

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2015

CORAM :

THE HONOURABLE Ms.JUSTICE K.B.K.VASUKI

C.R.P.No.1329 of 2004

... Petitioner

Vs.

1.The Tamil Nadu Wakf Board rep.  
by its Chairman, No.3, Santhome High Road,  
Chennai-14.

2.Mr.Khadim Hussain Khan (deceased)

3.M/s.Thousand lights Charities  
also known as the Sarkar-e-Abbasi  
Ashur Khana-e-Mubarak, Rep. by its  
Managing Muthavalli,  
No.210, Anna Salai,  
Chennai-2.

4.Feroze Hussain

... Respondents

**Prayer:** Petition filed under Article 227 of the Constitution of India against the decreetal order dated 13.08.2002 made in OS.No.7499 of 2001 on the file of the I Assistant Judge City Civil Court, (Tribunal Constituted under the WAKF Act) at Chennai

For Petitioner : Mr.Sathish Parasaran

For Respondents : Mr.P.M.Subramaniam for R4.

**ORDER**

The petitioner/plaintiff in OS.No.7449 of 2001 is the revision petitioner herein. The revision petition is filed against the order, dismissing the suit filed by the petitioner for declaring the order of the

first defendant/Tamil Nadu Wakf Board dated 27.06.2001, thereby removing the petitioner/plaintiff from Muthavalli and appointing the second defendant by name Khadim Hussain Khan as one of Muthavallis of third respondent Wakf as null and void and for granting permanent injunction restraining the defendants 1 and 2 from enforcing or claiming any right on the strength of the order dated 27.06.2001.

2.The parties are referred to as per their rank in the suit.

3.The facts which are relevant for consideration herein are as follows :- The third defendant/M/s.Thousand Lights Charities (hereinafter shortly referred to as WAKF) was founded by one Nawab Majdud Owla Bahadur for the benefit of Shia Muslim community of Madras. It is a Wakf being governed by the bye-laws and rules framed in pursuance of the scheme decree in CS.No.392 of 1978 and was controlled and managed by committee of members. The founder of the Wakf had three wife's, by names (i)Khurshid Begum (ii)Hussaini Begum and (iii)Faizunnissa Begum. The male descendants of these three wife's are the persons entitled to hold the office as Muthavallis of the Wakf. While the petitioner/plaintiff and his father are the male descendants of the second wife's branch, the second defendant/second respondent is the male descendant from the first wife's branch.

4.The protest was raised by the grand father of the second defendant/second respondent and then by his father and thereafter by the second defendant/second respondent. The representation sent by the male descendants of the first branch was not considered and the representation given by the second defendant/second respondent representing unrepresented first wife's branch was for the first time taken up for consideration on 28.05.2001. The second defendant also filed the suit raising the same issue and the same was subsequently dismissed as withdrawn. In the meanwhile, the petitioner/plaintiff was appointed as additional Muthavalli in the vacancy caused due to the demise of one Gulam Mohammed Takhi Khan Shahib who is none else than the grand father of the plaintiff/petitioner herein. The plaintiff/petitioner was appointed as Muthavalli, while he was residing abroad and even after his appointment, he did not admittedly come down to India to accept the Muthavalliship. His appointment as Muthavalli continued to hold good till the representation given by the second respondent/second defendant was considered by Wakf board on 28.05.2001. The Wakf board took up the matter for consideration on 28.05.2001. The Tamil Nadu Wakf board issued a notice to the plaintiff/petitioner for the enquiry to the local address and the same was not served on the plaintiff/petitioner as he was in Iran. The

petitioner's father who received the notice did not think it fit to inform his son, who was at Iran and did not also provide the petitioner's Iran address to enable the Wakf board to issue due notice to the petitioner. As a result, the petitioner is deemed to have been served with notice of the proceedings and the enquiry was proceeded with. The petitioner's father represented his son and opposed the relief sought for by the first wife's branch for giving them due representation in the Wakf board.

5.The first respondent Wakf board', after considering the denial of representation to the first wife's branch and over representation given to the second wife's branch and having found such arrangement to be not in conformity with the scheme decree made in CS.No.392 of 1878 providing for equal distribution among all the three wives' branches and having found that the petitioner herein has been residing outside India and is not in a position to administer the work in the way normally, it has to be administered and having upheld the right of male descendants belonging to first wife's branch to be in charge of the administration of the Wakf, held that the appointment of the petitioner as additional Muthavalli along with his father representing the second wife's branch is in violation of scheme decree and against

law and hence ordered removal of the petitioner from the post of Muthavalli and ordered appointment of the second respondent/second defendant as one of the Muthavallis in that place. Questioning the same, the petitioner preferred WP.No.13861 of 2001 for issuing a writ of certiorari to quash the impugned order dated 27.6.2001. This court by order dated 11.09.2001 disposed of the writ petition by holding that the petitioner's removal from Muthavalliship is under section 64(1) and he could not administer the work of Muthavalliship and such removal is subject to an appeal under Section 64(4) of the Tamil Nadu Wakf Act and the petitioner is at liberty to prefer an appeal along with an application to condone the delay within the time specified in the order.

6.In pursuance of the same, the petitioner has come forward with the present suit in O.S.No.7449 of 2001 before the Wakf Tribunal. The Wakf Tribunal considered all the legal and factual aspects involved in the issue and rendered a finding that the mode of appointment as laid down in scheme decree is a permanent mode of appointment and it has to be followed for every vacancy arising and all the three branches of the three wives of the founder should always have one Muthavalli and the entitlement of each branch never lapses and any future descendant's claim for the post is a matter of right, irrespective

of the non-representation or removal of one person and the claim made by the second respondent/second defendant is not barred by resjudicata or limitation and the appointment of the petitioner in absentia to the post of Muthavalli is contrary to the Rules and scheme decree and there is no justification for denying any representation to the descendants of the first wife in the administration of the Wakf by creating new line of succession contrary to the scheme decree amounts to deviation from the terms of the scheme decree and is legally not permissible and the order removing the petitioner from Muthavalli and appointing the second respondent/second defendant in that place is but valid and suffers from no infirmity and accordingly dismissed the suit. Hence this civil revision petition by the petitioner before this Court.

7. Pending this revision petition, the second defendant/second respondent died and one Feroze Hussain Khan representing the first wife's branch was in the meeting held on 22.02.2004 appointed as Muthavalli and the petitioner herein filed CMP.15394 of 2004 to implead him as the fourth respondent and as per the order dated 22.09.2004 Feroze Hussain Khan was impleaded as the fourth respondent. Pending CRP, the petitioner's father also died and the

petitioner competed for the post of Muthavalli in the vacancy created by the death of his father. Though the petitioner made representation to Wakf board and other authorities, he was not considered and the same compelled him to approach this court by way of writ petition in WP.No.16114 of 2004 for appointing him as Muthavalli. In the meanwhile, the vacancy in the second branch to which the petitioner belonging was also duly filled up by Wakf board and the detailed counter was filed by the first respondent/Wakf opposing the relief sought for in WP.No.16114 of 2004. The petitioner also sent representation under Section 66 of the Wakf Act questioning the appointment of other person from the second wife's branch as Muthavalli and the writ petition and the other proceedings appear to be still pending.

8.It is not in dispute that as per the scheme decree dated 27.11.1989 made in CS.392 of 1878 the male descendants of each of the three wives shall have equal representation for being appointed in each of the three posts of Muthavalli and the appointment was made as per the decree till 1915 and thereafter there was deviation in the matter of appointment of Muthavalli and there was no representation given to the first wife's branch and over representation was given to

the second wife's branch and the same state of affairs continued till 2001. In view of serious protest from the male descendants of the first wife's branch, this deviation was rectified by order dated 27.06.2001 removing the petitioner from Muthavalliship and by appointing the second respondent/second defendant as Muthavalli representing the second branch. The removal was also challenged initially by way of writ petition and in pursuance of the order made in writ petition, the suit, arising out of which is the present civil revision petition came to be filed and was after due contest dismissed by upholding the order passed by Tamil Nadu Wakf Board removing the petitioner as Muthavalli and appointing the second respondent/second defendant as Muthavalli. Pending civil revision petition, the second respondent/second defendant died and the fourth respondent was appointed as Muthavalli representing first branch and pending civil revision petition, the petitioner's father died and another person was appointed as Muthavalli representing the second wife's branch. The petitioner again challenged the appointment of another person as Muthavalli in the vacancy created by the death of his father by way of separate proceedings.

9.It is also not in dispute that the petitioner was not actually served with any notice in the proceedings before Wakf Board and the



petitioner was before Wakf Board represented by his father who was from the second wife's branch holding the post of managing Muthavalli, during the relevant point of time. In the detailed order passed by Wakf board, the removal of the petitioner was supported by the following reasons i.e, (i)denial of representation for the first wife's branch (ii)over representation for the second wife's branch (iii)the appointment of petitioner as Muthavalli is in absentia and is illegal and (iv)the appointee being outside India and in Iran is unable to perform his duties as Muthavalli.

10.While challenging the order of the Wakf Board by way of Civil suit, the petitioner reiterated the following points (i)the claim of the second respondent/second defendant for due representation is barred by resjudicata and limitation (ii)no notice was issued to him for the proceedings before the Wakf board. The petitioner/plaintiff was admittedly appointed as Muthavalli from the second wife's branch, while his father was already holding the post of Muthavalli. Further, the appointment of petitioner/plaintiff as Muthavalli during his stay in Iran and his continuous stay in Iran without coming down to India for performing the duties and responsibilities of Muthavalliship frustrated the very purpose of appointment of Muthavalli for administration of the

Wakf. As such, this Court finds greater force in the argument advanced on the side of the contesting respondents/defendants that not only the appointment of two Muthavallis from the second wife's branch and nil appointment of Muthavalli from first wife's branch, but also the mode of appointment of additional muthavalli from second wife's branch, while he was in abroad and his failure to come down to Madras to perform his duties as muthavalli of the Wakf is in serious violation of the terms and conditions of the scheme decree and is legally not permissible and the proceedings initiated before the Wakf Tribunal for rectifying the anamoly by removing the over representation given to the second wife's branch and by restoring the representation given to the first wife's branch is legally in order and is rightly held so by the Wakf tribunal.

11.Regarding the plea of non service of notice for the proceedings before the Wakf Board is concerned the reason for the same can be solely attributed to the failure of the petitioner to furnish correct address and the notice was duly received by his father who was adult member of the family, as such, service of notice on the father is rightly held to be sufficient service and the petitioner was also duly represented by the father in the enquiry before the Wakf board.

Hence, the plea regarding non service of notice is rightly negated by the Wakf Tribunal.

12.The next plea raised on the side of the plaintiff/petitioner is that the claim for restoration of representation to the first wife's branch is hit by the principle of resjudicata and barred by limitation. As rightly argued by the learned counsel for the contesting respondent, the every appointment of the petitioner as additional Muthavalli from one branch made contrary to the terms of the scheme decree gives rise to new cause of action and shall be questioned before the appropriate legal forum either by the surviving eligible male descendant or by future descendant from other branch and the principle of resjudicata is not applicable and fresh period of limitation arises from the date of every such illegal appointment. The Wakf Tribunal has after duly appreciating and analysing all the objections raised by the petitioner/plaintiff, passed a well considered order for negating the same and the reasoning given by the Wakf Tribunal hence warrants no interference by this Court.

13.Even otherwise, in view of the subsequent development, as stated above, caused due to the death of the second

respondent/second defendant and by appointment of the fourth respondent from the first wife's branch as Muthavalli and by the death of the petitioner's father and by the appointment of another person representing the second wife's branch as Muthavalli in that place, the reliefs sought for herein against the removal of the petitioner and against the appointment of the second respondent/second defendant as Muthavalli, need not at all be considered. Viewing from any angle the petitioner is dis-entitled to get any relief in this civil revision petition.

14.In the result, the civil revision petition is dismissed. No costs.

**30.04.2015**

Internet : Yes/No

Index : Yes/No

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To

1.The Tamil Nadu Wakf Board rep.  
by its Chairman, No.3, Santhome High Road,  
Chennai-14.

2.M/s.Thousand lights Charities  
also known as the Sarkar-e-Abbasi  
Ashur Khana-e-Mubarak, Rep. by its  
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No.210, Anna Salai, Chennai-2.

**K.B.K.VASUKI, J**

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**CRP.No.1329 of 2004**

**30.04.2015.**