

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SETHILKUMAR RAMAMOORTHY

W.A.No.829 of 2020

and CMP Nos.10547, and 10551 of 2020

Abdul Lathif Maracair

.. Appellant

-Vs-

1.S.Thameem @ Mohammed Thameem Ansari

2.Government of Puducherry

Rep.by its Secretary, Waqf Puducherry

No.1&3, 3rd Floor, Yanam, No.1&3,3rd Floor

Venkatachalam Pillai Street, Puducherry-605 001.

3.Government of Puducherry, rep.by Chief Executive

Officer, Waqf Board, Puducherry, No.1&3, 3rd Floor

Yanam, No.1&3,3rd Floor, Venkatachalam Pillai

Street, Puducherry-605 001.

.. Respondents

Appeal filed under Clause 15 of Letter Patent to set aside the order passed by the Hon'ble Court in WP No.12081/2019 on 12.02.2020.

For Appellant : Mr.N.A.Nissar Ahmed
For 1st Respondent : Mr.J. Srinivasa Mohan
For Respondents 2 & 3 : Ms.N. Mala
Addl.Govt.Pleader (Pondy.)

JUDGMENT

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

Heard learned counsel for the appellant, who had been granted leave by us vide order dated 21.09.2020 in C.MP.No.6380 of 2020 to move this appeal.

2.Mr.N.A. Nissar Ahmed, learned counsel for the appellant had advanced his submissions, which were recorded in our order dated 29.07.2020 extracted hereinunder:

The applicant claims himself to be a Muslim by faith and interested in the running of the Waqf in question, for which a Mutawalli has been directly appointed by the learned Single Judge in the exercise of writ jurisdiction under Article 226 of the Constitution of India at the instance of the writ petitioner, after selecting one name

out of the seven that had been proposed. The applicant has sought leave to appeal as he is not a party to the writ petition.

2. The contention raised by the learned counsel is that the procedure for appointment of Mutawalli is laid down exclusively under the Waqf Act, 1995 and there cannot be any departure from the Statute by invoking the extraordinary jurisdiction for permanently appointing a Mutawalli by this Court. The contention is that the Writ Petition itself was not maintainable much less the exercise of discretion by this Court for appointment of Mutawalli. Prima facie the argument requires scrutiny and therefore, the issue of interim relief or otherwise shall be considered after service of notice.

3. It also appears that the prayer made in the Writ Petition was a direction to the State Government and the Waqf Board to take appropriate steps for appointment of Mutawalli and there was no prayer for the Court itself to intervene in the matter.

4. We find prima facie that the applicant can maintain the appeal, keeping in view the nature of the directions issued by the learned Single Judge and the interest shown by the applicant and therefore issue notice to the writ petitioner calling upon him to file his objections, if any, to the application for leave to appeal and also the maintainability thereof. We also permit the learned counsel for the applicant to serve a copy of the papers to the learned counsel for the writ petitioner who had appeared before the learned Single Judge and also take private notice. Accordingly, the matter shall be listed immediately on the expiry of six weeks. Post on 09.09.2020.

5. Post the matter on 09.09.2020.

3. We have heard Mr.J. Srinivasa Mohan, learned counsel for the first respondent / writ petitioner and Ms.N. Mala, learned Additional Government Pleader for Government of Puducherry.

4. After hearing learned counsel for the parties, there are

contentious issues of law that have been raised as to find out a way out with regard to the procedure for appointing Mutawalli keeping in view the peculiar facts which are prevailing in Puducherry regarding constitution of the Board.

5. The learned Single Judge passed the impugned order on 12.02.2020, whereby, upon a list submitted by the writ petitioner, the learned Single Judge appointed one M. Abdul Jaleel. as a temporary Mutawalli to the Board with further directions.

6. Ms.Mala, learned Additional Government Pleader appearing for Government of Puducherry has submitted that in view of the peculiar situation, the constitution of the Board as desired under the Waqf Act, 1995 could not be concluded and therefore, intervention of the Court was necessary.

7. We find that the learned Single Judge has himself proceeded to appoint a temporary Mutawalli which we do not find to be justified or supported by law. As a matter of fact, appropriate directions ought to have been given for such appointment after inviting an affidavit

from the Government bringing on record as to the status of the Constitution of the Board or otherwise.

8. The writ appeal is therefore, allowed and the order dated 12.02.2020 is set aside. The Government of Puducherry, represented by Ms.Mala is therefore directed to file an affidavit within three weeks before the learned Single Judge.

9. The writ petition shall stand restored to its original number and the learned Single Judge may dispose of the writ petition as early as possible.

10. The appellant, in case, so chooses, may file an application for impleadment for being heard in the matter or also file an affidavit in support of the contentions advanced.

11. The writ appeal is allowed subject to the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

WEB COPY

(A.P.S., CJ.) (S.K.R., J.)
21.09.2020

sr

To

1. Government of Puducherry
Rep.by its Secretary, Waqf Puducherry
No.1&3, 3rd Floor, Yanam, No.1&3, 3rd Floor
Venkatachalam Pillai Street, Puducherry-605 001.
2. Government of Puducherry, rep.by Chief Executive
Officer, Waqf Board, Puducherry, No.1&3, 3rd Floor
Yanam, No.1&3, 3rd Floor, Venkatachalam Pillai Street,
Puducherry-605 001.



WEB COPY

W.A.No.829 of 2020

**The Hon'ble Chief Justice
and
Senthilkumar Ramamoorthy, J.**

sr



W.A.No.829 of 2020

WEB COPY 21.09.2020