

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
16.12.2019	20.12.2019

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CORAM:

THE HONOURABLE MR.JUSTICE M.DURAISWAMY
and
THE HONOURABLE MR.JUSTICE T.RAVINDRAN

W.A. (MD) No.86 of 2019
and
C.M.P. (MD) Nos.3991 & 482 of 2019

S.Akbar Ali

... Appellant / Petitioner

-vs-

1.The District Collector
Pudukkottai
Pudukkottai District

2.The Revenue Divisional Officer
Aranthangi
Pudukkottai District

3.K.R.A.Syed Mohamed

... Respondents / Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 21.12.2018, passed in W.P.(MD) No.11732 of 2018, on the file of this Court.

Prayer in WP(MD). 11732/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorari calling for the records relating to the impugned order made by the 2nd respondent in Proc.No.2356/2018 dated 18/05/2018 and quash the same as illegal.

For Appellant :Mr.R.Vijaya Kumar
for Mr.Mohamed Ibram Saibu

For Respondents :Mr.J.Gunaseelan Muthiah
Additional Government Pleader for R1 & R2
Mr.K.P.S.Palanivel Rajan
for Mr.B.Jameel Arasu for R3



J U D G M E N T

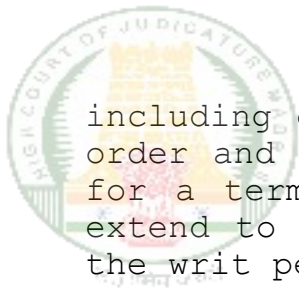
T.RAVINDRAN, J.

In this writ appeal, the order dated 21.12.2018 passed in W.P.(MD) No.11732 of 2018 is being challenged.

2. W.P.(MD) No.11732 of 2018 has been filed by the appellant to issue a writ of certiorari calling for the records relating to the order, dated 18.05.2018 in Proc.No.2356 of 2018, passed by the second respondent and to quash the same as illegal.

3. From the materials placed on record, it is seen that the appellant claims to be the President of Mohideen Andavar Jumma Pallivasal and it is found that the abovesaid Pallivasal had been registered as a wakf before the Tamil Nadu Wakf Board on 21.12.2015 and it is found that the appellant has also thrown a challenge to the abovesaid proceedings of the Wakf Board dated 21.12.2015 in W.O.P.No.191 of 2016, on the file of the Subordinate Court, Pudukkottai and the same is pending. It is further found that the abovesaid Pallivasal having been registered as wakf before the Tamil Nadu Wakf Board and therefore, the Pallivasal having been brought under the control of the Wakf Board, accordingly, to administer the Pallivasal, the proposal was mooted for constituting a proper Committee to manage the same and in this connection, it is found that following the intervention of this Court in W.P.(MD) No.16193 of 2017 directing the Wakf Board to conduct an election and accordingly, following the same, the Wakf Board has proceeded with the election process and thereafter, declared the third respondent and six others as the Administrative Committee to manage the Pallivasal. The election of the third respondent and the six others as the Administrative Committee had been declared by the Wakf Board on 24.12.2017. It is seen that the appellant had also challenged the election notification issued by the Wakf Board in W.P.(MD) No.23197 of 2017 and the same had subsequently been come to be withdrawn by the appellant.

4. In the light of the abovesaid factors, when it is found that the Administrative Committee had been constituted by the Wakf Board to manage the Pallivasal in question, accordingly, it is seen that the third respondent had moved the second respondent under Section 68 of the Waqf Act, 1995 (hereinafter, referred to as "the Act") directing the appellant and others, who claimed to be in the management of the Pallivasal, to hand over the possession of the records, accounts and properties, including cash, to the newly constituted Administrative Committee and the second respondent had passed the order dated 18.05.2018 directing the appellant and others, namely, the members of the removed committee, to hand over the charge and possession of the records, accounts and properties,



including cash, within fifteen days from the date of receipt of the order and failing which, they shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to eight thousand rupees or with both. Impugning the same, the writ petition had come to be levied by the appellant.

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5. It is mainly contended by the learned counsel appearing for the appellant that the second respondent has no authority to pass orders under Section 68(2) of the Act and according to him, only a Magistrate of the First Class is competent to pass orders under Section 68(2) of the Act in the light of the decision of this Court in **A.K.Kalifullah vs. M.Abdul Khader**, reported in **2013 (2) CTC 839** and therefore, according to him, in view of the order passed by this Court in the abovesaid decision, the powers under Section 68 (2) of the Act could only be exercised by a Judicial Magistrate of the First Class and not by the Executive Magistrate and accordingly, it is putforth that the second respondent, who is only the Executive Magistrate, has no jurisdiction or powers to pass any orders under Section 68 of the Act. It is also putforth by him that even though the Wakf Act, 1995 came to be amended vide Wakf (Amendment) Act, 2013 (Act 27 of 2013), wherein the term "Magistrate of the first class" provided under Section 68 of the Act was sought to be amended as "Executive Magistrate", however, according to him, the abovesaid amendment was repealed by the Repealing and Amending (Second) Act, 2015 (Act 19 of 2015) and therefore, it is putforth that by way of the abovesaid repeal, the position as existed originally before the amendment and as affirmed by the Division Bench of this Court in the case of **A.K.Kalifullah** (supra), got revived from the date of the Repealing and Amending (Second) Act, 2015 (Act 19 of 2015) i.e. from 14.05.2015 and therefore, it is contended that the order passed by the second respondent is absolutely without any authority of law and void and on the basis of the same, the newly constituted Administrative Committee is not entitled to take the possession of the management of the Pallivasal in question and accordingly, prayed for quashing of the order passed by the second respondent as illegal.

6. No doubt, as putforth by the learned counsel appearing for the appellant, in the decision of **A.K.Kalifullah's** case (supra), the Division Bench has held that the power under Section 68(2) could only be exercised by the Judicial Magistrate of the First Class and not by the Executive Magistrate. However, it is found that by way of the Wakf (Amendment) Act, 2013, the following amendments have been incorporated in Section 68 of the Act:

"In Section 68 of the principal Act,-

(i) in sub-section (2), for the words "Magistrate of the first class" and "Magistrate", the words "District Magistrate, Additional District Magistrate, Sub-Divisional Magistrate or their equivalent" shall be substituted;



(ii) in sub-sections (3), (4), (5) and sub-section (6), for the words "the Magistrate" the words "any Magistrate" shall be substituted."

7. It is further noted that the Wakf (Amendment) Act, 2013 has come to be repealed on 14.05.2015 by the Repealing and Amending (Second) Act, 2015 (No.19 of 2015) and by way of the same, according to the learned counsel for the appellant, the position, which stood originally prior to the Wakf (Amendment) Act, 2013, would come to occupy the field and therefore, according to him, as per the decision in the case of **A.K.Kalifullah** (supra), only the Magistrate of the First Class would be competent to pass orders and exercise the powers under Section 68(2) of the Act.

8. Countering the abovesaid contentions of the appellant's counsel, the learned counsel appearing for the third respondent contended that even though the Wakf (Amendment) Act, 2013 had been repealed on 14.05.2015 by the Repealing and Amending (Second) Act, 2015, according to him, by virtue of the Wakf (Amendment) Act, 2013, the subsequent repeal of amending legislation shall not affect the amendments, which had already been effected and in this connection, placed reliance upon the decision of the Allahabad High Court in the case of **Mohd.Junaid Ajaz vs. Union of India**, reported in **(2016) 4 ADJ 353** and the position of law with reference to the same has been outlined in the abovesaid decision as follows:

"Waqf Act, 1995 - Section 83(1) - Amendment - Effect of - Once provision of amending legislation, namely, amending Act 27 of 2013 had been brought into force and amendments had been incorporated in provisions of Waqf Act, 1995, the subsequent repeal of amending legislation would not affect amendments which had already been effect - No merit in writ petition.

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4. The basis on which the reliefs have been sought is that in view of the repeal of Act No.27 of 2013 by the Repealing and Amending (Second) Act, 2016 (Act No.19 of 2015), the Waqf Tribunals which were established at Lucknow and Rampur in pursuance of the amended provisions of Section 83 would cease to exist and would have to be abolished. The second relief is in similar terms as the first, insofar as a writ is sought to restrain the functioning of the Tribunals at Lucknow and Rampur which have been established in pursuance of the amended provisions of Section 83

<https://hcservices.ecourts.gov.in/hcservices/> In pursuance of an order of this Court dated



23 February 2016, a counter-affidavit has been filed in these proceedings by the Secretary, Ministry Welfare and Waqf Department of the State Government.

5. Section 4 of the Repealing and Amending (Second) Act, 2015 contains the following provisions:

4. The repeal by this Act of any enactment shall not affect any Act in which such enactment has been applied, incorporated or referred to:

and this Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing:

nor shall this Act affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed, recognised or derived by, in or form any enactment hereby repealed:

nor shall the repeal by this Act of any enactment revive or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force.

6. The effect of these provisions is that where any enactment has been applied, incorporated or referred to in any Act, the repealing provisions shall not affect the Act in which such enactment has been applied, incorporated or referred to. As a result of the provisions of Amending Act No.27 of 2013 with effect from 1 November 2013, sub-sections (1) and (4) of Section



83 were substituted. Sub-section (1) expanded the jurisdiction of the Waqf Tribunal. Prior to the amendment, the jurisdiction of the Waqf Tribunal was to determine any dispute, question or other matter relating to a waqf or waqf property under the Act. In addition to this, the substituted provisions of sub-section (1) also empower the Waqf Tribunal to determine matters relating to eviction of tenants or determination of rights and obligations of a lessor and lessee in respect of property under the Act. Moreover, under sub-section (4), the Tribunal is, in terms of the substituted provisions, to consist of three members. Earlier, the Act had contemplated a one member Tribunal consisting of a judicial officer. Once the amendment was notified and came into force on 1 November 2013, the amendment was incorporated into the provisions of the parent Act. Hence, the provisions of Section 4 of the Repealing and Amending (Second) Act, 2015 (Act No.19 of 2015) would stand attracted and the repeal of the Amending Act would have no effect on the incorporation of the provisions of the Amending Act which had already been effected prior to the repeal.

...
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10. Following these principles, it is clear that once the provisions of the amending legislation, namely, Amending Act 27 of 2013 had been brought into force and the amendments have been incorporated in the provisions of the Waqf Act, 1995, the subsequent repeal of the amending legislation would not affect the amendments which had already been effected."

9. For arriving at the abovesaid determination, the Allahabad High Court has relied upon the decision of the Apex Court in the case of **Jethanand Betab vs. State of Delhi**, reported in **AIR 1960 SC 89**, wherein the position of law with reference to the effect of the Repealing and Amending Act has been adumbrated as follows:

"Wireless Telegraphy Act (1933), S.6(1-A) - Object of Repealing and Amending Acts - Repeal of Amending Act of 1949 by Act of 1952 - Effect - S.6 (1-A) not affected - Section 4 of Act of 1952 not applicable - Case governed by S.6-A, General Clauses Act - Meaning of Text - (General Clauses Act (1897), S.6-A - (Repealing and Amending Act



(1952), S.4) - (Interpretation of Statutes) - (Words and Phrases - Texts) - ILR (1955) Punj 625: (S) AIR 1955 Punj 141 : 1955 Cri LJ 990 and 61 Pun LR 702. Overruled.

WEB COPY The main object of an Amending and Repealing Act is only to strike out the unnecessary Acts and excise dead matter from the statute book in order to lighten the burden of ever increasing spate of legislation and to remove confusion from the public mind. The object of the Repealing and Amending Act of 1952, therefore, was only to expurgate the amending Act of 1949, along with similar Acts, which had served its purpose : (AIR 1954 Cal 848, Ref.

...
...

(6). The general object of a repealing and amending Act is stated in Halsbury's Laws of England, 2nd Edition, Vol. 31, at p. 563, thus:

"A statute Law Revision Act does not alter the law, but simply strikes out certain enactments which have become unnecessary. It invariably contains elaborate provisos."

In Khuda Bux v. Manager, Caledonian Press AIR 1954 Cal 484, Chakravartti C.J., neatly brings out the purpose and scope of such Acts. The learned Chief Justice says at p. 486:

"Such Acts have no Legislative effect, but are designed for editorial revision, being intended only to excise dead matter from the statute book and to reduce its volume. Mostly, they expurgate amending Acts, because having imparted the amendments to the main Acts, those Acts have served their purpose and have no further reason for their existence. At times inconsistencies are also removed by repealing and amending Acts. The only object of such Acts, which in England are called Statute Law Revision Acts, is legislative spring-cleaning and they are not intended to make any change in the law. Even so, they are guarded by saving clauses drawn with elaborate care, . . .". It is, therefore, clear that the main object of the 1952 Act was only to strike out the unnecessary Acts and excise dead matter from the statute book in order to lighten the burden of ever increasing spate of legislation



and to remove confusion from the public mind. The object of the Repealing and Amending Act of 1952 was only to expurgate the amending Act of 1949, along with similar Acts, which had served its purpose."

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10. The effect incorporated in the Act by the Wakf (Amendment) Act, 2013 has also been considered by this Court in the case of **Janab Malang Nisar Ahmed and others vs. P.Hafeezan Rahman**, reported in **2015 (1) MLJ (Cr1) 108** and the position of law with reference to the same has been discussed, which is extracted below:

12.Thus, now, there are three judgements on this subject under Section 68(4) of the Wakf Act. The Division Bench presided over by the Hon'ble Ms. Justice K.Suguna in A.K.Kalifullah v. M.Abdul Khader and Another (cited supra) has held that the term First Class Magistrate as used in Section 68 (4) of the Wakf Act would mean only a Judicial Magistrate. The earlier view taken in Indian Overseas Bank v. Sree Aravindh Steels Ltd., (cited supra) by yet another Division Bench presided over by the Hon'ble Mr.Justice Elipe Dharma Rao was that the term First Class Magistrate used in Section 68(4) of the Wakf Act would mean only an Executive Magistrate and not Judicial Magistrate.

13.The Full Bench presided over by the Hon'ble Mr.Justice N.Paul Vasanthakumar has taken the view that the earlier term District Magistrate without qualifying the word Magistrate would mean an Executive Magistrate, because, there is no element of adjudication and the act is purely administrative in nature.

14.From the Full Bench judgement, it is crystal clear that the judgement in A.K.Kalifullah v. M.Abdul Khader and Another (cited supra) stands impliedly overruled and the same has lost its life. Therefore, as per the judgements of this Court as referred to above, the term Magistrate as employed in Section 68(4) of the Act would mean only an Executive Magistrate and not the Judicial Magistrate.

15.Because there were conflicting views taken by various Courts, while interpreting the unamended provision of Section 68 of the Wakf Act, the Parliament thought it fit to amend Section 68



of the Wakf Act so as to remove the ambiguity, if any.

16.Now, as per the Wakf Act, 2013, dated 20.09.2013, Section 68 has been amended and after the amendment, the words Magistrate of First Class, Magistrate and Sub Divisional Magistrate shall be deleted and the same shall be substituted by the words District Magistrate, Additional Magistrate or their equivalent. This amendment has been made only to remove the ambiguity so as to declare once for all that the term Magistrate referred to in Section 68 of the Wakf Act indicates only Executive Magistrate and not Judicial Magistrate.

17.Thus, as has been held by the Full Bench of this Court, the term District Magistrate as employed in Section 64 of the Act, refers only to the Executive Magistrate. As such, no judicial Magistrate has got any power under Section 68 of the Wakf Act to pass any order.

18.The party aggrieved has to approach only the appropriate Executive Magistrate for relief. In such view of the matter, I am inclined to quash the proceedings in C.C.No.764 of 2009 on the file of the learned II Metropolitan Magistrate, Egmore, Chennai.

11. In the light of the abovesaid principles of law as regards the impact of the Repealing and Amending Act, considering the scope of Section 4 of the Repealing and Amending (Second) Act, 2015 (No.19 of 2015), when it is found that the repeal by the abovesaid Act of any enactment shall not affect any Act in which such enactment has been applied, incorporated or referred to, in such view of the matter, particularly, in the light of the principles of law outlined by the Apex Court and the Allahabad High Court above referred to, it is found that the Repealing and Amending (Second) Act, 2015 (No.19 of 2015), shall not affect the validity of the amendments incorporated in the Act and in such view of the matter, it is found that the second respondent has all the authority under law to exercise the powers under Section 68 of the Act and pass appropriate orders under Section 68(2) of the Act and accordingly, when it is found that the appellant and others are bound to entrust the possession of the records, accounts and properties, including cash, of the Pallivasal to the newly constituted Administrative Committee, as directed by the second respondent, within the limited time, to say that the second respondent has no competency to pass such an order, as such, cannot



be countenanced and the same had been rightly rejected by the learned Single Judge.

12. The learned counsel for the appellant would further contend that the newly formed Administrative Committee has not been constituted in accordance with the provisions of the Act and similarly, the appellant and others, who were in the management of the Pallivasal had not been removed by the Wakf Board in accordance with the provisions of the Wakf Act or any scheme made by the Wakf Board and therefore, according to him, the second respondent would not be competent to exercise the powers conferred under Section 68(2) of the Act. However, when as above pointed out, the Pallivasal in question had been declared as wakf by the Wakf Board and following the same, the Wakf Board has proceeded with the election of the new management of the Pallivasal and elected the Administrative Committee of seven members to manage the Pallivasal and in such view of the matter, the appellant and others are bound to comply with the orders passed by the second respondent and hand over the records, accounts and properties, including cash, to the newly formed Administrative Committee and if at all the appellant and others are aggrieved over the appointment of the newly formed Administrative Committee by the Wakf Board or the declaration of the Pallivasal in question as wakf by the Wakf Board, their remedy would be only to approach the appropriate Tribunal in accordance with the provisions of the Act and in such view of the matter, the contentions of the appellant that the newly formed Administrative Committee had not been validly constituted and thereby, the second respondent lacks the jurisdiction to exercise the powers under Section 68(2) of the Act, as such, cannot be accepted. When with reference to the same, the remedy available to the appellant is only to approach the appropriate Tribunal as contemplated under the Act and when the abovesaid ground has also been not specifically raised, as such, in the writ petition, in such view of the matter, we do not find any merits in the writ appeal and the learned Single Judge is perfect in dismissing the writ petition filed by the appellant.

13. In the light of the abovesaid discussions, the writ appeal fails and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)



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To:

1.The District Collector,
Pudukkottai,
Pudukkottai District.

2.The Revenue Divisional Officer,
Aranthangi,
Pudukkottai District.

+1 CC to M/s.B.JAMEEL ARASU, Advocate (SR-106354[F] dated
20/12/2019)

+1 CC to M/s.MOHAMED IBRAM SAIBU, Advocate (SR-106511[F] dated
27/12/2019)

JUDGMENT

IN

W.A. (MD) No.86 of 2019

and

C.M.P. (MD) Nos.3991 & 482 of 2019

20.12.2019

krk

TK/SAR. /06.01.2020/11P/5C