

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.02.2019

Delivered on : 06.06.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No.3849 of 2018

and

C.M.P.No.21426 of 2018

1.Tamil Nadu Waqf Board
represented by its Chairman
1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 001.

2.The Chief Executive Officer,
Tamil Nadu Waqf Board,
1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 001.

... Petitioners/Respondents
/Respondents

सत्यमेव जयते
Vs

Sadaq Ali Khan
S/O.Late Khasim Ali Khan,
Muthavalli Treasurer,
Chota Naksha Charities,
104/219, Peters Road,
Royapettah,
Chennai – 600 014.

... Respondent/Petitioner
/Petitioner

PRAYER: Civil Revision Petition filed under Section 83(9) of Waqf Act, 1995, read with Article 227 of the Constitution of India against the order and decretal order in C.M.P.No.001 of 2018 in A.A.001 of 2018 on the file of the Waqf Tribunal, Chennai, dated 17.10.2018.

For Petitioners : Mr.V. Lakshminarayanan

For Respondent : Mr.N.A. Nissar Ahmed

ORDER

The above Civil Revision Petition has been filed by the Tamil Nadu Waqf Board represented by its Chairman, challenging the interim order of injunction granted by the Waqf Tribunal in C.M.P.No.001 of 2018 in A.A.001 of 2018.

2.The brief resume of the facts are given hereinbelow detailed so as to appreciate the issue on hand:

The Chota Naksha Charities is a registered, surveyed and

notified Waqf. This Waqf was founded by Mubarak Sultanunisa Begum Saheba @ Buddi Begum Sahiba 200 years ago for the benefit of the Shia community.

3.The above Waqf was being administered by a scheme and rules approved by the Wakq Board vide its proceedings dated 16.04.2001. As per this scheme, the Waqf was to be administered by a Committee, consisting of Muslims belonging to the "Shia Ithana Asari" Sect who are residents of Chennai. The scheme also stipulated that the Committee members shall be from amongst the 20 family members of Late Mahdi Hussain Khan Saheb, hereinafter referred to as Mahdi Saheb. The tenure of this Committee was for three years.

4.It appears that vide a Resolution dated 07.12.1999, seven male descendants of Mahdi Saheb had been appointed as the Committee members and the Resolution further directed the newly appointed Committee members to finalise the draft scheme

placed before the Board and submit the same for the finalisation and approval by the Board within 30 days. This Resolution has also been forwarded to the 1st respondent Board.

5.The Board vide their communication dated 31.01.2000, while acknowledging receipt of the Resolution dated 07.12.1999, directed the Committee members to take charge of the Waqf from the Executive Officer of the Waqf and report compliance. They were further directed to finalise the draft scheme and place it for the approval of the Board.

6.As per the draft scheme, the Committee was always to be elected from within the 20 family members of Mahdi Saheb. The committee was to consist of 7 members. This 7 Member Committee was to consist of 3 Muthawallis, Managing Muthawalli, Treasurer and Vice President, all of who were to be from the paternal side family of Mahdi Saheb. Out of the remaining four, one was to be the President and the others would be members of

the Committee. It was made clear that the Bye-Laws appended to the scheme would govern the proceedings of the Committee and the term of office was for a period of three years. On the expiry of the said period, a new committee was to be elected from amongst the 20 descendants of Mahdi Saheb as per the procedure stated hereinabove.

7.It is pertinent to note that the 1st petitioner Board through its Chief Executive Officer had approved the draft scheme and the rules with certain corrections and charges vide their Resolution No.72/2001 dated 29.03.2001.

8.It appears that the present Board was elected in a General Body meeting conducted on 23.07.2016. The said resolution of the Board had been forwarded to the 2nd respondent for their approval/records and the 2nd respondent by his proceedings dated 11.08.2016 had approved the Board and its functioning and administration of the Charities. The proceedings

of the 2nd respondent would read that the order of approval given by the 2nd respondent was subject to the approval of the 1st petitioner herein and the outcome of W.P.No.25374 of 2016 and W.P.No.19736 of 2016. The selection of the committee was done by and in the presence of the Superintendent of Waqf, Chennai and the Waqf Inspector, Chennai (South). It appears that while the Committee was discharging its duties, all of a sudden, they have received a notice dated 20.08.2018 from the 1st petitioner asking the committee Members to be present for a hearing on 28.08.2018 as there were complaints of illegal constructions, non submission of accounts as well as the contributions. The Committee Members were required to be present on 28.08.2018. The notice did not contain any enclosures and there was a note that no adjournments would be entertained. It appears that the Committee Members had requested an adjournment vide their letter dated 26.08.2018 informing the Board about their inability to attend the meeting since there was some celebrations which would commence from 28.08.2018 to 31.08.2018 in the premises

of the Charities. This letter was served on the 2nd petitioner on 27.08.2018. However, on 28.08.2018, the 1st petitioner/Board terminated the continuance of the committee and directed the Waqf Superintendent to take over direct management of the Charities with immediate effect. The said Resolution was challenged by the respondent herein before the Tribunal. It is seen that the Government Order for taking over the management was also published on 28.09.2018. The Shia Member of the 1st petitioner/Board, one Ahamadulla Athiba had requested the Board to nominate her as the Executive Officer since the Charities is a Shia Charities and she was the only Shia Member of the Board. It is to borne in mind that the impugned resolution has come to be passed only upon the letter issued by the said Amathul Athiba to the 2nd petitioner on 06.07.2018 asking the Chota Naksha Charities to be included in the Agenda of Board meeting held on 27.07.2018. The letter would refer to 5 complaints against the Committee Members. However, none of these documents have been made available to the Committee

Members so as to enable them to put forward their defence and without considering their request for an adjournment, the Board had proceeded to pass orders.

9.The respondent herein had challenged the order on the following grounds:

- (1)The Committee was elected for a period of three years and their term of office was yet to be completed and therefore, there is no question of taking over direct management of Charities.
- (2)The Scheme approved by the 1st petitioner/Board provided that it is only to the descendants of Late Jb. Mohdi Hussain Khan, who could be directed to be the members of the Committee.
- (3)There is no provision to obtain No Objection Certificate or prior approval from the Board.
- (4)The notice of hearing did not contain any enclosure and therefore, the respondent was at disadvantage and he could

not be suitably defend the charges against him.

(5)The 1st petitioner/Board had not issued a show cause notice, especially, when the Committee members have been functioning without any complaint.

(6)The issue of illegal construction would not lie since there was no question of obtaining No Objection Certificate from the 1st petitioner/Board. That apart, the accounts have been submitted to date, as also details of the contribution.

(7)It is further seen that not only were the Committee members not served with the copies of the complaints which formed the basis of the enquiry, the copy of the impugned order was also not given to the respondent.

(8)The 1st petitioner/Board had filed a detailed counter signed by the 2nd petitioner stating that since the direct management has been taken over nothing survives for consideration in the appeal and the appeal has become infructuous. It was further stated that the Committee had been approved subject to the approval of the Board and this

approval was not granted and the allegations of mismanagement had started right from the time the Committee Members had taken charge, namely, within four months. The allegations against the respondent herein was that he had illegally suspended the then managing trustee and had issued an illegal No Objection Certificate to carry out repairs. He would further contend that the unauthorised constructions have been carried out, after receiving illegal gratifications.

(9)The counter would emphasise upon the allegations/complaints made against all the other committee Members.

(10)Along with Appeal, the respondent had filed I.A.No.1 of 2018 for an injunction and I.A.No.2 of 2018 for a Stay.

10.The Tribunal below after hearing the elaborate arguments of both sides, ultimately granted the order of interim injunction pending disposal of the appeal. The following factors

had prompted the Tribunal below to pass the impugned order:

- (a) The principles of natural justice had not been followed since the committee members which included the respondents had not been given an opportunity to put forward their defence.
- (b) The invocation of the provisions of Section 65 of the Waqf Act was erroneous since the elected Committee was already in office and there was no vacancy and further, the procedures contemplated under Section 64(3) prior to taking over direct management under Section 65(5) had not been followed.
- (c) Since the complaint was regarding mismanagement the provisions contemplated under Sections 70 and 71 should have been resorted to and further, the mode of enquiry as contemplated under Rule 18 of the Waqf Act, 2000, had not been followed.
- (d) The manner in which the Board had broken open the lock of the premises of the Charities was not befitting the 1st

petitioner/Board.

Challenging the said order, the 1 and 2 petitioners are before this Court.

11.Mr.Lakshmi Narayanan, learned counsel appearing on behalf of the revision petitioners would raise a preliminary objection that the very filing of the applications before the Tribunal was not maintainable as it was only an appeal that was contemplated under Section 65(2) of the Waqf Act.

12.The learned counsel for the revision petitioners would draw the attention of this Court to the Judgment of this Court in ***Tamil Nadu Waqf Board, rep. by its Chairman and other v. A.Sadhik Ali and others [2011 (2) L.W.886]***, where this Court has held that in case of a challenge to the action of the Waqf Board in assuming the management of any Waqf contemplated under Section 65 of the Act, a person aggrieved

over the same has to prefer an appeal before the State as provided under Section 65(2) of the Act and cannot invoke the jurisdiction of this Court under Article 227 of the Constitution of India.

13.The learned counsel for the revision petitioners would draw the attention of this Court to the unreported Judgment of this Court in ***W.P.Nos.2170 and 6457 of 2011*** in the case of ***Janab. Abdul Ali Mohammed v. The Tamil Nadu Waqf Board and others.***

14.On the merits of the case, he would argue that the committee constituted in the year 2016 had not been approved by the Board and therefore, the Committee of the Charities was not a duly constituted Committee. He would argue that under Section 32(2)(g) of the Act, the general superintendence of all Waqfs is vested with the Board and it is the duty of the Board to exercise its powers to ensure that the Waqfs which are under its

superintendence are properly maintained, controlled and administered for the purpose for which such Waqfs has been created. It is the Board, who can appoint and remove Muthavalli in accordance with the provisions of the Act and it is only in some cases that the power of the Board could be delegated to the Chief Executive Officer under Section 27 of the Act. However, Section 27 of the Act clearly provides that the powers of the Board under Section 32(c)(d)(g) and Sub Section (2) of Section 32 and 110 cannot be delegated. Therefore, the approval granted by the 2nd petitioner on 11.08.2016 was without the authority of the Board. He would further argue that consequently since the Committee was not duly constituted, the 1st petitioner/Board was well within the rights under Section 63 to appoint any person to act as Muthavalli and it is drawing its right under this provision that the Board had assumed direct management of the Waqf by directing the Superintendent of Waqf to assume charge of the Charities.

15.He would therefore argue that since the Board had not

approved the appointment the removal was not under Section 64 of the Act and since there is a vacancy, Section 65 automatically comes into play. He would rely on the Judgment reported in **CDJ 2012 MHC 6491 and CDJ 2014 APHC 394**. He would therefore contend that the order granting injunction was perverse and without jurisdiction and therefore, the same has to be set aside.

16.Per contra, Mr.N.A. Nissar Ahmed, learned counsel appearing for the respondent would contend that the committee members had been selected by virtue of the scheme which has been settled by Board. That apart, the election had been held to the 1st petitioner/Board in the presence of the Superintendent of Waqf, Chennai and the Waqf Inspector, Chennai, as is evident from the order of approval dated 11.08.2018 granted by the Chief Executive Officer. He would further contend that no prior approval of Board was contemplated for the Committee to assume the charge and he would assail the order assuming direct management on the ground that Section 65(2) would come into

play only in the case of vacancy. In the instant case, the Committee elected for three years was in-charge and their period was to come to a close only on 21.08.2018 and therefore, the action taken under Section 65(1) when the Board was in place, is perverse and a clear case of over reach. He would further argue that the Board had not provided copies of the complaints upon which direct management, as per the order of the Board, had been ordered. That apart, without providing the requisite papers and despite a request for adjournment, the Board has proceeded to pass orders. He would also argue that the very action was malafide since the same had been initiated only to appease the Shia member of the Board who had given the complaint based upon which within a month, the notice of enquiry was issued and thereafter, the Committee of members had been superseded and the Board had taken over the direct management. The malafide is further obvious from the fact that a month after taking over the direct management, a special Resolution has been passed by the Board appointing the Shia member as the Executive Officer of

the Waqf. He would also rely upon the Judgment reported in ***Chief Executive Officer and another v. Syde Peer Shah Mohideen Khadari @ S.P. Shah, Vellore District*** [CDJ 2011 MHC 1337] where a Division Bench of this Court has held that the direct assumption and the management could be challenged before the Tribunal following the dicta in the Judgment in ***Salam Khan v. Tamil Nadu Waqf and others*** reported in **2005 (1) L.W. 676** and the Apex Court in ***Board of Wakf, West Bengal v. Anis Fathma Begum and another*** [(2010) 12 Scale 323].

17. He would also rely upon the Judgment of the High Court of Andhra Pradesh reported in ***Managing committee Masjid-e-Chanwer peeran v. A.P. State Wakf Board*** [CDJ 2014 APHC 394], where the learned Judge has held that the question of direct management would arise only when there is a vacancy in the office of the Muthavalli and that case as there was no vacancy the learned Judge has proceeded to set aside the impugned Resolution. He would also rely upon the the Judgment

of this Court in ***H. Sirajuddin v. The Tamil Nadu Wakf Board, rep. by its Chief Executive Officer [CDJ 2013 MHC 5952]***, where this Court has laid down the guidelines such as holding the enquiry which contemplated the issue of show cause notice and an opportunity to the respondents to submit their reply and after a personal hearing to pass orders. He would also rely upon the Judgment of this Court reported in ***CDJ 2012 MHC 6491***, interestingly, the learned counsels who are now before me were on opposite camps in that case. This Court has held that the challenge to an order under Section 65(2) of the Act could be made before the Tribunal.

18. Heard the learned counsel for the revision petitioners and the learned counsel for the respondent and perused the material on record.

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19. It has to be borne in mind that the issue before this Court is whether the order of interim injunction granted by the

Tribunal could be sustained?

20. Admittedly the case on hand is an example of how a statutory authority has exceeded its jurisdiction by not following the principles of natural justice and also by taking the Law into his hands. It is seen that the Board had not provided the details of the complaint to the respondent herein and the other committee members and it had simply issued a notice calling upon the parties to attend the enquiry on 28.08.2018. A letter of adjournment was made on 26.08.2018 which was also served upon the Board. Despite such a request, the Board has proceeded to pass orders assuming the direct management of the Charities. The Resolution does not give any details of nature of complaints etc., a reading of which makes it clear that the decision had already been taken and the enquiry was a mere farce. It is seen from the order of the Tribunal that after receiving notice from the Tribunal about the pendency of the appeal on 26.09.2018, the Superintendent of Waqf has entered in

the premises of the Charities created a document and has broken open the locks of bureau which conduct is absolutely shocking especially when the matter was already *sub judice* before this Court. It is not known as to what was the tearing urgency for the Board to try to take over management of the Charities, especially, when it was managed by a committee which was duly elected under the terms of the Scheme which has been approved by the 1st petitioner/Board and when the selection of the Office Bearers had been conducted in the presence of the Superintendent of the Board and the Waqf Inspector. The issue regarding the maintainability of the proceedings before the Tribunal has been considered by the Division Bench in the Judgment quoted by the petitioner and reported in ***Chief Executive Officer and another v. Syde Peer Shah Mohideen Khadari @ S.P. Shah, Vellore District [CDJ 2011 MHC 1337]*** where the Bench has held as follows:

"3.As far as the second issue relating to the decision of the Board to take over the management

of the Dharga in question is concerned, the aggrieved person could very well avail the remedy of approaching the Tribunal constituted under [Section 83](#) of the Wakf Act. That remedy has not been availed in this case. When this is pointed out, the learned senior counsel appearing for the respondent has fairly submitted that if liberty is given to the respondent, certainly, he will avail such a remedy, as the matter has been pending before this Court for quite some time. In our opinion, the question as to whether the Wakf Board has taken over the management of the Dharga by following the provisions of [Section 65](#) of the Wakf Act or not can be very well agitated before the Tribunal, as such dispute also will fall under the purview of the Tribunal, and in that view, the respondent could avail such a remedy, as has been held by this Court in the judgment in [Salam Khan v. The Tamil Nadu Wakf](#)

Board and others, 2005 (1) L.W. 676. The very same principle has also been held and approved by the Apex Court in the judgment in *Board of Wakf, West Bengal v. Anis Fathma Begum and another*, (2010) 12 Scale 323 = (2010) 4 KLT 765 and particularly, in paragraph-16 of that judgment, the Apex Court has held as follows:-

"We may further clarify that the party can approach the Wakf Tribunal, even if no order has been passed under the Act, against which he/she is aggrieved. It may be mentioned that *Sections 83(1) and 84* of the Act do not confine the jurisdiction of the Wakf Tribunal to the determination of the correctness or otherwise of an order passed under the Act. No doubt *Section 83(2)* refers to the orders passed under the Act, but, in our opinion, *Sections 83(1) and 84* of the Act are independent provisions, and they do not require an

order to be passed under the Act before invoking the jurisdiction of the Wakf Tribunal. Hence, it cannot be said that a party can approach the Wakf Tribunal only against an order passed under the Act. In our opinion, even if no order has been passed under the Act, the party can approach the Wakf Tribunal for the determination of any dispute, question or other matters relating to a Wakf or Wakf property, as the plain language of Sections 83(1) and 84 indicates."

4. In view of the above, the writ appeal is allowed and the impugned order is set aside only to the extent where the learned Judge has set aside that portion of the order and the notification, whereby the Wakf Board has brought the Dharga in question under its direct control. The respondent is at liberty to approach the Tribunal questioning that portion of the order and the notification as well. As the respondent had approached this Court with the

writ petition, we permit the respondent to approach the Tribunal on or before 15.03.2011. In the event such an application is filed questioning the order and the notification of the Board to bring the Dharga under its direct control, the same shall be entertained by the Tribunal without raising the question of maintainability and decide the same on its own merits keeping in mind the provisions of Section 65 of the Wakf Act also. Consequently, M.P.No.1 of 2010 and M.P.No.1 of 2011 are closed. No costs."

21.Considering the fact that the appeal is pending, this Court is not traversing into the merits of the case. However, taking note of the fact that it is only an interim order which is the subject matter of the challenge before this Court and applying the ratio laid by the Division Bench as extracted supra, this Court is of the view that the appeal before the Tribunal is maintainable

and considering the manner in which the Board had proceeded to take over the management of the Waqf without following the due process of law, this Court is not inclined to interfere with the order of the Tribunal. I do not find any infirmity in the order passed by the Tribunal below.

This Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

06.06.2019

Index : Yes/No
Internet : Yes/No
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To

The Waqf Tribunal,
Chennai.

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P.T. ASHA, J,

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Pre-Delivery Order in
C.R.P.(PD).No.3849 of 2018
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