

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2005

CORAM

THE HON'BLE MR.MARKANDEY KATJU, CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE D.MURUGESAN

W.A.No.2344 of 2000
and
W.P.Nos.12710 & 15945 of 2000

I.Salam Khan

..Appellant.

Vs.

1. The Tamil Nadu Wakf Board,
rep. by its Chairman,
3, Santhome High Road,
Chennai - 4.

2. The Chief Executive Officer,
The Tamil Nadu Wakf Board,
3, Santhome High Road,
Chennai - 4.

3. The Superintendent of Wakfs,
Salem.

4. M.Shaik Hyder

5. D.P.Shaukat Khan

6. D.I. Fayaz Khan

..Respondents

PRAYER: Appeal under Clause 15 of the Letters Patent
against the order of this Court in W.P.No.16134 of
2000 dated 25.09.2000, as stated therein.

For Appellant :: Mr.G.Masilamani, Senior Counsel
for Mr.Md.Habeed Raja

For Respondent 1 to 3 :: Mr.Munisuddin Sheriff

For Respondent - 4 :: Mr.AR.L.Sundaresan

For Respondent - 5 :: Mr.Md.Ashfaq Rafi

For Respondent - 6 :: Mr.M.Kalyanasundaram,
Senior Counsel for Mr.G.Sethuraman

W.P.Nos.12710 of 2000 & 15945 of 2000

M.Sheik Hyder ..Petitioner in both the W.Ps.

Vs.

1. The Government of Tamil Nadu,
rep. by its Secretary,
Home Department,
Fort St.George,
Chennai - 9.

2. The Superintendent of Police,
Dharmapuri District.

3. The Deputy Superintendent of Police,
Dharmapuri District.

4. The Inspector of Police,
Dhenkanikottai Police Station,
Dhenkanikottai.

..Respondents RR 1 to 4 in
W.P.12710/2000

1. The Tamil Nadu Wakf Board,
rep. by its Chief Executive Officer/Secretary.
3, Santhome High Road,
Chennai - 4.

2. D.P.Sowkath Khan ...Respondents RR 1,2 in
W.P.15945/2000

For Petitioner :: Mr.S.B.Fazluddin in both Wps

For Respondents in W.P.12710/00 :: Mr.P.S.Sivashanmugasundaram,
Addl. Government Pleader

For Respondents in W.P.15945/00 :: Mr.Muniruddin Sheriff for R-1
Mr.Ashfaq Rafi for R-2

PRAYER in W.P.No.12710/2000 : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the Respondents herein to forthwith close and cancel the Petitioners histroy sheet bearing No. 265/D, dt. 16.7.94 of the Denkanikottai Police Station.

PRAYER in W.P.No.15945/2000 : Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus, to call for all the records relating to the order in No. 112/2000 in R.C. No. 9593/B2/DP1/2000 and Item No, 96/2000 in R.C No. 7253/B2/DPI/93 dt. 29.8.2000 on the file of the Tamil Nadu Wakf Board, Chennai and quash the same and to direct the first Respondent herein to hold an enquiry Under Section 64 (3) of the Wakf Act 1995 in a prescribed manner offording reasonable appportunity of being heard by examining the witnesses and giving evidence relating to the above matter.

J U D G M E N T

(The Judgment of the Court was delivered by The Hon'ble The Chief Justice)

This writ appeal has been filed against the impugned judgment of the learned single Judge dated 25.09.2000. We have heard the learned counsel for the parties and have carefully perused the impugned order. The dispute in this case relates to a wakf.

2. In our opinion, all matters pertaining to Wakfs should be filed in the first instance before the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995 and should not be entertained by this Court straight away under Article 226 of the Constitution of India.

3. It may be mentioned that the Wakf Act, 1995 is a recent parliamentary statute which has constituted a special Tribunal for deciding disputes relating to Wakfs. The obvious purpose of constituting such a Tribunal was that a lot of petitions relating to Wakfs were being filed in the Courts in India and they were occupying a lot of time of all the Courts in the country, which resulted in increase in pendency of cases in the Courts. Hence, a special Tribunal has been constituted for deciding such matters.

4. Section 83(1) of the Wakf Act, 1995 states,
"83. Constitution of Tribunals, etc. - (1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a Wakf or Wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals."

5. Section 84 of the Act states,
"84. Tribunal to hold proceedings expeditiously and to furnish to the parties copies of its decision - Whenever an application is made to a Tribunal for the determination of any dispute, question or other matter relating to a Wakf or Wakf property it shall hold its proceedings as expeditiously as possible and shall as soon as practicable on the conclusion of the hearing of such matter give its decision in writing and furnish a copy of such decision to each of the parties to the dispute."

6. Thus, the Wakf Tribunal can decide all disputes, questions or other matters relating to a Wakf or Wakf property. The words "any dispute, question or other matters relating to a Wakf or Wakf property" are, in our opinion, words of very wide connotation. Any dispute, question or other matters whatsoever and in whatever manner which arises relating to a Wakf or Wakf property can be decided by the Wakf Tribunal. The word 'Wakf' has been defined in Section 3(r) of the Wakf Act, 1995 and hence once the property is found to be a Wakf property as defined in Section 3(r), then any dispute, question or other matter relating to it should be agitated before the Wakf Tribunal. It is not proper for this Court to straight away entertain writ petitions relating to a Wakf or Wakf property when there is a special Tribunal constituted for this purpose.

7. No doubt, alternative remedy is not an absolute bar to the filing of writ petitions, but at the same time it is well settled that writ jurisdiction is discretionary jurisdiction and when there is an alternative remedy, ordinarily a party must resort to that remedy first before approaching this court. Entertaining writ petitions straight away without insisting that a party should first avail of the alternative remedy is an over liberal approach which has caused immense difficulties to the High Courts in the country because they have added to the huge arrears. The Courts have already become overburdened by this over liberal approach instead of following the settled legal principle that a writ petition should ordinarily be dismissed if there is an alternative remedy. The High Courts in India are

already tottering and reeling under the burden of massive arrears which have flooded the dockets of the Court, and such kind of over liberal approach has only multiplied this problem manifold. If this approach is further continued a time will surely come when the High Courts will find it impossible to function. All this has happened because unfortunately some Courts have departed from well-settled legal principles.

8. Under Section 83(5) of the Wakf Act, 1995 the Tribunal has all powers of the Civil Court under the Code of Civil Procedure, and hence it has also powers under Order 39 Rules 1, 2 and 2A of the Code of Civil Procedure to grant temporary injunctions and enforce such injunctions. Hence, a full-fledged remedy is available to any party if there is any dispute, question or other matter relating to a wakf or wakf property.

9. This Court will now ordinarily stop entertaining writ petitions directly relating to a wakf and will insist that the party should first approach the wakf Tribunal as constituted under Section 83 of the Wakf Act, 1995.

10. We may, further, clarify that the party can approach the Wakf Tribunal, even if no order has been passed under the Act, against which he is aggrieved. It may be mentioned that Sections 83(1) and 84 of the Act do not confine the jurisdiction of the Wakf Tribunal to the determination of the correctness or otherwise of an order passed under the Act. No doubt Section 83 (2) refers to the orders passed under the Act, but, in our opinion, Sections 83(1) and 84 of the Act are independent provisions, and they do not require an order to be passed under the Act before invoking the jurisdiction of the Wakf Tribunal. Hence, it cannot be said that a party can approach the Wakf Tribunal only against an order passed under the Act. In our opinion, even if no order has been passed under the Act, the party can approach the Wakf Tribunal for the determination of any dispute, question or other matters relating to a wakf or wakf property, as the plain language of Sections 83(1) and 84 indicate. We are further of the opinion that even if an order has been passed prior to the commencement of the Wakf Act, 1995, or a dispute, question or matter has arisen before the commencement of the said Act, the Wakf Tribunal can adjudicate such issues or questions or the correctness of such an order, because the intention of Parliament in enacting Wakf Act, 1995 is that any dispute or matter pertaining to Wakf should go before the Wakf Tribunal.

11. We may clarify that under the proviso to Section 83(9) of the Wakf Act, 1995 a party aggrieved by the decision of the Tribunal can approach the High Court which can call for the records for satisfying itself as to the correctness, legality or

propriety of the decision of the Tribunal. This provision makes it clear that the intention of Parliament is that the party who wishes to raise any dispute or matter relating to a wakf or wakf property should first approach the Tribunal before approaching this Court.

12. The writ appeal is disposed off. For a period of one month from today status quo will continue. If any of the parties approaches the Wakf Tribunal within one month from today the application will be entertained without raising any objection as to limitation and will be decided expeditiously thereafter in accordance with law. As already made clear, any party to the dispute can apply along with an application for interim orders under Section 84 of the Wakf Act, 1995 for temporary injunction or orders, and if he does so the same will be decided expeditiously in accordance with law. We make it clear that after the expiry of one month for which period we have granted status quo, it is entirely in the discretion of the Tribunal to pass appropriate interim orders according to its discretion. The connected writ petitions are disposed off. No costs. Consequently, WAMP Nos.20399/00, 6901/04 and WPMP No.23116 of 2000 in W.P.No.15945 of 2000 are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ns/pv

To

1. The Chairman, Tamil Nadu Wakf Board,
3, Santhome High Road,
Chennai - 600 004.
2. The Chief Executive Officer,
The Tamil Nadu Wakf Board,
3, Santhome High Road,
Chennai - 4.
3. The Superintendent of Wakfs Salem,
Salem.
4. The Secretary, Government of Tamil Nadu
Home Department,
Fort.St.George, Chennai - 9.

5. The Superintendent of Police,
Dharmapuri District.

6. The Deputy Superintendent of Police,
Dharmapuri District.

7. The Inspector of Police,
Denkanikottai Police Station,
Dhenkanikottai.

4 ccs To Mr. M.N.S. Mohamed Habeeb Raja, Advocate SR. Nos. 3698,
3662,3699

1 cc to Mr. M. Muniruddin Sheriff, Advocate, SR. 3734

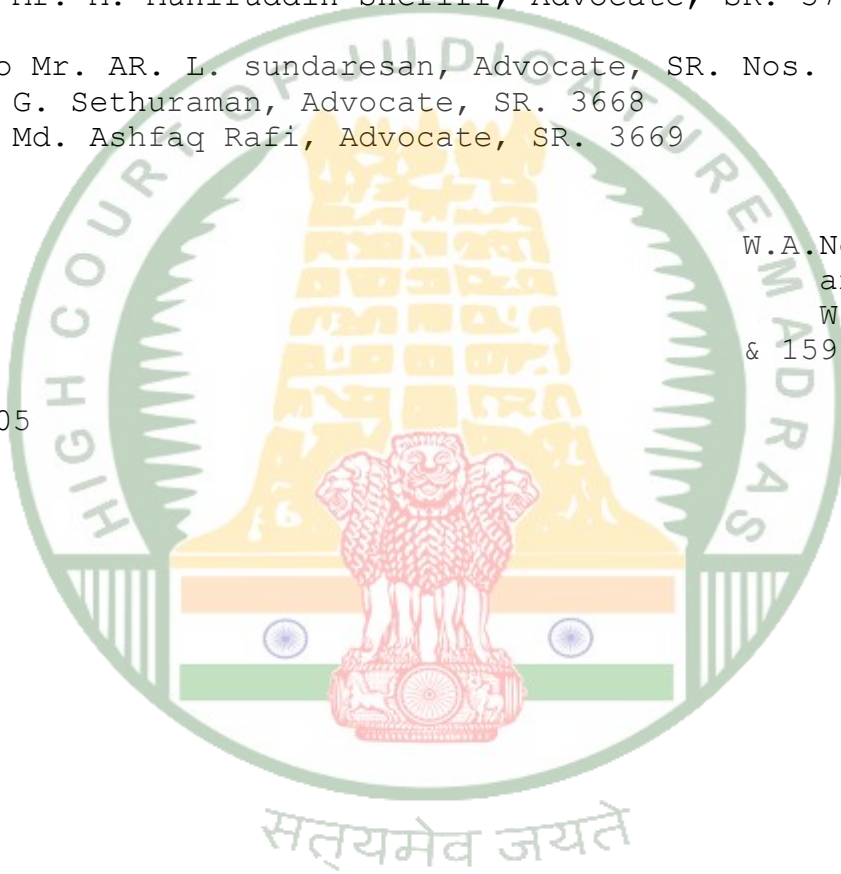
3 ccs to Mr. AR. L. sundaresan, Advocate, SR. Nos. 3851,3852,3850

1 cc to G. Sethuraman, Advocate, SR. 3668

1 cc to Md. Ashfaq Rafi, Advocate, SR. 3669

W.A.No.2344 of 2000
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W.P.Nos.12710
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