

Petitioner Vs. Respondent

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Court : Chennai Madurai

Decided On : Apr-25-2016

Judge : S. Manikumar & S.S. Sundar

Appeal No. : M.P.(MD)No. 4460 & 4461 of 2016 in W.A.(MD)Nos. 702 & 703 of 2016

Appellant : Petitioner

Respondent : Respondent

Judgement :

S. Sundar, J.

1. The Miscellaneous Petition in M.P.(MD)No.4460 of 2016 in W.A.(MD)Nos.702 of 2016 has been filed praying to grant an Ad-Interim Injunction, restraining the respondents from in any way taking over the possession / Management of the Kazimar Pallivasal, Madurai in furtherance of G.O(D) No.04, Backward Classes Department and Minority Welfare Department, dated 13.01.2016.

2. The Miscellaneous Petition in M.P.(MD)No.4461 of 2016 in W.A.(MD)Nos.703 of 2016 has been filed praying to grant an Ad-Interim Stay of operation of the impugned Resolution of the 2nd respondent in Na.Ka.No.13575/02/Aa8 / Madurai, dated 30.12.2015 and the consequent impugned notification in No.V1-3(I)/21/2016, dated 15.02.2016 published in Tamil Nadu Government Gazette on

24.02.2016.

3. The appellant, who is unsuccessful in W.P.(MD)No.2705 of 2016 of 2016, has filed the Writ Petition in W.P.(MD)No.2705 of 2016, challenging the impugned order passed by the first respondent, the Secretary, State of Tamil Nadu, Most Backwards and Minority Welfare Department, Chennai, dated 13.01.2016, by G.O.(D)No.04, backward Classes and Minority Welfare (S2) Department and consequently, forbearing the respondents from in any way taking over actual possession of Kazimar Periya Pallivasal, Madurai.

4. Similarly, the appellant has filed W.P(MD)No.4566 of 2016, challenging the impugned resolution of the Chief Executive Officer, Tamil Nadu Wakf Board, Chennai / the 2nd respondent, in Na.Ka.No.13575/02/Aa8/Madurai, dated 30.12.2015 and the consequent notification in No.VI-3(1)/21/2016, dated 15.02.2016 published in Tamil Nadu Government Gazette on 24.02.2016 and consequently, to forbear the respondents from in any way interfering with the petitioner's right to Management of Kazimar Periya Pallivasal, Madurai.

5. The brief facts, which are necessary for disposal of these two Miscellaneous Petitions, are summarised as follows:-

The appellant claims that he is the Managing Trustee of the Wakf viz., 'Kazimar Periya Pallivasal'. According to the appellant, the 'Kazimar Periya Pallivasal' is a Wakf established during the time of Pandian Kingdom and the said Wakf is a religious denomination, administered by the Trustees, who are elected among the male dissident founders by application of Rule of Succession etc., It appears that there is a dispute with regard to the entitlement and right of the present Trustees and there were several proceedings and the Wakf Board appears to have passed an order way back in 2004, to frame a scheme for proper administration of Wakf. It appears that the orders passed by the Wakf Board was challenged by the appellant and the other Trustees of the Wakf Board before the Wakf Tribunal and the Wakf Tribunal has confirmed the order of Wakf Board, by an order dated 16.06.20106 in Wakf Appeal in W.A.No.1 of 2015. Thereafter, the order of Wakf Tribunal was challenged before this Court in Civil Revision Petition in C.R.P.(MD)No.491 of 2006 and the same was dismissed by a learned Single

Judge of this Court, by an order dated 22.02.2007. Thereafter, the Tamil Nadu Wakf Board has passed an order on 23.10.2008, approving the scheme submitted by the existing Trustees wherein, the administration of the Wakf was suggested to be in the same manner as it is being done in the past.

6. Subsequently, by another order dated 06.07.2008 the Wakf Board modified the earlier scheme. Challenging the order dated 23.10.2008 and 06.07.2008 Writ Petitions in W.P.(MD)Nos.10056 and 10422 of 2008 have been filed. Learned Single Judge of this Court has allowed the writ petitions, on 22.12.2011, by quashing the impugned order of the Wakf Board. There was a further direction to the Wakf Board to issue notices to both the parties and hold a proper hearing, allowing both the parties to file documents and make submission and thereafter, frame a scheme taking into account all the aspects without expressing any opinion on the merits on the claim of both parties. Nearly after 22 months, the Wakf Board, which has been directed to frame a scheme has passed an order impugned in the first writ petition on 22.10.2013 assuming direct Management of the Wakf in respect of Kazimar Periya Pallivasal, for a period of two years. This order and the consequential orders were challenged by the appellants group in two writ petitions and the same were dismissed, by giving liberty to the appellants group to file a revision before the State Government as contemplated. The order passed in the Writ Petitions were also challenged by the appellant and his men in W.A(MD)Nos.918 and 919 of 2014 and this Court was pleaded to dismiss the Writ Appeals, however, giving liberty to the appellants to approach the State Government under Section 65(2) of the Wakf Act, 1995 and further observed that the respondents should not interfere with the administration of the Wakf by the 'Haqudars' (appellant groups) towards managing the Wakf, if the petitioner / appellant approach the State Government by way of revision within a period of 15 days from the date of the order passed by this Court i.e., on 6.6.2014.

7. It was thereafter, the appellant has preferred the revision before the State Government and the State Government has passed the order impugned in the Writ Petition in W.P.(MD)2705 of 2016 vide G.O(D) No.04, Backward Classes Department and Minority Welfare Department, dated 13.01.2016, confirming the order of Wakf Board. As a matter of fact, the order for assuming direct

management was only for a period of two years and once again, the Wakf Board has extended the period of direct management for a further period of two years from 23.10.2014 to 22.10.2016. This order was challenged in the second Writ Petition in W.P.(MD)No.4566 of 2016. Both the writ petitions were dismissed by the learned Single Judge of this Court, by an order dated 05.04.2016, by holding that there are serious allegations regarding the administration of the Wakf by the appellant and his groups and that the appellants are able to continue in the management of administration of the Wakf inspite of specific findings rendered by the Wakf Board and Wakf Tribunal negating their status, as 'Haqudars'. The leaned single Judge after rejecting the contentions of the appellant that the impugned order is in violation of principles of natural justice and other legal submissions after referring to the findings of the Wakf Board and Wakf Tribunal and further held that the writ petitions have no merits.

8. The main contention raised by Mr.AR.L.Sundaresan, the learned Senior Counsel for the petitioner/appellant is that, having regard to the order passed by the Wakf Board, dated 23.10.2013 ordering direct Management, under Section 38 of Wakf Act, is in violation of principles of natural justice, for the simple reason that notice for enquiry, dated 09.10.2013 issued by the Wakf Board before passing the impugned order do not indicate that the appellant was called upon to make his submission regarding taking over of Management or for appointment of an Executive Officer from the Wakf during the pendency of proceedings for framing a scheme. While challenging the order extending the time for direct Management the learned senior counsel for the appellant submitted that the same is without jurisdiction and that it cannot independently stand.

9. We have also heard Mr.AR.L.Sunderesan, learned Senior Counsel for the appellant, Mr.M.Vallinayagan, learned Senior Counsel appearing for respondent No.4, Mr.S.Kumar, learned Additional Government Pleader for respondent No.1 and Mr.S.Kumar, learned Additional Government Pleader, at length on the merits of the case to find out whether there is a prima facie case.

10. We find that the notice that was issued by the Wakf Board before the impugned order did not disclose the proposed action so as to enable the appellant

to make his submission before passing the order taking over the Management. Having regard to the admitted facts that the Wakf Board has been directed by this Court earlier to frame a scheme in respect of the Wakf, by an order, dated 22.02.2011 and the Wakf Board had ample time to frame the scheme, the impugned order assuming direct Management of the Wakf, is inappropriate, especially, when the Wakf Board has not cited any reason relating to the Mismanagement of the Wakf, except recording the fact that the present Trustees of the Wakf have not proved their claim of hereditary Trusteeship. The Wakf Board has not focussed its attention as to the necessity for direct Management so as to secure better Management and administration of the Wakf.

11. As pointed out earlier, the impugned order is pursuant to a notice, dated 09.10.2013 wherein, the proposed action was not stated. Though there is a reference to the order passed in W.P.(MD)No.6074 of 2012 wherein, there was a direction by this Court to consider the representation of the petitioner therein, dated 17.02.2012, the nature of representation, dated 17.02.2002 is not disclosed in the notice dated 09.10.2013. It is to be noted that even in the order in W.P.(MD)No.6074 of 2012, dated 19.03.2012, the respondent Wakf Board was directed to consider the representation of the petitioner therein dated 17.02.2012 and pass orders on merits, after affording an opportunity to the petitioner and others, if any. The representation of the petitioner dated 17.02.2002 was not produced before this Court or before the learned Single Judge before disposing of the writ petition. It is also admitted that the appellant or any one representing his group was not a party in W.P.(MD)No.6074 of 2012. Hence by referring to the Writ Petition in W.P.(MD)No.6074 of 2012, we cannot conclude that the appellants had sufficient notice about the scope of enquiry for which he was called upon. Since it is admitted that the appellant and his group are in Management and administration of the Wakf, as on date, we are inclined to grant interim orders, as prayed for in the Miscellaneous Petitions in M.P.(MD)No.4460 and 4461 of 2016 in W.A.(MD)Nos.702 and 703 of 2016 respectively.

12. Having regard to the serious allegations made against the appellant by referring to the mismanagement and transferring of funds to another society, we direct the main appeals to be listed, for final disposal during the 2nd Week of June

2016.

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