



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:17.02.2026

Pronounced on:13.03.2026

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THE HONOURABLE MR.JUSTICE P.B.BALAJI

CRP. No.2388 of 2025

1.Mahaboob Sheriff,

2.Khader Sheriff

... Petitioners

Vs

1.The Tamil Nadu Wakf Board,
Rep. by Chairman,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai -1.

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

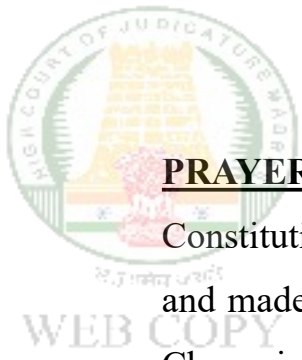
3.N.Aleemuddin Hussain

4.Haneefuddin Hussain

5.Badrudin Hussain

6.Sirajuddin Hussain

Respondents



PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 20.03.2025 and made in O.A. No.93 of 2023 on the file of the Tamil Nadu Waqf Tribunal, Chennai.

For Petitioners : Mr.N.A.Nissar Ahamed,
Senior Counsel for
M/s.Kowser Sulthana.I

For Respondents : Mr.T.Saikrishnan for R1 & R2
Mr.M.M.I.Kaleel for R3 to R6

ORDER

The revision petitioners are the applicants in O.A. No.93 of 2023 before the Waqf Tribunal filed under Section 83(1) and 83(2) of the Wafq Act, 1995 challenging the resolution of the Tamil Nadu Waqf Board dated 26.09.2023 and the consequential order of the Chief Executive Officer of the Waqf Board dated 10.11.2023 and also for a permanent injunction to restrain respondents 3 to 6 from in any manner interfering with the administration of Waqf and its properties at the hands of the first applicant/revision petitioner.

2. I have heard Mr.N.A.Nissar Ahamed, learned Senior Counsel for Mrs.I.Kowser Sulthana and Mr.T.Saikrishnan, learned counsel for R1 & R2 and Mr.M.M.I.Kaleel, learned counsel for R3 to R6.



3. The learned Senior Counsel Mr.Nissar Ahamed, would take me through the Waqf Deed dated 18.11.1930, registered as Doc. No.4 of 1931 and contend that the Waqf was a private Waqf created for the benefit of the daughter of the Wakif and there was no dedication of income for any charitable purposes. He would also state that the deed also set out the manner in which the office of the Muthawalli should be occupied, being from the male descendants alone. Referring to the various Clauses of the Waqf Deed, Mr.Nissar Ahamed, learned Senior Counsel would contend that the Board did not have any right to interfere with the administration and management of the Waqf in the first place and even otherwise, the statutory respondents could not have appointed the respondents 3 to 6 who were claiming through a female descendants, which goes against the original deed of Waqf dated 18.11.1930. The learned Senior Counsel would also take me through Section 3, Section 32(a)(j) and Sections 63 as well as 64 of the Waqf Act, 1995.

4. The learned Senior Counsel would also rely on the Hon'ble Division Bench judgment of this Court in *Tamil Nadu Waqf Board Vs. M.E.Musuee*, reported in *1979 AIR Madras 231 (DB)*, the decision of the Allahabad High Court in *Maulvi Abdul Rahman Siyai Vs. Sardar Maqbool Hasan and Others*, in *Civil Revision No.355 of 2008 dated 17.12.2008*, the judgment of this Court



N.Mohamed Younus Sait Vs. S.Sampathraj in CRP. (NPD) No.3258 of 2013, dated 04.06.2020; and The Managing Committee Nesavupettai Shafi Jamath Mosque Vs. A.Mohammed Abdul Khader and Ors, reported in 2025 (1) CTC 848.

5. It is also the submission of Mr.Nissar Ahamed, learned Senior Counsel that merely because a direction was issued by the Waqf Board to pay Rs.1000/- to the sister, in an Application moved by the mother of the respondents 3 to 6, that is the sister of the first petitioner, it would not confer jurisdiction on the Board and he would further contend that there can be no estoppel against statute, in order to assume jurisdiction based on the participation of the first petitioner before the Waqf Tribunal on the complaint made by his sister, regarding non payment of Rs.1000/-.

6. Per contra, Mr.M.M.I.Khaleel, learned counsel for the respondents 3 to 6, would state that the Waqf Deed dated 18.11.1930 was a composite Waqf Deed and not a Waqf Deed simpliciter as the Waqf Deed contemplated performance of annual ceremonies of Wakife, after the death, on a moderate scale by distribution of simple meals annually to 10 poor and deserving persons on each occasion. Referring to the said Clause, the learned Counsel would state



that a charitable object being clearly indicated in the Waqf Deed itself, the Waqf Board certainly has jurisdiction to interfere with the matter, in the interests of better administration.

7. In this regard, learned counsel would rely on the decision of this Court in Chairman, *Tamil Nadu Waqf Board and another vs. M.S.Mohammed Yahya (died) and Others*, reported in 2023 SCC Online Mad 6019. He would further state that the first revision petitioner has been squatting on the Waqf property and therefore, he is ineligible to be a Muthawalli as he has been acting against the interest of the Wakife who founded the Waqf, way back in the year 1930. As the first Applicant was ineligible having encroached and squatting on Waqf property, he or his children according to the learned counsel, are also ineligible to be appointed as Muthawallis and therefore, the Waqf Board did not commit any error in appointing the respondents 3 to 6, being the legal representatives of the deceased sister of the first petitioner. He would also state that the respondents 3 to 6 have filed sufficient documentary evidence to establish their relationship to the sister of the first petitioner and therefore, the Board as well as the Tribunal has not committed any error, warranting interference under Article 227 of the Constitution of India.



8. Mr.T.Saikrishnan, learned counsel appearing for the Board, would state that the Waqf is not a private Waqf as contended by the learned Senior Counsel for the petitioner and in this regard, he would advance similar arguments as advanced by the learned counsel for the respondents 3 to 6, contending that the Waqf is a composite Waqf, and not a Waqf simpliciter. He would therefore state that there is no error or infirmity in the order passed by the Waqf Board, which has been rightly, confirmed by the Tribunal.

9. In reply, Mr.Nissar Ahamed, learned Senior Counsel pointing out to Ex.P4, O.A. No.27 of 2023 which was filed at the instance of the contesting respondents, would state that the contesting respondents themselves have gone on record stating that there is absence of dedication for public purposes on the date of execution of the Waqf Deed and therefore, it was only a 'Waqf-alal-aulad', intended for the benefit of the beneficiaries alone. Referring to the said application filed by respondents 3 to 6 along with others, the learned Senior Counsel states that the respondents cannot now take a different stand, only in order to confer jurisdiction on the Board.

10. Mr.Nissar Ahamed, learned Senior Counsel would also state that the Tribunal has failed to interpret the document viz., the 1930 Waqf Deed, which



was the only crucial point for consideration before the Tribunal. He would therefore state that the Waqf is only a 'Waqf-alal-aulad' simpliciter and the post of Muthawalli being hereditary, neither the Board nor the Tribunal can interfere and appoint heirs through the female line. He would further state that even assuming, the first petitioner was incapacitated or ineligible on account of allegedly acting against the interest of the Waqf, even then, when the second petitioner, his son was very much available, he should have been appointed and not respondents 3 to 6. Mr.Nissar Ahamed, learned Senior Counsel would further state that the Authorities have miserably erred in holding that the petitioners have not been recognised by the Board to be the Muthawallis. In this context, he refers to the proceedings in and where by, in the year 2000, the first petitioner has been recognised as hereditary Muthawalli and therefore, the learned Senior Counsel states that the findings of the Board and confirmed by the Tribunal are perverse and liable to be interfered with.

11. I have carefully considered the submissions advanced by the learned Senior Counsel and the learned counsel appearing for the contesting respondents as well as the Board.



12. One Douloth Beebi W/o.Hajee Syed Madar Sahib as Wakife created a Waqf. The core question that would have to be necessarily answered in this revision petition is as to whether the said Waqf is a 'Waqf-alal-aulad' simpliciter or 'Waqf-alal-aulad' composite. It is not in dispute that the Waqf is a private Waqf, since the Waqf has been created for the benefit of the daughter of the Wakife viz., Amatul Ghousunissa, W/o.Mohammed Yusuf Sahib. Therefore, some of the Clauses of the said Waqf Deed assume significance and the same are extracted for ready reference.

"Whereas the said Wakife are absolutely entitled to and are in enjoyment of the houses and grounds-No.82, Mosque (Naryanan Naicken) Street, and No.16, Yagappan Lane, Pudupet Mount Road, P.O. Madras, and more particularly described in schedule hereunder and where as the said Wakife desire that the said properties mentioned below should be permanently dedicated by way of Wakf for the maintenance of the Makoofalaiah and her children and her descendants.

NOW THIS INDENTURE WITNESSTH that the income of the main properties should be utilized after payment of taxes and .. of repairs for the following objects:-

for the maintenance of Makoofalaiah during her life time 2) for the maintenance of Makoofalaiah's children born to her and descendants forever (3) for the performance of annual ceremonies of the Wakife after their death on a moderate scale by distribution of simple meals annually to 10 poor and deserving persons on each occasion; and (4) for the performance of monthly charity of Rs.2/- to poor relations. Now this indenture witnessst that after the death of the said Makoofalaiah, the Muthawalli whoever for the time being is in office, shall distributes, after meeting all expenses mentioned in the above Para 3, the income of the properties mentioned below to the other descendants of the Makoofalaiah as per Mohammedan Law and this indenture further witnessst that for the performance of the above mentioned religious and pious acts and charities, the Makoofalaiah here if shall be Muthawalli during her lifetime and after her death the Muthawalliship shall descend on her eldest son,



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and after him among his lineal agnatic descendants on the male lines in perpetuity from son to son if, God forbid -- there is no male descendants in that line, any one descendants of the Makoofalaiah from any line whatever who is a pious and religious Musalman and who is otherwise-competent, shall take up the office of the Muthawalliship and manage the charities and religious acts in the manner aforesaid. The Muthawalli, whoever for the time being in office, shall administer the properties in the manner aforesaid with due care and caution and shall have no rights whatsoever to deal with the properties in any manner contrary to the terms of this Deed of Wakf and that these properties are inalienable. This indenture further witnesseth that, if for any reason, which God forbid, there is no one among the descendants of the Makoofalaiah to take the benefit of this Wakf Deed and enjoy the income of the properties mentioned in schedule hereunder, the whole income shall be utilised of rth eobjects mentioned in para 3, of these projects viz., charities. The Wakifs shall have power to revoke rescind, alter and cancel this during their life time. This will shall take effect on the Wakifs deaths...."

13. The argument of the learned Senior Counsel for the petitioner, Mr.Nissar Ahamed is that the Waqf is only a private Waqf and therefore, no jurisdiction is conferred on the Board to interfere with the management and administration of the Waqf by the male heirs, who were alone eligible to be appointed as Muthawallis, the post of Muthawalli being hereditary in the nature. Per contra, it is the case of the respondents that the Waqf is 'Waqf-alal-aulad' composite in view of the charitable objects set out in the Waqf. It is in this regard that the relevant portions of the Waqf Deed have been extracted herein above. Admittedly, the Waqf has been created only for the benefit of the daughter of the Wakifs and her descendants. No doubt, from and out of income of the Waqf properties, certain objects were stipulated viz., the maintenance of



Makoofalaiah during her life time 2) for the maintenance of Makoofalaiah's children born to her and descendants forever (3) for the performance of annual ceremonies of the Wakife after their death on a moderate scale by distribution of simple meals annually to 10 poor and deserving persons on each occasion; and (4) for the performance of monthly charity of Rs.2/- to poor relations. Clause 3, is now relied on and contended that the Waqf Deed would be rendered as 'Waqf-alal-aulad' composite as it contemplates distribution of meals every year to 10 poor and deserving persons on the death annual ceremonies of the Wakifs.

14. However, the deed of Waqf has to be read as a whole and cannot be read in isolation. On an over all reading of the Waqf Deed, it is clear that the Waqf is a private Waqf, created only for the daughter of the Wakifs and her descendants forever. Merely, because an obligation is cast on the Muthavallis to distribute meals to 10 poor and deserving persons on the death anniversary of the Wakife, it would not make the deed a 'Waqf-alal-aulad' composite. Subsequent clauses of the Waqf Deed clearly indicate that such an interpretation cannot be given to the Deed. It is set out that after meeting all the expenses mentioned, the remaining income shall go to the descendants of Makoofalaiah as per Mohammedan Law, after her death. Therefore, there is no permanent dedication of any income of the Waqf or Waqf properties for public purposes or



charitable purposes. The direction to feed 10 poor and deserving persons is only in the nature of an expenditure to be incurred by the Muthawalli on the death ceremonies of the Wakife. Therefore, I am not able to countenance the arguments of the respondents that in view of the said performance of annual ceremonies by distribution of simple meals to 10 poor and deserving persons, the Waqf has to be treated as 'Waqf-alal-aulad' composite.

15. In this regard, the Hon'ble Division Bench of this Court in *Tamil Nadu Waqf Board's* case (referred herein supra) held that when the Waqf Deed does not dedicate any property in *praesenti* for the purposes recognised by Muslim Law as pious, religious or charitable, then the Waqf will not come within the scope of the Act. The Hon'ble Division Bench further held that where only in the event of entire line in the family becoming extinct and so long as a single member of the family is alive, there is no chance of any poor person coming and taking benefit of the Waqf Deed, then the Waqf would only be a Waqf-alal-aulad simpliciter and fall outside the scope of the Act.

16. The Allahabad High Court, in *Maulvi Abdul Rahman Siyai's* case (referred herein supra) held that the Waqf Board exercising powers under Section 32(1) of the Act and the proviso to Section 32(1), the Board shall act in



conformity with the directions of the Waqf Board, the purposes of the Waqf and any usage or custom of the Waqf sanctioned by School of Muslim Law and even the powers for appointment under Section 63 can be exercised by the Board only when there is no one to be appointed under the terms of the Waqf Deed or where the right of any person to act as a is disputed and not under any other circumstances or situations.

17. In Mohamed Yunis Syed's case (referred herein supra), this Court held that for a Waqf-alal-aulad to be a Waqf under the Act, there must be a dedication for any purposes recognised by Muslim Law as pious, religious or charitable and when there is no dedication *in praesenti*, and the property is only for the benefit of the descendants alone, such a Waqf would only be a Waqf-alal-aulad simpliciter.

18. In *A.Mohammed Abdul Khader's* case (referred herein supra), this Court held that even if administration was given to Jamath without any specific period, it cannot be said that a direction contained in the Waqf Deed ceased automatically and once the creation of Waqf by Deed is not disputed, then the Board has to exercise powers conferred in the Act, only in conformity with the directions available in the Waqf Deed and not otherwise. Even in the decision



that has been relied on by the learned counsel for the respondents, in *S.M.Pitchaiyammal's* case (referred herein supra), this Court only held that unless it is possible to determine the extent to which the properties had been dedicated for pious, religious and charitable purposes, the entire properties will have to be deemed to be dedicated to God and subject matter of the Waqf and there can be no partial dedication. This decision will not apply to the facts of the present case as the dedication, as already discussed, is only for the members in the family, more specifically, the daughters and the descendants to be continued forever and even the excess income available after meeting the expenses and conditions stipulated have been clearly set apart only for distribution amongst the legatees of Makoofalaiah, the daughter. In such circumstances, the dedications cannot be for any pious, religious or charitable purposes, either in part or in full, permanent or otherwise as well.

19. Even as regards decision in *M.S.Mohammed Yahya's* case, (referred herein supra), this Court, on a reading of the Wakf Deed found that from and out of the income, charity has to be necessarily performed and administration of the property and performing of charity were in inextricably linked to each other and in such circumstances, held that the Waqf-alal-aulad on the facts of the said case was composite in nature and not Waqf-alal-aulad simpliciter. Therefore, I



do not see that even in Mohamed Yahya's case, this Court has taken any different view from what the Hon'ble Division Bench and the Allahabad High Court have taken for this Court to now treat the Waqf Deed as Waqf-alal-aulad composite. In the light of the above discussion, the Waqf Deed is certainly a Waqf-alal-aulad simpliciter and does not come within the purview of the Act. Therefore, the Board was not competent to interfere and pass the impugned resolution and consequent order being passed by the Chief Executive Officer. Therefore, the impugned resolution as well as the consequent order of the Chief Executive Officer, the second respondent are liable to be set aside.

20. In fact, this Court *Maulvi Abdul Rahman Siyai's* case and *A.Mohammed Abdul Khader's* case (referred herein supra) held the Board can only act in terms of the Waqf Deed and not outside or beyond it. The Waqf Deed clearly makes the post of Muthawalli hereditary in nature and in such circumstances, the Wakf Board could not have appointed the respondents 3 to 6 who are admittedly claiming under female line of succession viz., sister of the first petitioner. As rightly pointed out by the learned Senior Counsel, even assuming the first petitioner was found to be incompetent, the second petitioner alone could have been appointed and recognised as hereditary Muthawalli and therefore the Board as well as the Tribunal have clearly fell in error. The



Tribunal has not considered the nature of the document and has proceeded to confirm the findings of the Tribunal. Even as regards the argument that the petitioners have submitted to the jurisdiction of the Tribunal, the mere fact that the sister of the first petitioner approached the Board and sought for payment of Rs.1000/- from the first petitioner and an order being passed will not amount to an estoppel against statute and thereby, prevent the petitioners from challenging the impugned resolution and consequential orders contending that the Board has no jurisdiction as the Waqf is a private Waqf. In fact, the respondents themselves have gone on record in O.S. No.27 of 2023 before the Waqf Tribunal stating that the Waqf is only a Waqf-alal-aulad simpliciter. Therefore the respondents cannot now turn around to suit their convenience and contend that the Waqf is a Waqf-alal-aulad composite and not a Waqf-alal-aulad simpliciter.

21. Even with regard to the findings of the Tribunal that the petitioners have not been recognised or appointed as Muthawalli, the question of appointing the Muthawalli does not arise since Waqf Deed clearly provides for the hereditary office of Muthawalli to be occupied by the male line, after the death of the first Muthawalli Amatul Ghousinnissa, the daughter of Makoofalaiah. Therefore, the Board as well as Tribunal have clearly erred in holding that the petitioners have not been recognised by the Board and



therefore, the Office of Muthawalli was vacant and thereby, there was no impediment for the Board to appoint the respondents 3 to 6 as the Muthawallis.

The said findings are also clearly erroneous and perverse and liable to be set aside.

22. For all the foregoing reasons, the petitioners entitled to the relief and the Civil Revision Petition is *allowed* and the order of the Waqf Tribunal is confirming the order of the Board are set aside. No costs.

13.03.2026

rkp

Neutral Citation Case : Yes

Internet: Yes

Index : Yes

To:

1.The Tamil Nadu Waqf Tribunal, Chennai.

2.The Chairman,

The Tamil Nadu Wakf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai -1.

3.The Chief Executive Officer,

Tamil Nadu Wakf Board,
No.1, Jaffer Syrang Street,
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P.B.BALAJI, J.,

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Pre-delivery order in
CRP. No.2388 of 2025

13.03.2026