



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:20.01.2016

Coram:

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**THE HONOURABLE Mr.JUSTICE V.RAMASUBRAMANIAN
and
THE HONOURABLE Mr.JUSTICE N.KIRUBAKARAN**

Writ Appeal (MD) No.934 of 2012 & W.P.(MD)No.22895 of 2015
and
M.P.(MD)Nos.1, 2 and 6 of 2012 in W.A.(MD)No.934 of 2012

W.A. (MD) No.934/2012:

S.Sheik Dawood

... Appellant/
Writ Petitioner

vs.

1. Tamil Nadu Wakf Board,
rep.by its Chairman,
No.1, Jaffar Sirang Street,
Vallal Seethakathi Nagar, Mannadi,
Chennai.

2. The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffar Sirang Street,
Vallal Seethakathi Nagar, Mannadi,
Chennai.

3. The Wakf Superintendent,
South Zone Office,
Tamil Nadu Wakf Board,
Town Hall Road, Madurai.

4. A.Abdul Rahman

... Respondents 1 to 4/
Respondents

5.Parimala Sunnath Jamath Development
Welfare Association, rep.by its President
M.Akkeem,
11-5-6A, Batcha Rawther Street,
Battagundu, Dindigul District.

6.Batlagundu Dhakni's Development Welfare Association,
rep.by its Executive Secretary K.Mohamed Najumudeen,
33/1, Palivisal Street,
Batlagundu, Dindigul District.



7. Batlagundu Rawthar Eluthukarar Lebbai Welfare Association,
rep. by its President M. Usman Ali,
1-16-25H, 46/52, Pandian Street, Gandhi Nagar,
Batlagundu, Dindigul District.

8. R. Abdul
9. A. Sabeer Ahamed
10. M. Arasu Mydeen
11. M. B. Sheik Ali
12. K. Mohamed Ismail
13. M. Kudbudeen
14. S. Bismi Seik Mydeen
15. M. Abbas
16. S. Mohamed Rafeek
17. P. Mohamed Hanifa
18. G. Mohamed Rabek

... Respondents 5 to 18

(Respondents 5 to 7 were impleaded as per order dated
22.01.2013 made in MP(MD) Nos. 3 to 5/2012 in W.A. (MD)
No. 934 of 2012)

(Respondents 8 to 18 are impleaded vide order dated
22.01.2013 made in MP(MD) Nos. 1 to 11 of 2013 in
W.A. (MD) No. 934 of 2012)

W.P. (MD) No. 22895 of 2015:

M.A. Mohammed Ansari

... Petitioner

vs.

1. The Tamil Nadu Wakf Board,
rep. by its Chief Executive Officer,
No. 1, Jaffar Sirang Street,
Vallal Seethakathi Nagar,
Chennai - 1.

2. A. Abdul Rahman,
President, Adhoc Committee,
Jumma Periya Pallivasal Wakf,
Vathalagundu,
No. 10, Savarimuthu Lane,
Pudupet, Chennai-600 002.

3. Parimala Sunnath Jamath Development
Welfare Association, rep. by its President
M. Akkeem,
11-5-6A, Batcha Rawther Street,
Batlagundu, Dindigul District.



4. Batlagundu Dhakni's Development Welfare Association,
rep. by its Executive Secretary K. Mohamed Najumudeen,
13-10-7, Pallivasal Street,
Batlagundu, Dindigul District.

5. Batlagundu Rawthar Eluthukarar Lebbai Welfare Association,
rep. by its President M. Usman Ali,
1-16-25H, 46/52, Pandian Street, Gandhi Nagar,
Batlagundu, Dindigul District.

6. A. Sabeer Ahamed

7. A. V. M. Inthirajith

8. S. Karuppusami

9. B. Muniyandi

10. S. Murugesan

... Respondents

(Respondents 3 to 10 were impleaded as per order dated 20.01.2016,
made in WMP(MD) No. 810 to 817 of 2016)

W.A. (MD) no. 934/2012:

Writ Appeal filed under Clause 15 of Letters Patent,
against the order, dated 18.10.2012 made in W.P.(MD) No. 13330 of
2012.

W.P. (MD) No. 22895/2015:

Writ Petition filed under Article 226 of the Constitution
of India, praying for issuance of a writ of mandamus, directing
the 1st respondent to take steps in accordance with the proforma
to constitute a managing committee for the administration of Jumma
Periya Pallivasal, Vathalagundu.

Prayer in WP(MD). 13330/ 2012 :

Writ Petition is filed under Article 226 of the Constitution
of India, praying this Court To issue a Writ of Certiorarified
Mandamus, to call for the records pertaining to the Impugned
Memorandum in Na.Ka.No.616/06/Aa8/Thi.Kal dated 12.09.2012 on the
file of the Respondent No.2 and quash the same as illegal and
consequently to direct the Respondent No.1 to declare that the
Respondent No.4 is not competent to continue as the President of
the Adhoc Committee of Jumma Periya Pallivasal Wakf, Batlagundu
Town, Dindigul District.

For Appellant in W.A. : Mr. T. Lajapathi Roy

For Petitioner in : Mr. G. R. Swaminathan
WP for Mr. T. Antony Arul Raj

For Respondents 1 to 3 : Mr. K. K. Senthil



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For Respondent-4 : Mr.Velumani for
in W.A. & R-2 in WP Mr.D.Shanmugaraja Sethupathy.

For Respondent-5 : Mr.M.Vallinayagam,
in W.A. & Senior Counsel for
RR 3 to 10 in W.P. Mr.D.Nallathambi

For Respondent-6 : Mr.K.K.Senthilvelan
in W.A.

For Respondent-7 : Mr.S.M.Anantha Murugan
in W.A.

For Respondents : Mr.A.Kannan
8 to 11 in W.A.

For Respondents : Mr.V.Maharajan
12 & 13 in W.A.

For Respondents : Mr.V.Santhakumaresan
16 to 18 in W.A.

JUDGMENT

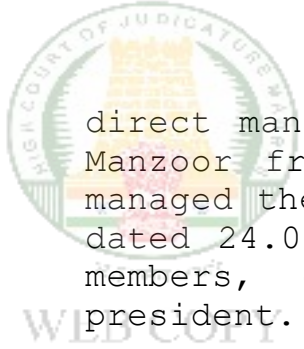
(Judgment of the Court was delivered by V.RAMASUBRAMANIAN,J)

Battalagundu Periya Pallivasal is a wakf, surveyed and notified under the Muslims Wakf Act, 1954, by the proceedings of the District Collector of Madurai, dated 08.08.1955. At the time when the wakf was surveyed and notified, three persons by name (i) K.M.Mohammed Ibrahim, (ii)V.A.Abdul Kareem Rowther, and (iii) R.E.Abdul Kareem were muthavallis.

2.As per the Notification, the rule of succession to the office of muthavallis was indicated as "selection of the musim jamath". The wakf was stated to be administered at that time, according to local muslim custom. In Column No.22 of the Notification, the details of the properties of the wakf were indicated.

3.It appears that one Mr.K.S.M.Mohammed Kasim was appointed as the Muthavalli, way-back on 13.04.1985. When an attempt was made in 1989 to conduct selection/election, a dispute arose and the matter went into a cold storage. Again the dispute surfaced only after the death of K.S.M.Mohammed Kasim in the year 2000, when one Mr.K.S.M.A.Mohammed Manzoor was appointed as muthavalli. Since we are not concerned with those disputes, we are not recording the nature and details of all the disputes that arose from 2001 upto 2009.

4.On 14.10.2009, Tamil Nadu Wakf Board took over the



direct management of the wakf, after removing Mr.K.S.M.A.Mohammed Manzoor from the management. After a Committee of three persons managed the wakf for nearly two years, the Wakf Board, by an order dated 24.02.2011 appointed an Adhoc Committee, consisting of four members, of which one Mr.A.Abdul Rehman was named as the president.

5.It appears that whenever an attempt was made thereafter to hold elections, the same resulted in series of disputes. As a consequence, the Adhoc Committee appointed on 24.02.2011 has continued for the past five years.

6.Therefore, in February, 2012, the Chairman of the Adhoc Committee himself filed a writ petition in W.P.(MD)No.2651 of 2012, seeking a mandamus to direct the Tamil Nadu Wakf Board to pass an order of extension of the Adhoc Committee till the new committee is appointed. The said writ petition was disposed of by a final order passed on 06.02.2012 by a learned Judge of this Court. By this order, the learned Judge simply directed the Wakf Board to consider the representation of the Chairman of the Adhoc Committee, dated 20.01.2012 and pass orders within a period of two months. Till such final order was passed, the Adhoc Committee was directed to be continued in management.

7.Thereafter, a complaint was lodged by a group of about six persons with the Tamil Nadu Wakf Board on 25.01.2012. Therefore, the Wakf Board issued a notice dated 17.02.2012 directing the Adhoc Committee to file their response to the complaint.

8.Immediately, the said show cause notice was challenged by the Adhoc Committee before the Wakf Tribunal in O.A.No.77 of 2012. It appears that a First Information Report in Crime No.301 of 2012 was also registered thereafter against one Mr.Mohammed Ansari and two persons, by name Peer Mohammed and M.Miyakkani. This complaint was lodged by the Manager of the mosque on the ground that he was attacked by those persons.

9.Thereafter, three writ petitions came to be filed in W.P.(MD)Nos.13004 of 2012, 13330 and 14435 of 2012. While the first writ petition was filed by three persons, by name Nasurullah, M.Sheik Jaffar and M.Miyakkani, the second writ petition was filed by one Shiek Dawood and the third writ petition was filed by one S.Amroz Tahira, w/o.Shiek Dawood. The reliefs sought for in the first two writ petitions were for setting aside the election notification. The relief sought for in the third writ petition was for including women voters in the election.

<https://hcservices.ecourts.gov.in/hcservices/> W.P.(MD)No.13004 and 13330 of 2012, a learned Judge of this Court passed an interim order on 18.10.2012, directing the elections to go on but restraining the respondents from declaring



the results until further orders of the Court. As against the said interim order, dated 18.10.2012, Mr.Shiek Dawood, the petitioner in W.P.(MD)No.13330 of 2012 has come up with a writ appeal in W.A.(MD)No.934 of 2012.

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11.In the meantime, one Mr.Mohammed Ansari, who is a member of the Jamath, has come up with a writ petition in W.P.(MD) No.22895 of 2015, for a mandamus to direct the Tamil Nadu Wakf Board to take steps in accordance with the Proforma to constitute a Managing Committee for the administration of the Periya Pallivasal. Therefore, the writ petition was tagged along with the writ appeal.

12.In the meantime, several persons have come up with applications for impleading themselves as parties to the main writ petition in W.P.(MD)no.22895 of 2015, which is filed in public interest. Persons who filed impleading applications and their names are as follows:

Sl.No.	WMP(MD)No.	Name of the petitioner
1	810 of 2016	Parimala Sunnath Jamath Development Welfare Association
2	811 of 2016	Badlagundu Dhaknis Development Wlfare3 Association
3	812 of 2016	Badlagundu Rowthar Eluthukarar Lebbai Welfare Association
4	813 of 2016	A.Sabeer Ahamed
5	814 of 2016	A.V.M.Inthirajith
6	815 of 2016	S.Karuppusami
7	816 of 2016	B.Muniyandi
8	817 of 2015	S.Murugesan

All the imploding applications were allowed by us.

13.We have heard Mr.T.Lajapathi Roy, learned counsel appearing for the appellant in W.A.(MD)No.934 of 2012, Mr.G.R.Swaminathan, learned counsel appearing for the petitioner in the public interest writ petition, Mr.K.K.Senthil, learned Standing Counsel for the Tamil Nadu Wakf Board, appearing for respondents 1 to 3 in the writ appeal and respondent No.1 in the writ petition, Mr.Velumani, learned counsel appearing for the 4th respondent in the writ appeal and the 2nd respondent in the writ petition and Mr.M.Vallinayagam, learned senior counsel, representing Mr.D.Nallathambi, learned counsel for the 5th respondent in the writ appeal and the newly impleaded respondents 3 to 10 in the writ petition and M/s.K.K.Senthilvelan, S.M.Anantha Murugan, A.Kannan, V.Maharajan and V.Santhakumaresan, learned counsel appearing for the other contesting respondents in the writ



appeal.

14.As we have indicated above, the wakf has been plunged into series of litigations from the year 2001. The committee selected/elected way-back in 1985 continued till the year 2000. From 2001, there has been one problem or the other and elections could not be conducted.

15.Eventually, the Tamil Nadu Wakf Board took over the direct management of the wakf on 14.10.2009 and thereafter appointed an Adhoc Committee on 24.02.2011. Originally, appointment of the Adhoc Committee was only for a period of one year. But, since elections could not be conducted thereafter and also by virtue of an order passed by a learned Judge of this Court in W.P.(MD)No.2651 of 2012, the Adhoc Committee has continued till date. Therefore, it is utmost important that elections are conducted atleast after such a long period of fifteen years and the democracy is restored in the institution.

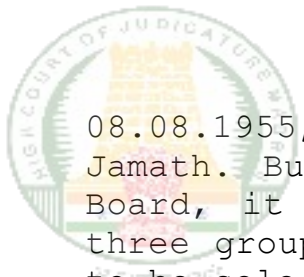
16.More than the Adhoc Committee and the Tamil Nadu Wakf Board, it is the impleaded respondents who vociferously oppose the maintainability of the public interest writ petition. The attitude is one of more royal than the king. Even the learned counsel appearing for the impleaded parties are definitely interested in the wakf. Therefore, when we put a pointed question about the elections, they had no alternative except to submit that elections are the need of the hour, despite their reservation about the maintainability of the writ petition. In other words, the impleaded parties have no objection to the writ petition being killed, but elections being held. In other words, none of the parties before us have any objection to an election being ordered. From the rival contentions raised across the Bar, the only thing that we could decipher is that there are certain issues which are to be clarified before the election is conducted. The first issue is as to how the elections are to be conducted. The second issue is as to who would constitute the electorate and the third issue is as to who would continue to be in the management till the elections are held and the newly elected body takes over.

17.We heard the arguments of all the learned counsel on both sides on these three issues.

18.All the learned counsel appearing for the parties insisted that a learned retired Judge of this Court or a senior member of the Bar should be appointed to conduct the elections. This resolves the first issue.

19.The second issue is little complicated. This issue
<https://hcservices.scotnigov.in/hcservices/> would constitute the electorate.

19(a).As per the original proforma of the date



08.08.1955, the rule of succession was by selection by the Muslim Jamath. But, it appears that by a Resolution passed by the Wakf Board, it was decided that two representatives from each of the three groups that constitute the entire jamath of Battalagundu are to be selected.

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19(b).Admittedly, there are three groups of Muslims living in the area, one are called Daknis, which appears to be a contrived form of what was originally Deccanis. The second group of persons are lebbai rowthars, who are Tamil speaking Muslims. The third category of Muslims are Parimala Sunnath Muslims, who are supposed to be merchants.

19(c).Therefore, the question is as to whether six members are to be elected from the entire population of Muslim community, without any division or as to whether two persons from each of the three groups are to be elected.

19(d).It is no doubt true that the original proforma speaks only about selection from the Muslim community at large. But, the Resolution passed by the Wakf Board, which was never challenged in any proceedings in the past about 30 years, indicates that two members from each group are to be elected.

19(e).As a matter of fact, the present president of the Adhoc Committee was none other than the brother of the daughter-in-law of Mr.K.S.M.Mohammed Kasim, who was elected in 1985, by virtue of the very same Resolution of the Wakf Board. Therefore, the method of election prescribed by the Resolution of the Wakf Board cannot be objected to by any of the parties. Hence, we are of the view that the Commissioner appointed by this Court can hold elections for electing two persons from each of the three groups for the management, after drawing a list of voters, separately.

19(f).Mr.M.Vallinaygam, learned senior counsel appearing for some of the impleaded parties submitted that due to efflux of time, people belonging to one group started giving their sons or daughters in marriage to people belong to other groups and that therefore the identity of a person belonging to one particular group has now been lost. But, we do not think that in a country like India, people lose any identity, even by marriage. An identity is a matter of convenience, both ways. Therefore, we still think that it is possible for the Commissioner to identify the persons belonging to each group.

20.The next issue is as to whether the Adhoc Committee should continue till elections are over. Under normal circumstances, a committee which is in management should be continued till the elections are held. But, in this case, a peculiar situation has arisen. It is stated that the Chairman of the present committee may also contest the elections.



If he is allowed to contest the elections, even while holding the management, it may lead to all kinds of allegations later on. Therefore, we put a question to Mr.Velumani, learned counsel appearing for the President of the Adhoc Committee as to whether his client is insisting upon contesting the elections or he would choose to continue till the elections are held.

21.After we passed over the matter from the pre-lunch session to post-lunch session, we were informed by Mr.Velumani, learned counsel for the 4th respondent in the writ appeal, that his client is not willing to contest the elections. Therefore, there could be no impediment for allowing him to continue in the management till elections are held.

22.In view of the above, the writ appeal and the writ petition are disposed of to the following effect.

(i) Mr.P.Thiagarajan, Advocate, 25, Law Chambers, Madurai (Cell No.9443573756) and Ms.J.Maria Rosaline, Advocate, 84, Law Chambers, Madurai (Cell No.9345220202) are appointed as the Commissioners to prepare the voters list, separately for each of the three groups and to conduct elections for two members from each group.

(ii)After the election of two members from each group, all the six members shall elect a president from among themselves.

(iii)All disputes with regard to the preparation of voters list, deletion or inclusion of names, etc. shall be addressed by all members only to the Commissioners first. The Commissioners may take into consideration all objections and submissions before finalising the voters list.

(iv)No proceedings of the Commissioners shall be open to challenge in any Court, civil court or this Court, until elections are completed by the Commissioners and Report is filed before this Court.

(v)No civil court, subordinate to this Court, shall grant any interim order restraining the Commissioners from proceeding with the election and declaring results.

(vi)All disputes with regard to election may be raised only after the declaration of results.

(vii)Till the date of declaration of results, the present Adhoc Committee shall continue to be in-charge of the Periya Pallivasal in question.

(viii)The Commissioners shall complete the entire process and declare the results on or before 31st August, 2016. If there is any difficulty for the Commissioners to complete the electoral process and if such difficulty is created by persons who do not want the election process to go on, it is open to the Commissioners to seek clarifications.

<https://hcservices.ecourt.gov.in/hcservices/> remuneration is Rs.1,00,000/- (Rupees one lakh only) payable by Adhoc Committee, Jumma Periya Pallivasal Wakf and to be shared equally by the Commissioners.



24. The Writ appeal and Writ Petition are disposed of as above. No costs. Consequently the connected M.P. (MD) Nos. 1, 2, 6 of 2012 are closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

1. The Chairman,
Tamil Nadu Wakf Board, No.1, Jaffar Sirang Street,
Vallal Seethakathi Nagar, Mannadi, Chennai.
2. The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffar Sirang Street,
Vallal Seethakathi Nagar, Mannadi, Chennai.
3. The Wakf Superintendent,
South Zone Office, Tamil Nadu Wakf Board,
Town Hall Road, Madurai.

Copy to :

4. Mr. P. Thiagarajan, Advocate, (Cell No. 9443573756)
25, Law Chambers, Madurai Bench of Madras High Court, Madurai.
5. Ms. J. Maria Rosaline, Advocate, (Cell No. 9345220202)
84, Law Chambers, Madurai Bench of Madras High Court, Madurai.

- +1cc to Mr. T. Lajapathi Roy, Advocate, Sr.No. 3282
- +1cc to Mr. D. Nallathambi, Advocate, Sr.No. 3376
- +1cc to Mr. A. Kannan, Advocate, Sr.No. 3365
- +1cc to Mr. V. Maharajan, Advocate, Sr.No. 3364
- +4cc to Mr. D. Shanmugaraja Sethupathy, Advocate, Sr.No. 3361
- +1cc to Mr. S. M. Anantha Murugan, Advocate, Sr.No. 3375
- +1cc to Mr. K. K. Senthilvelan, Advocate, Sr.No. 3366
- +1cc to Mr. T. Antony Arulraj, Advocate, Sr.No. 3587
- +1cc to Mr. K. K. Senthil, Advocate, Sr.No. 3214
- +1cc to Mr. R. Srinivasan, Advocate, Sr.No. 3363

gb/kpl

JM/AAL-MPA/SAR-I/02.06.2016/10P-19C

Judgment in
Writ Appeal (MD) No. 934 of 2012 &
W.P. (MD) No. 22895 of 2015
and
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