(2002) 09 MAD CK 0107

In the Madras High Court

Case No : Writ Petition No. 36283 of 2002

I.A. Abdul Rasheed and I.A. Nizamudeen APPELLANT

Vs

The Tamil Nadu Wakf Board RESPONDENT

Date of Decision : 23-09-2002

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2002) 09 MAD CK 0107

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : J. Thilagaraj, for the Appellant; S. Thiruvenkatasamy, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Dinakaran, J.—On the only contention that the contribution/ dedication of any movable or immovable property by a person who is not professing Islam shall not come within the meaning of Wakf as defined u/s 3(r) of the Wakf Act, 1995, the petitioner seeks the issue of a writ of Mandamus to forbear the Wakf Board and its Secretary & Chief Executive Officer, the respondents herein from interfering with the peaceful management, administration, control, maintenance and day-today affairs of the Peer Pylvan Dharga, Thiruvotriyur, Chennai-19, contending that the respondent-Board proposes to interfere with the properties, both movable and immovable, which are dedicated by persons who are not professing Islam, as per the Deed of Trust dated 22.8.1946.

2. I am unable to appreciate the above contention of the learned counsel for the petitioner.

3. Mr. S. Thiruvenkatasamy takes notice on behalf of the respondents.

4. No doubt, "wakf" is defined u/s 3(r) of the Wakf Act, 1995 as follows:

" "wakf" means the permanent dedication by a person professing Islam, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes-

(i) a wakf by user but such wakf shall not cease to be a wakf by reason only of the user having ceased irrespective of the period of such cessor;

(ii) "grants" including mashrut-ul-khidmat for any purpose recognised by the Muslim law as pious, religious or charitable; and

(iii) a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable, and "wakif" means any person making such dedication. "

5. Hence, to bring a dedication of any movable or immovable property as a wakf for any purpose, the same should have been dedicated by a person professing Islam.

6. But "Wakf Fund" is defined u/s 3(t) of the Wakf Act, 1995 as follows:

" "Wakf Fund" means a wakf fund formed under sub-section (1) of Section 77."

7. Section 77 of the Wakf Act, 1995 deals with Wakf Fund, which reads as follows:

"Wakf Fund.--

(1) All moneys received or realised by the Board under this Act and all other moneys received as donations, benefactions or grants by the Board shall form a fund to be called as Wakf Fund.

(2) All moneys received by the Board, as donations, benefactions and grants shall be deposited and accounted for under a separate sub-head.

(3) Subject to any rules that may be made by the State Government in this behalf, the Wakf Fund shall be under the control of the Board, so, however, that the Wakf Fund under the control of common Wakf Board shall be subject to rules, if any, made in this behalf by the Central Government.

(4) The Wakf Fund shall be applied to-

(a) repayment of any loan incurred u/s 75 and payment of interest thereon;

(b) payment of the cost of audit of the Wakf Fund and the accounts of wakfs;

(c) payment of the salary and allowances to the Officers and staff of the Board;

(d) payment of travelling allowances to the Chairperson ,members of the Board;

(e) payment of all expenses incurred by the Board in the performance of the duties imposed, and the exercise of the powers conferred, by or under this Act;

(f) payment of all expenses incurred by the Board for the discharge of any obligation imposed on it by or under any law for the time being in force.

(5) If any balance remains after meeting the expenditure referred to in sub-

section (4), the Board may use any portion of such balance for the preservation and protection of wakf properties or for such other purposes as it may deem fit. "

8. A harmonious reading of Sections 3(t) and 77 of the Wakf Act, 1995 makes it clear that the wakf fund may be a donation or benefaction of money or in kind either by any person who professes Islam, and even a person who does not profess Islam also can donate the wakf fund, either in terms of cash or in kind, and the Board shall control the wakf fund.

9. Even though Mr. J. Thilagaraj, learned counsel for the petitioner, would contend that such donation or benefaction should have been contributed to the Board, which was not in existence as on the date of the Deed of Trust dated 22.8.1946, I am of the considered opinion that such donation or benefaction are protected under the savings clause u/s 112 of the Wakf Act, 1995, which reads as follows:

Section 1123(r):

" Repeal and savings.--

(1) The Wakf Act, 1954 (29 of 1954) and the Wakf (Amendment) Act, 1984 (69 of 1984) are hereby repealed.

(2) Notwithstanding such repeal anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of the Act.

(3) If, immediately before the commencement of this Act, in any State, there is in force in that State, any law which corresponds to this Act that corresponding law shall stand repealed:

Provided that such repeal shall not affect the previous operation of that corresponding law, and subject thereto, anything done or any action taken in the exercise of any power conferred by or under the corresponding law shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act was in force on the day on which such things were done or action was taken. "

10. Section 112 of the Wakf Act, 1995, repeals not only the Wakf Act, 1954 and the Wakf (Amendment) Act, 1984, but also any law in force in any State, which corresponds to this Act. Therefore, I am unable to appreciate the contention of the learned counsel for the petitioner that the Wakf Board has no control to proceed against the petitioners with regard to the properties that were dedicated by a person, who does not profess Islam. In any event, when such powers are conferred on the Board under the statute, it may not be proper for this Court to issue a writ of Mandamus, as prayed for. Hence, this writ petition is dismissed for devoid of merits and for want of legal contentions. No costs. Consequently, W.P.M.P. No. 54578 of 2002 is also dismissed.