

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

W.P.No.26288 of 2003 and
W.P.No.8215 of 2004

S.Md.Jamaludeen ... Petitioner in both
the Writ Petitions

Vs

1.The TamilNadu Wakf Board ,
represented by its Chief Executive Officer,
Santhome High Road,
Chennai - 600 004.

2.The Superintendent of Wakfs,
Vellore zone,
Vellore - 632 004.

3.The Executive Officer,
The Superintendent of Wakfs,
Vellore.

... Respondents in
W.P.No.26288 of 2003

1.The Tamil Nadu Wakf Board,
represented by its Chief Executive Officer,
Santhome High Road, Chennai - 4.

2.The Executive Officer cum
Superintendent of Wakfs,
Vellore.

3.S.D.Afsar Jan

4.Shajahan

5.G.Abdul Saffoor

6.Hussain

7.H.Abdul Kadar @ Mechanic Babu

... Respondents in
W.P.No.8215 of 2004

(The name of the petitioner has been substituted vide order of
this court dated 30.08.2018 in W.M.P.Nos.7690 & 7691 of 2017)

PRAYER in W.P.No.26288 of 2003 : Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the 1st respondent pertaining to its resolution in Rc.4852/B4/2002/VLR dated 22.07.2003 and quash the same.

PRAYER in W.P.No.8215 of 2004: Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus in the nature of a Writ forbearing the respondents from interfering with the right of the committee headed by the petitioner to manage and administer of Jamia Mosque Wakf, Arrakkonam.

For petitioner : Mr. G.Jeremiah
in both Wps

For respondents : Ms.Abitha Banu for R1
in both WPs

COMMON ORDER

Since the prayer sought for in both the writ petitions are related to each other and arising out of the same issue, with the consent of both sides, both the writ petitions are heard together and are being disposed of by the following common order.

2.For the purpose of disposal of these writ petitions, the facts pertaining to the first case i.e. in W.P.No.26288 of 2003 can be taken into account and the necessary facts which are required to be noticed for the disposal of both the writ petitions are as follows:

3.The Jamia Masjid is a registered Wakf, registered under section 36 of the Wakf Act with the first respondent Tamil Nadu Wakf Board bearing No.130 of 1995. The said Wakf was created sometime in the year 1897 and there had been 4 separate Wakf Deeds governing the said Wakf. However due to the passage of time, those Deeds of Wakf were not available and the said Wakf is a Sunni Institution Establishment for religious and pious Wakf purposes.

4.It is the claim of the petitioners that, from the time of inception, the office of Muthavalli of the said Wakf, had been chosen from the Hanifi Labbi Sunni Muslim residents of the locality. This custom had also been recognised by the first respondent. The elected Muthavalli, in turn, would nominate a

"Patel", of the Mosque from among the Shafi Sect of the community. This custom of selecting Muthavalli and nomination of Patel had been prevailing for long years right from the inception. While so, the selected Muthavalli had passed away in the year 1970 and therefore, in that place one R.Mohamed Safuillah was nominated, as per the prevailing custom and usage from among the Hanafi Labbi Sunni Muslims. Thereafter, it seems that, there had been some litigation and subsequently, the incumbent Muthavalli expired in the year 1995. After the expiry of the incumbent Muthavalli in the year 1995, in spite of several representations given to the respondents to ensure successor for the office of the Muthavalli, no steps had been taken. Therefore, in the absence of Muthavalli for a long period, since the Wakf Board members got affected, the elders of the Jamath of the Hanafi and Shafi sects of the Mosque unanimously nominated 12 members Committee consisting 6 members from each sect namely Hanafi Sect and Shafi Sect.

5.The said Committee had been constituted on 03.10.2002 and the same had been intimated to the respondents on 14.10.2002. The petitioner i.e. C.H.Basha was the president of the Committee under whom, the 12 Member Committee was functioning. While that being so, the second respondent had issued a notice dated 29.11.2002, wherein, it has been stated that, the Patel of the Mosque, by letter dated 31.10.2002, called the second respondent to conduct an election to the Committee of the Management consisting of 5 members belonging to Hanafi Sect and 5 members belonging to Shafi Sect. Only on the basis of the said request of the Patel, it was claimed that, the said notice was issued by the 2nd respondent to conduct an election to the committee of the management on 13.12.2002.

6.Since the said notice sent by the second respondent was considered to be an interference to the Wakf, the petitioner filed W.P.No.44247 of 2002 challenging the said notice and in the said writ petition, the Writ Court while disposing of the writ petition, had given a liberty to the petitioner group to participate in the enquiry to be conducted by the 1st respondent. Pursuant to the orders of this Court, the petitioner had appeared before the 1st respondent on 18.12.2002. Thereafter, the matter has been adjourned for several days for enquiry. Ultimately, the first respondent passed the impugned order which disclosed that, the first respondent Board has passed a Resolution dated 22.07.2003 in respect of Jumma Mosque, Arakonam Town and Taluk, Vellore District. As per the contents of the impugned order, the first respondent Wakf Board decided to take the administration of the Wakf under its direct management for a period of six months and appointed the Superintendent of Wakf, who is the second respondent herein, as Executive Officer of Wakf and the petitioner who was acting as

Muthavalli in the capacity of the President Committee, was directed to hand over charges to the second respondent and it was further directed that the second respondent would call for five applications from each sect of the Jamath after obtaining consent from the respective Jamathars. Feeling aggrieved over the said order / resolution of the first respondent Wakf Board dated 22.07.2003, the petitioner filed the first writ petition with the respective prayer.

7. In the said writ petition, this court has granted an order of interim stay of the impugned resolution. However, in spite of the interim order passed by this Court, it is the claim of the petitioner that, some of the individual Jamathars belong to "Dakhni" sect were alleged to have been trying to interfere with the administration and management of the affairs of the petitioner and its Committee members and therefore, the petitioner filed the second writ petition in W.P.No.8215 of 2004, wherein, the petitioner seeks for a writ of mandamus forbearing the respondents from interfering with the affairs of the petitioner and his group in the Wakf administration. That is how both the writ petitions came to be filed before this court.

8. I have heard Mr.G.Jeremiah, the learned counsel appearing for the petitioner in both these writ petitions.

9. During the pendency of the writ petitions, the petitioner C.H.Basha died on 21.02.2006 and in whose place one S.Md.Jamaludeen was elected as the President and therefore, the said Jamaludeen filed a Miscellaneous Petition to implead him as the substitute for the petitioner, accordingly, the said petition was ordered by this Court. Therefore, the said Jamaludeen has now become the petitioner in both the petitions.

10. The learned counsel appearing for the petitioner would submit that, the Wakf was established in 19th century and from the inception of the Wakf, the practise was that, only Hanifi Labbai Sunni Muslim residing in that locality, had been administering the Wakf and the Muthavalli would be selected only from the said sect as per the custom and usages for more than a Century. When that being so, the other sect called Shafi group of muslims also participated in the administration as the Muthavalli selected from Hanifi sect group, would nominate a "Patel", who will assist the Muthavalli, from Shafi group.

11. Insofar as, these arrangements are concerned, the petitioner cannot have any grievance as the Muthavalli would be selected from Hanifi Labbai Sunni Muslim and the Patel would be nominated from Shafi group. That apart, the third group namely "Dakhni" sect also claimed to participate in the administration of the Wakf and if at all the said sect also wants to be in the

administration of the Wakf, they can be members of the Committee and at no point of time, they would be permitted to sponsor the candidate for the election of Muthavalliship as the Muthavalli should be selected only from Hanifi Labbai Suuni Muslim group, as per the prevailing custom and usage which had been followed for more than a Century.

12. In this context, the learned counsel for the petitioner would submit that, the present impugned Resolution, which is under challenge in the first writ petition, passed by the first respondent pave way for making a Committee of 15 members consisting of 5 members from each sect and also pave way for selection of Muthavalli from any of the group, which is against the custom.

13. In this regard, the learned counsel appearing for the petitioner would rely upon the stand taken by the first respondent Wakf Board through the written arguments that, the Muthavalli would be selected only from Hanifi Sect and the Patel would be nominated from Shafi Sect. If that being so, the proposed Committee to be constituted consisting of 15 members i.e, 5 members each from three sect, should not be interpreted enabling other sects than the Hanifi Labbai Sunni Muslim, to sponsor the candidate for Muthavalliship.

14. Only in that context, it became necessity for the petitioner to approach this court by filing the first writ petition, challenging the proposal made by the first respondent Wakf Board through the impugned resolution.

15. On the other hand, Ms. Abitha Banu, the learned Standing Counsel appearing for the first respondent Wakf Board, by relying upon the counter affidavit filed by them, would submit that, insofar as the said Wakf is concerned it is a recognised, approved and notified Wakf under the Wakf Act and insofar as the administration of the Wakf is concerned, it must be headed by Muthavalli, who would be selected by the Jamathars and the selected Muthavalli would appoint a Patel and also the Committee members to assist the Muthavalli.

16. However, insofar as the selection of Muthavalli and nomination of Patel and also the selection of committee members who administer the said Wakf, there had been some controversy among the three sect of Muslim namely Hanifi Labbai Sunni Muslims, Shafi Muslim sect and Dakhni Sect of Muslims. So, in order to settle the said controversy and to ensure smooth conduct and functioning of the Wakf, the first respondent Wakf Board decided to take over the charge for a limited period of six months. Within six months period, the Wakf Board decided to constitute a Committee by selection and only in that regard, the

second respondent i.e. the Superintendent of Wakf who was nominated as the Executive Officer, was directed to receive the applications i.e. five applications, each from the three sect of Muslims, to constitute a Committee consisting of 15 members. The learned Standing Counsel would further submit that, once the 15 members committee is constituted, the selection of Muthavalli can be made and who in turn, would nominate Patel and that the Wakf can be effectively managed by the said administration consisting of the Muthavalli assisted by Patel and 15 members and that is the contention of the first respondent Wakf Board and in order to ensure such a smooth transformation of the administration, the said impugned resolution was passed by the Wakf Board. The learned standing counsel for the Wakf Board would further submit that, the said resolution, having good intention to have a smooth functioning of Wakf, cannot be doubted and in this regard, the first respondent Wakf Board cannot be found fault with.

17. Though notices have been served and learned counsels had entered appearance for some private respondents in the second Writ Petition i.e. in WP.No.8215 of 2004, who claim to be the Dakhin sect of Muslims, the learned counsel for the said respondents have not appeared.

18. I have considered, the said rival submissions made by the learned respective counsels appearing for the parties herein.

19. Insofar as the Wakf is concerned, it is an admitted fact that, it is an approved and notified Wakf. Therefore, the same can be controlled/supervised by the first respondent Wakf Board under the provisions of the Wakf Act. Nevertheless, how to administer the Wakf can be easily decided if a Wakf Deed is available. However, insofar as this Wakf is concerned, even though it is the claim that, there had been Wakf Deeds at the time of the inception of the Wakf, subsequently because of passage of time, the Wakf Deeds are not available. However, the prevailing customs for more than a Century, according to the petitioner was that, the Muthavalli would be selected only from Hanifi Labbai Sunni Muslims Sect and the Muthavalli, in turn, would nominate the Patel from Shafi sect of Muslim. In this regard, the stand of the Wakf Board is also in support of the petitioner in view of the affidavit filed today i.e. dated 20.08.2018 before this Court, by the Chief Executive Officer of the Tamil Nadu Wakf Board which reads with the following contention:-

"I submit that I am the Chief Executive Officer of the 1st respondent and well acquainted with the facts case and I am competent to swear to this affidavit. I am swearing this affidavit on behalf of 2nd respondent also.

I submit that the above writ petition is filed challenging the order dated 29.02.2003 passed by the 1st respondent. The present affidavit is filed in pursuance of the order dated 20.08.2018.

I submit that as per the Pro-format Report, Muthavalli to be nominated by Jammath according to custom and usage. I submit that the prevailing custom is, Muthavalli is nominated by the Jamaath from Hanafi, Labbai Sunni Muslims.

I submit that Patel is nominated by Jamaath from Shafi Sect. (Emphasis Supplied)"

20. From the reading of the said averments made in the affidavit filed on behalf of the first respondent, it has become abundantly clear that, the Muthavalli would be nominated by Jamaath according to custom and usage and it is further stated in the affidavit that according to the prevailing custom, the Muthavalli is nominated by the Jamaath from Hanafi Labbai Sunni Muslims. This sect is exactly the same, to which the petitioner and his group of Jamaath are belonging.

21. Since, the said issue, as to how, Muthavalli can be selected for administering Wakf is agreed upon and the first respondent Wakf Board also contented in tune with the stand taken by the writ petitioner, there can be no much quarrel on the said issue as to how the Muthavalli of the Wakf can be selected.

22. Insofar as the appointment of Patel is concerned, it is also the stand of the first respondent Wakf Board as reflected in the affidavit of the Chief Executive Officer, that the Patel would be nominated by the Jamaath from Shafi Sect and this is exactly the stand of the petitioner group. Therefore, there is also no quarrel in respect of nomination of Patel of the Wakf. These two issues, namely selection of Muthavalli and appointment of Patel can be resolved as there can be no quarrel in these two aspects, since, the stand of the petitioner's group is fully endorsed by the first respondent Wakf Board. Hence, this Court has no hesitation to hold that, the case of the petitioner that the Muthavalli can be selected only from Hanafi Labbai Sunni Muslims sect can very well be accepted. Like that, insofar as the appointment of Patel is concerned, it also the stand of the petitioner that the Patel from Shafi Sect of Muslim can be appointed by the Muthavalli, which also can be accepted. The only issue now left is, what is the role of the "Dakhni" Sect of Muslims. Insofar as the said sect is concerned, even though some of the individual Jamaathaars had been impleaded as the parties/respondents in one of the writ petition, no one has

appeared and their views could not be obtained by this Court for adjudication.

23. However, it is the stand of the petitioner that, insofar as the said Dakhni sect of Muslim is concerned, they can very well participate in the administration by sponsoring 5 members for the 15 members Committee to be constituted in this regard.

24. The only contention of the petitioner side is that, Muthavalli shall be selected from Hanafi Labbai Sunni Muslims sect and the Patel would be nominated from Shafi Sect of Muslim. Therefore, the Dakhni sect of Muslim can also very well be permitted to participate in the administration of the Wakf by sponsoring 5 members in the 15 members Committee. In fact, this was also one of the intend of the Tamil Nadu Wakf Board while passing the impugned communication. In view of these positions which have been emerged from the documents filed before this Court and the stand taken by the petitioner as well as the Wakf Board through the counter affidavit, this court has no hesitation to hold that, the impugned order passed by the 1st respondent, even though had intended to almost follow the same procedure, as has been discussed above, since the said position has not been clearly mentioned or clarified in the impugned order, the same had been assailed by the petitioner on the apprehension that the right of the Hanafi Labbai Sunni Muslims group to have the Muthavalli for the association of the Wakf would get defeated, if the impugned resolution is accepted. The said apprehension since has been now cleared by the stand taken by the Tamil Nadu Wakf Board, this Court of the view that the impugned resolution with the modification can be given effect to, at least for the future.

25. In the result, these Writ petitions are disposed of with the following directions:-

The impugned resolution can be executed with the following modification:-

i) The selection for constitution of 15 member Committee of the Wakf can be processed by the first respondent Wakf Board through its representatives on fixing a date, giving prior intimation to the three sects namely Hanafi Labbai Sunni Muslims sect, the Shafi Sect of Muslim and the Dakhni Sect Muslim.

ii) On receipt of such communication from Wakf Board, each sect will sponsor the names of five members from the respective sect for the purpose of constituting 15 members committee.

iii)Consequently, one among the 5 members sponsored by the Hanafi Labbai Sunni Muslims sect can be unanimously elected as Muthavalli of the Wakf.

iv)Once, Muthavalli is elected from the Hanafi Labbai Sunni Muslims sect, he shall nominate one of the five members sponsored by the Shafi Sect, as Patel.

v)After the election of Muthavalli and nomination of Patel from the respective groups as indicated, the Wakf shall be administrated by the committee of 15 members including the Muthavalli and Patel. However, the head of the administration committee shall be, no doubt, the Muthavalli.

vi)Once, after the constitution of committee, election of Muthavalli and nomination of Patel is taken place, the same shall be communicated by the Muthavalli in writing to the Tamil Nadu Wakf Board, the first respondent, who in turn, on receipt of the same shall give necessary approval.

26.It is open to the Tamil Nadu Wakf Board to give such approval for such Committee headed by the Muthavalli assisted by the Patel to administer the Wakf for the period of three years from the date of assumption of office and on expiry of three years period, in the same pattern the subsequent Board shall be selected.

27.The aforesaid process shall be completed and the new Board as aforesaid shall take office within a period of three months from the date of receipt of copy of this order. It is made clear that till the new Board is selected and takes office, the present administrative set up need not be disturbed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

1.The TamilNadu Wakf Board ,
represented by its Chief Executive Officer,
Santhome High Road,
Chennai - 600 004.

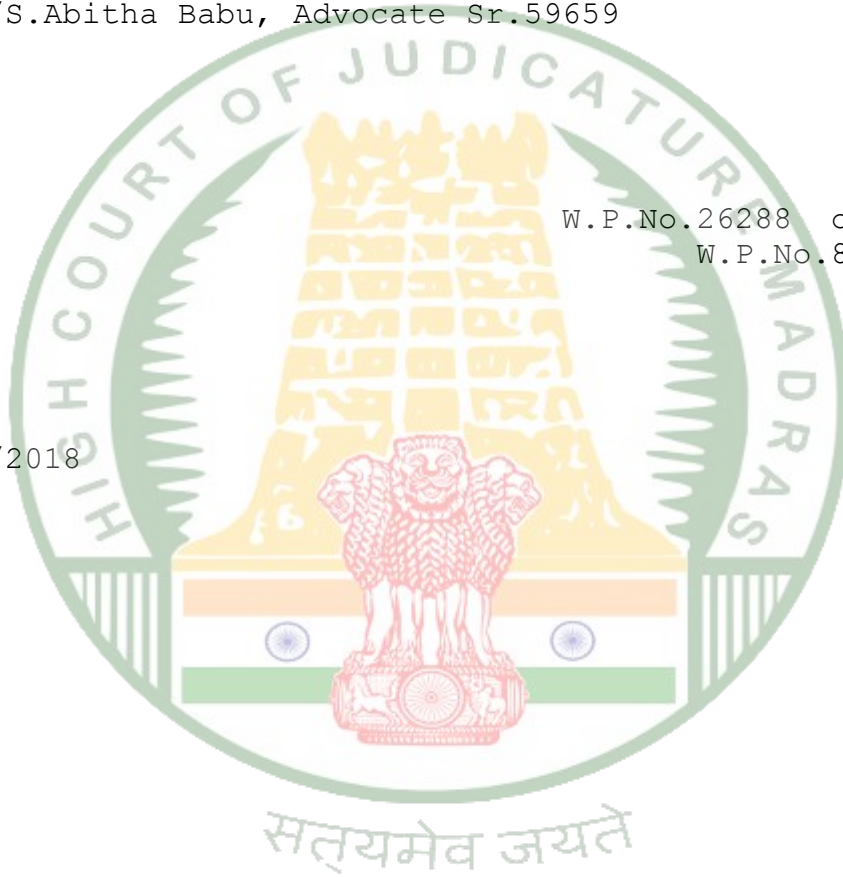
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+lcc to Mr.G.Jerimiah, Advocate Sr.59963
+lcc to M/S.Abitha Babu, Advocate Sr.59659

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srg 28/09/2018



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