

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 05.11.2020]

[PRONOUNCED ON : 30.12.2020]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P.NPD.No.1628 of 2020

and

C.M.P.Nos.9932 and 10487 of 2020

H.Mohammed Sajath

... Petitioner

... Vs ...

1. Ms.Habeebunissa

2. Syed Akthar Hussain

... Respondents

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India r/w. Section 83(9) of the Wakf Act, 1995, against the fair and decretal order dated 07.09.2020 made in I.A.No.200 of 2020 in O.A.No.36 of 2020 on the file of the Tamil Nadu Wakf Tribunal at Chennai.

For Petitioner : Mr.N.A.Nissar Ahmed
For Respondents : Mr.V.R.Kamalanathan
for M/s.Y.Kaja Navas

ORDER

The respondent before the Tamil Nadu Wakf Tribunal is the petitioner herein.

2. The respondents herein have filed an application in O.A.No.36 of 2020 before the Tamil Nadu Wakf Tribunal and in the said application, they have also filed I.A.No.200 of 2020 seeking an order of interim injunction restraining the respondent therein, his men or agents or any other person or persons on behalf of the respondent therein from in any manner disturbing the first and second petitioners therein from discharging the day-to-day affairs of the Management and Administration as President and Treasurer of the Dadasha Makkan Wakf at No.5, Dargha Street, Dadashamakkan, Chennai - 12, till the disposal of the Original Application.

3. The revision petitioner herein, who was the respondent before the Wakf Tribunal, has filed counter contending that the second applicant therein/second respondent herein acted against the interest of the Wakf

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by swindling Wakf money and encroaching Wakf property and illegally transferring Wakf property through registered document and therefore, the Wakf Executive Committee in accordance with the approved by-law and the practice in vogue and as per law resolved to hold, the second applicant therein to have attracted disqualification to hold the post and thereby, removed the second applicant therein from the post of Treasurer vide resolution dated 28.10.2019 and the same came to be communicated to the second applicant vide proceedings dated 29.10.2019.

4. Revision petitioner has further stated in the counter affidavit before the Tribunal that the vacancy thus caused by the removal of the applicants therein/respondents herein to the posts of President and Treasurer came to be filled up as per by-law by new incumbents viz., Syed Kasim Sakaff and Syed Sajad Ali respectively and the said removal and appointments in the vacancies consequent to removal were as per law and by-law and duly communicated as per law to the Wakf Board. Since their appointment was on 09.11.2019 and 28.10.2019, the new office bearers to the posts of President and Treasurer are discharging their duties in the presence of Wakf officials.

5. It is also stated in the counter that the applicants therein/respondents herein were removed from the posts on 09.11.2019 and 28.10.2019 and communicated on 11.11.2019 and 29.10.2019 respectively. The new incumbents were appointed by the Committee in the vacancy so caused vide proceedings dated 28.10.2019 and 09.11.2019 and the new incumbents are discharging their duties in the said post since then.

6. During the enquiry, on behalf of the petitioners therein/respondents herein, documents Exs.P.1 to P.21 were marked. On behalf of the respondent therein/revision petitioner herein, no document was marked.

7. On consideration of the submissions and the documents that are marked before the Court, the Wakf Tribunal has come to the conclusion that prima facie, there was no enquiry conducted and the alleged Executive Committee meeting said to have been held on 28.10.2019 and 09.11.2019 stands vitiated for the non observance of the principles of

natural justice and accordingly, granted injunction in favour of the respondents herein/petitioners therein and hence, the Civil Revision Petition has been filed by the respondent therein.

8. Mr.N.A.Nissar Ahmed, learned counsel for the revision petitioner would submit that there had been removal of the respondents herein in the Month of October and November 2019 as they were not holding the post and therefore, the grant of interim injunction on the premise that removal is illegal, patently unsustainable in law and exceeded the scope of the injunction application and decided the main Original Application itself.

9. Learned counsel for the revision petitioner further submitted that the Tribunal has failed to see that as per Clause IV (4) of the scheme, the Executive Committee is authorized to remove any member from the post for commission or omission or misappropriation of Wakf property and as per clause III, the vacancy could be filled up by the Executive Committee by co-option, who shall also retire along with other members of the Executive Committee.

10. The sum and substance of the argument of the learned counsel for the revision petitioner is that the first respondent herein had misappropriated the Wakf funds and colluded with the second respondent herein and acted against the interest of the Wakf. The second respondent encroached the Wakf property, swindled Wakf money and executed registered settlement deeds in favour of his children transferring Wakf property and thereby, suffered disqualification as per clause I (11) and II (g) and therefore, the Executive Committee, after due enquiry, resolved vide its resolution dated 28.10.2019 to remove the second respondent herein from the post of Treasurer and the same was communicated vide letter dated 29.10.2019 by the petitioner herein as Secretary of the Wakf and on 28.10.2019, the post of Treasurer was filled up by a new incumbent namely, Syed Sajad Ali. Similarly, the first respondent, after a due enquiry, was removed by the Executive Committee vide its resolution dated 09.11.2019 and communicated by the petitioner vide letter dated 11.11.2019 and the vacancy to the post of President as filled by a new incumbent namely, Syed Kasim Sakaff on 09.11.2019. Since then the new incumbents have been discharging their duties as President and Treasurer since 2019.

11. Per contra, Mr.V.R.Kamalanathan, learned counsel appearing for the respondents would contend that no show cause notice was given and no proper enquiry was conducted as contemplated under the Regulation thereto and also narrated that since the revision petitioner herein has indulged in misappropriation of funds and also that as per the request of the respondents, the construction of the Dargha was entrusted to the revision petitioner and he started the construction work without getting plan approval and permission from the Tamil Nadu Wakf Board and also not submitted the budget estimate and also started collecting donation from the public and when it came to the knowledge of the members of the Wakf, in the Executive Committee meeting held on 06.10.2019, the respondents were asked to submit the Corporation Plan, Budget Estimate, Source of Income submitted before the Tamil Nadu Wakf Board and permission letter obtained from the Tamil Nadu Wakf Board to construct the Dargha and the respondents also was asked to hand over the donation bill book and the amount collected by them and their agents in the next Executive Committee meeting on 03.11.2019.

12. In short, according to the respondents herein, the revision petitioner herein has committed serious offences by criminal breach of trust, misappropriation of Wakf funds and hence, they have convened a general body meeting. Before the general body meeting could be commenced, the revision petitioner herein has taken a hasty steps misusing the post as Secretary and created dismiss and respondents 1 and 2 are still acting.

13. In reply, Mr.N.A.Nissar Ahmed, learned counsel for the revision petitioner would contend that he has filed certain documents before the Wakf Tribunal and they were not considered. Accordingly, this Court has directed the Registry to call for the records from the Wakf Tribunal and the same is arrived and I have perused the records.

14. Admittedly, the petitioners before the Wakf Tribunal have marked Exs.P.1 to P.21 on payment of necessary stamp duty and the documents have been separately marked. On the side of the respondent therein, no document was filed and only typed set has been filed.

15. After perusing the entire records and also the chequered history, I find that Dadasha Makkan Wakf was administered by the Scheme Decree dated 21.02.1910 passed by the City Civil Court, at Chennai, in O.S.No.75 of 1909. Hence, the Scheme Decree was not followed by the previous Muthawalli's. Subsequently, the Tamil Nadu Wakf Board has framed the Scheme Under Section 69 of the Wakf Act, 1995, in their Proceedings and Resolution passed in item No.98/2010 in R.C.No.619/B1/99/Chennai, dated 05.06.2010 as per the Gazettee Notification, Published in the Tamil Nadu Government Gazettee dated 08.09.2010. As on today, the Dadasha Makkan Wakf is being administered by the Managing Committee under the above said Scheme.

16. The Great Saint Hazrath Syed Hussain Pyaray Janullah Sha Khadari Shuttari, also called as DadaPeer, who is the Original founder of the above Wakf, after his demised, he left 6 son and 2 daughters. The Dadasha Makkan Wakf was managed by 7 branches, Electing/Selecting 2 members from each branch, and the 14 members as Managing Committee, they being the descendants of the Great Saint. Presently, the

beneficiaries are increase about 120 within the 7 branches and they are the beneficiaries of the above said Wakf.

17. The Dadasha Makkan Wakf was administrated by the 14 members, consists of 7 Managing Committee, and 7 Committee Members and they are Elected/Selected members among the beneficiaries within 7 branches. The Executive Committee consists of 1.President, 2.Vice President, 3.Secretary, 4.Joint-Secretary, 5.Treasurer, 6.Joint-Treasurer-I and 7.Joint-Treasurer-II, remaining 7 members are Committee members. They are elected/selected as per scheme framed by the Tamil Nadu Wakf Board under Section 69 of the Wakf Act, as per the Gazettee Notification published in the Tamil Nadu Government Gazettee dated 08.09.2010.

18. As per the Bye-law, the Tamil Nadu Wakf Board conducted the election/selection on 07.07.2018, the following particulars of the office bearers are 1.Miss.Habeebunnisa Begum (President) and the 1st respondent herein, 2.Syed Sajjad Ali (Vice-President), 3. Mohammed Sajath (Secretary) and the petitioner herein, 4.Syed Kasim Sakka (Joint Secretary), 5.Syed Akthar Hussain (Treasurer) and the second respondent

herein, 6.Dula Basha (Joint-Treasurer-I), 7.Ghayas Ali (Joint-Treasurer-II) and the 7 Committee Members are 1.Sayeeda Shabana Ayesha, 2.Hassena Begum, 3.Abdul Rahman, 4.Syed Mustaq Hussain, 5.Syed Latheef, 6.Syed Ali Mohammed, 7.Syeeda Shaheena Begum.

19. The said office bearers were recorded officially under Section 42 of the Wakf Act, 1995 and the Managing Committee was approved by the Tamil Nadu Wakf Board dated 20.09.2018. The Tamil Nadu Wakf Board has approved the elected/selected office bearers for the period of three years from 07.07.2018 till 06.07.2021 period.

20. The petitioner herein is the Secretary of the above said Wakf. As per the version of the respondents herein, the revision petitioner herein has not applied for the Corporation Plan and not submitted the Budget Estimate and Source of Income and not obtained prior permission of the Tamil Nadu Wakf Board and the petitioner appears to have started the construction work of Dargha without informing the members of the Wakf and collected the amount by making a printed donation bill book and also appointed agents for collection.

21. It is the further case of the respondents herein that when this fact came to the knowledge of the respondents, the Executive Meeting is prefixed every month 1st Sunday. Likewise, on 06.10.2019, the Executive Meeting held, the respondents asked the petitioner to submit the Corporation Plan, Budget Estimate, and Source of Income submitted before the Tamil Nadu Wakf Board and permission letter to construct the Dargha from Tamil Nadu Wakf Board and also to hand over the donation bill book and the amount collected by him and his agents to check the income and expenditure of the Wakf and the petitioner asked one month time to hand over the above said documents and amount collected by him and his agents, by Next Executive Committee Meeting on 03.11.2019. The petitioner and other members believed the words of the petitioner with the consultation of the other members given one month time to hand over the above said documents and amount collected by the respondents and hence, on the above factual background, the respondents projected that in the meantime, the petitioner with the intention to escape from his fault, on 29.10.2019, he simply sent the letter to the respondents stating that the Executive Committee meeting was held on 28.10.2019 and the respondent was removed from the post of the Treasurer.

22. The petitioner promise in the Executive Committee Meeting held on 06.10.2019 before the members that by next Executive Committee meeting on 03.11.2019 he will hand over the Corporation Plan, Budget Estimate, Source of Income submitted before the Tamil Nadu Wakf Board and permission letter to construct the Dargha from the Tamil Nadu Wakf Board and also he will hand over the donation bill book, amount collected by him and his agents and hence, the respondent herein sent a written complaint to the Tamil Nadu Wakf Board about the illegal act of the petitioner herein and the same is pending before the Court. After perusing the documents marked before the Tribunal, I find that the members of the Executive Committee have filed sworn affidavit before the Tamil Nadu Wakf Tribunal that the Executive Committee meeting was not conducted on 28.10.2019 and 09.11.2019 and the affidavit filed by the Executive Committee members before the Tribunal was marked Exs.P.16 and P.20 which is to the effect that the revision petitioner herein came to their house and obtained signature in misrepresentation and the common fact is that no Executive Committee meeting was held as projected by the revision petitioner herein.

23. The second contention of the revision petitioner is that after the removal of the respondent herein, new members have been appointed. My attention was drawn to Clause IV (4) of the scheme and as per the said Clause, the Executive Committee is authorized to remove any member from the post for commission or omission or misapplication of Wakf property. But willfully and wantonly, the petitioner had omitted the next line that "After due enquire of the Executive Committee". In this case, no executive meeting was conducted, the members of the committee had stated that no executive meeting was conducted by the Secretary and no notice was given to any of the members of the Committee. The illegal decision was taken unilaterally by the petitioner and hence, on a combined reading of clause IV (4) of the scheme coupled with the sworn affidavit of the Executive Committee members under Exs.P.16 to 20, whether an Executive Committee meeting was conducted for removal of the respondent itself appears to be under cloud.

24. It remains to be stated that though the dispute was regarding as to removal of the respondent herein and approval of the Wakf Board on

which date, it is to be stated that there is no notification has been issued under Section 42 of the Wakf Act, in support of the appointment of the new member as a committee member also assumes significance. Thus, this Court finds that the petitioner has not sent any show cause notice to her, no charges were framed and no opportunity was given to her to put forth her defense. Therefore, the letter sent by the petitioner dated 11.11.2019 is illegal.

25. Taking into consideration that whether there is an observance of principles of natural justice viz., whether a domestic enquiry as contemplated under the Regulation has been complied with, especially, when the alleged conduct of the Executive Committee Meeting itself is under cloud, for the reasons observed supra. Furthermore, there is no notification under Section 42 of the Wakf Act regarding nomination of the new member in the alleged vacancy and their action thereto. In fact, the written complaint given by the respondent herein to the Wakf Board is also still pending and hence, viewing on the above factual matrix of the case, I find that the main O.A. is pending and I.A. is filed for injunction and the tenure is about to complete in the year 2021 and

hence, I find that prima facie the non observance of the principles of natural justice appears to be uncured. It is open to the respondent to mark necessary documents before the Wakf Tribunal to substantiate the clear observance of principles of natural justice and it is also to be noted that in the absence of any document before the Tribunal being marked, the Wakf Tribunal has come to the conclusion that on behalf of the revision petitioner herein no document has been marked.

26. Furthermore, for the reasons stated supra,

[A] I find that prima facie, the respondents herein [petitioners before the Wakf Tribunal] have made out a prima facie case for non-observance of principles of natural justice and non conduct of the alleged Executive Committee meeting as stated in sworn affidavit by the members and also the absence of Notification under Section 42 of the Wakf Act and

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[B] Hence, I find that the order passed by the Tribunal is well considered and well merited and the finding rendered by the Tribunal that the petitioners/applicants have prima facie established that

no enquiry was conducted against them in the Executive Committee Meeting alleged to have been held on 28.10.2019 and 09.11.2019 which vitiates the Rule of "Audi Alteram Partem" and also not followed the bye-laws of the Wakf.

[C] Hence, such a finding is well merited and well considered and it does not warrant any interference by this Court at this revisional jurisdiction and hence, no merits in this petition and Civil Revision Petition is liable to be dismissed.

27. In the result, this Civil Revision Petition is dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

30.12.2020

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RMT.TEEKAA RAMAN, J.

JRL

To

The Tamil Nadu Wakf Tribunal,
Chennai.



Order made in
C.R.P. NPD.No.1628 of 2020

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