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W.P. No. 32058 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

CORAM

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

W.P. No. 32058 of 2023

Tmt.Wasefa Kaussar

... Petitioner

-VS-

1. The Secretary to Government,
Department of Minority Welfare,
Secretariat,
Chennai – 600 005.

2. The Chairman
Waqf Board,
No. 1 Jaffar sarang Street,
Vallal Seethakathi Nagar,
George Town,
Chennai – 600 001.

...

Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the First Respondent to consider the representation dated 20.10.2023 and to restrain the Second Respondent from chairing the enquiry as per the notice dated 18.10.2023 served on her vide Na.Ka.3211/07/A1 Thirunelveli.

For Petitioner : Mr. S.Sirgeth Naina Mohamed

For Respondent : Mr. U.Baranidharan,
Additional Government Pleader (for R1)

Mr. Mohamed Fayaz Ali



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Additional Public Prosecutor (for R2)

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ORDER

Heard Mr. S.Sirgeth Naina Mohamed, Learned Counsel for the Petitioner, Mr. U.Baranidharan, Learned Additional Government Pleader, who takes notice for the First Respondent, Mr. Mohamed Fayaz Ali, Learned Additional Public Prosecutor, who takes notice for Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition has been filed for directing the First Respondent to consider the representation dated 20.10.2023 made by the Petitioner and to restrain the Second Respondent from chairing the enquiry as per the Notice No. Na. Ka. 3211/07/A1 dated 18.10.2023 issued by the Second Respondent.

3. It is borne out from the materials placed on record that the matter in dispute relates to Khan Mian Pallivasal and Durgah in Kandiaperi Village, Tirunelveli District situated within the territorial limits of jurisdiction of the Madurai Bench of this Court. The only reason stated by the Petitioner for approaching the Principal Seat of this Court instead of Madurai Bench is that the offices of the First and Second Respondents are located in Chennai. There



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cannot be any doubt that the First and Second Respondents exercise powers for the whole of the State of Tamil Nadu, but it cannot mean as if the cause of action has arisen within the territorial limits of jurisdiction of the Principal Seat of this Court at Chennai. Even if it is assumed that a part of cause of action has arisen within the territorial limits of jurisdiction of this Court, the principle of *forum conveniens* would come into play as held by the Division Bench of this Court in **C.Ramesh -vs- Director General of Police** (Order dated 06.06.2013 in W.P. (MD) No. 8790 of 2013), as follows:-

“7. Exercise of jurisdiction is based on arising of the cause of action, either in whole or in part in any one of the said Revenue Districts. [See RAJASTHAN HIGH COURT ADVOCATES' ASSOCIATION Vs. UNION OF INDIA AND OTHERS (2001 (2) SCC 294) and B.STALIN Vs. THE REGISTRAR, SUPREME COURT OF INDIA AND OTHERS (2012 (3) LW 489 (FB))].

8. It should be remembered that the part of cause of action must be substantial in nature. The territorial jurisdiction of the Court is linked with the place of accrual of cause of action. [See U.P. RASHTRIYA CHINI MILL ADHIKARI PARISHAD,



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LUCKNOW Vs. STATE OF U.P. AND OTHERS (1995 (4) SCC

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9. Referring to *KUSUM INGOTS & ALLOYS LTD. Vs. UNION OF INDIA (2004 (3) CTC 365)*, a Full Bench of this Court in *SANJOS JEWELLERS Vs. SYNDICATE BANK, BANGALORE AND OTHERS (2007 (5) CTC 305)*, held as under:-

"30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the Doctrine of forum conveniens.

[See BHAGAT SINGH BUGGA Vs. DEWAN JAGBIR SAWHNEY, AIR 1941 CAL 670 : ILR (1941) 1 CAL 490; MADANLAL JALAN Vs. MADANLAL, 1945 (49) CWN 357: AIR 1949 CAL 495; BHARAT COKING COAL LTD. Vs. JHARIA TALKIES & COLD STORAGE (P) LTD., 1997 CWN



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122; *S.S.JAIN & CO. Vs. UNION OF INDIA*, 1994 (1) CHN

445, and *NEW HORIZONS LTD. Vs. UNION OF INDIA*, AIR

1994 DEL 126]."

10. *Question of entertaining a lis disclosing a cause of action or part of cause of action is based on the averments contained in the affidavit etc. At that stage, the truth or otherwise of the averments need not be gone into. But, there must be necessary averments disclosing a cause of action, so that the Court can take cognizance of/entertaining the lis exposed in the petition for taking further action. [See OIL AND NATURAL GAS COMMISSION Vs. UTPAL KUMAR BASU AND OTHERS (1994 (4) SCC 711)].*

11. *A Court cannot arrogate/assume/confer upon itself a jurisdiction-territorial jurisdiction, when it has no such jurisdiction. Lack of jurisdiction to entertain a matter goes to the root of the matter, otherwise whatever action taken or orders passed by the Court becomes a nullity, it is non est and of no*



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consequence at all resulting in wasting of precious public time.

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Having regard to the aforesaid legal position *viz-a-viz* factual matrix of this case, the cause of action for the Writ Petition, would have to be necessarily construed as having arisen wholly outside the territorial limits of jurisdiction of the Principal Bench of this Court, notwithstanding that the offices of the First and Second Respondents are located in Chennai.

4. When it is pointed out that the Writ Petition cannot be entertained in the Principal Seat of this Court in that backdrop, Learned Counsel for the Petitioner seeks permission of the Court to withdraw this Writ Petition with liberty to file fresh Writ Petition for the same relief impleading Khan Mian Pallivasal and Durgah, Kandiaperi Village, Tirunelveli District as a party, before the Madurai Bench of this Court and he has made an endorsement to that effect in the court record.

In fine, the Writ Petition is dismissed as withdrawn granting such liberty.

No costs.



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Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 01.12.2023.

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To

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1. The Secretary to Government,
Department of Minority Welfare,
Secretariat,
Chennai – 600 005.

2. The Chairman
Waqf Board,
No. 1 Jaffar sarang Street,
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P.D. AUDIKESAVALU, J.

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