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W.A.No.1339 of 2022 and
O.A.Nos.240, 318 & 410 of 2021 and
A.Nos.273, 1156, 1653 & 1175 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 05.04.2023

Judgment Pronounced on : **13.04.2023**

CORAM :

**THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.A.No.1339 of 2022 and O.A.Nos.240, 318 & 410 of 2021
and
A.Nos.273, 1156, 1653 & 1175 of 2021
and
CMP.Nos.8517 & 8518 of 2022

In W.A.No.1339 of 2022 :

1. I.S. Ibrahim

2. M. Basheer Ahamed

... Appellants

Versus

1.The Principal Secretary to the Government,
Backward Class, Most Backward Class and Minorities
Welfare (T1) Department,
Secretariat, Chennai – 600 009.

2.The Secretary to the Government,
Backward Class, Most Backward Class and Minorities
Welfare (T1) Department,
Secretariat, Chennai – 600 009.



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3. The Chairman,
Tamil Nadu Wakf Board,
No.1, Jaffer Syrang Road,
VallalSeethakathi Nagar, Chennai – 600 001.
4. The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffer Syrang Road,
VallalSeethakathi Nagar, Chennai – 600 001.
5. The Superintendant of Wakf,
Poonamalee Zone, Big Mosque Complex,
Poonamalee, Chennai – 600 056.
6. Executive Officer/Superintendant of Wakf,
Trust Estate of M.K.P.Maracayar and Masid Moqdoomi Wakf,
No.139, Dr.Anni Besant Road,
Ice House, Triplicane, Chennai – 600 005.
7. The Administrative General and
Official Trustee of Madras,
High Court Campus, Chennai – 600 104.
8. The Association of Worshipers and
Well Wishers of “Masjid – e – Moqdoomi”,
Rep. By its President,
No.83, Sembudoss Street, Chennai – 600 001.
9. S.Sahih Masjid ... Respondents

[R-9, impleaded vide Court order dated 25.08.2022
made in C.M.P.No.9993 of 2022]

Prayer in W.A.No.1339 of 2022 : Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 10.12.2022 made in W.P.No.2504 of 2021 by the Learned Single Judge of this Court.



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For Appellants : Mr.A.Ilayaperumal

For Respondents : Mr.P.Muthukumar,
State Government Pleader, (for R1 & R2)

: Mr.S.Haja Mohideen Gisthi, (for R3 to R6)

: Mr.R.Jothimanian, (for R7)

: Mr. N.A.Nissar Ahmed, Senior Counsel.
for Mr.N.Nassir Hussain, (for R9)

: No Appearance (for R8)

COMMON JUDGMENT

D.BHARATHA CHAKRAVARTHY, J.

A.The Appeal:

Writ Appeal No.1339 of 2022 is filed against the order of the Learned Single Judge, in W.P.No.2504 of 2021, dated 10.12.2022, in and by which the Writ Petition filed by the petitioners/appellant herein, challenging the order of the Waqf Board dated 04.11.2020, thereby taking over the management of the Trust Estate of M.K.P.Maracayar and Masid Moqdoomi Waqf, George Town, Chennai District, under the direct management of the Tamil Nadu Waqf Board, for a period of one year, was dismissed on the ground that aggrieved parties are entitled to file an appeal



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to the Government under Section 65(2) of the Waqf Act, 1995.

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1.1 Original Application No.410 of 2021 is filed by one of the lineal descendants of the maker of the Trust in C.S.No.314 of 1930, which is the scheme suit by which the subject matter Trust is administered, with a prayer to grant an interim injunction against the respondents 2 to 17 therein, from interfering with the administration and management of the above said Trust.

1.2 Original Application Nos.240 & 318 of 2021 are also filed by yet another lineal descendant *Hajee A.M.Farook*, with the same prayer. The Association of Worshipers and Well Wishers of “Masjid – e – Moqdoomi”, have filed Application No.1175 of 2021 in C.S.No.314 of 1930, to direct the first respondent/Applicant, namely, the Administrative General and Official Trustee of Madras, not to handover the administration of the above Trust to the Waqf Board or any other Waqf Authorities.

1.3 Application No.1653 of 2021 is filed by *Hajee A.M.Farook*, challenging the order dated 23.03.2021, by which the District



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Superintendent of Waqf constituted a nine member Committee to manage the affairs of the Trust.

1.4 Application No.273 of 2021 is filed by the Tamil Nadu Waqf Board, for a direction to transfer the entire papers relating to M.K.P.Maracayar and Masid Moqdoomi Waqf, which was the subject matter of the scheme of administration under C.S.No.314 of 1930, from the file of this Court to that of the Tamil Nadu Waqf Board.

1.5 Application No.1156 of 2021 is filed by one *I.S.Ibrahim*, to implead themselves as respondents in A.No.273 of 2021, filed by the Tamil Nadu Waqf Board. The impleading stands allowed.

1.6 The question involved in this case, is as to whether the taking over the management by the Waqf Board in respect of the *M.K.P.Maracayar and Masid Moqdoomi Trust* is in order and what directions are to be given in respect of the above Trust, in which the Official Trustee is appointed by this Court in the Scheme Suit to conduct the affairs of the Trust. Since we found that the prayers in the applications



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and in the Writ Appeal are all interconnected and revolve around the above

said question, we directed the applications pending on the original side of this Court to be listed along with the present Writ Appeal. After hearing all the learned Counsel, these matters are disposed off by this common judgment.

B. The Brief Facts:

2. The brief facts leading to the filing of these applications are that one *M.K.Periyathambi Maracayar* by a Deed dated 25.04.1919, declared a Charitable Trust by donating four of his immovable properties and appointing a *Muthawallis* to manage the affairs of the Trust. The purposes of the trust are religious(*Mohamedan*) and charitable in nature.

2.1 Thereafter, a suit came to be filed in respect of the said Trust under Section 92 of the Code of Civil Procedure, on the file of the Extra-Ordinary Original Civil Jurisdiction of this Court by one *K.M.Moulana Abdul Raheem* in C.S.No.314 of 1930 and this Court had framed a scheme by a Decree dated 02.05.1939 whereby the Official Trustee of Madras, was made a sole trustee of the properties endowed by the Deed dated



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25.04.1919 and described the schedule thereto, and vested the properties in the Official Trustee for him to administer and carry out the charities. The scheme also appointed managers to conduct the charities in rotational order mentioned therein. Pursuant thereto, the properties are till date being administered by the Official Trustee under periodical directions and orders of this Court under Section 25 of the Official Trustees Act, 1913.

2.2 While so, by a notification issued under the erstwhile Waqfs Act, 1954, and published in the Government Gazette dated 20.05.1959, above mentioned Trust is also notified as 'Waqf' and the properties thereto are entered into the Register. Periodical attempts were being made by the Waqf Board to takeover the Waqf and its properties within its fold. But, however, the then Official Trustees have been writing back to the Waqf Board that they are only bound by the directions of this Court and they cannot hand over the properties or go by the directions of the Waqf Board. One such letter dated 29.03.1961 written by the then Administrative General and Official Trustee of Madras, refusing to comply with the request of the registration for the trust under the erstwhile Waqfs Act, 1954 is placed on record.



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2.3 While so, there has been dispute in respect of carrying out of the charities and functioning of the trust, for which, periodical applications have been filed and this Court being a Competent Court, as per Section 25 of the Official Trustees Act, 1913 and being the Scheme Court has been issuing periodical directions to the Official Trustee. While so, the Waqf Act, 1995 came into force, replacing the erstwhile Act and the Waqf Board claiming itself to be the authority replacing the Scheme Court and claiming itself to be the Supervisory Authority of the Official Trustee, started issuing various directions to the persons managing the various charities and also to the Official Trustee.

2.4 For instance the Waqf Board by its communication dated 19.08.2020 issued to the Official Trustee called for an explanation as to how the Official Trustee had adopted the process of auctioning the properties for lease, when it has been vested with the power to deal with the Waqf. To all the communications sent periodically, the only answer of the Official Trustee either appearing in person or through written communication is that the Waqf Board is not the authority to whom the



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Official Trustee will report and he will abide only by the directions of this Court.

2.5 Under these circumstances on 20.10.2020, the Waqf Board passed a resolution alleging that there is mismanagement in respect of the Waqf, the Waqf Board resolved to take out the management of the Waqf directly under its control and this was notified through the impugned order dated 04.11.2020.

2.6 Aggrieved by the takeover of the management of the Waqf, the lineal descendants, who are performing the charities have filed the above Writ Petition which came to be dismissed by the learned Single Judge on the ground that there is an alternative remedy by way of an appeal to the Government under Section 65(2) of the Waqf Act. Aggrieved by the same, the present Writ Appeal has been filed.

2.7 During the earlier hearings, since it is contended by the learned Counsel appearing on behalf of the Waqf Board that the Waqf Board has replaced the Scheme Court in view of Section 32 of the Waqf Act, 1995



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and since the applications in that regard pending before this Court, all the above matters are clubbed and heard together.

C. The Submissions:

3. *Mr.A.Ilayaperumal*, Learned Counsel appearing on behalf of appellants in the Writ Appeal would submit that he is one of the lineal descendants and has been carrying out the charities without any default whatsoever. While so, the impugned order directing to takeover of the management cannot be passed under Section 64(5) of the Waqf Act, 1995, since the properties are managed by the Official Trustee, who is appointed by this Court. Periodically directions are given by this Court in respect of the management of the property, and the accounts have been duly submitted to this Court. This being so, passing of the order impugned in the writ petition, without any proper charge or proven allegations supported by evidence on record, is erroneous.

3.1 According to the learned Counsel, even the application filed in the Civil Suit not to handover the management is liable to be allowed, since the trust, in the first instance, was not even properly notified or



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registered under the Waqf Act and is all along administered only as per the provisions of the Official Trustees Act, 1913.

3.2 Supporting his submissions, *Mr.V. Manohar*, Learned Counsel appearing on behalf of the applicants in A.No.1653 of 2021 would also submit that firstly, even under the Waqf Act, 1995, it is *Muthawalli*/Trustee, who is managing the Waqf has to register the Waqf under the Waqf Act. So long as the Official Trustee did not register the Waqf under the Act, the jurisdiction of the Waqf Board is not in existence. At best, the Waqf Board can only issue a direction to *Muthawalli* concerned to register the Waqf. When the said directions are not complied with, first the Waqf Board has to approach this Court to take over the property from the Official Trustee and only thereafter the registration can take place. Only after the registration, there is jurisdiction for the Waqf Board to deal with the Waqf properties or transfer the management of the Waqf. Therefore, the impugned order of the Waqf Board taking over the direct management as well as appointing the Committee are all absolutely without jurisdiction.



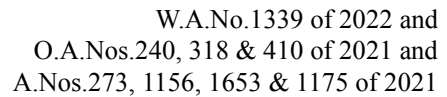
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4. *Mr.R.Jothimanian*, Learned Counsel appearing on behalf of the

Administrative General and Official Trustee, would submit that while framing the Scheme, finding no other fit person available to manage the affairs of the Trust, this Court in C.S.No.314 of 1930 entrusted the trust properties to the Official Trustee. Thus, as per the Scheme Decree and as per Section 10(2) of the Official Trustees Act, 1913, the trust property is vested in the Official Trustee. The Official Trustee is administering the property in accordance with the law and maintaining proper accounts which are periodically submitted to this Court. While so, without the trust property being entrusted by this Court to the Waqf Board, the Official Trustee cannot on its own or on the directions of the Waqf Board entrust the property or management of the trust to the Waqf Board. The stand of the Official Trustee was repeatedly made known to the Waqf Board and they themselves filed an application before this Court in the above scheme suit praying for an order under Section 25 of the Act, to entrust the Trust to the Waqf Board.

4.1 *Mr.R.Jothimanian*, Learned Counsel would further submit that the lineal descendants/persons performing the charities have filed an



5. Opposing the above said submissions, *Mr. N. A. Nissar Ahmed*, Senior Counsel appearing on behalf of the Members of the Management Board, appointed by the Waqf Board, would submit that by virtue of Section 32 of the Waqf Act, 1995, the Waqf Board replaces the Civil Court and as such the supervisory functions, Scheme framing, etc., appointment or removing of *Muthawalli*, etc., ought to be decided by the Waqf Board. The Waqf Board superseded the Scheme of Waqf by operation of law and no further orders are necessary in this regard. Once the Waqf Board is vested with the jurisdiction then the



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Official Trustee becomes *Muthawalli* in respect of the present Trust and he is bound by the various directions issued by the Waqf Board.

5.1 In any event, since there is an allegation including the alienation of the trust property by the persons nominated by the Official Trustee, who are the lineal descendants carrying out the charitable activities and for other allegations of mismanagement of the Waqf property, on the basis of enquiry, the Waqf Board passed an order under Section 64(5), and the same is within its jurisdiction and is perfectly in order.

5.2 In support of his contention, Learned Senior Counsel would rely upon the Judgment of this Court, in ***Managing Trustee, Rep. by the Board of Trustees, Nagoor Dargha, Nagore. Vs. Haja Noordeen Sahib¹***, more particularly in paragraph No.46 of the Judgment, whereunder, it has been held by this Court that the Waqf Board replaces the Scheme Court by virtue of the Act, even where the Courts have framed the scheme under Section 92 of the Code of Civil Procedure, for the administration of the Waqf.



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5.3 Learned Senior Counsel also relied upon the Judgment of this

Court passed by the Learned Single Judge, in ***Mahboob Basha and Another Vs. Tamil Nadu Waqf Board***², more particularly relying upon paragraph No.16 of the Judgment, to contend that the Waqf board is vested with enormous powers to deal with the Waqf at all times and the Waqf board is not required to go before the Scheme Court and seek permission of the concerned Court to take over the control of the Waqf to itself.

6. Learned Senior Counsel further would submit that, once the Waqf has been duly registered and the properties are also enlisted in the Register of Waqf Properties under the erstwhile Act, and the same amounts to valid registration under the present Act also. The subject matter Trust is Waqf for all purposes and the said fact cannot be disputed by the other side. Therefore, he would submit that the impugned order passed by the Waqf Board is in order and that the Official Trustee ought to have entrusted the Waqf properties and their management to the Committee appointed by the Waqf.



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7. *Mr. S. Haja Mohideen Gisthi*, Learned Counsel appearing for the

Waqf Board in the writ appeal would submit, that the order has been duly passed by taking into account, the evidence on record by the Waqf Board.

As a matter of fact an enquiry has been conducted and the Official Trustee himself has attended the enquiry which is borne out of records. When one of the properties belonging to the trust itself has been settled by one of the trustees appointed by the Official Trustee, in favour of his son there is complete mismanagement of the Waqf property. Thus when there are proven allegations of mismanagement, the impugned order under Section 64(5) has rightly been passed. Learned Counsel would also produce the relevant document whereby notices have been issued to the persons who are already in the administration of the affairs of the Waqf by the Waqf Board.

8. *Mr. Avinash Wadhwani*, Learned Counsel appearing on behalf of the Waqf Board in A.No.273 of 2021, would submit that a clear reading of Section 32 would show that the Waqf Board has replaced the Scheme Court. In that view of the matter, the application filed by the Waqf Board is to be allowed by transferring all the applications and papers which are



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pending as on date in the scheme suit, and also the Official Trustee has to entrust the management of the Waqf to the Tamilnadu Waqf Board.

9. We have considered the rival submissions made on either side and perused the material records of this case. At the outset, there can be no two opinions as to the proposition that by the Waqf Act 1995 coming into force, the Tamil Nadu Waqf Board had replaced the Scheme Court, and has all the power of General Superintendence as per Section 32 of the said Act. The said position has clearly been laid down by the Division Bench of this Court in ***Managing Trustee, Rep. by the Board of Trustees, Nagoor Dargha*** cited Supra. The said view has also been followed and re-affirmed by us, in our judgement in ***Dr.K.M. Kalifa Masthan Sahib Kadiri -Vs- Tamilnadu Waqf Board & Others***³, the relevant portion of the Judgment is extracted hereunder for ready reference:-

“3.1 At the outset, it is to be mentioned that in respect of Nagore Dargah, there were several interse disputes between the Board of Trustees, some of which are pending and some of which have been decided by this Court. While so, it is essential to reproduce the Judgment of the earlier Division Bench of this Court made in W.A.No.1640 of 2016 (& batch of cases), in respect of the Dargah, more particularly the relevant portion of the paragraph



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Nos.45 & 46 of the Judgment, which is extracted hereunder:

“45....

On the face of it, it only means the scheme decree will continue. But the issue here is not about anything by which the existing Scheme is sought to be replaced now but who should have the residual power of superintendence over the working of the Scheme? Until now, the Court retained to itself the residuary power to administer the Scheme it framed and from now it is going to be replaced by the Waqf Board. But the Nagoor Durgha seems to believe that the compromise operates as an estoppel against the Waqf Board from replacing the Court in its role to ensure the working of the Scheme. In H.H. The Prince of Arcot case [(2006) 3 MLJ 856], a Division Bench of this Court had an occasion to hold:

“The compromise cannot read to mean that any particular authority or institution would become above law and no action would be taken in accordance with law notwithstanding any transgression or violation of law. No immunity above law would have been contemplated to be given by way of compromise.”

*To this, this Court now intends to add that no statutory authority has the power to barter away his statutory responsibility, duty or authority merely to facilitate a compromise, howsoever **honourable** the intentions that peace may reign in a cause be.*

46.1 To sum up, even where the Courts have framed a scheme under Sec.92 CPC for the administration of the Waqf, on the establishment of Waqf Board, the residual power of superintendence of the Waqfs which hitherto remained with the Court as the conscience keeper of the public trusts founded



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on the principle of parens patriae would shift from the Scheme Court to the Waqf Board. In effect, the Waqf Board replaces the Principal District Court, Nagapattinam, in administering the Scheme settled in O.S.30 of 1946. However, its power of superintendence stops on determination of surplus income meant for the kasupangudars. The authorities which the counsel for the Waqf Board has cited and listed in paragraph 32 above may be referred to. One immediate effect is that the Waqf Board cannot claim contribution in relation to the surplus funds meant for distribution to the Kasupangudars. ”

(emphasis
supplied)

3.2 Thus, by virtue of Section 32 of the Waqf Act, 1995 and the above decision of this Court, the proposition that the Waqf Board had replaced and had taken the position of the Scheme Court is well settled.....”

9.1 Similarly in ***Mahboob Basha Vs. Tamil Nadu Wakf Board***,

cited supra, The Learned Single Judge has held as follows:-

“ 11. I would like to lay stress upon the explanation appended to Sub-Section (1) of Section 32 of the Act, which unambiguously and unequivocally highlight and shed light that Wakf Board has been conferred with enormous statutory powers to deal with even the Wakfs covered by Scheme decrees formulated by the court.

12. A plain reading of the said provision will leave no doubt in the mind of the court that the statutory body, irrespective of any Court decree or order already governing such Wakf under any scheme, can exercise its power. While exercising its power, how the Board



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should conduct itself is found exemplified in Section 32 of the Act itself and I need not dilate or elaborate on that because as of now, this court is not enjoined to deal with those aspects in extenso.”

10. We are also in agreement with the Learned Counsel that the Waqf Board after replacing the Scheme Court, need not make an application before the Scheme Court, for the purpose of taking over the management of the Waqf in the normal course. However, in the instant case, the matter is not simply pending before the Scheme Court or any private person appointed by the Scheme Court to administer the Waqf. By the Scheme Decree dated 02.05.1939, the Waqf is entrusted to the Official Trustee, and upon such entrustment, the property vests in the Official Trustee as per Section 10(2) of the Official Trustees Act and once the property vest in the Official Trustee, it is the High Court under Section 25 of the Official Trustees Act, which has the general power of superintendence and the powers to issue directions periodically in respect of such properties vested in the Official Trustee. Once the Official Trustee is bound to act as per the directions of this Court issued under Section 25 of the Official Trustees Act then so long he is under the orders of this Court, it cannot be said that the Waqf Board can automatically or directly



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require the Official Trustee to comply with its directions or handover the property. This would be further clear from a reading of Section 29 of the Official Trustees Act, 1913 which is extracted hereunder for ready reference:

“29. Transfer of trust property by Official Trustee to original trustee or any other trustee.—

(1) Nothing in this Act shall be deemed to prevent the transfer by the Official Trustee of any property vested in him to—

- (a) the original trustee (if any); or*
- (b) any other lawfully appointed trustee; or*
- (c) any other person if the Court so directs.*

(2) Upon such transfer, such property shall vest in such trustee, and shall be held by him upon the same trusts as those upon which it was held prior to such transfer, and the Official Trustee shall be exempt from all liability as trustee of such property except in respect of acts done before such transfer:

Provided that, in the case of any transfer under this section, the Official Trustee shall be entitled to retain out of the property any fees leviable in accordance with the provisions of this Act. ”

10.1 Therefore, the trust properties can be transferred or handed over by the Official Trustee only to (a) the original trustees if the original trust is revived ; (b) or any trustee lawfully appointed by the original trustee ; (c) or any other person if the Court so directs. The Waqf Board, once it requests that it would directly manage the property, the Court has to



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hand over the same under Section 29 (1) (c) of the Act. In the absence of such a direction under the Waqf Board ought not to have issued directions to the Official Trustee and thereafter complain that the Official Trustee has not complied with its directions and then take over the management of the trust in exercising the powers under Section 64(5) of the Act.

11. *Mr.N. A. Nissar Ahmed*, Learned Senior Counsel brought to the notice of this Court Section 108-A of the Waqf Act, 1995, to contend that the Waqf Act, will have an overriding effect, therefore the action of the Waqf Board is in order. We are not in agreement with the said contention. Section 108-A accords overriding effect of the provisions of the Waqf Act, if there is anything inconsistent in any other law for the time being in force. We do not see any apparent conflict between the Official Trustees Act, and the Waqf Act. It is only the procedure which is envisaged under the Official Trustees Act, to be complied with for transferring the management/ properties of the Waqf which have to be complied with.

12. In that view of the matter, it can be seen from the order



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impugned in the writ petition, and the resolution passed by the Waqf

Board, to takeover the management, that primarily the grievance is that the Official Trustee did not comply with the directions of the Waqf Board.

The relevant portion of the resolution reads thus:

"....மேலும், தற்போது மஸ்ஜிதே மக்தூமி பள்ளிவாசலை வாரியத்தின் அங்கீகாரமின்றி நிர்வகித்து வரும் நிர்வாகக்குழுவினர் அதிகார துஷ்பிரயோகம் செய்தும், வாரியத்தின் உத்தரவுகளுக்கு கீழ்படியாமல் செயல்படுவதும், புதியதாக வாங்கப்பட்ட சொத்தினை வாரியத்தில் பதிவு செய்யாமலும், கணக்குகளை சமர்ப்பிக்காமலும், சகாயத் தொகையினை செலுத்தாமல் உள்ளதும் வாரியம் கவனத்திற்கு கொண்டு வரப்பட்டது....."

13. Thus, when the property vested in the Official Trustee as per the Scheme Decree and as per Section 10(2) of the Official Trustees Act, 1913 has not even been handed over to the Waqf Board, by properly filing an application under Section 29 of the Official Trustees Act, there was no question of the Official Trustee complying with the directions of the Waqf Board, therefore, the very charge of the mismanagement has no legs to stand and accordingly, the action of the Waqf Board in taking over management even before the application filed by the Waqf Board in A.No.273 of 2021, is ordered, is unsustainable. Therefore, the impugned



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order is liable to be quashed. The argument is that the writ petition is not filed by the Official Trustee, but by the other persons, is only technical in nature and since we are deciding the issue on merits in a composite manner, we hold that even the writ petitioner who is likely to be affected as to the person to whom he has to report has locus to challenge the order and we are inclined to set aside the order of the Waqf Board.

14. Be that as it may, from a reading of the Trust Deed and the Scheme Decree, there can be no two opinions that the objects and acts done under the Trust is of religious (*Mohamedan*) in nature. The donor is a Muslim who declared the Trust for the religious and charitable purposes mentioned therein and thus, it is undoubtedly a Waqf. The same has also been duly registered and enumerated as a Waqf, which is published in the Gazette even under the old Act as early as 20.05.1959 and the perusal of the Register of Waqfs categorically shows the enlisting of the Waqf and its properties.

15. That being so, when by operation of law henceforth, it will only



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be the Waqf Board, which will be the Scheme Court, it would be as per law, to entrust all the matters/papers relating to the Waqf in respect of the scheme suit in C.S.No.314 of 1930, to be transmitted and henceforth be dealt with by the Tamil Nadu Waqf Board. However, the Official Trustee being an authority under the Official Trustees Act, need not continue to be a *Muthawalli* or in the management of the Waqf as the same would result in twin authorities managing the Waqf leading to repugnancy, as he is to be bound by the directions of this Court as per Section 25 of the Official Trustees Act, and the directions given by the Waqf Board, which will not be in the best interests of the Wakf and carrying on the pious causes intended by the donor.

16. On the other hand now the Waqf Board is fully empowered to (i) appoint *Muthawalli* and manage the waqf; (ii) to takeover the direct management; (iii) to decide the claims made by the lineal descendants and persons associated with the trust carrying out the charities in accordance with the law; (iv) alter the scheme or frame new scheme etc, after due notice to all the parties, etc. The parties aggrieved by the decisions of the Waqf Board are entitled to approach the Waqf Tribunal in accordance with



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law.

17. This being the situation, in exercise of power under Section 29 of the Official Trustees Act, we deem it appropriate to now direct the Official Trustee, to entrust the management of the trust properties and the accounts to the Tamil Nadu Waqf Board through its Chief Executive Officer, within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the Tamil Nadu Waqf Board will be entitled to pass fresh orders as to the management of Waqf in accordance with law and proceed to manage or supervise the Waqf property in accordance with law. Needless to mention that all the claims made by the writ appellants as well as the impleading parties shall be dealt with by the Waqf Board in accordance with law, and if the parties are aggrieved by any of such decisions, it is for them to avail redressal in the manner known to law.

D. The Result :

18. In the result,

- (i) Writ Appeal No.1339 of 2021 stands partly allowed ;
- (ii) The impugned notification of the Tamilnadu Waqf Board,



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Chennai bearing Ref. No.IV-3(a)/97/2020, dated 04.11.2020 published

vide Tamilnadu Government Gazettee dated 11.11.2020 bearing G.O.No.46 ; and the resolution passed in Serial No.1, Inam No.12/2020, bearing Na.Ka.No.12765/16/A9, Chennai dated 07.10.2020 and signed on 20.10.2020, shall stand quashed;

(iii) Consequential Orders dated 23.03.2021 bearing Se.Mu.O.No.264/Se/Ni.A/21 and notice in Na.Ka.No.264/Se/Ni.A/21, dated 23.03.2021, shall also stand quashed;

(iv) Application No.273/2021 filed by the Tamilnadu Waqf Board is allowed on the following terms:

(a) It is declared that the Tamilnadu Waqf Board has replaced the Scheme Court as per Section 32 of the Waqf Act, 1995;

(b) The registry is directed to transfer all the papers and other records relating to the Scheme Suit in C.S.No.314 of 1930 are ordered to be transmitted / transferred to the Tamil Nadu Waqf Board;

(c) The Administrator General and Official Trustee of Madras, is directed to handover (i) the management and properties of the M.K.P.Maracayar and Masid Moqdoomi Waqf in as is where is condition



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to be taken over and further administered by the Tamilnadu Waqf Board in accordance with the existing scheme or such varied terms it may make in future and in accordance with the provisions of the Waqf Act, 1995; (ii) the accounts relating to the said Waqf along with such monies standing to its credit, to the Tamil Nadu Waqf Board, within 2 weeks from the date of receipt of the copy of the order;

(d) After the entrustment of the Waqf and its properties and its accounts, it would be open for the Waqf Board to pass an orders afresh under Section 64, for taking over the direct management if it so desires; and it would also be open for the Waqf Board to pass such further or other orders under Section 32 of the Act and exercise its powers and superintendence and management in accordance with law, henceforth;

(v) The Applicants in O.A.Nos.240, 318 & 410 of 2021, shall make their due claims before the Waqf Board, and the same shall be considered on its own merits, by the Waqf Board in accordance with law;

(a) A. No. 1156 of 2021 for impleading stands allowed;

(b) A. No. 273 of 2021 is allowed on the above terms;

(c) A.No.1653 of 2021 stands allowed since the order dated 23.03.2021 stands quashed as per above terms;



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(d) The Original Application No. 410 of 2021 stands partly

allowed on the above terms;

(e) O.A. Nos. 240 and 318 of 2021 and A.No.1175 of 2021

stand dismissed as per the above terms.

(vi) There will be no orders as to costs and all the connected
miscellaneous petitions are closed.

(T.R., ACJ.) (D.B.C., J.)

13.04.2023

Index : yes

Speaking order

Neutral Citation : yes

klt

To

- 1.The Principal Secretary to the Government,
Backward Class, Most Backward Class and Minorities
Welfare (T1) Department, Secretariat, Chennai – 600 009.
- 2.The Secretary to the Government,
Backward Class, Most Backward Class and Minorities
Welfare (T1) Department, Secretariat, Chennai – 600 009.
- 3.The Chairman,
Tamil Nadu Wakf Board,
No.1, Jaffer Syrang Road, VallalSeethakathi Nagar,
Chennai – 600 001.



W.A.No.1339 of 2022 and
O.A.Nos.240, 318 & 410 of 2021 and
A.Nos.273, 1156, 1653 & 1175 of 2021

- 4.The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffer Syrang Road, VallalSeethakathi Nagar,
Chennai – 600 001.
- 5.The Superintendant of Wakf,
Poonamalee Zone, Big Mosque Complex,
Poonamalee, Chennai – 600 056.
- 6.Executive Officer/Superintendant of Wakf,
Trust Estate of M.K.P.Maracayar and Masid Moqdoomi Wakf,
No.139, Dr.Anni Besant Road,
Ice House, Triplicane, Chennai – 600 005.
- 7.The Administrative General and
Official Trustee of Madras,
High Court Campus, Chennai – 600 104.
- 8.The Association of Worshipers and
Well Wishers of “Masjid – e – Moqdoomi”,
Rep. By its President,
No.83, Sembudoss Street, Chennai – 600 001.



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A.Nos.273, 1156, 1653 & 1175 of 2021

**T.RAJA, ACJ.,
AND
D.BHARATHA CHAKRAVARTHY, J.,**

klt

Pre-Delivery Judgment in

W.A.No.1339 of 2022 and
O.A.Nos.240, 318 & 410 of 2021 and
A.Nos.273, 1156, 1653 & 1175 of 2021
and
CMP.Nos.8517 & 8518 of 2022

13.04.2023