



W.P.(MD).No.6717 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2025

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD).No.6717 of 2015

and

M.P.(MD)Nos.1 and 2 of 2015

1.Mohideen Pichai Annavi (Died)

Beer Mohamed

...Petitioner

(Petitioner is substituted vide Court Order dated 07.06.2024 in W.M.P.(MD)No.13386 of 2016 in W.P.(MD)No.6717 of 2015)

Vs

1.The Secretary,
Ministry of Law and Justice,
4th Floor, A Wing,
Shastri Bhawan,
New Delhi – 110 001.

2.The Secretary,
Department of Law,
Government of Tamil Nadu,
St.George Fort,
Chennai – 600 009.

3.The Secretary,
Central Waqf Council,
14/173, Jamnagar House,
Shajahan Road,
New Delhi – 110 011.



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4.The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffar Sarang Street,
Parrys,
Chennai – 600 001.

5.The Chief Executive Officer,
Kerala State Wakf Board,
V.I.P.Road, Kaloor,
Kochi – 682 017.
Kerala State.

6.The Tahsildar,
Taluk Office,
Shencottah,
Tirunelveli District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Mandamus, directing the 4th respondent to treat the petitioner's testamentary property registered vide Document No.725/1113 dated 05.09.1937 in the sub registrar's office Shencottah as wakf visualised under Section 3 of The Mussalman Wakf Validating Act, 1913 (6 of 1913) in consonance with provision of Section 3 of The Madras (Transferred Territory) Extension of Laws Act, 1960 (Act No. XXIII of F 1960).

For Petitioner : Mr.A.Nister Hakeem

For R-2, R-6 : Mr.J.K.Jayaselan
and R-7 Government Advocate



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For R-4 : Mr.G.Chandrasekar
Standing Counsel

For R-5 : No Appearance

ORDER

Heard learned counsels on either side.

2. The Writ Petition had been filed praying for a Mandamus, directing the 4th respondent to treat the petitioner's testamentary property registered vide Document No.725/1113 dated 05.09.1937 in the sub registrar's office Shencottah as wakf visualised under Section 3 of The Mussalman Wakf Validating Act, 1913 (6 of 1913) in consonance with provision of Section 3 of The Madras (Transferred Territory) Extension of Laws Act, 1960 (Act No. XXIII of F 1960).

3. The case of the petitioner is that the petitioner is a private wakf which would not come within the purview of The Wakf Act, 1995. He would further submit that these aspects are not noted by the Waqf Board and had passed an order after framing a scheme for the wakf based upon the application and thereafter based upon the application made by Mohideen Andawar Pallivasal Jamath appointed the said Jamath as a



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Mutawalli to Pitchai Annavi Wakf Melur. The same was challenged by the petitioner in appeal suit A.S.No.44 of 2011 and by judgment and decree dated 30.01.2013, the Principal Sub Judge, Tirunelveli had dismissed the same. He would vehemently contend out that even as per proforma of the wakf, it is a private wakf and that, a notice was issued on 10.01.1957 for appointment of Mutawalli. An order had been passed on 12.05.1957 and the said order itself is without jurisdiction. Therefore, the rights of the petitioner to manage the wakf cannot be whittled down. Therefore, he would seek interference of this Court to direct the fourth respondent to treat the wakf as a private wakf.

4. Countering his arguments, the learned Government Advocate for the respondents 2, 6 & 7 would vehemently contend that the petitioner is trying to rake up an issue which was closed 7 decades ago and that even after the appeal suit ended against him, the petitioner had not proceeded thereafter and innocuously filed the present writ petition to circumvent the available statutory remedy of appeal before this Court. Hence, he would submit that there is no merit in the writ petition.



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5. The learned Standing Counsel appearing for the fourth respondent would submit that the petitioner had lost his rights even before the Wakf Board and the appellate Court, and his rights have all been concluded long back and he had acquiesced himself of his rights to claim Mutawalli of the Wakf. Therefore, he would submit that no indulgence is required to be made in the present case.

6. I have considered the submissions on either side and perused the materials available on record.

7. Admittedly, proceedings were initiated in the year 1957 in which it had been recorded that no interested persons appeared and order was passed on 12.10.1957. Thereafter, pursuant to the application made by Mohideen Andawar Pallivasal Jamath, orders were also passed against the petitioner which was unsuccessfully challenged by him in the appeal suit. He had not filed any appeal against the same. However, he had filed the present writ petition for the similar relief which had been negatived against him.



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8. In such view of the matter, I do not find any merits in the writ petition. As the petitioner had acquiesced himself of the claim which had been negatived against him. The petitioner cannot be allowed to re-agitate the very same claim in the form of writ petition under Article 226 of the Constitution of India.

9. For the aforesaid reasons, I do not find any merits in the writ petition. Accordingly, the Writ Petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

02.01.2025

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr



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K.KUMARESH BABU, J.

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