
(2013) 03 MAD CK 0181

In the Madras High Court

Case No : C.R.P. (PD)Nos. 3978 and 3979 of 2012 & M.P. Nos.1 and 1 of 2012

The Chairman, Tamil Nadu Wakf Board

APPELLANT

Vs

M.S. Muhammad Yahya

RESPONDENT

Date of Decision : 06-03-2013

Acts Referred:

Citation : (2013) 2 MadWN(Civil) 46

Hon'ble Judges : Mr. R. S. Ramanathan, J.

Bench : Single Bench

Advocate : Mr. Mohammed Fayaz Ali, Advocate, for the Petitioners (In Both CRPs.); Mr. Muniruddin Sheriff, Advocate, for the 1st Respondent (In CRP (PD) No. 3978 of 2012); Mr. N.A. Nissar Ahmed, Advocate, for the 2nd Respondent (In CRP(PD)No. 3978 of 2012); No appearance, for the Respondent Nos. 3 to 6 (In CRP (PD) No. 3978 of 2012)

Final Decision : Disposed Off

Judgement

R. S. Ramanathan, J.—Aggrieved by the order of the Wakf Board made in item No.21/09 Va.Vi.Ma.8/08/U5/Chennai, dated 29.04.2010, the first respondent in CRP(PD)No.3978 of 2012 filed O.A. No.19 of 2011 before the Wakf Tribunal, Chennai (I Assistant Judge, City Civil Court, Chennai). Challenging the same order of the Wakf Board, the respondent in CRP(PD)No.3979 of 2012 also filed O.A. No.16 of 2011 on the file of the Wakf Tribunal, (I Assistant Judge, City Civil Court), Chennai.

2. The revision petitioners herein filed the above revisions to strike off the proceedings in O. A. Nos. 19 and 16 of 2011 on the file of the Wakf Tribunal (I Assistant City Civil Court), Chennai.

3. It is submitted by the learned counsel for the petitioners that under the order, which is impugned in O.A.Nos.16 and 19 of 2011, the management of the Wakf, namely K. Magdoo Mohammed Markkayar was brought under the control of the first revision petitioner under section 65(1) of the Wakf Act and therefore, the

first respondent in CRP(PD)No.3978 and the respondent in CRP(PD)No.3979 of 2012 cannot challenge the same before the Wakf Tribunal, as there is an effective and alternative remedy available before State Government under section 65(2) of the Wakf Act and therefore, the initiation of proceedings by the respondent in CRP(PD)No.3979 of 2012 before the Wakf Board is without jurisdiction and therefore, the proceedings in O.A.Nos.16 and 19 of 2011 are liable to be struck off. He relied upon the judgment rendered by me reported in 2010 (2) CTC 699 in the case of Tamil Nadu Wakf Board, represented by its Chairman, No.1, Jaffar Syrang Street, Vallal Seethakadhi Nagar, Chennai-600 001 & 4 others v. Janab K.S.M.A. Mohamed Mansoor and (2011)7 MLJ 1124 in the case of Tamil Nadu Wakf Board rep. by its Chairman, Chennai and others v. A.Sadhik Ali and others, in support of his contention.

4. On the other hand, Mr.V. Manohar, the learned counsel for the respondent in CRP(PD)No.3979 of 2012 submitted that proceedings were initiated under sections 32(2)[c] and [d] and 69 of the Wakf Act and there is a dispute regarding the character of the property and it is contested by the respondents in CRP(PD)No.3978 of 2012 and also the respondent in CRP(PD)No.3979 of 2012 that the property is not a Wakf property and it is the personal property belonging to the family of K.Magdoom Muhammad Marakayar and that was negated and the Wakf Board has taken direct management by invoking the provision of section 65(1) of the Wakf Act and therefore, having regard to the issue raised before the Wakf Board regarding the character of the property, the Wakf Tribunal has got jurisdiction under section 83 of the Wakf Act and therefore, the proceedings initiated by the respondents before the Wakf Tribunal is competent and the Wakf Tribunal alone can decide about the character of the property and hence, both the revision petitions are liable to be dismissed. He has also relied upon the judgment rendered in 2011(1)CTC 636 (SC) in the case of Board of Wakf, West Bengal & another v. Anis Fatma Begum & another, in support of his contention.

5. The learned counsel for the respondents further submitted that the first respondent in CRP(PD)No.3978 of 2012 filed W. P. No. 30029 of 2010 and the respondent in CRP(MD)No.3979 of 2012 filed, W.P.No. 15652 of 2011 before this court, challenging the order passed by the Wakf Board, dated 29.04.2010, which is also impugned in O.A.Nos. 19 and 16 of 2011 filed by the respondents and a common order was passed by this court on 12.08.2011 granting liberty to the petitioner to approach the Wakf Tribunal, challenging the impugned order. He further submitted that in the said writ petitions, the first revision petitioner has taken a stand that there is an appeal remedy provided under section 83 of the Wakf Act and the petitioners in the writ petitions, namely the first respondent in CRP(PD)No.3978 of 2012 and the respondent in CRP(PD)No.3979 of 2012 have to approach only the Wakf Tribunal, wherein evidence can be let in and therefore, having regard to the alternative remedy provided under section 83 of the Wakf Act, the writ petition is not maintainable and that contention of the Wakf Board was accepted and the writ petitioners were directed to approach the Wakf Board.

The order passed in W.P.No.30029 of 2010 was challenged by the first respondent in CRP(PD)No.3978 of 2012 in W.A.No.1961 of 2011 and the same was dismissed and liberty was granted to the first respondent in CRP (PD)No.3978 of 2012 to move the Wakf Board within a period two weeks and as per the direction of the Division Bench, applications were filed before the Wakf Tribunal by the first respondent and the respondent in the above revisions and therefore, it cannot be stated that the Wakf Tribunal had no jurisdiction to decide the issue and the respondents have to approach the Wakf Board under section 62(5) of the Act.

6. The learned counsel for the respondent No.2 in CRP (PD)No.3978 of 2012 supported the case of the revision petitioners.

7. I am unable to accept the contention of the learned counsel for the petitioners that the Wakf Tribunal has no jurisdiction to entertain the petition, challenging the order of the Wakf Board, dated 29.04.2010. It is seen from the order passed by the Wakf Board, which was challenged before the Wakf Tribunal that the first respondent in CRP(PD)No.3978 of 2012 had taken a stand that the properties are not the Wakf properties and the properties are the separate properties of the family of K.Magdoo Muhammad Marakayar and M.S.A. Muhammad Jaffer in O.S. No.4285 of 1976 and prayed for direction to appoint him as Muthavalli and in that suit, a compromise was recorded and Muhammad Jaffer, the plaintiff was declared not entitled to any relief and the first respondent M.S. Muhammad Yahya was appointed as Court Receiver. Thereafter, RCOP Nos.961 of 2004 and 1346 of 2004 were filed to evict the D.Sambandam, who claimed to be the tenant and who initiated proceedings before the Wakf Board under sections 32(2) (c) & (d) and 69 of the Act and eviction was ordered and Muhammad Jaffer filed RCOP Nos.3714 of 1987 seeking permission to deposit the rent and in that proceeding, it was held that the receiver alone was entitled to collect the rent and Muhammad Jaffer was not entitled to collect the rent and his application was dismissed and therefore, the properties are not the Wakf properties and Wakf Board has no right to decide that issue. The respondent in CRP (PD)No.3979 of 2012 had taken a stand before the Wakf Board that Wakf is not a Public Wakf and it is only Wakf Alal-Aulad and it was created for the welfare of the members of the family of K.Magdoo Muhammad Marakayar and therefore, the Wakf Board has no jurisdiction to entertain an enquiry and the properties are the personal properties of the respondent in CRP (PD)No.3979 of 2012.

8. It is further seen that the proceeding before the Wakf Board was initiated by one Sambandam, who claims to be the tenant of the property and he filed petition under section 32(2)[c] and (d) and section 69 of the Wakf Act and as per section 32(2)[c] and (d), Wakf can give direction for the administration of Wakfs and to settle schemes of management for a Wakf and section 69 deals with the power of the Wakf Board to frame scheme for the administration of Wakf. A petition was filed by Sambandam on the premise that the properties are the Wakf properties and that was opposed by the first respondent in these revision

petitions, who are the petitioners in O.A.Nos.16 and 19 of 2011 disputing that the properties are not the Wakf properties. While considering the same, the Wakf Board held that the properties are the Wakf properties and even in O.S.No.4285/1977 on the file of the City Civil Court, Chennai, it has been so declared as Wakf property and the Wakf is under the control of the Wakf Board as per section 32 of the Act and the petition filed by Sambandam was maintainable and the sale in favour of the respondent in CRP(PD)No.3979 of 2012 is not binding on the Wakf Board and directed action to be taken under section 52 of the Wakf Act to cancel the sale deed and also brought the Wakf under the control of the Wakf Board under the provision of section 65(1) of the Wakf Act. Therefore, it is seen from the order passed by the Wakf Board that the Wakf Board has taken a decision that the properties are the Wakf properties and the sale in favour of the respondent in CRP (PD)No.3979 of 2012 is not valid and consequent to that, brought under the management under section 65(1) of the Wakf Act. Therefore, it cannot be stated that the Wakf Tribunal has passed the order under section 65(1) of the Wakf Act and such order is appealable under section 65(2) of the Act and the initiation of the proceedings by the respondents, in these revision petitions, are not maintainable.

9. Further, as per section 83 of the Wakf Act, any dispute, question or other matter relating to a Wakf or Wakf property under the Act and the Wakf shall be determined only by the Wakf Tribunal and Wakf Tribunal is the competent authority to decide the same. As the dispute arose regarding the nature and character of the properties, the first respondent in CRP(PD)No.3978 of 2012 and the respondent in CRP(PD)No.3979 of 2012 have initiated proceedings before the Wakf Tribunal under section 83 of the Wakf Act and that proceedings are validly initiated and the Wakf Tribunal has got jurisdiction to decide the same.

10. Further, as rightly submitted by the learned counsel for the respondent in CRP(PD)No.3979 of 2012 that in W.P. No.30029 of 2010 and W.P. No.15652 of 2011, the Wakf Board has taken a stand that the petitioners in those writ petitions have to approach the Wakf Tribunal as per section 83 of the Wakf Act, as they have questioned the character of the property and accepting the contention of the Wakf Board, the writ petitions were dismissed and the petitioners, in those writ petitions, were given liberty to approach the Wakf Tribunal to challenge the order of the Wakf Board and the same was confirmed in Writ Appeal No.1961 of 2011, dated 19.10.2011.

11. In the judgment reported in 2010(2) CTC 699 in the case of Tamil Nadu Wakf Board v. Janab K.S.M.A. Mohamed Mansoor, the Original Application before the Wakf Tribunal was filed challenging the taking over of the management of the Wakf by the Wakf Board and prayed for setting aside that order and having regarding to the facts of that case, I held that the order passed under section 65(1) of the Wakf Act is subject to appeal under section 65(2) of the Wakf Act and therefore, the Wakf Tribunal has no jurisdiction to entertain such application challenging the order of the Wakf Board in taking over the management of the

Wakf.

12. Similarly in (2011) 7 MLJ 1124, in the case of Tamil Nadu Wakf Board Rep. by its Chairman, Chennai and others v. A.Sadhik Ali and others, the Wakf Tribunal was approached by challenging the order of taking over the direct management of the Wakf and the learned single Judge relying upon the judgment reported in 2010(2)CTC 669 : (2010)3 MLJ 621 in the case of Tamil Nadu Wakf Board v. Janab K.S.M.A.Mohamed Mansoor held that the Wakf Tribunal has no jurisdiction to entertain any petition against the order passed under section 85(1) of the Wakf Act.

13. As stated supra, in this case, the character and nature of the properties are disputed and when there is a dispute regarding the property and one person contends that the properties are the properties of K.K.Magdood Muhammad Marakayar and the Wakf Tribunal takes a decision holding that the properties are the Wakf properties, the aggrieved party has to approach the Wakf Tribunal under section 83 of the Wakf Act, as Wakf Tribunal is the competent authority to decide the Wakf dispute regarding the Wakf property.

14. As a matter of fact, the judgment reported in 2012 (4) LW 699, in the case of Inamdhar Pallivasal Wakf by its Muthavalli I. Shamiyan Sahib, Tiruchirappalli v. Sheik Abdullah, it has been held after relying upon the judgment reported in 2011(1) CTC 636 (SC), in the case of Board of Wakf, West Bengal & another v. Anis Fatma Begum & another that whenever any dispute, question or other matter whatsoever and in whatever manner arises which relates to a Wakf or Wakf property, it should be agitated before the Wakf Tribunal. Therefore, the judgments relied on by the revision petitioners cannot be applied to the facts of the case and as per section 83 of the Wakf Act, the Wakf Tribunal has got exclusive jurisdiction to decide the character of the Wakf property and therefore, the proceedings initiated by the first respondent in CRP(PD)No.3978 of 2012 and the respondent in CRP(PD)No.3979 of 2012 before the Wakf Tribunal challenging the order of the Wakf Board under section 83(1) of the Wakf Act has been legally initiated and those proceedings cannot be struck down.

15. In the result, these civil revision petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.