



WEB COPY



W.P. No.16604 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2024

CORAM:

THE HON'BLE MR. JUSTICE M.DHANDAPANI

W.P. No.16604 of 2016

and

W.M.P. No.14342 of 2011

Ashok Nagar Muslim Cultural Association,
Represented by its Secretary
Dawood Ali

... Petitioner

Versus

1. The Tamil Nadu Waqf Board,
Rep. By its Chairman,
having office at No.1,
Jaffer Sarang Street,
Chennai – 600 001.
2. The Chief Executive Officer,
Tamil Nadu Waqf Board,
having office at No.1,
Jaffer Sarang Street,
Chennai – 600 001.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorari to call for the records from the second respondent insofar as relates to his proceedings in Na.Ka. No.14083/15/Aa6/Chennai, dated 03.03.2016 including the annexed resolution No.49 of 2016, dated 03.03.2016 passed by the first respondent and quash the said orders.

For Petitioner

: Mr.J. Raja Kalifulla
Senior Advocate
for M/s.Munuruddin Sheriff

For Respondents

: Mr. Avinashwadhvani



W.P. No.16604 of 2016

ORDER

This writ petition has been filed to call for the records from the 2nd

respondent insofar as relates to his proceedings in Na.Ka. No.14083/15/Aa6/Chennai, dated 03.03.2016 including the annexed resolution No.49 of 2016, dated 03.03.2016 passed by the 1st respondent and quash the said orders.

2. It is stated that the petitioner Association is a registered body, registered under the Societies Registration Act. It is further stated that said Association is carrying out various welfare activities for the Muslim Community, one of the activity is having prayer Hall. While so, based on a false representation given by the ex-Member of the Association, the 2nd respondent vide Proceedings dated 15.10.2015 directed the Waqf Inspector to hold enquiry and ascertain details of registration of Petitioner's Association as well as with regard to holding of elections. Pursuant to which, the Waqf Inspector, without any power, had mechanically issued a notice, thereby directed the petitioner to register the said Association with the Waqf Board and cautioned that failing which, action under Section 36(1)(2)(3) of the Waqf Act, 1995 as amended in 2013 would be taken. It is the case of the petitioner that they are governed by its own bye-laws and due to private Association, the question of registration under Section 36 of the Waqf Act does not arise. When that be so, the 2nd respondent issued



W.P. No.16604 of 2016

show cause notice, dated 29.01.2016, wherein, it was stated that during the enquiry conducted by the said Inspector, the petitioner association had not co-operated and further there was a direction to submit explanation in respect of non-registration of the Association. Thereafter, detailed reply was sent to the 2nd respondent on 08.02.2016, where the question of jurisdiction in respect of show cause notice was also raised by the petitioner and requested further to drop all further proceedings. Later, based on the notice dated 01.03.2016, their counsel appeared for enquiry before the Waqf Board on 03.03.2016 and the matter was adjourned without informing the next date of hearing as there was no quorum. All of a sudden, the 2nd respondent passed the impugned order, dated 03.03.2016, directing the petitioner Association to register their Association under Section 36 of the Waqf Act, and along with the said order, they have enclosed the resolution, which was referred earlier, but according to the petitioner, it was anti-dated as 03.03.2016, received by them on 21.04.2016 only. Aggrieved by the impugned order as well as resolution, this writ petition has been filed.

3. Learned Senior Counsel for the petitioner submitted that without following the procedure contemplated under Section 40 of the Waqf Act, 1995, the 2nd respondent has passed the impugned order, which is arbitrary



W.P. No.16604 of 2016

and illegal. Also he submitted that the impugned resolution of the Board was passed by violating the provisions contemplated under the Act and further, the principles of natural Justice have also been violated. He mainly pointed out that there is no dedication of any property, either movable or immovable and the same was owned and possessed by the Petitioner-Association and when that be so, the power to administer the Association vested only with the Executive Committee duly elected by the General Body.

4. Finally, he submitted that without any enquiry, contrary to Section 40 (3) and (4) of the Act, the impugned order as well as resolution was passed by the authorities respectively. He submitted that an anti-dated resolution viz., 03.03.2016 was sent, after 50 days i.e., on 21.04.2016 by the respondents to the Petitioner Association. In support of his submission, he pointed out that on 03.03.2016, there was no quorum and as such no hearing / enquiry was conducted by the respondents and therefore, the said resolution was passed unilaterally and has no legal sanctity. In such a scenario, he fairly submitted that this Court may either set aside the impugned order and the matter may be remanded to the respondents / Waqf Board or to permit the petitioner to file a suit before the Waqf Tribunal. Hence, he prays for issuance of appropriate orders in the above regard.



W.P. No.16604 of 2016

5. Denying the averments contained in the affidavit filed in support of this writ petition, learned counsel for the respondents argued his points based on the counter affidavit filed. He submitted that the petitioner Association neither co-operated with the enquiry nor they have forwarded justifiable reasons for the show cause as to why the provisions of Section 36 do not apply to the Mosque-in-question. However, he submitted that there is an effective remedy available to the petitioner -Association to challenge the order of the waqf Board under Section 83 of the waqf Act. Hence, he prays before this Court for issuance of appropriate directions to the petitioner to avail the effective remedy available.

6. Heard the learned counsel on both sides and perused the materials placed before this Court.

7. Considering the fair submissions made by the learned counsel on either side, this Court without going into the merits of the case, disposes of this writ petition by directing the petitioner to avail the appropriate remedy available under Section 83 of the Waqf Act, before the Waqf Tribunal by filing necessary petition, within a period of four weeks from the date of receipt of a copy of this order. It is further directed that if any such petition is filed before the Waqf Tribunal, the said Tribunal shall consider and dispose of the same in accordance with law, within a period of



W.P. No.16604 of 2016

four weeks, thereafter. It is made clear that the period of pendency of this writ petition before this Court shall be excluded for the purpose of computing limitation, while entertaining the petition. Till the disposal of the said petition, the interim order granted by this Court shall continue. Liberty is granted to the petitioner to agitate all those issues raised in this writ petition before the Waqf Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

02.09.2024

Note : Registry is directed to return all the original papers to the learned counsel for the petitioner and obtain xerox copy of the same for records.

Index : Yes / No
Internet: Yes/No
Speaking Order/Non-Speaking Order
vsi2



W.P. No.16604 of 2016

To

1. The Chairman,
The Tamil Nadu Waqf Board,
having office at No.1,
Jaffer Sarang Street,
Chennai – 600 001.

2. The Chief Executive Officer,
Tamil Nadu Waqf Board,
having office at No.1,
Jaffer Sarang Street,
Chennai – 600 001.

M.DHANDAPANI, J.

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W.P. No.16604 of 2016

W.P. No.16604 of 2016

02.09.2024