

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 16.4.2021.

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P.(NPD) No.504 of 2021

and

C.M.P.No.4367 of 2021

S.B.Sheik Azeezuddin

Petitioner

vs.

1. S.Feroz Khan,  
Secretary of Dasthagir Sahib Jamia,  
Masjid, No.54, Mosque Garden,  
East Jones Road, Saidapet,  
Chennai-15.
2. The Special Officer (S.O.),  
Tamil Nadu Wakf Board,  
No.1, Jaffer Syrang Street,  
Vallal Seethakathi Nagar,  
Chennai-1.
3. The Chief Executive Officer,  
Tamil Nadu Wakf Board,  
No.1 Jaffer Syrang Street,  
Vallal Seethakathi Nagar,  
Chennai-1.
4. The Superintendent of Wakf,  
Chennai District cum Election Officer,  
Tamil Nadu Wakf Board,  
No.138, Dr.Besant Road,  
Ice House, Triplicane, Chennai-5.

Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India read with Section 83(9) of the Wakf Act, 1995 against the Fair and Decretal order dated 3.2.2021 passed in AA.No.1/2020 on the file of the Wakf Tribunal, Chennai in directing respondents 2 to 4 to conduct election to Dasthagir Sahiba Jamia Mosque insofar as including two streets namely East CIT Nagar 1st Cross Street and East CIT Nagar 2nd Cross Street.

For Petitioner : Mr.N.A.Nissar Ahmed

For R1/Caveator : Mr.L.Gavaskar

For R2 : Mr.C.Shankar

For R3 : Mr.V.Lakshminarayanan

### ORDER

The Civil Revision Petition has been filed questioning the order passed in AA No.1 of 2020 dated 3.2.2021 by the Tamil Nadu Wakf Tribunal, Chennai.

2. The said Appeal has been filed taking advantage of Section 64(4) of the Wakf Act, 1995 read with Sections 83 and 84 of the Wakf Act to set aside the order dated 6.2.2020 passed in proceedings Na.Ka.No.4879/05/B6/Chennai by the Special Officer, Tamilnadu Wakf Board.

3. The issue in question is with respect to conducting of election by way of secret ballot to elect the office bearers (Management Committee) for the Dasthagir Jamia Mosque situated at No.54, Jones Road, Saidapet, Chennai 600 015 including casting votes, participating

and contesting Muslim people with respect to two streets East CIT Nagar 1st Cross Street and East CIT Nagar 2nd Cross Street.

4. In the Proceedings of the Special Officer, Tamil Nadu Wakf Board dated 6.2.2020, presided over by an IAS Officer, it had been observed therein that the present petitioner herein had filed W.P.No.23864 of 2018 before this court to implement the election notification dated 5.3.2018 and conduct secret ballot election for electing the office bearers as per the area fixed in the notification dated 16.3.2021. The dispute is with respect to the eligibility of the voters and the area from which the voters can participate in the said election. Thereafter, the Secretary of the Dasthagir Sahib Jamia Masjid had filed W.P.No.718 of 2019 before this court once again seeking conducting of elections by secret ballot for electing the office bearers based on the notification issued by the Tamil Nadu Wakf Board in which 31 streets have been listed in the voters list, by considering his representation dated 10.12.2018.

5. In W.P.No.23864 of 2018, by order dated 5.12.2018, a learned Single Judge of this court had extended the time by four months from the date of receipt of copy of the said order for conducting of election for electing the office bearers pursuant to the

notification dated 5.3.2018. In the order dated 10.1.2019 in W.P.No.718 of 2019, the learned Single Judge of this court had directed the consideration of the representation dated 10.12.2018 and pass orders in accordance with law after issuance of notice to all the persons concerned.

6. It is only thereafter, the order of the Special Officer, Tamil Nadu Wakf Board was passed and I am confident that such Proceedings had been passed after issuance of notice and also after hearing all the parties.

7. In the said order, a list of Streets had been given for which earlier elections were conducted. In the year 2001, it is seen that a list of 14 streets had been given. With respect to the years 2006 and 2010, a list of 21 streets have been given. For the year 2014, the list had increased to 30 streets. It had been stated therein that with respect to the addition of the streets in the year 2006, 2010 and 2014, objections had not been received from the Jamathars for including the said streets. The only objection which now prevails is inclusion of CIT Nagar I Cross Street and CIT Nagar II Street Street.

8. The then Executive Engineer, Tamil Nadu Wakf Board, alongwith the Assistant Secretary and Superintendent of Wakf Board,

had submitted an inspection report dated 6.2.2010 and they had stated that an error had crept in the year 2014, which must be rectified and therefore, ordered CIT Nagar I Cross Street and CIT Nagar II Cross Street should be read as CIT Nagar (West) I Cross Street and CIT Nagar (West) II Cross Street. This order of the Special Order was in question before the Tamil Nadu Wakf Tribunal and the order passed therein is the subject matter of the present revision petition.

9. Heard Mr.N.A.Nissar Ahmed, learned counsel appearing for the revision petitioner and Mr.L.Gavaskar, learned counsel appearing for the first respondent, who had entered appearance on caveat.

10. The learned counsel for the petitioner has raised a primary objection that the Tamil Nadu Wakf Tribunal cannot sit as an appellate authority and go against the facts of the case. It is also stated by him that interference of the order passed by the Special Officer, who is a fact finding authority, cannot be appreciated.

11. It must be mentioned that the Tamil Nadu Wakf Tribunal, in its order, which is now under challenge, had stated that two streets should be included viz., CIT Nagar I Cross Street and CIT Nagar II Cross Street and therefore, it directed inclusion of eligible residents

from those two streets to participate in the election. That is the cause of grievance of the revision petitioner.

12. The reason given by the Tamil Nadu Wakf Tribunal in its order is that those two streets have been excluded but, other streets which are situated far away from the Masjid and beyond the said two streets have been included. It had also been pointed out that the said boundaries of Mohalla and the Jamath can also be expandable.

13. I would hold that as a fact, it would be advantageous to the public who participate in the Jamath if the area is expanded and not restricted. Therefore, boundaries cannot be fixed so far as conducting of election to a particular area.

14. This is not an issue with respect to a particular street which is situated far from the Masjid where the list of voters and members of another Masjid reside. This is for election to be conducted for electing office bearers of a Masjid. The voters of that election can be residing in a street a little far away or close to another Masjid. However, they should be permitted to participate in the election in the said Jamath when they are paying subscription from the year 2006 which fact also cannot be simply wiped away. This is also observed by the the Tamil Nadu Wakf Tribunal and I hold that such observation cannot be found

fault with.

15. Normally a Muslim is not prohibited to be a member of two Masjid. As a matter of fact, such membership can also be encouraged in the interest of the community. It is for these reasons, the order passed by the Special Officer has to be interfered with. The Tamil Nadu Wakf Board has given specific reasons taking into consideration the well being and interest of the community as a whole and included the two streets, the residents of which streets had also paid subscription in their capacity as Jamathars.

16. It had been pointed out by the Tamil Nadu Wakf Tribunal that a mistake had been crept in the 2006 also. As a matter of fact, if the list of streets are to be examined, it is evident from the order of the Special Officer, the number of streets have been increasing during every election. As stated above, there were originally 14 streets when the elections were conducted in the year 2001, and it was increased to 21 streets when elections were conducted in the year 2006 and 2010 and subsequently, it had increased to 30 when the election was conducted in the year 2014. Therefore, it is an ongoing process where people take residence in the locality close to the Masjid and become Members of Jamath and pay subscription. When that being so, merely

for the reason that they reside a little far away, they cannot be denied the right to participate in the elections. This is the principle under which the Tamil Nadu Wakf Tribunal had also passed the order under revision and I do not find any reason to interfere with the finding arrived at by the Tamil Nadu Wakf Tribunal. Accordingly, the civil revision petition is dismissed. No costs. The connected Miscellaneous Petition is also dismissed.

17. It is also seen from the order of the Tamil Nadu Wakf Tribunal that elections had been directed to be conducted within four months from February 4, 2021. It is informed by the learned counsel that due to the fasting observed during the holy month of Ramadan, it may not be possible to conduct the elections within that time frame.

18. The four months period granted by the Tamil Nadu Wakf Tribunal would expire by the first week of June 2021. Therefore, the time for conducting the election is extended upto 31.7.2021.

16.4.2021.

Index: Yes.  
Internet: Yes.  
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To

1. Secretary of Dasthagir Sahib Jamia,  
Masjid, No.54, Mosque Garden,  
East Jones Road, Saidapet,  
Chennai-15.
2. The Special Officer (S.O.),  
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The seal of the Tamil Nadu Wakf Board is a circular emblem. It features a central illustration of the Lion Capital of Ashoka, which is a four-lion capital carved from a single block of dark soapstone. The lions are standing back to back on a high, square abacus. The abacus is decorated with a frieze of animals in high relief. The entire seal is set against a background of a green and white striped border. The text 'TAMIL NADU WAKF BOARD' is written in a circular path around the central emblem. Below the seal, the motto 'सत्यमेव जयते' (Satyameva Jayate) is written in Devanagari script.

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C.V.KARTHIKEYAN, J.

Ssk.



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