

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (NPD) No. 3680 of 2019

and

C.M.P. No. 24186 of 2019

Nari Akbar Basha ... Petitioner

-Vs-

1. Tamil Nadu Waqf Board,
Represented by its Chief Executive Officer,
No. 1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai - 600 001.
2. Tamil Nadu Waqf Board - Vellore Zone,
Rep by its Zonal Superintendent,
No. 8, Bhadur Shah Masjid,
Arni Road, Sayeenathapuram,
Vellore - 632 001.
3. Cholavaram Ilyaas Ahmed
4. T. Abdul Waheed
5. T. Mohamed Kashif ... Respondents

Prayer : Petition filed under Section 115 of the Civil Procedure Code, 1908, r/w Section 83(9) of The Waqf Act 1995 against the fair and decretal order dated 04.09.2019 passed by the Tamil Nadu Waqf Tribunal, Chennai in A.A. No. 18 of 2019.

For Petitioner : Mr. B. Ram Prasath

For Respondents : Mr. V. Lakshmi Narayanan
Standing Counsel for R1 and R2
Mr.M.M.I.Khaleel for R4

ORDER

This Civil Revision Petition has been filed against the order passed by the Tamil Nadu Waqf Tribunal at Chennai in A.A. No. 18 of 2019, by order dated 04.09.2019.

2. In respect of the notified waqf, namely Muslimpur Thottipattari Masjith and Farookhiya Matharasa Waqf, there had been an elected committee from the year 2013 to 2016 and once the term of the elected committee was over in the year 2016, the committee was given further extension of time for one year, which also was over by 2017, thereafter election ought to have been conducted to elect the new Administrative Committee of the notified work i.e., subject waqf, however for various reasons, the election could not be held immediately.

3. In the meanwhile, the Tamil Nadu Waqf Board, who is the first respondent herein, had appointed an Adhoc Committee by order dated 06.03.2019, whereby nine members Adhoc Committee was constituted which has taken in charge of the Waqf concerned.

4. In that juncture, the present revision petitioner who was the erstwhile Muthavalli, whose tenure was extended till 2017, had approached the Tribunal assailing the said order appointing an Adhoc Committee for a period of three years to maintain the Waqf. The said appointment of Adhoc Committee was taken note of and accordingly, the Tribunal decided the issue in A.A. No. 18 of 2019 through the impugned order, rejecting the said appeal filed by the revision petitioner, as against which, the present revision petition has been filed.

5. Heard Mr. B. Ram Prasath, learned counsel appearing for the revision petitioner who would submit that, though the elected term of three years was over by 2016 and extended time of one year was over by 2017, it is the claim of the revision petitioner that, he continued even

beyond 2017, of course with the permission of the Superintendent of the Waqf Board.

6. When that being the position, all of a sudden, the Tamil Nadu Waqf Board cannot plunge into action by constituting an Adhoc Committee consisting of nine members, without including the name of the revision petitioner. Therefore, the constitution of Adhoc Committee is a wrong solution, hence, the revision petitioner, assailing the same, has preferred this revision petition.

7. The learned counsel would further submit that, the Waqf Tribunal without going into merits of the issue by taking into account that, when the revision petitioner had been in the helm of affairs, as erstwhile Muthavalli, he had not at all been included in the present Adhoc Committee, which is impugned, has rejected the said appeal filed by the revision petitioner by stating that, the Adhoc Committee was appointed by the Board for three years, therefore the same need not be interfered with, accordingly, the Tribunal did not find any jurisdictional error or illegality in the appointment of Adhoc Committee and by

stating the same, the appeal was dismissed, of course erroneously, therefore assailing the same, the present revision petition has been filed.

8. However, Mr. V. Lakshmi Narayanan, learned Standing counsel appearing for the first and second respondents / Tamil Nadu Waqf Board has made submissions stating that, as of now, the Tamil Nadu Waqf Board has been superseded, in whose place, the Special Officer has been appointed by the State Government invoking Section 99 of The Waqf Act, 1995. The Special Officer has also taken charge of the Waqf Board and he has been acting upon.

9. The learned Standing counsel appearing for the Tamil Nadu Waqf Board would further submit that, the Special Officer has got power to conduct election and also is empowered to exercise the power of the Waqf Board under the Act. In this regard, if at all any election has to be conducted for the present directing to replace the present Adhoc Committee by an elected body, certainly that exercise also would be undertaken by the Tamil Nadu Waqf Board through the Special Officer, in due course.

10. The learned Standing counsel appearing for the Tamil Nadu Waqf Board would also point out that, insofar as the present scheme Governing the Waqf Committee, the recital provides that, the Trustee once appointed or elected shall hold the office during his life time. This kind of unlimited period of holding office by any Trustee elected or appointed is impermissible in law thereby in the scheme of the Waqf, the present Waqf deed in respect of the disputed Waqf itself requires modification, for which, a scheme has to be framed or re-framed after hearing the interested parties. In order to complete the said exercise, i.e., re-framing the scheme of the board, the Special Officer requires at least six months period and once the scheme is re-framed, there is no further impediment for the Special Officer or the Board, as the case may be, to conduct the election to elect new body to administer the Waqf. Hence, the learned standing counsel seeks indulgence of this Court to grant a reasonable time to undertake all these exercise and till such time, the order impugned, which is a reasoned order need not be interfered with.

11. I have considered the said rival submissions made by both parties and perused the materials placed before this Court.

12. It is a fact that, in the present Waqf, there was an elected body upto 2016, where the revision petitioner was part of the body, as Muthavalli, which period subsequently was extended for one more year. It is the claim of the revision petitioner that, he continued even beyond 2017, of course with the consent of the Superintendent of Waqf Board. If once the Waqf Board decided to appoint an Adhoc Committee consisting of nine members, the views of the existing body headed by the revision petitioner should have been asked for and without even taking into account the erstwhile members especially the Muthavalli, if the Adhoc Committee has been constituted, leaving him, it is not only erroneous but also unjustifiable. Therefore on that ground itself, the said order of constitution of Adhoc Committee can be successfully assailed.

WEB COPY

13. Even though such a ground was urged by the learned counsel appearing for the revision petitioner, this Court is not

impressed with the same, for the reason that, in the scheme of the Waqf Act, the Waqf Board has got every power to take over the management of any Waqf even from any elected body.

14. Here in the case in hand, admittedly the term was over by 2016, assuming it was extended for one year, that was already over by 2017. Thereafter, though it was claimed by the revision petitioner that, he continued with the concurrence of the Superintendent of Waqf, the Superintendent of Waqf is acting only under the Board. Therefore, once the Board has come forward to take the management of the Waqf by appointing Adhoc Committee, during the interregnum, till the elected body takes over, such power exercised by the Board in the teeth of the Waqf Act, cannot be found fault with for any of the aforesaid reason, as no plausible reason has been given by the revision petitioner.

15. However, the order appointing the nine members Adhoc Committee by the Board, dated 06.03.2019, was made for a period of three years, as if that, this Adhoc Committee shall be in the office of Waqf Administration for the next three years. This also have been

taken note of by the Tribunal through the impugned order stating that, the Board has appointed the Adhoc Committee for three years, therefore it cannot be construed as without jurisdiction and it does not require any interference. In the considered view of this Court, this Court feels that, the said reasoning given by the Tribunal stating that, the Waqf Board since has constituted the Adhoc Committee for three years interference was not warranted, may not be justified, because, even the elected administrating body can be only for three years period.

16. When that being the position, if the Board exercised the power appointing any Adhoc Committee, the term of such Adhoc Committee shall not be for the full term of three years as that will give a wrong signal that for the entire three years period, the Adhoc Committee will be in the office without facing the election, to maintain the Waqf.

17. In that view of the matter, this Court feels that, the period of tenure of three years given by the Waqf Board to the Adhoc Committee is not justifiable and therefore, it should be restricted with a

reasonable period, taking into account, within which time, the Waqf Board will take efforts to conduct the election and ensure the elected body will take charge of the Administration.

18. In the present case, it is the submission made by the learned Standing counsel appearing for the Tamil Nadu Waqf Board that, as of now, the Waqf Board has been superseded and it is in the control of the Special Officer. During the earlier hearing of this case, a doubt arisen, as to whether, the Special Officer has got power to conduct election without the concurrence of the State Government, since it is the duty entrusted to him by the State Government. It has been stated by the learned standing counsel that, the election can be conducted by Waqf Board alone and not by any authority.

19. However, this Court was of the view that, once the Waqf Board is superseded, in whose place, the Special Officer was appointed for all purpose and for all activities to be undertaken on behalf of the Waqf Board, the Special Officer shall be empowered to, as if he is acting as the Waqf Board, hence, there can be no impediment for the said exercise of the Special Officer.

20. Today when the hearing was continued, Mr. V. Lakshmi Narayanan, learned Standing Counsel in support of the view expressed by this Court, has brought a recent decision of the Karnataka High Court, where the similar situation seems to have been confronted. The learned Standing counsel relied upon the following judgment in *W.P. No. 13182 of 2018* between ***Karnataka Waqfs Protection vs The Secretary to Government and others.***

21. In the said Karnataka High Court Judgment, the learned Standing counsel relied upon the following passages, which are extracted herein for easy reference:

" Therefore, Section 99 of the Act, does bestow ample power upon the Government to appoint a person or persons in place of the Board. Therefore, the first contention raised by the learned counsel that the Administrator could not be appointed by the State, is clearly untenable. It is, indeed, trite to state that according to Section 99 of the Act, all the powers and duties which may be exercised or performed by or on behalf of the board, shall vest on the Administrator

during the period of super session. Therefore, the Administrator is bestowed with all the powers and duties of the Board.

A perusal of Section 18 of the Act, read with Regulation 15 of the Regulations, clearly reveals that the Board does have the power to specify the area within which the District Waqf Advisory Committee has to function. Thus, the Board does have ample power to bifurcate Bengaluru District into Bengaluru North and Bengaluru South. Since the Board has the said power, obviously, the Administrator who has stepped into the shoes of the Board under Section 99 of the Act, too has ample power to bifurcate Bengaluru District into Bengaluru North and Bengaluru South. Therefore, the impugned orders passed by the Administrator are in consonance with Section 18 of the Act, read with Regulation 15 of the Regulations, and with the powers bestowed upon him under Section 99 of the Act."

22. By relying upon this decision, the learned Standing counsel would submit that, no doubt under Section 99 of the Act, once the Board is superseded and an Administrator or Special Officer was appointed by the State Government concerned, what are all the powers

or duties vest with the Board or the Board is empowered to do whatever the actions, all that acts can be done by the Special Officer appointed in this regard. Therefore, he would submit that, the Special Officer now taken charge of the Board, would do all necessary acts to ensure the earlier elections to elect the Administrative body.

23. It is also brought to the notice of this Court by the learned Standing counsel that, insofar as the present Waqf is concerned, in the Waqf deed, especially under clause(6), it has been specified that the term of office of the Trustee is for his life time. In order to appreciate the same, clause (6) of the Waqf deed is extracted here under:

" The term of the trustee is for his life. In any event any trustee became un sound mind or suffering from other mental or physical defects or infirmity or is a discharged insolvent or has been convicted of any offence of breach of trust or any other offence involving moral turpitude he will be expelled from the trusteeship immediately."

24. However, the learned counsel appearing for the revision petitioner relied upon clause(9) of the said Waqf deed, which reads thus:

" The selected nine trustees have to elect one trustee among them as Mangaing Trustee (MUTAVALI) and he should carry the day-to-day affairs and management work of the mosque for one year from the date of his selection."

25. By relying upon clause(6), the learned Standing counsel would submit, this kind of unlimited period during the entire life time of trustee is not conducive for management of any trust, therefore wherever is necessary in the waqf deed i.e., scheme, has to be re-framed. Though it was pointed by the learned counsel appearing for the petitioner that, in view of the clause (9) referred to above, where the term of Muthavalli is fixed for one year, such re-framing is not required, this Court feels that, it may not be required to re-frame for the term of Muthavalli which has already been fixed for one year, however, the term of members since has life time, it is required to re-frame.

26. In view of the said position, since some re-frame is also required in the present Waqf, the learned Standing counsel seeks some reasonable time for finalizing the re-framing of scheme of the Waqf.

27. Having heard the learned counsel appearing for both sides and having gone through the materials placed before this Court, this Court is of the considered view that, certainly the Special Officer, in the helm of affairs in lieu of the Tamil Nadu Waqf Board, is empowered to act as a Waqf Board, till a new Waqf Board is constituted by the State Government. Insofar as the present issue is concerned, since the Waqf deed is required to be re-framed, a reasonable time is required for the Special Officer or the Waqf Board as the case may be, which, in the considered opinion of this Court, is to be fixed as six months.

28. Once the Scheme is re-framed within the outer limit of six months, there would not be further impediment for the Special Officer or the Board, as the case may be, to conduct the election to elect the managing body for administering the Waqf for the next term of three years.

29. Such exercise of conducting elections, in the opinion of this Court, can be completed within a period of three months thereafter. Therefore, all together within a period of nine months, since all these

exercises can be completed, this Court feels that, the present term given to the Adhoc Committee through the order, which was impugned before the Tribunal, can be restricted to the maximum of ten months from today. Therefore, the term of office of the Adhoc Committee shall be seized at the end of 30.09.2020, before which, the aforesaid exercise of re-framing the scheme of the Waqf, has to be completed and the election to elect the Managing Committee shall also be completed by the Special Officer / Waqf Board of the Tribunal.

30. With these orders and directions, this Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

25.11.2019

Index: Yes

Speaking order

vji

Note: Issue order copy by 27.11.2019.

To

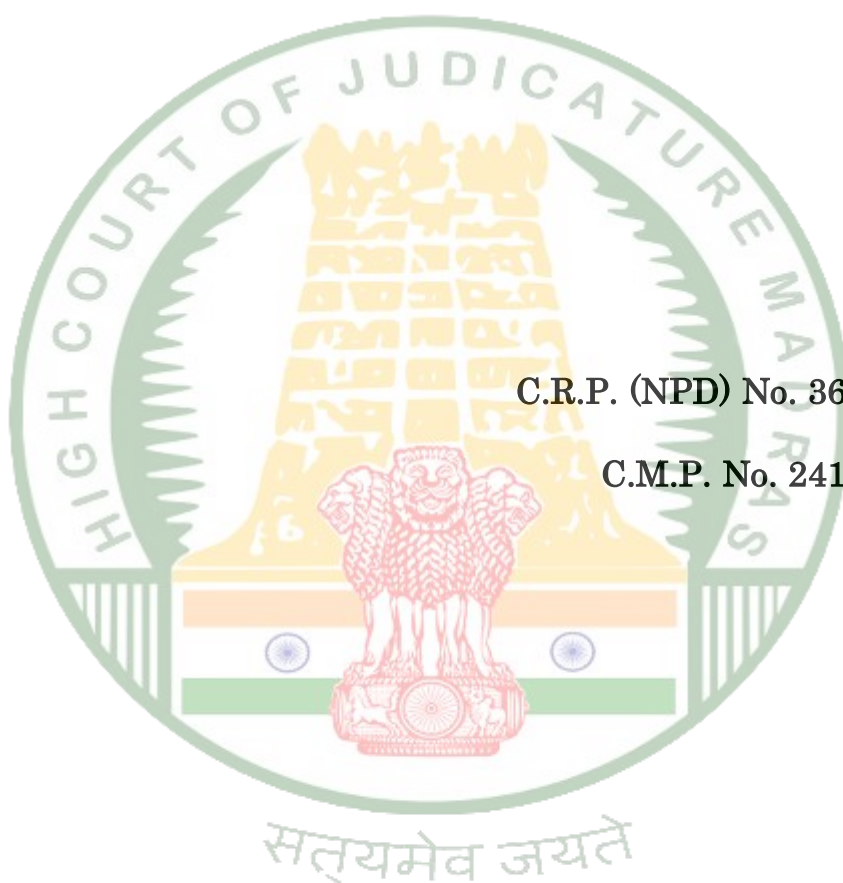
16/18

1. The Tamil Nadu Waqf Tribunal,
Chennai.
2. The Chief Executive Officer,
The Tamil Nadu Waqf Board,
No. 1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai - 600 001.
3. The Zonal Superintendent,
The Tamil Nadu Waqf Board - Vellore Zone,
No. 8, Bhadur Shah Masjid,
Arni Road, Sayeenathapuram,
Vellore - 632 001.



WEB COPY

R. SURESH KUMAR, J.



C.R.P. (NPD) No. 3680 of 2019
and
C.M.P. No. 24186 of 2019

WEB COPY
25.11.2019