

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

IA 3/2013 in
Petition(s) for Special Leave to Appeal (Civil) No(s).26058/2010

(From the judgement and order dated 23/06/2010 in CRP No.30368/2010 of The
HIGH COURT OF MADRAS)

M. SELVAM Petitioner(s)

VERSUS

AHALE SUNNATHWAL JAMATH & ORS. Respondent(s)

(for directions and office report)

Date: 12/07/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA
HON'BLE MR. JUSTICE VIKRAMAJIT SEN

For Petitioner(s) Mr. Fakhruddin, Sr. Adv.
Mr. Shakil Ahmed Syed, AOR
Mr. S.A. Saud, Adv.
Mr. Parvez Dabas, Adv.

For Respondent(s) Mr. Aftab Ali Khan, AOR

R.1 Mr. Altaf Ahmad, Sr. Adv.
Mr. R.Chandrachud, AOR

UPON hearing counsel the Court made the following
O R D E R

1. I.A.No. 3 of 2013, filed on behalf of the respondent No.1 and the Special Leave Petition are both taken up for consideration together.

2. The Special Leave Petition is directed against the judgment and final order dated 23rd June, 2010, passed by the Madras High Court in C.R.P.(NFD) BR No.30368 of 2010, setting aside the order dated 9th March, 2010, passed by the Wakf Tribunal at Vellore, in O.S.No.220 of 2008, allowing the application filed by the petitioner herein under Order 7 Rule 11 of the Code of Civil Procedure, without indicating that as a result the suit also stood dismissed.

3. The applicant in I.A.No.3 of 2013 is the plaintiff before the Tribunal. It is a wakf estate referred to as the Ahale Sunnathwal Jamath Jogi Madam Majid and Durga, Gudiyattam, represented by its duly appointed Muthavalli, A.Abdul Rasheed.

4. The cause for the suit before the Tribunal appears to be the acts of the defendants in the suit in treating the wakf property as private property and taking steps to start constructions thereupon. After the suit was filed, the petitioner herein

filed an application under Order 7 Rule 11, C.P.C. indicating that the suit is not maintainable on account of the fact that the same was Trust property and not wakf property and that the Muthavalli had no authority to file the suit before the Tribunal.

5. One of the points which has been urged is that without determination of the character of the property under Section 40 of the Wakf Act, 1995, the suit was not maintainable before the Tribunal, which had to await the decision of the Board of Wakfs, before it could entertain the suit.

6. The other ground which was urged before the Tribunal is that the property in question is not listed in the declaration contemplated under Section 5 of the aforesaid Act.

7. Merely on such objection and without hearing the Board of Wakfs, which is the authority to decide as to whether a property was Wakf property or not, the Tribunal allowed the application under Order 7 Rule 11 and the suit stood dismissed accordingly.

8. When we had issued notice in the matter on 20th September, 2010, we had observed that the High Court while passing the order impugned in the Special Leave Petition, appears to have overlooked the provisions of Section 40 of the Wakf Act, 1995, which empowered the Board of Wakfs to decide as to whether a particular property was a Wakf property or not.

9. When the matter was taken up for consideration today, it was pointed out by Mr. Altaf Ahmad, learned senior advocate appearing for the respondent No.1 in the Special Leave Petition, that the order of the Tribunal was not sustainable and that when the matter was taken before the High Court, it rectified the error which had been committed, and had rightly remitted the matter back to the Tribunal for a decision upon proper evidence being taken in the matter and upon directing the members of the Tamil Nadu Wakf Board to appear.

10. Mr. Altaf Ahmad, referred to a certified copy issued by the Chief Executive Officer of the Tamil Nadu Wakf Board, Chennai, which included a general notification published in the Gazette in Madras on 11th February, 1959, wherein the properties involved have been shown and included as Wakf properties. This goes against the finding of the Tribunal that the properties had not been included in the List published under the provisions of the Central Wakf Act, 1954. This has possibly led to the error upon an objection being taken that the property in question was not Wakf property and had not been declared as such and that it was a trust property, leading to the dismissal of the suit.

11. From the materials disclosed before us, the position seems to be different and the objection taken, even if it is correct, has to be established before the Tribunal, which cannot abdicate its responsibility in determining the issue as to whether the claim of the Special Leave Petitioner before us that the property was not Wakf property, was correct or not, especially in the light of the List, referred to hereinabove.

12. It may be relevant to mention one or two provisions of the Wakf Act, before we issue directions in the matter.

13. In this regard, we may first refer to Section 6, which relates to disputes regarding wakfs. The said section provides that if any question arises whether a particular property, specified as wakf property in the list of wakfs, is wakf property or not or whether a wakf specified in such list is a Shia wakf or Sunni wakf, the Board or the mutawalli or the wakf or any person interested therein may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final, which pre-supposes that a list has been published and doubts have arisen as to whether the inclusion of the property in the list was correct or not.

14. Section 7 of the Act, describes the power of the Tribunal to determine disputes regarding wakfs relating to a property included in the list of wakfs. This pre-supposes the publication of a list before the Tribunal could assume jurisdiction.

15. This takes us to Section 40 of the Act, which empowers the Board to decide if the property is wakf property or not. It

provides that the Board may itself collect information regarding any property which it has reason to believe to be wakf property and if any question arises whether a particular property is wakf property or not or whether a wakf is a Sunni wakf or a Shia wakf, it may, after making such inquiry as it may deem fit, decide the question and the decision of the Board on the said question shall, unless revoked or modified by the Tribunal, be final. This particular provision does not contain any reference to the list, as indicated in Sections 5,6 and 7 and is an independent Section, which empowers the Board to decide the question as to whether a particular property is wakf property or not, de hors the list.

16. In the instant case, since the property appears to have been included in the list published in 1959, this question may not arise. However, on considering what has been indicated hereinabove, we are convinced that the matter requires proper inquiry in a suit, as filed by the respondent No.1 herein, before the case of the petitioner herein that the property is trust property, can be accepted.

17. In our view, the order passed by the High Court was fully justified and does not warrant any interference.

18. Accordingly, the order of the High Court, remanding the matter to the Wakf Tribunal for a fresh decision on the petitioners' application under Order 7 Rule 11 of the Code of Civil Procedure, cannot be sustained. On the other hand, the petitioners' application under Order 7 Rule 11 CPC is dismissed and the entire matter is sent back to the Wakf Tribunal concerned, which has to decide the dispute regarding the character of the properties after framing an issue for the said purpose and, then proceed with the suit.

19. We are fully aware of the decisions cited by Mr. Fakhruddin, learned senior counsel appearing for the petitioner, in T.N. Wakf Board Vs. Hathija Ammal(Dead) by LRs. and Others, reported in [2001 (8) SCC 528], wherein it was held that the Wakf Board itself could not file a suit for declaration and possession, but if any question arose before the Tribunal regarding the status of a Wakf property, the Board could certainly deal with the same before the Tribunal in the interest of the Wakf property.

20. The Special Leave Petition is, therefore, dismissed, with the aforesaid observations, with a request to the Tribunal to dispose of the suit at an early date, so that the disputes of the parties can be resolved expeditiously.

21. We also make it clear that observations made hereinabove, are only for the purpose of disposal of this matter and the Tribunal will be at liberty to decide the matter on the evidence produced before it.

22. The order passed by the High Court, impugned in the Special Leave Petition, is set aside.

23. Let a copy of this Order be transmitted to the Wakf Tribunal, Subordinate Judges Court, Vellore.

|(Sheetal Dhingra)
|AR-cum-PS

|(Juginder Kaur)
|Assistant Registrar