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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2021

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NO.27425 OF 2021

Shanaz. H.W.

...Petitioner

-Vs-

The Chief Executive Officer,
Tamil Nadu wakf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar, Chennai - 1.

...Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus directing the respondent to consider and pass orders on the representation dated 29.11.2021 seeking to record the change in management as per section 42 and to hand over charge to the newly elected committee.

For Petitioner : Mr.N.A.Nissar Ahmed
for Mr.A.Masood Ahmed

For Respondents : Mr.C.Shankar
Standing counsel for wakf Board

O R D E R

The prayer sought for herein is for a Writ of Mandamus directing the respondent to consider and pass orders on the representation dated 29.11.2021 seeking to record the change in management as per section 42 and to hand over charge to the newly elected committee.

2. In respect of the wakf called Dadashamakan wakf which is a registered and notified wakf under the control of Tamil Nadu wakf Board, which is governed by a scheme framed in this regard by the Tamil Nadu wakf Board under Section 69 of the wakf Act.

3. In order to elect the new governing body of the wakf, the Superintendent of wakf, Chennai - 5 was appointed as Election Officer who conducted the election on 03.10.2021, where 14 members had been elected, out of whom, the other office bearers were also elected. Though the said election was conducted, 14



members were elected and other office bearers were elected and this has been communicated to the respondent wakf Board, the same has not been acted upon by handing over the charge of the administration to the elected body. Therefore, in order to hand over the charge to the elected body, the petitioner though had already moved an application before the Tamil Nadu wakf Tribunal, since she considered the remedy is not efficacious before the Tribunal, has made a representation on 29.11.2021 to the respondent. Since the same has not been considered, she has moved the present Writ Petition with the aforesaid prayer.

4. Heard Mr.N.A.Nissar Ahmed, learned counsel appearing for the petitioner who would point out that, after completing the election, where 14 members had been elected and office bearers also have been elected, the charges were not handed over to the elected persons, therefore the representation has been given on 29.11.2021. However, on 03.12.2021, the respondent has come forward to cancel the election conducted and office bearers were elected. As against the said proceedings dated 03.12.2021, already the Writ Petition had been filed by one of the affected person before this Court in W.P.No.26402 of 2021, where the learned Judge of this court, by order dated 10.12.2021 has passed the following order:

"The writ petition has been instituted questioning the validity of the proceedings of the Chief Executive Officer, Tamil Nady Wakf Board dated 03.12.2021.

2. As per the Scheme of the Wakf, the Wakf shall be maintained by an Executive Committee elected once in three years in the General Body Meeting by the beneficiaries as per Clause 10 of the Bye-Law. The procedures for conducting an election and other criterias are also prescribed in the Bye-Law.

3. The grievance of the petitioner is that by following the procedures and in consonance with the Bye-Law, elections were conducted on 03.10.2021. The petitioner was elected as Treasurer of the Wakf , Perambur, Chennai. To his shock and surprise, the impugned proceedings are issued on 03.12.2021 stating that re-election is to be conducted on the ground that the beneficiaries were not aware of the Bye-Laws. Therefore, the Chief Executive Officer notified another election. Aggrieved from and out of the said Notification, the petitioner filed the present writ petition.

4. The impugned order reveals that Janab Syed Dula Basha and seven others were represented the Board stating that the Election Officer has to



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comply with the Bye-Law regarding the mode of election. However, the Board observed that out of 139 beneficiaries, 83 of them have submitted their consent letters to the Election Officer and identified that there was lack of awareness for Bye-Law. No doubt any such lack of awareness must be rectified before conducting any election.

5. Once an elected body has been constituted after conducting a proper election, then, the Authority cannot form an opinion that the beneficiaries were not aware of certain procedures or otherwise. If such reasons are permitted, then every election can be cancelled merely on the ground that the voters were not aware of the procedures or otherwise.

6. In view of the facts and circumstances, this Court is inclined to grant interim stay of the impugned order. Notice. Private Notice is also permitted."

5. Relying upon this order, the learned counsel would contend that, since the learned Judge has made an observation that, once an elected body has been constituted after conducting the proper election, then, the authority cannot form an opinion that the beneficiaries were not aware of certain procedures or otherwise. If such reasons are permitted, then every election can be cancelled merely on the ground that, the voters were not aware of the procedures or otherwise.

6. Since this observation has been made by the learned Judge, which prima-facie makes it clear that, the election conducted and the office bearers elected for the administration of the Wakf concerned was properly conducted. Therefore based on such election, if any administrative body is elected, that should be handed over to the charge and without handing over the charge by cancelling the said election issuing the order dated 03.12.2021, the same was stayed by this Court. Therefore the natural corollary would be that, the management has to be handed over to the elected body, he contended.

7. However, Mr.C.Shankar, learned Standing counsel appearing for the respondent would submit that, first of all, the Tamil Nadu Wakf Board has not been made as a party here, only the Chief Executive Officer of the Wakf Board has been made as a party and the representation which is sought to be considered now was given by the petitioner only on 29.11.2021, whereas the election itself was cancelled by Wakf Board by proceedings dated 03.12.2021. Even though, the same was challenged, where interim order of stay has been granted, unless the Writ Petition is disposed of one way or other, the issue as to whether the



elected body can be handed over the charge cannot be decided, he contended.

8. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

9. Insofar as the conducting of election is concerned as has been opined by the learned Judge by finding out the prima facie case in the other Writ Petition referred to above, once a democratically elected body was available, the same has to be given the charge to administer the Wakf, for which the election was conducted.

10. If here and there, some technical objection is raised, that all the voters were not aware of the procedure etc., that may not be the good reason for stalling the elected representative or elected body from taking charge of the administration of the Wakf concerned.

11. Therefore, I am also of the view that, of course prima facie that the order dated 03.12.2021 cancelling the election already held may not be justifiable. However, since that has been questioned in the other Writ Petition, the final decision would be taken thereon on merits.

12. However, as on date by virtue of the interim order granted by this Court dated 10.12.2021 referred above, there can be no impediment for the elected body to take over the charge of the administration of the Wakf. Therefore, in this regard, the plea raised by the petitioner through her representation dated 29.11.2021 can very well be considered by the respondent. Therefore, in that view of the matter, this Court is inclined to dispose of this Writ Petition with the following orders:

"that there shall be a direction to the respondent to consider the representation of the petitioner dated 29.11.2021 and pass orders thereon. While considering the said representation, it must be borne in mind that the order dated 03.12.2021 cancelling the said election since has been stayed, where prima facie opinion has been made by this Court as referred above and therefore, accordingly the decision can be taken with regard to the plea of the petitioner to take over the charge of the administration of the Wakf concerned and the said decision shall be taken by the respondent within a period of three weeks from the date of receipt of a copy of this order."



13. With these directions, this Writ Petition is disposed of. However, there shall be no order as to costs.

Sd/-
Deputy Registrar (CS)

// True Copy //

Sub Assistant Registrar

vji / rap

To

The Chief Executive Officer,
Tamil Nadu wakf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai - 1.

+1cc to Mr.Masood Ahmed, Advocate Sr.No.68805

+1cc to Mr.C.Shankar, Advocate Sr.No.68921

W.P.No.27425 of 2021

NRL (CO)
RVM(07/02/2022)