



WEB COPY



Writ Petition No.35012 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.03.2023

PRONOUNCED ON : 13.04.2023

Coram:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Writ Petition No.35012 of 2022

WMP Nos.34444, 34445 of 2022 and WMP No.495 of 2023

Mohammed Abusali

.... Petitioner

Vs.

1. The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1 Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 1.

2. K.Mohamed Mariyam Gani
Rep. By her Power Agent
S.M.Sheik Dawood

.... Respondents

[R2 impleaded vide order of this Court [TKRJ] dated .04.2023 made in WMP No.495 of 2023 in WP No.35012 of 2022]

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for records of the respondent dated 13.12.2022 and made in Na.Ka.No.4467/13/B7/Nagai and quash the same.



Writ Petition No.35012 of 2022

WEB COPY

For Petitioner : Mr.N.A.Nissar Ahmed, Sr. Counsel

For Respondents : Mr.G.Mohammed Asif (For R1)
Standing Counsel

Mrs.A.Ajimath Begam (For R2)

ORDER

This Writ Petition is filed challenging the impugned show cause notice dated 13.12.2022, issued by the Chief Executive Officer (CEO), Tamilnadu Wakf Board.

2. The short facts that are necessary to determine the *lis* are as under

(i) Sikandar Rowthar Wakf, Theru Palli Street, Nagore is a registered Wakf under the supervisory control of the Tamil Nadu Wakf Board. The property bearing Door No.240 about 117 acres and 17 cents in Vadakudi Village had been endowed by the petitioner's ancestor viz., Janab. Vavanna Sikhandar Rowthar under Document No.1137/1904 dated 16.12.1904. The founder's friend Vajoor Madar Sahib dedicated 5.63acres to said Wakf under Wakf Deed dated 27.06.1914.



Writ Petition No.35012 of 2022

(ii) After coming into force of Wakf Act, 1954, the above Wakf came to be registered with the Wakf Board with G.S.No.240/Tangore and in the list of Wakf, the above said Wakf Deed was found as title document.

(iii) The petitioner has further contended in his affidavit that the private property of his ancestors which had not been endowed in the above Wakf Deeds and which are being enjoyed by his family members as private property, was acquired by the national highways to an extent of 10.69 acres out of a total extent of 48-61.50 and the same came to be gazetted on 17.09.2019 and award was passed on 05.12.2020. All revenue records are in the name of estate of Vavanna Sikhander Rowthar.

(iv) The respondent herein proceeded against the petitioner by issuing a show cause notice dated 13.12.2022 in Na.Ka.No.4467/13/B7/Nagai alleging that by receiving the award amount in respect of petitioner's private property, he has contravened the provisions of the Wakf Act as the said properties are also Wakf property.

(v) The petitioner also contented that one Mohammed Ghouse Rizwan has filed O.A.No.102/2022 before the Wakf Tribunal to delete



Writ Petition No.35012 of 2022

petitioner's private properties from the proforma. When the above O.A. is pending before the Wakf Tribunal, proceeding cannot be initiated against the petitioner and it is without jurisdiction.

(vi) After receipt of the impugned notice dated 13.12.2022, this writ petition is filed.

3. Learned Senior Counsel Mr.N.A.Nissar Ahmed, appearing for the petitioner would contend that the power of removal of Mutawalli is only vested with the Wakf Board. However, impugned proceedings proposing to remove the petitioner from Muthawaliship has been initiated by the CEO, which suffers from want of power and jurisdiction.

4. Learned senior counsel would further contend that once enquiry is conducted by the Wakf Board, they cannot delegate the powers to the Chief Executive Officer, for issuance of show cause notice as to why the petitioner should not be penalised for the proved charges and relied upon Section 32(2)(g) and also drew my attention to the powers of the CEO under Sections 25 and 26 of the Wakf Act.



Writ Petition No.35012 of 2022

WEB COPY

5. Per contra, learned counsel for the proposed 2nd respondent/K. Mohamed Mariyam Gani, could draw my attention to the decision of the Hon'ble Supreme Court in *Rashid Wali Beg Vs. Farid Pindari and others, reported in (2022) 4 Supreme Court Cases 414* and contended that any dispute questioned or other matters relating to Wakf and Wakf property, should be relegated to Wakf tribunal.

6. WMP No.495 of 2023 filed for impleadment is allowed. The proposed party viz., K.Mohamed Mariyam Gani, is impleaded as 2nd respondent and his objection is taken on file.

7. Heard learned counsel on either side and perused the documents.

8. The Tamil Nadu Wakf Board has passed a resolution on 27.10.2022 in Na.Ka.No.4467/13/AA7/Nagai. I have also perused the impugned notice dated 13.12.2022, wherein it is stated as follows:

காரண கேட்பு அறிவிப்பு

பொருள் : வக்பு சட்டம் 1995 - நாகை மாவட்டம் - நூகூர்
வாவன்னா சிக்கந்தர் டிரஸ்ட் வக்பு - வக்பு சொத்து
மற்றும் நிதியில் முறைகேடுகள் சம்பந்தமாக - காரணம்
கேட்பு அறிவிப்பு - அனுப்புதல்



Writ Petition No.35012 of 2022

பார்வை : தமிழ்நாடு வக்பு வாரிய தீர்மானம் இனம் எண்.191/21

ந.க.எண்.4467/13/ஆ7/நாகை நாள் : 27.10.2022

.....

.....

எனவே மேற்கண்ட குற்றச்சாட்டுக்களின் அடிப்படையில் உங்கள் மீத வக்பு சட்டம் 1995 (திருத்திய சட்டம் 2013) பிரிவு 46, 50, 52A, 61 மற்றும் 64ன் கீழ் ஏன் நடவடிக்கை எடுக்கக்கூடாது என்பதற்கான விளக்கத்தை இக்காரணம் கேட்பு அறிவிப்பு கிடைக்கப்பெற்ற 15 தினங்களுக்குள் சமர்ப்பிக்குமாறு கேட்டுக் கொள்ளப்படுகிறது. தவறும் பட்சத்தில் வக்பு சட்டம் 1995 (திருத்திய சட்டம் 2013) பிரிவு 46, 50, 52A, 61, 64 மற்றும் இதர பிரிவுகளின் கீழ் நடவடிக்கை மேற்கொள்ளப்படுமென தெரிவிக்கப்படுகிறது. (emphasis supplied)

9. On a close perusal of the impugned notice, from the first 11 paragraphs, I find that the Chief Executive Officer being the Ex-officio of the Wakf Board has issued the show cause notice on behalf of the Wakf Board. As per the resolution of the Board in Na.Ka.No.4467/13/AA7/Nagai dated 27.10.2022, the 1st respondent had communicated the show cause notice which is the decision of the Board and the petitioner was asked to submit his reply to the Board for further action. Hence, the Chief Executive Officer has not taken any action *suo moto*. The petitioner has neither challenged the above resolution in the manner known to law nor denied those allegations in his affidavit, assumes significance.

<https://www.mhc.tn.gov.in/judis>



per the parameters laid down by the Hon'ble Apex Court in **(2022) 4 SCC 414** [cited supra]. All the matters relating to Wakf to be agitated before the Wakf tribunal.

14. At this juncture, it is relevant to extract Rule 7(3) of the Tamil Nadu Wakf Rules 2000, which is as follows:

“7. Authentication of the orders of the Board:-

- (1) The Chairperson or the Chief Executive Officer shall authenticate the orders and decisions of the Board.
- (2) The common seal shall remain in the custody of the Chief Executive Officer.
- (3) All correspondence emanating from the Board shall be in the name of the Chairperson or the Chief Executive Officer and all correspondence with the Board shall be addressed to the Chairperson or the Chief Executive Officer.”

15. Thus, I find that the impugned notice is only a show cause notice and as against the said show cause notice, a writ petition is not maintainable, unless and until there is a gross violation of either procedures or principles of natural justice. In the instance case, the CEO has merely conveyed the decision of the Wakf Board and in the capacity of Ex-officio of the Wakf Board, he has sent the communication in the nature of show cause notice and it is for the petitioner to give a reply and thereafter, the Wakf Board has to take its call.



Writ Petition No.35012 of 2022

WEB COPY

16. At this juncture, it is pertinent to be state that the resolution passed by the Wakf Board dated 27.10.2022, remains unchallenged, assumes significance.

17. The other contention of the learned counsel for the petitioner is that since there is an OA pending before the Wakf Tribunal for deletion of the subject matter of the property, it is always open to the petitioner to expedite the proceedings and to get a decision on the merits of the case. As such when the Wakf Board has come to the conclusion that the property is a Wakf property, after following the necessary procedures, they have passed a resolution on 27.10.2022, finally thereby issued impugned show cause notice on 13.12.2022.

18. After perusing the show cause notice issued by the CEO and also powers conferred under Section 25 of the Wakf Act, which enumerates the powers of CEO for investigating in respect of Wakf properties, inspecting or causing inspection of the Wakf properties and accounts, records, deeds and documents, doing generally of such acts, as may be necessary for the control, maintenance and superintendence of the Wakf.



WEB COPY

19. Here, in the instant case, the resolution was passed by the Wakf board and in connection with the proved irregularities, explanation is sought for from the person concerned. Section 25 of the Wakf Act deals with the duties and powers of CEO and Section 27 of the Act deals with the delegation of the powers of the Board.

20. Section 27 of the Wakf Act, is as follows:

“7. Section 27 of the Act deals with the Delegation of powers by the Board.

27.Delegations of powers by the Board:- The Board may, be a general or special order in writing, delegate to the Chairperson, any other member, the Chief Executive Officer or any other officer or servant to the Board or any area committee, subject to conditions and limitations as may be specified in the said order, such of its powers and duties under this Act, as it may deem necessary, except the powers and functions of the Board mentioned under clauses (c),(d),(g) and (j) of sub-section (2) of section 32 and section 110.

21. The delegation of the power to exercise powers under clauses (c), (d), (g) & (j) of sub-section (2) of section 32 and and Section 110 is necessarily conferred only to the Board. Admittedly, the resolution has been passed by the Board authorising the Chief Executive Officer/1st respondent. Pursuant to the same, the impugned show cause notice has been issued. Therefore, instead of



Writ Petition No.35012 of 2022

giving explanation, one cannot challenge the show cause notice merely under the pretext that same has been issued for removal of Muthavalli. No doubt, only the Board has the power to remove Muthawallis under Section 64 of the Act. When such situation is not reached, merely on the apprehension, the show cause notice cannot be challenged.

22. Therefore, the action of the CEO in calling reply for the show cause notice neither infringes his power under Section 27 of the Wakf Act nor under Section 25 of the Act. Hence, the contention raised by the learned counsel for the petitioner could not be countenanced for the above reasons.

23. Accordingly, this Court has no hesitation to come to the conclusion that the impugned notice is only a show cause notice, pursuant to the resolution passed by the Wakf board and it is in the nature of a communication only and therefore it is not in violation of Section 25 or 27 of the Wakf Act.

24. Hence, all the contentions raised by the learned counsel for the petitioner remains rejected and the writ petition stands *dismissed*. No costs.

Consequently, the connected Writ Miscellaneous Petitions in WMP Nos.34444



Writ Petition No.35012 of 2022

and 34445 of 2023, are closed.

13.04.2023

Index : Yes/No
Speaking order / Non-speaking order
Neutral Citation: Yes/No.
ars

To

The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1 Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 1.



WEB COPY



Writ Petition No.35012 of 2022

RMT.TEEKAA RAMAN,J

ars

Pre-delivery order in
Writ Petition No.35012 of 2022

13.04.2023