

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.1857 of 2009
and
M.P.No.1 of 2009**

E.Khader Sherif

.. Petitioner

Vs.

1.Tamil Nadu Wakf Board,
Rep. by its Chief Executive Officer,
No.7/4, 9th Cross Street,
Indira Nagar, Chennai-20.

2.A.Mohammed Hussain

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Judgment and decree dated 30.04.2008 and made in O.A.No.10 of 2003, on the file of the I Assistant Judge, Wakf Tribunal, City Civil Court, Chennai.

For Petitioner : Mr.R.C.Paul Kanagaraj

For Respondents : Mr.A.S.Kaizer (for R1)

R2 – Not ready in notice

ORDER

The applicant in O.A.No.10 of 2003, on the file of the I Assistant Judge, (Wakf Tribunal) City Civil Court, Chennai, is the civil revision petitioner before this Court, challenging the order passed in O.A.No.10 of 2003, dated 30.04.2008, on the file of the I Assistant Judge, (Wakf Tribunal), City Civil Court, Chennai.

2.The case of the petitioner/applicant is that he has filed the appeal in O.A.No.10 of 2003 before the learned I Assistant Judge, City Civil Court (Wakf Tribunal), City Civil Court, Chennai-104, challenging the order passed by the first respondent Tamil Nadu Wakf Board in WEA.No.1/90/E5/MDS dated 24.07.2003 served on the applicant's counsel on 05.09.2003 through the postal Department and postal cover of which is enclosed as proof, within 30 days from the date of service as contemplated under Section 64(4) of the Wakf Act, 1995.

3.The case of the petitioner is that one Mr.Syed Ali has filed a case in W.E.A.No.17/87 against this petitioner before the first respondent Wakf Board alleging that the petitioner/applicant for removal of him from the Mutawalliship. The said Mr.Syed Ali happened

to be the President of Muslim Podhu Nala Sangam and he also instigated the Sangam Secretary one Mr.Mohammed Hussain to file W.E.A.No.1/90 against this petitioner for removal. Later, on 06.09.1990, Mr.Syed Ali was died, therefore, the application filed by him in W.E.A.No.17/87 became infructuous.

4.The petitioner has further come forward by saying that the averment in W.E.A.No.1/90, the Secretary Mr.Mohammed Hussain had made several allegations against this petitioner and the Special Officer of the Wakf Board elaborately considering all the facts and circumstances of the case and dismissed the said application on 27.08.1992 on the ground of devoid of merits. Thereafter, the said Mohammed Hussain has filed an appeal before the Government under Section 43(4)(A) of Wakf Act, 1954 and consider his case the Government in his order in G.O.515 CT and RE Department dated 29.11.1996 directed the respondent Wakf Board to enquire into the complaints and to send a detailed report to the Government. Thereafter, the Government further in his letter dated 07.09.1998 clarified that the allegations of Mohammed Hussain may be enquired into and action may be taken to review the earlier decision if necessary.

5.The petitioner further states that subsequently the Government has remanded back the matter to the respondent Wakf Board to enquire into and take action to review the earlier decision of the Board, if necessary and thereafter, the Wakf Board has permitted the said Mohammed Hussain to file fresh submission before the Board on 22.01.2003 and to review the order of the Wakf Board dated 29.01.1990. This petitioner further states that he has not aware of the above said Government orders and no notice or an opportunity was given to the Government. Therefore, this petitioner requested the Board to furnish copies, but the same was also declined by the Board. When there is no power under the Wakf Act for the Board to review its order, the order of the Government is remanded the matter to the Wakf Board without setting aside the earlier decision is wrong and the Wakf Board cannot review its order, particularly when it has not rendered its finding as to the necessity. Therefore, the prayer sought for by Mohammed Hussain in his fresh submissions on 22.01.2003 cannot be entertained and since it is not maintainable and the copies of the same had not been served on the petitioner. Therefore, the Wakf Board has passed the order in WEA.No.1/90/E5/MDS dated 24.07.2003 stating that the petitioner had no right to give power of

attorney to his wife to look after the day to day affairs of the Wakf due to his business tours to various places and the Board also states that it was done without the knowledge of the Board, since, the Board says that the petitioner is not entitled to give power of attorney under the Act. But, the petitioner states that there is no provision under the Act forbearing the appointment of general power of attorney in favour of the petitioner's wife, since it is no violation or irregularity of any sort particularly when there is no provision under the Wakf Act 1995 prohibiting such appointments of power of attorney.

6.The petitioner states that in fact he has informed the Board in respect of the executing power of attorney in favour of his wife vide letter dated 06.10.1997, which was also noted by the Wakf Board.

7.The petitioner also states that in the impugned order it was alleged that the petitioner has not submitted the accounts from 1957-1958 to 1973-1974 and 2000-2001 to 2002-2003 and that the budget estimate had not been submitted and the contribution due is Rs.571/-. The petitioner states that this allegation is factually not correct, since the petitioner has submitted the accounts properly till date and paid contribution without any default. In fact, the petitioner rendered

accounts for the period of his mutawalliship and for the period prior to assuming office as mutawalli, he cannot be fastened with the liability.

8.The petitioner also states that the properties mentioned in C and D schedule are not Wakf Properties even according to Mohammed Hussain and also according to report of the Commissioner of Wakf as the same had not been surveyed and notified as Wakf property. There was no ground has been made for removal of the petitioner from the post of Mutawalliship as contemplated under Section 64 and no oral evidence or documentary evidence is against the applicant to invoke Section 64.

9.The petitioner further states that after assuming office as Mutawalli since 1979 he has been discharging his duties to the fullest satisfaction of one and all and in accordance with law. In fact, during the Mutawalliship, this petitioner has submitted the accounts and paid contribution due to the Wakf Board. Therefore, the impugned order holding that the applicant had not paid contribution and that accounts were not submitted is factually wrong. Since the letter dated 04.10.2002 and 03.12.2002, letters sent by the petitioner, which was acknowledged by the Wakf Board, it would be crystal clear that the

petitioner had paid contribution without committing any default and had replied regarding budge estimate suitably without giving room for complaint of any sort. The petitioner also states that as per the Exs.B11, B14, B15, the Wakf Board vide R.C.No.2366/C2/MDS/93 dated 16.02.1993 ratified the lease granted by the petitioner in favour of R.Prakash Chand and held that R.Prakash Chand shall not make any further construction or alteration without the prior approval of the Wakf Board. While the above order of the Board of the year 1993 had not been set aside and hence it is unsustainable and untenable for the Wakf Board to hold in the impugned order that the lease is in contravention of the Wakf Act 1995. Since when the Board had ratified the lease the impugned order without giving into the aspect of ratification erroneously held that the application acted in contravention of Section 56 of the Wakf Act. Therefore, challenging the order passed by the Wakf Board in WEA.No.1/90/E5/MDS/ dated 24.07.2003, this petitioner has filed O.A. before the I Assistant Judge (Wakf Tribunal), City Civil Court, Chennai for challenging the said order dated 24.07.2003.

10.On behalf of the first respondent Wakf Board, the executing officer namely Mr.Mohamed Jamaludin, Tamil Nadu Wakf Board has

filed his counter by denying all the allegations set out in the application by the petitioner. The 1st respondent has stated in his counter that the petitioner has not approached the Wakf Tribunal in the clean hands by suppressed several material facts with malafide intention. It is admitted by the first respondent that the Special Officer of the Wakf Board has passed the order in WEA.No.1 of 1990 dated 27.08.1992 and passed detailed order stating that the petitioner has alienated the Wakf properties without permission of the Wakf Board and leased out the Wakf property bearing No.20, East Kalmandapam Road, Royapuram, Chennai-13 to K.Prakash Chand for a period of 51 years by registered lease deed in violation of the provisions of the Wakfs Act and without the permission of the Wakf Board by receiving the huge amount of Rs.40,000/- and thereafter, the said Prakash Chand to construct a new building without the permission from the Tamil Nadu Wakf Board and also found in guilty in executing lease deed dated 31.01.1972 bearing Document No.428 of 1972 and alienated the Wakf properties.

11.The 1st respondent also states that the Special Officer has directed the Superintendent of Wakf, Noth Zone, Madras to verify the long lease given by the mutawalli and to take action to recover the

properties alienated by the mutawalli without the permission of the Tamil Nadu Wakf Board and dismissed the petition. Though the board has enquired the matter after giving notice to the mutawalli and passed an order. In spite of notice issued to the petitioner / mutawalli, he did not chosen to appear before the Tamil Nadu Wakf Board. Therefore, after going through the documentary evidence directed the Tamil Nadu Wakf Board, to enquire into the complaint of A.Mohamed Hussain and in their subsequent letter dated 07.09.1998 clarified that the Government had remanded the case to the Wakf Board setting aside the order of the then Special Officer, Tamil Nadu Wakf Board referred to the above and directed the Tamil Nadu Wakf Board and to enquire into the allegations and to take action if necessary, against the petitioner. The 1st respondent also states that the petitioner has granting lease for a period of 51 years against the provisions of the Wakf Act were true. As the Mutawalli has acted to the detriment of the interest of the Wakf and in total violation of the Wakf Act, 1995 and therefore, the Wakf Board has removed the petitioner from the office of the mutawalli as per Section 64 of the Wakf Act, 1995 and assumed direct management for a period of two years.

12. After remanding the matter from the Government to the Wakf Board, it is stated that the Board has issued several notice to the petitioner, but he failed to appear. Therefore, the order passed by the Wakf Board is totally correct and sought for the dismissal of the O.A.No.10 of 2003 filed by the petitioner/Mutawalli.

13. On behalf of the 2nd respondent, the counsel was appeared and he filed the counter denying the entire allegations set out in the O.A. filed by the petitioner in O.A.No.10 of 2003 under Section 83(2) under Section 64(4) of the Wakf Act, 1995 is not maintainable under law. The 1st respondent also states that the order passed in W.E.A.No.1/90 not only against this petitioner, also against eight persons. The order passed by the Wakf Board in WEA.No.1/90 is correct and this petitioner has no locus standi to challenge the same, since the order passed by the Wakf Board is correct. Therefore, the 2nd respondent prayed for dismissal of O.A.No.10 of 2003.

14. Considering both side cases, the learned 1st Assistant Judge, (Wakf Tribunal), City Civil Court, Chennai was pleased to dismissed the O.A.No.10 of 2003 on 30.04.2008, on the ground that pursuant to the order passed by the Government by remitting back to the Wakf Board

by passing the order and the notice given by the Wakf Board to the petitioner/Mutawalli and the Wakf Board has passed the order in respect of notice given to them, but the petitioner has not appear before the Board, therefore, the Wakf Board has taken action as per the Wakf Act.

15.The learned Judge also states that this petitioner has not denied about the leased out of the property without permission from the Wakf Board for a period off 51 years, which was acted to the detriment of the interest of the Wakf and in total violation of the Wakf Act, 1995, the Board has removed the petitioner from the office of the Muutawalli under Section 64 of the Wakf Act, 1995. The learned Judge also states that the petitioner failed to avail the opportunity given by the Tribunal to prove and enable the Court or Tribunal to exonerate him from the allegations levelled by the Wakf Board. Therefore, when he has failed to prove those allegations, the tribunal has no other way than to come to conclusion that all the above referred allegations said to have been done by the petitioner/then Mutawalli as against the interest of the Wakf and so Wakf Board is entitled to take direct management and proceed to recover the property in accordance with Wakf Act, 1995. Therefore, the learned Judge has dismissed the said

application in O.A.No.10 of 2003. Challenging the said order, the petitioner has filed the present civil revision petition by invoking the jurisdiction under Article 227 of the Constitution of India, before this Court.

16.I heard Mr.R.C.Paul Kanagaraj, learned counsel appearing for the petitioner and Mr.A.S.Kaizer, learned counsel appearing for the 1st respondent and perused all the records.

17.Admittedly, the petitioner is the mutawalli of Sheik Fareed @ Babu Husra Wakf, Royapuram, Chennai-13. The petitioner has becoming mutawalliship from the year 1979, he was functioned as Mutawalli and he has regularly submitted the accounts of the Wakf to the Wakf Board and discharging the duty fully satisfied to one and all in accordance with law. This petitioner also paid the contribution due to the Wakf Board.

18.Admittedly, the petitioner has executed the alleged lease deed in favour of one Mr.R.Prakash Chand on 15.04.1987 which had been ratified by the Wakf Board in R.C.No.2366/C2/MDS/93 16.02.1993 and the tenant had been directed not to put up any further

construction without prior approval. It is not denied by the respondent that the petitioner has not submitted his accounts and budget estimate regularly and paid contribution regularly without any default.

19.It is the case of the Wakf Board, the petitioner/mutawalli has paid the contribution regularly without any default. Therefore, it does not warrant invoking Section 64 of the Wakf Act, and in any event, it is highly disproportionate.

20.The provision under Section 64 of the Wakf Act has stated as follows:

“64.Removal of Mutawalli :-(1) Notwithstanding anything contained in any other law or the deed of Wakf, the Board may remove a mutawalli from his office if such mutawalli-

(a)has been convicted more than once of an offence punishable under Section 61; or

(b)has been convicted of any offence of criminal breach of trust or any other offence involving moral turpitude, and

such conviction has not been reversed and he has not been granted full pardon with respect to such offence; or

(c) is of unsound mind or is suffering from other mental or physical defect or infirmity which would render him unfit to perform the functions and discharge the duties of a mutawalli; or

(d) is an undischarged insolvent; or

(e) is proved to be addicted to drinking liquor or other spirituous preparations, or is addicted to the taking of any narcotic drugs, or

(f) is employed as a paid legal practitioner on behalf of, or against, the Wakf; or

(g) has failed, without reasonable excuse, to maintain regular accounts for two consecutive years or has failed to submit, in two consecutive years, the yearly statement of accounts, as required by sub-section (2) of Section 46; or

(h) is interested, directly or indirectly, in a subsisting lease in respect of any Wakf property, or in any contract made with, or any work being done for, the Wakf or is in arrears in respect of any sum due by him to such Wakf; or

(i) continuously neglects his duties or commits any misfeasance malfeasance, misapplication of funds or breach of trust in relation to the Wakf or in respect of any money or other Wakf property; or

(j) wilfully and persistently disobeys the lawful orders made by the Central Government, State Government, Board under any provision of this Act or rule or order made thereunder;

(k) misappropriates or fraudulently deals with the property of the Wakf.

(2) The removal of a person from the office of the mutawalli shall not affect his personal rights, if any, in respect

of the Wakf property either as a beneficiary or in any other capacity or his right, if any, as a sajjadanashin.

(3) No action shall be taken by the Board under sub-section (1), unless it has held an inquiry into the matter in a prescribed manner and the decision has been taken by a majority of not less than two-thirds of the members of the Board.

(4) A mutawalli who is aggrieved by an order passed under any of the Clauses (c) to (j) of sub-section (1), may, within one month from the date of the receipt by him of the order, appeal against the order to the Tribunal and the decision of the Tribunal on such appeal shall be final.

(5) Where any inquiry under sub-section (3) is proposed, or commenced, against any mutawalli, the Board may, if it is of opinion that it is necessary so to do in the interest of the Wakf, by an order suspend such mutawalli until the conclusion of the inquiry:

Provided that no suspension for a period exceeding ten days shall be made except after giving the mutawalli a reasonable opportunity of being heard against the proposed action.

(6)Where any appeal is filed by the mutawalli to the Tribunal under sub-section (4), the Board may make an application to the Tribunal for the appointment of a receiver to manage the Wakf pending the decision of the appeal, and where such an application is made, the Tribunal shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), appoint a suitable person as receiver to manage the Wakf and direct the receiver so appointed to ensure that the customary or religious rights of the mutawalli and of the Wakf are safeguarded.

(7)Where a mutawalli has been removed from his office under sub-section (1), the Board may, by order, direct the mutawalli to deliver possession of the Wakf property to the Board or any officer duly authorised in this behalf or to any person or committee appointed to act as the mutawalli of the

Wakf property.

(8)A mutawalli of a Wakf removed from his office under this Section shall not be eligible for reappointment as a mutawalli of that Wakf for a period of five years from the date of such removal.”

21.As per the above provisions, it is made clear that the Wakf Board has not warranting to pass any orders, since the non payment of contribution due is only Rs.571/-, since the Wakf Board has also not enquired or investigated the said allegations, but instead has abruptly and erroneously passed the order that the petitioner has mismanaged the Wakf and its properties.

22.It is admitted fact that when the petition filed by one Mr.Syed Ali in W.E.A.No17/87 against this petitioner and the same was dismissed as infructuous. The said Syed Ali happened to be the President of Muslim Podhu Nala Sangam and after that the order has been passed by the 2nd respondent represented in W.E.A.1/90 and also the subsequent order dated 07.09.1998, it is made clear that the Government has passed the order without giving any opportunity to

the petitioner/mutawalli, who is the aggrieved authority passed on the plaint given by Mr.Mohamed Hussain. Therefore, the order of the Government is totally wrong and violation of the principles of natural justice.

23.Pursuant to the above remitting back by the Government, the 1st respondent Wakf Board without issuing any notice, but it was alleged by the board is that this petitioner has not appear, even issuing several notice, but either the 1st respondent Wakf Board and the 2nd respondent has not produced documents to show that before deciding the issue in WEA.1/90, whether the Wakf Board has issued notice against this petitioner or not, since no documentary evidence has been produced either before the Wakf Tribunal namely the Ist Assistant Judge, City Civil Court, Chennai.

24.Apart from this, the allegations that the petitioner has given the power of attorney in favour of his wife, which was violating the Wakf Act alleged by the Wakf Board. But as per the Wakf Board, there is no provision to show that for giving a power of attorney by the mutawalli namely the petitioner herein, to his wife to manage the properties under the mutawalliship and unless the specific provisions in

the Wakf Act, excepting the power of attorney in favour of his wife, then the first respondent Wakf Board is having power to go into the enquiry and pass appropriate orders. Therefore, the order of the Wakf Tribunal namely the 1st Assistant Judge, City Civil Court, Chennai, is totally wrong.

25. When the Government has remand back the matter to the Wakf Board, it is their bounden duty to issue notice to the petitioner and thereafter only the order to be passed, but it was totally ignored by the Government which clearly attract the violation of natural justice.

26. It is the case of the respondent Wakf Board is that several notices were sent to the petitioners for his appearance but the petitioner has not appeared before the Board, but the Board has failed to produce documents to substantiate their case. Therefore, it is crystal clear that the learned Ist Judge, City Civil Court, Chennai, has not consider this aspect, but simply dismissed the petitioner's case in O.A.No.10 of 2003, which is warranting interference by this Court and accordingly, the impugned order in W.E.A.No1 of 1990 is liable to be set aside and accordingly it is set aside.

27.In the result, the civil revision petition is allowed by setting aside the Judgment and decree passed in O.A.No.10 of 2003, dated 30.04.2008, on the file of the I Assistant Judge, Wakf Tribunal, City Civil Court, Chennai. No costs. Consequently, connected miscellaneous petition is closed.

27.03.2017

Note:Issue order copy on 11.05.2017.

Index:Yes

Speaking Order

vs

To

The I Assistant Judge,
(Wakf Tribunal), City Civil Court,
Chennai.

M.V.MURALIDARAN, J.

VS

Pre-Delivery order made in
CRP(NPD)No.1857 of 2009
and
M.P.No.1 of 2009

27.03.2017