



W.P. No. 30981 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2023

CORAM

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

W.P. No. 30981 of 2023

and

W.M.P. Nos. 30612, 30616 and 30619 of 2023

1. I.S.Ibrahim

2. M.Basheer Ahamed

... Petitioners

-VS-

1. The Tamil Nadu Wakf Board,
Represented by its Chairman,
No. 1, Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 001.

2. The Chief Executive Officer,
Tamil Nadu Wakf Board,
No. 1, Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 001.

3. The Superintendent of Wakf,
Tamil Nadu Wakf Board,
No. 1, Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 001.

4. The Inspector of Wakf,
Tamil Nadu Wakf Board,
No. 139, Dr.Besant Road,
Ice House,
Chennai – 600 005.



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5. The Trust Estate of M.K.P.Maracayar & Masid Moqdoomi Waqf,
Rep. by its President,
S.M.A. Mohammed Saleem,
No. 85, Sembudoos Street,
Mannady,
Chennai – 600 001.

6. S.Majid @ Sali Majid

7. Janab. P.Mohammed Adam

8. Janab. A.Sulthan

9. Janab. K.M.Siddique

10. Janab. Mohammed Nizam

11. Janab. B.Mohammed Peeran

12. Janab. S.Bhuhari

13. Janab. M.Abdul Rahman
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 impugned Order of the Second Respondent in Se. Mu. Order: 12765/16/B2/Chennai dated 21.08.2023 and quash the same as illegal, incompetent and without jurisdiction and consequently, directing the First Respondent to conduct the enquiry under Section 32 of the Wakf Act, 2013 as directed by the Hon'ble Division Bench of the Court in W.A. No. 1339 of 2022 dated 13.04.2023 within time frame fixed by the Court.



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For Petitioners : Mr. A.Ilayaperumal

For Respondents : Mr. S.Haja Mohideen Gisthi,
Standing Counsel (for R1 to R4)

Mr. N.A.Nissar Ahmed,
Senior Counsel
for M/s. D.Koswer Nissar (for R5 to R13)

ORDER

Heard Mr. A.Ilayaperumal, Learned Counsel for the Petitioners, Mr. S.Haja Mohideen Gisthi, Learned Standing Counsel appearing for the First to Fourth Respondents and Mr. N.A.Nissar Ahmed, Learned Senior Counsel appearing for the Fifth to Thirteenth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Division Bench of the Court in ***I.S.Ibrahim -vs- Principal Secretary to Government, Backward Class, Most Backward Class and Minorities Welfare Department, Chennai*** (Order dated 13.04.2023 in W.A. No. 1339 of 2022 etc., batch) had passed certain orders relating to the administration and management of the affairs of the Fifth Respondent, viz., Trust Estate of M.K.Periyathambi Maracayar, apart from conducting an enquiry under Section 32 of the Waqf Act, 1995 (hereinafter referred to as 'the Act' for short). It is the case of the Petitioners that in utter disregard of the said order passed by the



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Division Bench of the Court, the Second Respondent by Proceedings No. Se.

Mu.Aanai: 12765/ 16/Aa9/ Chennai 3/6 dated 21.08.2023 has appointed an *ad hoc* Committee for the Fifth Respondent, which has published an advertisement on 08.01.2023 in Daily Thanthi Newspaper for demolition and removal of debris of the building situated at Old Door Nos. 79 and 80, Broadway, Chennai – 600108, belonging to it. In that backdrop, this Writ Petition has been filed challenging the aforesaid order passed by the Second Respondent.

3. At this juncture, it requires to 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 or its property before the Waqf Tribunal.

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 precisely explained the legal position relating to the exercise of discretionary powers under writ jurisdiction when an alternative remedy exists, in the following words:-



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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 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.

In *Nivedita Sharma -vs- Cellular Operators Association of India* [(2011) 14 SCC 337], adverting to the the previous decisions with regard to the rule of self-restraint when an alternative remedy is available to the aggrieved person, the Hon'ble Supreme Court of India has pointed out that when a statutory forum is created by law for redressal of grievance, a Writ Petition should not be ordinarily entertained ignoring that statutory dispensation. Further, 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] in the following words:-

27.1. The power under Article 226 of the Constitution to issue writs can be



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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.

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 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.

In such circumstances, the Petitioner has not been impeded from canvassing



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what is sought to be agitated in this Writ Petition in the aforesaid statutory remedy and there is no acceptable explanation from the Petitioner for not having availed it. In that view of the matter, this Court is not inclined to entertain this Writ Petition so as to delve into the merits of the controversy involved.

In the result, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

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Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 05.06.2024.

vjt

To

1. The Chairman,
Tamil Nadu Wakf Board,
No. 1, Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 001.



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No. 1, Syrang Street,
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Tamil Nadu Wakf Board,
No. 1, Syrang Street,
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5. The President,
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P.D. AUDIKESAVALU, J.

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