 2022, this petitioner is also entitled to raise his objection with regard to election of the second respondent since because he is holding a wakf property, which is against the election norms.

5. But the learned counsel appearing for the respondents 1 and 2 submits that implead petition is not maintainable and as a third party, he is not entitled to implead himself in OS.No.79 of 2022 for the reason that he was not party to the earlier writ proceedings. Furthermore, as per Rule, a third party cannot implead himself as a party to the proceedings to challenge the election. Hence, he raised strong objection.

6. But however on seeing the pendency of the OA before the Wakf Tribunal wherein the main issue involved, 14 candidates said to be illegally



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selected by violating the clause 9 of bye-laws of the Wakf. So also this petitioner also raised objection with regard to selection of the second respondent stating that he is owning property of the wakf board. As per earlier direction of this Court, the parties who are having grievance over the election is entitled to proceed before the Wakf Tribunal. Accordingly, OA.No.79 of 2022 pending with the main issue of election of 14 candidates, out of which the second respondent is also one of the candidates whose selection is also already in dispute. There is also no impediment caused to the parties concerned in OA.No.79 of 2022 by impleading this petitioner as proposed 14th respondent in order to avoid multiplicity of proceedings. Therefore, the reasons assigned by the Wakf Tribunal that the application was not filed under Order I Rule 10 of CPC is liable to set aside as subject to merits of the entire proceedings of the OA, mere impleading him would not cause any prejudice to the parties.

7. Accordingly, the findings of the trial judge in OA.No.79 of 2022 are set aside. This petitioner is added as the 14th respondent in the proceedings subject to both the parties are directed to cooperate for the proceedings. The petitioner is directed to cooperate for the appeal proceedings without causing unnecessary delay and the appeal is to be disposed of within a period of three months from the date of receipt of this order.



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Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order

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T.V.THAMILSELVI, J.

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To

- 1.Tamilnadu Waqf Tribunal at Chennai.
- 2.Chief Executive Officer,
The Tamilnadu Waqf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai-1
- 3.The Election Officer / Superintendent of Waqfs,
Chennai Zone, No.139, Dr.Besant Road,
Ice House, Triplicane, Chennai-5
- 4.The present Secretary,
Dadasha Makkan Wakf,
No.5, Dargah Street,
Dadashamakkan,
Chennai-12

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