

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2019

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Civil Revision Petition (PD) No.3083 of 2019
and C.M.P.No.20032 of 2019

S.Muneer Hussain

... Petitioner

-Vs-

1. Janab S.Syed Nawshad
Hereditary Muthavalli & President of
Sitthalur Durga Waqf & Hazrath Syed Shabash
Bharanesha Vaiiyulla Dargah Waqf Dargah Compound
Sitthalur Village & Post, Kallakurichi Taluk
Villupuram District.
2. Tamil Nadu Waqf Board, rep.by its Chief Executive Officer
No.1, Jaffer Syrang Road, Vallal Seethakkathi Nagar
Chennai - 600 001.
- 3.Mr.M.Sirajuddin
- 4.Mr.R.Abdul Samad
- 5.Mr.A.Nawab January
- 6.Mr.J.Fariyaz
- 7.Mr.H.Nizam

...Respondents

Prayer : Civil Revision Petition under Article 227 of the
Constitution of India against the fair and decreetal order in
I.A.No.467 of 2019 in O.A.No.343 of 2019 dated 09.08.2019 on the
file of the Hon'ble Waqf Tribunal at Chennai.

For Petitioner : Mr.A.Ilayaperumal

For Respondents: Mr.S.Hussain Afroze - for R1

O R D E R

This Civil Revision Petition has been filed against the
order passed by the Waqf Tribunal at Chennai by order dated
09.08.2019 in I.A.No.467 of 2019 in O.A.No.343 of 2019.

2. The Waqf called Sitthalur Durga Waqf & Hazrath Syed Shabash Bharanesha Vaiiyulla Dargah Waqf, Dargah Compound, Sitthalur Village & Post, Kallakurichi Taluk, Villupuram District, is a notified Waqf. In the said Waqf, it seems that, there had been an election some years back, where a committee had been elected. Among them, the first respondent has been elected as Muthawalli and he claimed to have been continuing to function as Muthawalli.

3. While making the arrangements to perform the Urs festival, the Chief Executive Officer of the Tamil Nadu Waqf Board (hereinafter referred to as 'CEO') ie., the second respondent herein, has appointed a nine member committee headed by one Janab J.Syed Ahmed Basha. The petitioner is one among the eight members along with the said Janab J.Syed Ahmed Basha, under whose chairmanship the committee was constituted by the proceedings of the CEO of Tamil Nadu Waqf Board in S.M.No.7775/19/A10/Villupuram dated 05.07.2019. The said order has been challenged by the first respondent before the Waqf Tribunal in O.A.No.343 of 2019, on the ground that, he acts already as a Muthawalli and it is his turn to make arrangements to perform the forthcoming Urs festival and that the order of the CEO dated 05.07.2019 is without jurisdiction, hence he has also filed I.A.No.467 of 2019 to stay the operation of the said order dated 05.07.2019. It seems that, initially an interim order of stay was granted, which has been subsequently made absolute by an order dated 09.08.2019, which is the order impugned herein, as against which the present revision has been filed.

4. I have heard Mr.Ilayaperumal, learned counsel for the petitioner, who would submit that, there had been an election few years back, where the first respondent claimed to have been elected as Muthawalli and accordingly, he has been acting as Muthawalli. Such continuance of Muthawallship by him is not approved by the Waqf Board and without being approved by the Waqf Board, his continuing as Muthawalli is unlawful and therefore, in that capacity, he cannot claim any right over the Waqf to act as Muthawalli basically, and particularly, to conduct the Urs festival, which is forthcoming.

5. Moreover, the said first respondent, though had been asked for rendition of accounts by the CEO of the Waqf Board and since accounts has not been given, action had to be taken and only in this regard, the CEO concerned, after having taken note of the developments in the Waqf and also the malfunctioning of the Muthawalli and his team, had decided to constitute an interim committee for the purpose of conducting the Urs festival and accordingly, the committee was constituted through the order dated 05.07.2019.

6. Learned counsel for the petitioner would further make his submission that for making such an order of constituting an interim committee to conduct the Urs festival, certainly the CEO of the Waqf Board has got powers under the Waqf Act. In this regard, the learned counsel would rely upon Section 25 of the Waqf Act, which reads thus,

"25. Duties and powers of Chief Executive Officer -

(1) subject to the provisions of this Act and of the rules made thereunder and the directions of the Board, functions of the Chief Executive Officer shall include -

(a) investigating the nature and extent of [auqafs] and [waqf] properties and calling whenever necessary, an inventory of [waqf] properties and calling, from time to time, for accounts, returns, and information from mutawallis;

(b) inspecting or causing inspection of [waqf] properties and accounts, records, deeds or documents relating thereto;

(c) doing generally of such acts as may be necessary for the control, maintenance and superintendence of [auqafs].

(2) In exercising the powers of giving directions under sub-section (1) in respect of any [waqf], the Board shall act in conformity with the directions by the [waqf] in the deed of the [waqf], the purpose of [waqf] and such usage and customs of the [waqf] as are sanctioned by the school of Muslim law to which the [waqf] belongs.

(3) Save as otherwise expressly provided in this Act, the Chief Executive Officer shall exercise such powers and perform such duties as may be assigned to him or delegated to him under this Act."

7. Learned counsel very particularly relied upon Section 25 (1)(c) and would submit that, the CEO is empowered to do any act generally as may be necessary for the control, maintenance and superintendence of Waqfs. If such power is vested with the CEO, in order to have a control, maintenance and superintendence over the Waqfs, if he wishes to act in general, that can be done by the CEO and any such act done by the CEO in that manner, can only be construed as his duty, which he has done by exercising his power vested with him under Section 25 of the Act.

8. Learned counsel would further submit that, while that being so, the Waqf Tribunal, through the impugned order, has found out a reason as if that the CEO does not have the power to constitute the committee by passing the order dated 05.07.2019 and prima facie on that ground, the stay granted earlier has been made absolute and by virtue of that, the committee

constituted on 05.07.2019 has become functus officio and therefore, the petitioner and other members including the Chairman of the committee constituted on 05.07.2019 by the CEO of the Waqf Board is not in a position to conduct the forthcoming Urs festival and therefore, aggrieved over the same, the present revision has been filed.

9. Per contra, Mr.Hussain Afroze, learned counsel appearing for the first respondent / Muthawalli would submit that, the Muthawalli having been elected, had been acting upon for the past few years and admittedly, as of now, there is no Muthawalli looking after the Waqf concerned and he only acts as the Muthawalli. He further submits that, unless and until the first respondent is removed from the Muthawalliship for any proven misconduct or any other lawful reason and in whose place a new Muthawalli is appointed or elected, till such time the present Muthawalli can administer the Waqf by discharging his functions as Muthawalli. When that being so, according to the learned counsel for the first respondent, the CEO of the Waqf Board is not empowered to make any arrangement in supersession of the existing Muthawalliship or to constitute a committee to look after the administration of the Waqf, as an interim arrangement to conduct the forthcoming Urs festival.

10. I have considered the said submissions made by the learned counsel appearing for both sides and have gone through the materials placed before this Court.

11. In the impugned order passed by the Waqf Tribunal, the order of stay granted against the order passed by the CEO of Waqf Board dated 05.07.2019 was made absolute on the sole ground that, the CEO who passed the said order dated 05.07.2019 does not have the power under the Waqf Act and if at all any such committee is to be constituted, it shall be constituted only by the Waqf Board and in this context Section 25 and Section 18 of the Waqf Act has been exhaustively relied upon by the Waqf Tribunal and accordingly, they made the stay granted already absolute, against the order of the constitution of the committee by the CEO dated 05.07.2019.

12. Section 25 of the Act has already been extracted above, where the learned counsel for the petitioner heavily relied upon Subsection (1)(c) of Section 25 and argued that, in order to have control, maintenance and superintendence of Waqf, whatever act in general is apt, as he deems fit, the CEO can do and this is one such act that he did by constituting a committee by the order dated 05.07.2019. He further argued that the Muthawalliship claimed by the first respondent is not so far approved by the Waqf board nor the Muthawalli has submitted any kind of rendition of accounts.

13. Insofar as the alleged reasons as to whether the Muthawalli can continue legally as Muthawalli of the Waqf concerned on the ground of want of approval of the Waqf Board, or on the ground of non submission of rendition of accounts is concerned, it is the matter to be decided altogether by the Tamil Nadu Waqf Board in a separate and appropriate proceedings and this Court do not want to go into those aspects, as such issue has not arisen in this case.

14. Insofar as the power vested with the CEO to exercise, as has been exercised in this case, to constitute a committee like this, whether Section 25 empowers him to act independently is the moot question to be answered.

15. In this context, even though Section 25(1) was relied upon by the learned counsel for the petitioner, Section 25(2) makes it clear that, whatever actions undertaken by the CEO of the Waqf Board, that shall be only considered as action of the Board because, the language used in Subsection (2) of Section 25 makes it clear that, "In exercising the powers of giving directions under sub-section (1) in respect of any [waqf], the Board shall act in conformity with the directions by the [waqf]....."

16. Therefore, the legislation is very clear in this aspect to state that, whatever action taken or whatever powers exercised for giving directions under Section 25(1) of the Act is only by the Board, which shall alone exercise the power, that too in accordance with the particular Waqf. If that being so, conjoint reading of Subsection(2) with Subsection (1), makes it abundantly clear that, whatever the duties and powers vested with the CEO or exercisable by the CEO, that shall be the powers of the Board, which means, without the consent of the Board or without the direction of the Board or without the delegation of the Board, such power cannot be exercised by the CEO independently as per Section 25 of the Act.

17. Moreover, the Tribunal also has made a reference about Section 18 of the Act, which reads thus,

"Committees of the Board : (1) The Board may, whenever it considers necessary, shall be either generally or for a particular purpose or for any specified area or areas, committees for the supervision of [acqafs].

(2) The constitution, function and duties of the term of office of such committees, shall be determined from time to time by the Board.

Provided that it shall not be necessary for the

members of such Committees to be members of the Board."

18. Section 18 speaks about the constitution of committees for the supervision of the Waqf. These committees in the nature of interim committee, in order to supervise the Waqf, can be constituted by the Board under Section 18. Therefore, this Section also makes it clear that, if at all any interim committee is to be constituted, the same shall be constituted only by the Board and not by the CEO.

19. Therefore, prima facie this Court feels that, the order dated 05.07.2019 made by the CEO constituting a committee consisting of nine members to conduct the forthcoming Urs festival of the Waqf concerned, is neither by exercising the power under Section 25 of the Act, nor under Section 18 of the Act, as under both the Sections, there is no independent power vested with the CEO without the sanction, nod or direction of the Waqf Board.

20. Here, admittedly the Waqf Board has not given any such permission, nod or direction, and as has been dealt with by the Tribunal in the impugned order, the same has not been proved and no document had been filed by the Civil Revision Petitioner, who was the beneficiary under the constitution of the committee, before the Waqf Tribunal, to establish his case that, the CEO has been empowered by the Board. Therefore, this Court feels that absolutely there is no infirmity in the view taken by the Tribunal, of course prima facie, in making the interim order absolute, by passing the impugned order.

21. In that view of the matter, there is absolutely no reason to interfere with the said impugned order passed by the Waqf Tribunal, which is under challenge in this revision. Accordingly, this revision fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

22. However, it is made clear that, the findings given in this order, shall not stand in the way of the Tribunal, in deciding the main issue, and the Tribunal shall take up the main issue at the earliest and decide the same to give a quietus to the issue.

s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

To

1.The Chairman

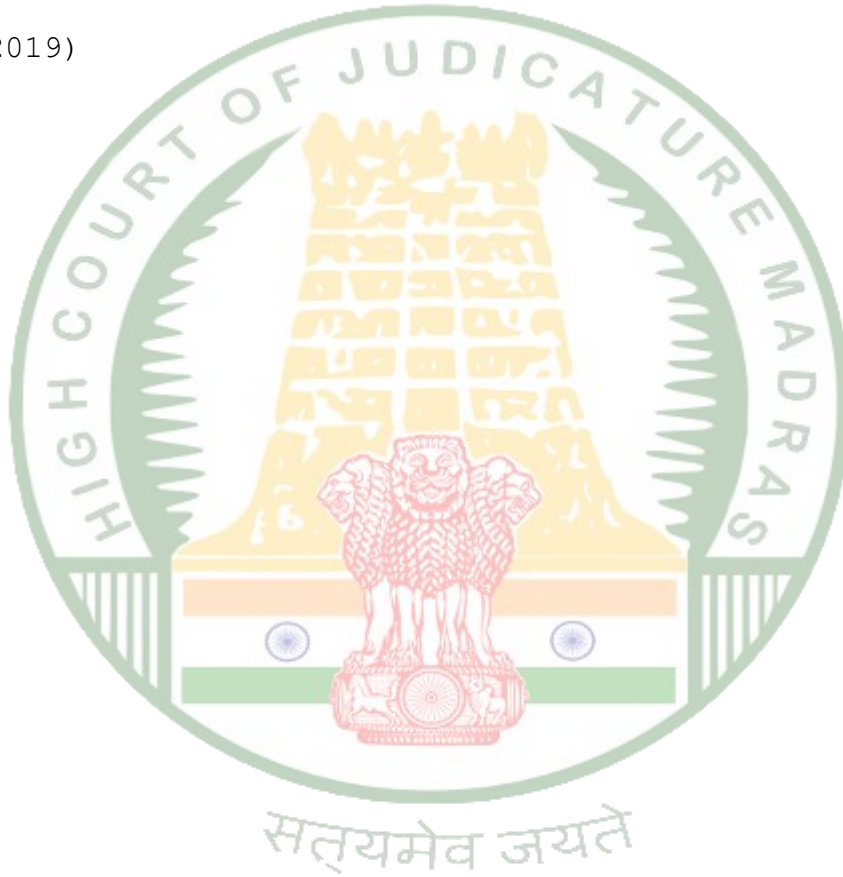
District Judge/Wakf Tribunal Chennai

+1 CC to Mr.A.Ilayaperumal, Advocate sr 80898.

C.R.P.(PD) No.3083 of 2019

KS (CO)

SP(24/10/2019)



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