

(2010) 08 MAD CK 0259

In the Madras High Court

Case No : Writ Petition No. 3408 of 2010 and M.P. No. 1 of 2010

K.M. Abdul Subhan

APPELLANT

Vs

Tamil Nadu Wakf Board

RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Citation : (2010) 08 MAD CK 0259

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : Zaffarullah Khan, for the Appellant; V. Lakshminarayanan, for the Respondent

Final Decision : Allowed

Judgement

D. Hariparanthaman, J.—The petitioner was a Muthavalli of Gudimiyandithope Mosque, Sholinganallur, Tambaram Taluk, Kanchipuram District. The respondent issued show-cause notice alleging certain allegations against the petitioner that he sold the Wakf property. An enquiry was conducted and the respondent reserved orders on 29.07.2009. Thereafter, the respondent passed the impugned order dated 09.11.2009 removing the petitioner as Muthavalli and also taking over the management of the Wakf. The writ petition is to quash the aforesaid order dated 09.11.2009. Though the order was pronounced on 09.11.2009, it is stated that the order is dated 29.07.2009.

2. The learned Counsel for the petitioner submits that after reserving orders on 29.07.2009, respondent issued show cause notice dated 10.09.2009. But, the petitioner did not send reply to the said show cause notice. The respondent had taken into account the said show cause notice, which was issued after reserving orders in the enquiry that was conducted against the allegations made against the petitioner. Such show cause notice issued on 10.09.2009 on the same subject matter after reserving orders and considering the same for passing the impugned order is violative of principles of natural justice.

3. On the other hand, the learned Counsel for the respondent submits that the respondent is willing to withdraw the show cause notice dated 10.09.2009 and pleads for non-interference of the order of the respondent. The learned Counsel for the respondent further submits that the petitioner has alternative remedy before the Tribunal, to question his removal as Muthavalli and before the Government, against taking over the administration.

4. Considered the submissions of either side counsel.

5. Usually, this Court would not have entertained writ petition against the order of Wakf Board, removing Muthavallis, since a statutory Tribunal is constituted to hear appeals against the order passed by the Wakf Board. Further an appeal to the Government against the order of the respondent taking over the administration is provided in the Wakf Board.

6. In this case, I am inclined to entertain the writ petition on the sole ground that the impugned order is passed in violation of principles of natural justice. Otherwise, as stated above I could have directed the petitioner to approach the appropriate forum ventilating his grievances. I am not going into the merits of the matter. Further, I could have permitted the respondent to withdraw the show cause notice if it was issued after passing of the final order. But, the show cause notice forms part of the impugned order and the same was taken note of while removing the petitioner and also taking over the administration.

7. In these circumstances, I am of the view that the impugned order was passed in violation of principles of natural justice. Hence, the impugned order is quashed.

8. At this juncture, the learned Counsel for the respondent submits that the respondent may be permitted to consider the entire matter from the stage of the show cause notice dated 10.09.2009 and pass appropriate order within a period of eight weeks from the date of receipt of a copy of this Order. The learned Counsel for the respondent further submits that the respondent would conduct enquiry on the show cause notice dated 10.09.2009 and give all the opportunities to the petitioner and take a final decision. The learned Counsel for the petitioner also states that the petitioner would co-operate in the enquiry.

9. While quashing the impugned order, the respondent is permitted to proceed with the enquiry from the stage of the show cause notice dated 10.09.2009 giving opportunity to the petitioner and to pass appropriate orders based on the enquiry within a period of eight weeks from the date of receipt of a copy of this order.

10. In the result, the writ petition is allowed in the above terms. No costs. Consequently, the connected Miscellaneous Petition is also closed.