



W.P.(MD).No.11237 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.09.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.11237 of 2013

and

M.P.(MD).Nos. 1 of 2013 and 1 & 2 of 2014

S.Mohamed Meeran

... Petitioner

Vs.

1.The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagra,
Chennai-600 001.

2.The Superintendent of Wakf,
Tirunelveli.

3.The Wakf Inspector,
Tenkasi, Tirunelveli District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the proceedings of the first respondent in RC.No.167/04/B/Tnv and quash the same.

For Petitioner : Mr.Vallinayagam,
Senior Counsel
For D.Nalla Thambi

For Respondents : G.Chandrasekar
Standing Counsel



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ORDER

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This Writ Petition is filed for Writ of Certiorari, to quash the impugned notice dated 03.07.2013 issued by the first respondent, the Chief Executive Officer, Wakf Board.

2. The brief facts as stated in the affidavit is that the petitioner's grandfather endowed land and building in favour of the Wakf namely Saraful Islam Madarasa through registered deed dated 05.12.1911. As per the deed the petitioner's grandfather is the founder mutawalli and the management of the wakf is within the male members of the family and the petitioner is the present mutawalli. However, the 1st respondent had passed a resolution dated 25.07.2005 directing to convene the General Body of Jamadhars to elect mutawalli. Aggrieved over the same petitioner had filed preferred W.P.No.7547 of 2005 and the Court vide order dated 18.09.2007 granted liberty to file appeal before Tribunal. The petitioner preferred C.M.A.No.11 of 2007 and the same was allowed on 08.01.2010 and the hereditary mutawalliship was confirmed.

3. The further contention of the petitioner is that the petitioner's father for the purpose of confirming the transfer of management of wakf in favour of the petitioner had executed two deeds dated 04.05.1989 and 11.05.1989 and granted



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full right to deal with the property and also the administration of the school.

Even though the above documents are styled as gift deeds, the petitioner have not treated the properties as individual. The properties are treated as Madarasa property only, since the said deeds are confirmation of transfer of mutuwalliship and the school.

4. The respondents after lapse of two years have issued the present notice for enquiry under section 52 of Waqf Act, 1995 alleging illegal gift of wakf property in S.No.712 admeasuring 0.12 cents and in S.No.717/1 admeasuring 0.3½ cents. The respondents submitted that the writ petition is not maintainable since the petitioner had challenged the enquiry notice. But the Learned Senior Counsel appearing for the petitioner submitted that under section 52 only the Wakf Board had power to conduct an enquiry and the decision of the Wakf Board ought to be on majority. But in the present case the Chief Executive Officer has to invoked section 52, hence the Chief Executive Officer has no power under section 52 of the Waqf Act and the said section is extracted hereunder:

“52. Recovery of waqf property transferred in contravention of section 51.—(1) If the Board is satisfied, after making any inquiry in such manner as may be prescribed, that any immovable property of a waqf entered as such in the register of waqf maintained under section 36, has been transferred without the previous sanction of the Board in



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contravention of the provisions of section 51 or section 56, it may send a requisition to the Collector within whose jurisdiction the property is situate to obtain and deliver possession of the property to it.

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When the section specifically states that “if the Board is satisfied”, then the Board alone is having power to restore the property to wakf through the Collector. Even though the writ petition is filed challenging the enquiry notice, since the petitioner has raised jurisdiction issue, this Court is of the considered opinion that the writ petition is maintainable.

5. The next contention of the Learned Senior Counsel is that the said property should be in the register maintained by the Waqf Board. The respondents have produced the register of the Waqf Board in that it is stated Document No.548 dated 21.03.1996 S.No.174 and Document No.105 dated 16.03.1959 admeasuring 0.35 cents are entered. The petitioner's property shown in the gift deed which is registered as Document No. 2713 and the said document number is not in the register in the Register of Wakf Board. It is seen also seen the properties stated in the deed, the survey numbers and the measurement differ. In such circumstances the enquiry notice issued by the 1st respondent is illegal.



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6. The next contention of the petitioner is that the respondents have not framed rules regarding to conduct enquiry. But the respondents submitted that the Tamil Nadu Wakf Rules, 2000 was framed and published in gazette on 16.10.2000, hence the same has come into effect on 16.10.2000.

7. The Rule 8 of the said Rules states “the powers of the Board and Chief Executive Officer to Hold Enquires”. The Learned Senior Counsel submitted that the said rule covers the enquiry contemplated under section 39 and not under Section 52. But the respondents refuted the said contention and submitted that under Rule 15 of the said Rules the said power is granted to Chief Executive Officer to conduct enquiry under section 52.

8. It is seen that Rule 8 states the powers of **Board** as well as **Chief Executive Officer** to conduct enquiry. But Rule 8 further states to conduct enquiry under section 39. Under Rule 15 it speaks of enquiry to be conducted under section 52. In Rule 15 it further states that Chief Executive Officer shall conduct enquiry in the manner prescribed in Rule 8, shall draw up a report and submit the report to the Board for further orders. On perusing the said Rules, especially Rule 15 it is again the Board has power to pass final orders, but the preliminary enquiry can be conducted by the Chief Executive Officer.



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9. Therefore, this Court is of the considered opinion that the notice is issued by the Chief Executive Officer to conduct preliminary enquiry as stated in Rule 15 of the Tamil Nadu Wakf Act, 2000. However, the Board is the appropriate authority to pass final orders under Rule 52. The Board while passing final orders ought to follow the procedure stated in Rule 8.

10. Since the Chief Executive Officer has issued enquiry notice to conduct preliminary enquiry the petitioner is bound to submit records to the Chief Executive Officer and also to attend the enquiry. Therefore this Court is of the considered opinion that the impugned enquiry notice is issued under Rule 15, to conduct preliminary enquiry and the same is legally sustainable. The petitioner is directed to submit records and participate in the enquiry.

11. With these observations and directions, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition are closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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S.SRIMATHY, J.

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