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CRP No.3016 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.3016 of 2023

and

CMP.No.18617 of 2023

- 1.Syed Mazheruddin
- 2.The Management of Hazrath Syed Moosa
Sha Khaderi Dargha viz. Mount Road Darga,
Represented by its Muthawalli, situated at
Anna Salai, Chennai-2.

... Petitioners

Versus

- 1.Fazal Mohammed
- 2.Misbah Bathool
- 3.Rahila Bathool
- 4.Tamil Nadu Wakf Board,
Rep by its Chairman,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai-600 001.
- 5.The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai 600 001.

...Respondents

Civil Revision Petition filed Under Article 227 of Constitution of India, praying to set aside the fair and decretal order dated 28.07.2023 made in I.A.No.350 of 2023 in O.A.No.41 of 2023 on the file of the Tamil Nadu Waqf Tribunal, Chennai.



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For Petitioners : Mr. Nissar Ahmed, Senior counsel
for Mr. N. A. Nissir Hussain

For R1 to R3 : Mr. M. J. Jaseem Mohamed
For R4 & R5 : Mr. C. Sankar

ORDER

The petitioners have filed this revision petition to set aside the order dated 28.07.2023 made in I.A. No. 350 of 2023 in O.A. No. 41 of 2023 on the file of the Tamil Nadu Waqf Tribunal, Chennai.

2. Heard Mr. Nissar Ahmed, learned senior counsel for Mr. N. A. Nissir Hussain learned counsel for the petitioner, Mr. M. J. Jaseem Mohamed, learned counsel appearing for the respondents 1 to 3, Mr. C. Sankar, learned counsel appearing for the respondents 4 & 5 and perused the materials available on record.

3. The respondents 1 to 3 are the applicants in O.A.No.41 of 2023 before the Wakf Tribunal. The said application was filed praying to call for the records of the 2nd respondent/Board relating to the order dated 05.03.2019 appointing the 3rd respondent as Chief Hereditary Trustee in Hazrath Syed Moosa Sha Khaderi Darga and the orders dated 13.06.2019 and 25.06.2019 asking the applicants to get the endorsement from 3rd respondent, declare the same as null and void ab-initio and set aside the same. They have also sought



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for permanent Injunction restraining the respondents from interfering with the legitimate rights of the applicants as turn holding trustees during their respective turn of management of Hazrath Syed Moosa Sha Khaderi Darga situated at Annasalai, Chennai-2 and also directing the 2nd respondent to release the Hundial collections amount due to the applicants in respect of their turn during 2019, 2021 & 2022, which was deposited in the Wakf Account of 1st respondent and continue to release the Hundial collections for the consecutive terms, against the revision petitioners.

4. The revision petitioners herein are the 3rd and 4th respondent in the said application. Immediately, after receipt of notice 3rd and 4th respondents filed an I.A. No. 350 of 2023 in O.A. No. 41 of 2023, under Section 151 of the Code of Civil Procedure read with Rule 8(3) of the Tamil Nadu Waqf Tribunal (conditions of service and procedure) Rules 2016 to reject the main application in O.A. No. 41 of 2023 as it has been filed beyond the period of limitation prescribed under the Rules. As per Section 89 (3) of the Tamil Nadu Waqf Tribunal (Conditions of Service and Procedure) Rules 2016 application before the Tribunal shall be presented within 90 days from the date of the order by which the applicant is aggrieved and if at all any delay the applicant may file supporting application for condoning the delay by adducing



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proper reason. Rule 8 (1) also makes it clear that the Code of Civil Procedure

and Civil Rules of Practice shall apply to the proceedings before the Tribunal.

In this case, the orders are dated 05.03.2019, 13.06.2019, 25.06.2019 and the applicants had filed W.P. No. 22283 of 2021 for Writ of Certiorari before this Court to quash the order dated 05.03.2019. The said petition was dismissed on 17.10.2022 granting liberty to the applicants to file application under Section 83 of Waqf Act before the Tribunal and observed that the period from the date of filing of Writ petition i.e., 14.09.2021 till the date on which the certified copy of the order is made ready by the Registry, shall be excluded for the purpose of reckoning limitation. The order copy was issued on 03.11.2022 but only the web copy dated 17.10.2022 has been filed in the typed set in O.A.No.41 of 2023 and the certified copy has not been enclosed. O.A. No. 41 of 2023 was sworn on February 2023 and is understood to have been filed on 21.02.2023 vide SR.No.462 of 2023. Within 90 days the application has to be filed, but the applicants have not filed the application within 90 days and without an application for condoning the delay and as such the O.A. challenging the orders of the year 2019 are not maintainable as they are barred by law and even excluding the period from 14.09. to 17.10.2022 or 03.11.2022 as per the order passed by this Court, the O.A. has been filed on 14.02.2023 beyond the period of limitation and therefore, the Original Application is not



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maintainable.

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5. On the other hand, the respondents in the said Application to reject the Original Application contended that as per the order of Apex Court dated 23.09.2021 passed in MA. No. 665 of 2021 in SMW (C) No.3/20 the period of limitation runs from 15.03.2021 to 04.10.2021 and then further extended upto 31.03.2022 during Covid-19 Pandemic period. Presuming and assuming there is a delay then Rule 8 (3) of the Tamil Nadu Waqf Tribunal (conditions of service and procedure) Rules clearly and categorically stipulate that delay, if any, may be condoned. The 1st respondent is a Diabetic patient and was undergoing rigorous treatment. He had to get his tow amputated. In such circumstances, no prejudice whatsoever would be caused to the respondents if the delay is condoned. Hence, he prays to dismiss the application.

6. Considering both side submissions, the Tribunal held that on considering the arguments advanced on the side of the respondents, the relief (A) sought for in the main O.A. by the respondents 1 to 3, who are the applicants in the main O.A. relates to a continuing cause of action and hence the question of limitation does not arise. Moreover, the main case cannot be rejected on the ground of technicalities and even the Rule 8 (3) of the Tamil



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Nadu Waqf Tribunal Rule 2016 does not provide for rejecting any application in the threshold. The Waqf Act, 1995 (as amended in 2013) also does not contain any period of limitation for filling an application under Section 83(1) and (2) for the reliefs sought for in the main O.A.No.41 of 2023. The respondents have also explained the reasons for the delay in approaching the Tribunal due to the pandemic and due to their efforts in approaching the officials of the Tamil Nadu Waqf Board seeking redressal. Such explanation given by the respondents 1 to 3 can be tested only during the enquiry of the main O.A. and as such it cannot be rejected at this stage. No prejudice is going to be caused to the petitioners herein if the main O.A.is going to be decided on merits, as only the respondents 4 and 5 are burdened to justify the reasons for their passing the orders dated 05.03.2019, 13.06.2019 and 25.06.2019 which are under challenge. Even Section 151 of the Code of Civil Procedure cannot be invoked to reject the main O.A. No. 41 of 2023 as there is no abuse of process of Court or there is no necessity to pass such rejection order as claimed by the petitioners. There is no provisions of law in the Tamil Nadu Waqf Board Act. Rule 8 of the Tamil Nadu Waqf Tribunal (Conditions of Service and Procedure) Rules 2016 deals with procedure for filing application and limitation under Rule 8(3) reads as follows:

"If any application is made, it shall be within 90 days from the date of



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the order in which the applicant is aggrieved or a right of an interested person is denied or any cause of action arises in any matter in relation to a Waqf and its properties.

provided that in the case of any delay in filing the application before the Tribunal, the applicant may file a supporting application with affidavit for condoning the delay by adducing proper cause of such delay and the Chairman of the Tribunal if satisfied may condone such delay and allow the application to file an application for relief sought for on such application."

7. Admittedly, an order was passed in Writ Petition on 17.10.2022 to exclude the period of the pendency of the Writ proceedings but within 90 days the application has not been filed. Therefore, the reason assigned to condone the delay has not be properly explained.

8. On a perusal of the records, it reveals that initially Original application was received without application for delay so it is a technical error on the side of the Tribunal. The Tribunal also to avoid it in future has to adopt correct procedure to take the application on file. Therefore the reason assigned by the learned Judge is justifiable and there is no need to interference and the

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question as to whether the cause of action is continuous or not can be worked out at the time of finally deciding the Original Application.

9. Accordingly, the Civil Revision Petition is dismissed as devoid of merits. Consequently, connected Miscellaneous petition is closed. No costs. However, learned Tribunal is directed to dispose of the Original Application within a period of four months from the date of receipt of a copy of this order.

02.11.2023

Index : Yes/No
Speaking/Non Speaking order

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To

1. The Tamil Nadu Waqf Tribunal, Chennai.
2. The Section Officer,
VR-Section, High Court of Madras.

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and
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