



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.12.2019

Pronounced on : 07.01.2020

CORAM :

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

C.R.P (MD)No.1533 of 2007

1.P.S.K.N.Amanulla

2.N.S.M.Mohammed Farooq

3.M.K.M.Abdul Kareem

... Petitioners

Vs.

1.The Tamil Nadu Wakf Board,
Represented by its Secretary,
9th Cross, Indira Nagar,
Adayar, Chennai 600 004.

2.T.A.K.A.Mohaideen Maraikayar

3.T.A.K.A.Mohammed Abdul Kader

4.M.Anwardeen

5.Thahir Nachiya

6.Minor J.Mohammed Ershed

7.Minor J.Mohammed Moktum

... Respondents

(R5 to R7 are the legal heirs fo the deceased 3rd
respondent before the Tribunal T.A.K.M.Jaleel Maraikayar)
(Minor R6 & R7 are represented by
minor and next friend Tahir Nachiya)

PRAYER: Civil Revision Petition is filed under Article 227 of the
Constitution of India to set aside the fair and decreetal order of
the Wakf Tribunal, Thanjavur cum Principal Subordinate Judge,
Thanjavur in W.O.P.No.4 of 2002 dated 19.09.2007.

For Petitioners	: Mr.S.Ramesh
For R1	: Mr.N.Mohideen Basha
For R2	: Mr.Babu Rajendran
For R3	: Mr.K.C.Maniyarasu
For R4, R5, R6 & R7	: No appearance

O R D E R

This Civil Revision Petition is filed challenging the order of
the Wakf Tribunal, Thanjavur, dated 19.09.2007 made in W.O.P.No. 4
of 2002. The said petition came to be filed seeking the following
reliefs:

i)Declaring that the right to mutawalliship for the
administration and management for Jumia Pallivasal,
Maln Pallivasal and Sheik Farid Valivulla Wakf,
notified Wakf No.G.S.410/TNJ. Madukkur, Pattukottai
Taluk, is not hereditary.



ii) Declaring that the Jamathars (Muslim congregation) of Jumia Pallivasal, Mela Pallivasal, Madukkur have the right to elect the committee of Mutawallis for the above Wakf, to be approved by first respondent.

iii) Declaring that the Committee consisting of 30 members elected by Jamathars of the above Jumia Pallivasal, Mela Pallivasal, Madukkur on 21.12.2001 are entitled to manage and administer the above Wakf for a period of 3 years

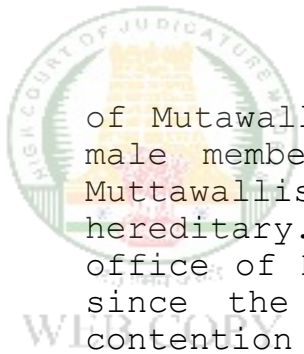
iv) Declaring that the appointment of second and third respondents as joint Mutavallis for the above said Wakf by the first respondent by its order dated 06.08.2002 in item No.10/2001 is invalid after setting aside the above order of first respondent

v) Directing the respondents to pay costs and thus render justice.

2. The contention of the petitioners before the Wakf Tribunal was that the Jumia Pallivasal, Mela Pallivasal and Sheik Farid Valiullah Wakf, Madukkur, Pattukkottai Taluk notified as Tamilnadu Wakf Board were under the management of the elected representatives of the Muslim community of Madukkur. It is stated that a Committee consisting 10 committee members was elected for the period from 29.12.1997 to 28.12.2000. The Wakf Board has also approved the said appointment.

3. At the meeting of Jamathdars held on 21.12.2001, a Committee consisting of 30 members was elected to act as Mutawallis for a period of 3 years. Out of 10 persons elected in the year 1997, two persons had died and the remaining eight members have also sent a letter on 24.12.2001 to the Wakf Board stating that they have handed over the administration to the newly elected Trustees. The letter was sent by the Jamathdars seeking approval of the election of 30 members committee. It is the further claim of the petitioners that the 4th and 5th respondents, who are the descendants of the Wakif had objected to the elected committee being allowed to administer the Wakf. Pursuant to the said objection, the Wakf Board appears to have conducted an enquiry and passed an order dated 06.08.2002 appointing the second and third respondents as joint Mutawallis. Contending that the appointment of the respondents 2 and 3 as joint Mutawallis on the basis of a hereditary succession is alien to Mohammedan law, the petitioners sought for the declaratory reliefs as aforesaid and also to set aside the order dated 06.08.2002.

4. This petition was resisted by the second respondent contending that as per the proforma of the Wakf, mode of appointment



of Mutawallis is governed by the rule of succession and the eldest male member of the 2 families are entitled to be appointed as Muttawallis. It is also noted that the rule of succession is hereditary. As per the proforma, the rule of succession to the office of Mutawalli subject matter of Wakf was by custom and usage since the original Wakf nama was missing. It was the further contention of the second respondent that Jamathdars have no right to nominate a Committee in the place of the original Mutawallis by overlooking the rule of succession as found in the proforma issued by the Wakf Board in the year 1956 itself.

5. The Wakf Board, which is cited as the first respondent, filed a counter affidavit stating that the petition itself is not maintainable. It also claimed that no proceedings were initiated *suo motu* under Section 63 of the Wakf Act to enable the petitioners to approach the Wakf Tribunal. It was also contended that as per the report of the competent authority, after holding proper enquiry, the rule of succession to the office of Mutawalli is eldest male member of the two families of the Wakifs. The established custom and usage was that the eldest male member should be nominated as the Mutawalli. At the time of preparing proforma, there were two Mutavallis namely, Kader Bawa and Mohamed Yusuf Maraicar. Hence, after the life time of the two Mutawallis, the eldest male member of those two families were entitled to the office of Mutawalli. It is also stated that though the proforma was published and objections were called for, no objection was received. It was also the contention of the first respondent-the Wakf Board that merely because the Committee was appointed and the same was approved by the Wakf Board in the interregnum period, that will not have the effect of nullifying the wishes of the founders of the Wakf regarding succession to the office of Mutawalli.

6. The fifth respondent has filed a separate counter contending that the Mutawalliship would be in the family of Ameer Mohideen. He would further contend that the proforma of the Wakf shows the mode of succession to the office of Mutawalli and therefore, the same cannot be overlooked to appoint a Committee of persons elected by the Jamathdars to manage the Wakf. The genealogy of Ameer Mohideen was admitted.

7. The Waf Tribunal, upon consideration of the evidence on record and law relating to the appointment of Mutawallis, concluded that as per the custom and usage of the Wakf, it has to be managed by hereditary Mutawallis, who are nominated as per the rule of succession and as such, the eldest male member of the two families are entitled to be appointed as Mutawallis. The Wakf Tribunal has also concluded that mere fact that the Committee nominated by Jamathdars was allowed to be managed for a short span of time cannot deprive the descendants of Wakifs, the right to be Mutawallis of the Wakfs. In fine, the Wakf Tribunal rejected the claim of the



petitioners and concluded that the action of the Wakf Board in appointing the descendants of the two families as Mutawallis is correct. Aggrieved by the said decision of the Wakf Tribunal, the petitioners have come up with this Civil Revision Petition.

8. I have heard Mr.Ramesh, learned counsel appearing for the petitioners, Mr.Mohideen Basha, learned counsel appearing for the first respondent, Mr.Babu Rajendran, learned counsel appearing for the second respondent and Mr.K.C.Maniarasu, learned counsel appearing for the third respondent. The respondents 4 to 7, though served, are not appearing either in person or through counsel.

9. Mr.Ramesh, learned counsel appearing for the petitioners would vehemently contend that hereditary succession is unknown to Mohammedan law. The only exception being, where the founders have laid down the rule of hereditary succession to the office and where the office of Mutawalli becomes hereditary by custom, in which case, the custom should be followed.

10. Mr.Ramesh would further contend that the second principle of custom and usage cannot apply to Tamilnadu, since Section 2 of Central Act XXVI/1937 namely, the Muslim Personal Law (Shariat) Application Act, 1937 is amended as follows:

'Notwithstanding any custom or usage to the contrary, in all questions regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of personal law, marriage, dissolution of marriage, including Tallaq, Ila, Zihar, Lian, Khula and Mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties and wakfs the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat)''

11. Mr.Ramesh, learned counsel appearing for the petitioners, relying on the above amended Section, would contend that insofar as the State of Tamilnadu is concerned, the amending Act which has obtained the assent of the Governor General would be valid and it would prevail in the State. Therefore, according to Mr.Ramesh, any custom or usage, which provides for a hereditary succession to the office of Mutawalli is deemed to be invalid and the same cannot be enforced. Ofcourse, a plea was taken before the Wakf Tribunal that the descendants of the Wakifs had executed certain consent letters, waiving their right to the office of Mutawalli of the Wakf in question. Though Mr.Ramesh would attempt to rely upon those letters, the said attempt is only a faint attempt since the right of Mutawalliship, which accrues to a family by custom or usage and is to be made on the basis of primogeniture cannot be surrendered by the person in office for the time being. It is essentially an inheritable right, which vests for the family for generations.



12. Mr.Mohideen Basha, learned counsel appearing on behalf the first respondent would contend that the Wakf Board has gone by the rule of succession and the proforma of the Wakf and as such, the order of the Wakf Board dated 06.08.2002 cannot be faulted. According to him, the Wakf Tribunal was right in concluding that the proforma is valid piece of evidence to decide the question regarding Mutawalliship of the Wakf.

13. Mr.Babu Rajendran, learned counsel appearing for the second respondent and Mr.K.C.Maniarasu appearing for the third respondent would submit that no doubt, the Muslim Personal law (Shariat) Application (Tamilnadu Amendment) Act, 1949 abrogates any custom or usage, which results in hereditary succession to the office of Mutawalliship. But, upon enactment of the Wakf Act, 1995, the said Act would be in conflict with the provisions of the Wakf Act, 1995.

14. They would also contend that as per the proviso to Article 254 (2) of the Constitution of India, if an existing law conflicts with a subsequently enacted Central Law, the State legislation would become invalid, insofar as inconsistency is concerned, unless the State legislature re-enacts the law and reserves it for the assent of the President.

15. They would also invite my attention to the judgment of the Hon'ble Supreme Court of India in **PT. Rishikesh and another Vs. Salma Begum** reported in **1995 (4) SCC 718** wherein, the Hon'ble Supreme Court had considered the effect of proviso to Article 254(2) of the Constitution of India particularly, when an existing State legislation conflicts with a subsequently enacted Central Law. After referring to the provisions of the Article 254(1) and (2) the Hon'ble Supreme Court had observed as follows:

15.Clause (2) of Article 254 is an exception to clause (1). If law made by the State Legislature is reserved for consideration and receives assent of the President though the State law is inconsistent with the Central Act, the law made by the Legislature of the State prevails over the Central law and operates in that State as valid law. If Parliament amends the law, after the amendment made by the State Legislature has received the assent of the President, the earlier amendment made by the State Legislature if found inconsistent with the Central Amended law, both Central law and the State law cannot coexist without colliding with each other. Repugnancy thereby arises and to the extent of the repugnancy the State law becomes void under Article 254(1) unless the State Legislature again makes the law reserved for the consideration of the President and it receives the assent of the President.



Full Bench of the High Court held that since U.P.Act 57 of 1976 received the assent of the President on 30.12.1976, while the Central Act was assented to on 09.09.1976, the U.P.Act made by the Legislature later in point of time it is a valid law."

WEB COPY

16. I have considered the rival submissions.

17. The only question that has to be decided in this Civil Revision Petition is as to whether the custom and usage, which results in a hereditary succession to the office of Mutawalli would continue to apply and the prohibition enacted under the Muslim Personal Law (Shariat) Application (Tamil Nadu Amendment) Act, XVIII of 1949 would cease to have effect because of the enactment of the new Wakf Act in 1995. Before proceeding further, it would be pertinent to refer to the provisions of the Wakf Act, 1995. Section 3(i) of the Wakf Act defines the term 'Mutawalli'. From the definition of the Mutawalli under the new Wakf Act, it is clear that it includes a person appointed as a Mutawalli by virtue of any custom or usage. This definition of the term 'Mutawalli' as found in the Wakf Act, 1995, therefore, would have precedence over the provisions of Muslim Personal Law (Shariat) Application (Tamil Nadu Amendment) Act, XVIII of 1949. Section 3 of the amending Act substitutes Section 2 instead of Section 2 of the Central Act XXVI of 1937. Amended Section 2 of the Central Act XXVI of 1937 has already been extracted. A comparison of Section 3(i) of the Wakf Act and Section 2 of the Central Act XXVI/1937 as amended by Tamilnadu Act XVIII of 1949 are inconsistent with each other as much as Section 3(i) of the Wakf Act, 1995 recognizes Mutawalliship by custom and usage. This would automatically mean that if there is a hereditary succession to the office of Mutawalliship by custom and usage, the same can continue under the Wakf Act, 1995. A reading of the amended Section 2 of the Central Act, XXVI of 1937 would show that it prohibits applicability of custom and usage. The law applicable shall be the Muslim Personal Law (Shariat). It is common knowledge that the Muslim Personal law does not recognize the hereditary succession. There is inconsistency between the Wakf Act, 1995, which recognizes the custom and usage in appointment of Mutawallis and the amended Section 2 of the Central Act, XXVI of 1937. The amendment was introduced by Tamilnadu Act, XVIII of 1949. The amending Act had been reserved for assent of the Governor General and has received the assent. Therefore, it is valid piece of legislation enacted in conformity by Article 254(2) of the Constitution of India. However, the effect of the new Wakf Act on the amended Section 2 will have to be considered. It is here that the proviso to Article 254(2) of the Constitution of India assumes significance.

18. Article 254 of the Constitution of India reads as follows:

254. Inconsistency between laws made by Parliament and

<https://hcservices.ecourts.gov.in/hcservices/>



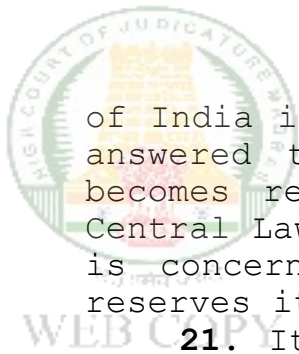
laws made by the legislatures of State. - 1) If any provision of law made by the legislature of a State is repugnant to any provision of law made by parliament which parliament is competent to enact, or to any provision of existing law with respect to one of the matters enumerated in the concurrent list, then, subject to the provisions of clause (2), the law made by the parliament, whether passed before or after the law made by the legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the legislature of the State shall, to the extent of the repugnancy, be void.

2) Where a law made by the legislature of the State with respect to one of the matters enumerated in the concurrent list contains any provision repugnant to the provisions of the earlier law made by the parliament or an existing law with respect to that matter, then, the law so made by the legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent parliament from enacting any time any law with respect to the same matter including a law adding to, amending, varying or repelling the law so made by the legislature of the State.

19. A reading of Article 254 of the Constitution of India would show that Article 254(1) provides primacy to laws made by the parliament in respect of the matters in the concurrent list. Article 254(2) makes an exception and enables the State legislature to make its own law in respect of the matters provided in the concurrent list even repugnant to the Central law subject to the condition that the law so made by the State Legislature should be reserved for the assent for the President and upon assent, the same would prevail in that State. The proviso goes one step further. It empowers the Parliament to make a law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the legislature of the State. By introducing Wakf Act, 1995, the Parliament has provided that the custom and usage in appointing Mutawallis would continue by including in the definition of the term 'Mutawalli' 'a person who is entitled to be appointed by custom and usage'. To that extent, upon enactment to Wakf Act, 1995, the State Law namely, the Muslim Personal Law (Shariat) Application (Tamil Nadu Amendment Act, XVIII of 1949, becomes repugnant to the Central Law namely, the Wakf Act.

20. The question that arises for consideration is as to whether the State Law namely Amended Act, XVIII of 1949 would prevail in the State of Tamilnadu even after enactment of the Wakf Act, 1995. It is precisely this question which was adverted to Hon'ble Supreme Court



of India in the case of PT.Rishikesh and another. The Supreme Court answered the question concluding that if an existing State Law becomes repugnant to or inconsistent with a subsequently enacted Central Law, the Central Law would prevail insofar as the repugnancy is concerned unless the State Legislature re-enacts the law and reserves it for assent and obtains the assent of President.

21. It is nobody's case that Act XVIII of 1949 was re-enacted by the State Legislature after enactment of Wakf Act, 1995 and was reserved for presidential assent. In the absence of such procedure having been followed, it is the Wakf Act, 1995, which would have precedence over the State Law.

22. Mr.Ramesh would rely upon a judgment in **Syed Ansaruddin Vs. Tamil Nadu Wakf Board** reported in **1992 (2) LW 685** wherein the Hon'ble Justice Mr.Abdul Hadi had taken a view that in view of the provisions of the Act XVIII of 1949, there is no question of hereditary devolution of Office of Mutawalli in the State of Tamilnadu. It should be pointed out that the said decision was rendered prior to the enactment of the Wakf Act, 1995. Therefore, the same should be taken as the judgment rendered on the basis of then prevailing law. In fact, then Justice Mr.S.A.Kader in his book 'The law of Wakfs' had adverted to the decision in Syed Ansaruddin Vs. Tamil Nadu Wakf Board has observed as follows:

"Questions relating to agricultural land, charities and charitable institutions and charitable and religious endowments were excluded from the purview of the Central Act, 1937, as these subjects were in the provincial list under the Government of India Act 1935. The then Madras Legislature passed the Muslim Personal Law (Shariat) Amendment Act 18 of 1949 introducing a new sub section (2) deleting the words 'save questions relating to agricultural land' and the words 'other than charities and charitable institutions and charitable and religious endowments'. As a result of this Madras amendment hereditary right of succession to the office of mutawalli of Muslim charitable and religious institutions and endowments by custom stood abrogated in the then Presidency of Madras. But in view of the definition of mutawalli in the Wakf Act 1995, which includes any person who is a mutawalli of a wakf by virtue of any custom, customary right of hereditary succession gets revived in areas to which the Madras Amendment Act, 1949 applied. In a very recent decision in Syed Ansaruddin v Tamil Nadu Wakf Board, a Single Judge of the Madras High Court has held that so far as Tamil Nadu is concerned the law of hereditary succession to the office of mutawalli based on custom cannot be applied in view of the amendment made by the Madras Amendment Act, 1949. This decision is no longer good law



in view of the definition of mutawalli in the present Act, which includes any person who is a mutawalli of a wakf by virtue of any custom".

23. This view of law of the author is in consonance with the judgment of the Hon'ble Supreme Court of India in **PT.Rishikesh and another** referred to supra.

24. In the light of the above legal position, the question of law argued by Mr.Ramesh, will have to be decided against the petitioners. I therefore concluded that the Wakf Board was right in reverting to the hereditary succession as provided for in the proforma and recognizing two members of the families of the Wakifs as Mutawallis. The Wakf Tribunal has also upheld the said action of the Wakf Board. I do not see any illegality or material irregularity in the order of the Wakf Tribunal so as to enable interference under Article 227 of the Constitution of India.

25. For the foregoing reasons, this Civil Revision Petition fails and accordingly, the same is dismissed. No costs.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

CM

To,

The Principal Subordinate Judge, Thanjavur

+1 CC to Mr.V.RAGAVACHARI, Advocate (SR-597[F] dated 07/01/2020)

+3 CC to Mr.BABU RAJENDRAN, Advocate (SR-800[F] dated 08/01/2020)

C.R.P(MD)No.1533 of 2007

07.01.2020

VB(22.01.2020) 9P 6C