

(2015) 11 MAD CK 0054

In the Madras High Court

Case No : W.A.(MD) No. 1100 of 2015, M.P.(MD) Nos. 1 and 2 of 2015, W.A. (MD) Nos. 1237, 1238 of 2015 and M.P.(MD) No. 1 of 2015 in W.A. (MD) No. 1238 of 2015

A.M.S. Shihabuddin and Others

APPELLANT

Vs

The Tamil Nadu Wakf Board and Others

RESPONDENT

Date of Decision : 26-11-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : (2015) 8 MLJ 802

Hon'ble Judges : V. Ramasubramanian and N. Kirubakaran, JJ.

Bench : Division Bench

Advocate : Veera Kathiravan, for the Appellant; Hema Karthikeyan for K.K. Senthil, for the Respondent

Judgement

V. Ramasubramanian, J.—All these writ appeals arise out of a common order passed by a learned Judge in a single writ petition filed by the appellant in the first writ appeal, seeking a direction to the Tamil Nadu Wakf Board, not to entertain the applications of the respondents 3 to 7 in the writ petition for appointment as Board of Trustees of a Trust by name M.K.N. Trust, Adirampattinam, Thanjavur.

2. We have heard Mr. Veera Kathiravan, learned Counsel for the appellant in W.A(MD) No. 1100 of 2015, Mr. V.K. Vijayaraghavan, learned Counsel appearing for the appellant in W.A.(MD) Nos. 1237 and 1238 of 2015, Mr. Hema Karthikeyan, learned Counsel appearing on behalf of Mr. K.K. Senthil, learned Counsel appearing for Tamil Nadu Wakf Board, Mr. G.R. Swaminathan, learned Counsel representing the Judge-Administrator appointed by this Court, Mr. G. Ravi Sankar, learned Counsel for the third respondent in the main writ petition, Mr. M. Ajmal Khan, learned Senior Counsel appearing for M/s. Ajmal Associates for the fifth respondent in the main writ petition and Mr. T.K. Gopalan, learned Counsel for the respondents 6 and 7 in the main writ petition.

3. By two deeds of gift executed more than a century ago on 16.02.1900 and 06.04.1901 one Haji Khadir Mohideen Marakayar of Athiramapattinam in Thanjavur District endowed a vast extent of wet and dry land measuring about 1500 acres, with the noble object of providing religious education through Madrasas. The endowment was known as Madurasathul-salahi-adramil Filaki otherwise known as M.K.N. Madarasa Trust of Adirampattinam.

4. The management of the trust was vested with a committee of trustees consisting of the founder trustee Khadir Mohideen Marakayar and his three brothers and the son of one pre-deceased brother.

5. As per the recitals of the deeds of trust, six male line descendants of the family of the founder trustees are eligible to become trustees. Since the eldest founder member Khadir Mohideen Marakayar did not have any issues, his three brothers represented the trust.

6. The District Court, Thanjavur framed a scheme for the proper administration of the trust, in a suit filed under Section 92 of the Code of Civil Procedure in O.S. No. 21 of 1952. The scheme was amended further on 10.03.1954 and the same was confirmed by the Supreme Court on 16.01.1962.

7. Again by a fresh decree passed in O.S. No. 6 of 1970, the original scheme was amended and a fresh scheme was to be in place. As per the scheme, the District Court, Thanjavur, was actually nominating the trustees, once in three years. Every time a nomination was made, it was invariably challenged before this Court, making this trust gain huge popularity.

8. When the term of office of the members of the board of trustees, expired on 31.03.2011, the District Court, invited applications by making due publication in the newspapers on 30.12.2010 and 20.01.2011. The appointment was for two hereditary trustees from each of the three branches totaling to six hereditary trustees apart from three non hereditary trustees. The trustees newly selected were supposed to hold office for a period of three years, from 01.04.2011 to 31.03.2014.

9. In response to the advertisement issued in the local dailies as well as in the notice boards, 10 applications were received from the male lineal descendants of the first branch, five applications received from second branch and 11 applications received from the third branch. The parties also exchanged objections to the applications of each other.

10. After considering all the applications as well as objections raised on all sides, the Principal District Judge, Thanjavur, appointed a group of six hereditary trustees and three non-hereditary trustees by his order dated 21.09.2012, valid for a period of three years. Challenging these orders, several Civil Revision Petitions were filed before this Court. The hearing of the Civil Revision Petitions was stalled on account of the writ petition in W.P.(MD) No. 15524 of 2012, challenging the validity of Explanation II of Section 32(1) and 32(2)(g) of the

Wakf Act, 1995.

11. Eventually the writ petition challenging the vires of the above provisions, which vested the power of appointment of trustees upon the Tamil Nadu Wakf Board, was taken up by a Division Bench of this Court along with all the Civil Revision Petitions challenging the appointment made by the Principal District Judge, Thanjavur on 21.09.2012. By a common order passed on 19.06.2014, to which one of us (V. RAMASUBRAMANIAN, J.) was a party, we upheld the validity of the statutory provisions and held that after the 1995 Act, it is only the Wakf Board which could appoint the trustees. The operative portion of the order of the Division Bench dated 19.06.2014, reads as follows:

"73. Therefore, while allowing the Civil Revision Petitions, we direct the Tamil Nadu Wakf Board to appoint trustees to the trust in question, strictly in accordance with the directives, contained in the deeds of trust and also keeping in mind the manner in which the Civil Court had handled the question of appointments in the past. The Wakf Board shall complete the exercise and appoint trustees after giving opportunities to all parties concerned within a period of three months from the date of receipt of a copy of this order. Till then, the interim arrangement ordered by this Court on 25.02.2013, shall continue to be in force. No costs. Consequently, connected miscellaneous petitions are closed."

12. It appears that thereafter, the petitioner in the writ petition who is also the appellant in W.A.(MD) No. 1100 of 2015 made a representation to the Wakf Board, to disqualify the respondents 3 to 7 in the writ petition on the ground that they were guilty of mismanagement and also malfeasance and misfeasance. After giving a representation, the writ petitioner also came to this Court by way of the writ petition in W.P(MD) No. 14160 of 2014 directing the Wakf Board to consider his representation. The said writ petition was ordered by a learned Single Judge on 06.11.2014 directing the Wakf Board to consider his representation. An attempt to challenge the said order by way of third party appeal failed.

13. Thereafter, the Wakf Board issued a notification on 05.02.2015 inviting applications for appointment of trustees.

14. Immediately, the writ petitioner came up with the present writ petition in W.P(MD) No. 3533 of 2015. The prayer in the writ petition was for a Mandamus to direct the Tamil Nadu Wakf Board not to entertain the applications of the respondents 3 to 7 for the appointment to the Board of Trustees. During the pendency of the writ petition, the learned retired Judge of this Court who was appointed as Administrator has filed a report. After looking into the report and after going through the disputed questions raised, before him, learned Judge was convinced to dismiss the writ petition in W.P(MD) No. 3533 of 2015, by an order dated 25.09.2015.

15. As against the dismissal of his writ petition, the writ petitioner has come up with a writ appeal in W.A.(MD) No. 1100 of 2015.

16. Interestingly, the fourth respondent in the writ petition, who should not normally be aggrieved by the dismissal of a writ petition and according to whom, the writ petition itself is not maintainable, has come up with two writ appeals not challenging the order of the learned Judge, but challenging the report filed by the Administrator. These are the writ appeals in W.A.(MD) Nos. 1237 and 1238 of 2015.

17. Insofar as the first writ appeal in W.A.(MD) No. 1100 of 2015 is concerned, the same is liable to be dismissed. This is for the reason that the appellant in W.A.(MD) No. 1100 of 2015 sought a Mandamus from this Court to direct the Tamil Nadu Wakf Board not to entertain the applications of the respondents 3 to 7 in the writ petition. The reason for the writ petitioner asking for such a prayer is that according to him, the respondents 3 to 7 are indebted to the Trust and that they were guilty of misfeasance and malfeasance.

18. But whether a person is qualified for appointment as a trustee is a question to be decided by the authority competent to appoint the trustees. After having secured an order from this Court in W.P(MD) No. 14160 of 2014 to consider his representation, it was not open to the writ petitioner to straight away ask this Court to disqualify some people. The writ petitioner cannot also contend that the Wakf Board did not consider his representation as per the order passed by this Court in W.P(MD) No. 14160 of 2014. The occasion for considering the question of disqualification of the respondents 3 to 7 would not arise unless and until the notification for appointment is issued. In a hypothetical case, where the respondents 3 to 7 did not make an application, the question of Wakf Board considering their disqualification does not arise. Therefore the writ petition ought not to have been entertained in the first instance. Since one writ petition was entertained, it has given rise to three writ appeals. Before it multiplies further, we were fortunate to deal with these writ appeals for nipping any further writ appeal in the pipeline in the bud.

19. Therefore the writ appeal in W.A.(MD) No. 1100 of 2015 is dismissed. No costs. Consequently, the connected miscellaneous petitions are dismissed.

20. Insofar as the other writ appeals are concerned, they should automatically meet with the same fate as the fate of the writ petition. In case, a writ petition is dismissed with certain observations against the respondents, the only remedy available to the respondents is to go before the learned Judge and seek deletion of those observations. In this case, the learned Judge did not even record any observations against the appellants in W.A.(MD) Nos. 1237 and 1238 of 2015.

21. The contention of Mr. V.K. Vijayaraghavan, learned Counsel for the appellant in those two writ appeals is that the Judge-Administrator's report is an indictment of his client without any opportunity and that therefore the report should be scrapped. In other words, the writ appeals in W.A.(MD) Nos. 1237 and 1238 of 2015 are not directed against the order of the learned Judge, but are directed against the report of the Administrator. Such writ appeals are clearly not

maintainable in law.

22. Many times the role of a Judge appointed as an Administrator, is mistaken. People think that if a Judge is appointed as an Administrator of a Trust, he should continue to play the role of a Judge. He simply replaces the existing Board of Trustees. Therefore if the authority to scrutinise the applications for appointment, vests with somebody other than the Administrator, it is that authority which has to give an opportunity of hearing to parties who are allegedly disqualified. It is a misconception to think that the report of the Administrator, being the retired Judge, itself is a judgment. Hence two writ appeals have come to be filed before this Court.

23. Therefore both the other writ appeals are also liable to be dismissed. Several arguments were advanced on the basis of Record of Rights by Mr. V.K. Vijayaraghavan, learned Counsel for the appellant in those writ appeals to contend that on misapprehension that the properties belonging to the Trust were assigned in favour of his client the Administrator has given a wrong report. The learned Counsel also pointed out the portions of the report of a learned Judge of the Supreme Court earlier appointed which was followed by a finding recorded by the Principal District Judge in an application.

24. But we cannot be called upon to decide whether somebody is disqualified or not. We act as the Court which has supervisory or revisional jurisdiction. The Wakf Board is now conferred with the power to decide all questions including the questions whether some persons are disqualified or not. By pointing out documentary evidence, the appellants cannot invite a finding from this Court that they are not guilty of any misapprehension and misfeasance. Such a finding by an appellate or revisional Court would actually infringe upon the powers of the original authority conferred with the right to appointment of the candidates to the Trust. Therefore those writ appeals are also dismissed. No costs. Consequently, the connected miscellaneous petition is dismissed.

25. We have already extracted paragraph 73 of the order passed on 19.06.2014 by the Division Bench of this Court. As per the said order, the Wakf Board shall proceed with the elections. We do not want to burden the Wakf Board with an obligation to publish a fresh advertisement. Since the advertisement has already been issued and also since the applications have already been received from all the three branches, no fresh applications need be entertained. On the applications already made, if objections relating to eligibility or disqualification are made, the Wakf Board shall conduct an enquiry after giving an opportunity of hearing to both objectors as well as the persons whose applications are objected to. Both parties shall produce whatever documents they rely upon to prove their own innocence or other party's guilt. Based upon such documents and the presentation made, the Wakf Board shall decide the disqualification and pass an order appointing the trustees. This exercise shall be completed by the Wakf Board on or before 31.12.2015. If any party does not co-operate in the enquiry, they will forfeit the opportunity to challenge on the ground of violation of

principles of natural justice. We also clarify that any decision taken whether accepting the application or rejecting the same on the ground of disqualification will be open to challenge after the Wakf Board passes a final order appointing the trustees. All parties having objections about the candidature of others shall submit the same within a period of one week from the date of receipt of a copy of this order.

26. Since our past experience shows that the appointment of trustees is always plagued by litigations and such litigations are also multiplied just as in the present case, one writ petition which has given rise to three writ appeals, we direct that any further litigation shall be posted only before the Division Bench in whatever form they arise.