



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.07.2021

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P(MD)No.10070 of 2021

and

W.M.P(MD) .No.7792 of 2021

A.H.Ibrahim

... Petitioner

Vs.

1.The Tamilnadu Wakf Board,  
Rep. by its Chief Executive Officer,  
No.1, Jaffer Shrirang Street,  
Vallal Seethakathi Nagar,  
Chennai-600 001.

2.The Superintendent of Wakf,  
Kazimar Street Big Mosque,  
Having office at  
No.1, Town Hall Road,  
Madurai.

3.S.G.Azam Ali

4.Meer Fakrudeen Munshi

... Respondents

**Prayer:** Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Mandamus, directing the respondents 1 and 2 to take steps to prevent the respondents 3&4 or any other persons claiming to be as Haqdhars of Kazimar Street Big Mosque Wakf, Madurai from dealing with any funds and properties of the Kazimar Street Big Mosque, Madurai either by demanding or collecting fee for burying the dead of the interested person of the Wakf or in whatsoever manner in consideration of the representation of the petitioner dated 26.09.2020 and 13.05.2021.

For Petitioner : Mr.G.Prabhu Rajadurai  
For Respondents 1 & 2 : Mr.S.A.Ajmal Khan  
Standing Counsel  
For Respondents 3 & 4 : Mr.Mahaboob Athif

**ORDER**

This writ petition has been filed for the issue of writ of Mandamus directing the first and second respondents to prevent the

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third and fourth respondents or any other persons claiming to be Haqdhars of Kazimar Street Big Mosque Wakf, Madurai, from dealing with any funds and properties of the Kazimar Street Big Mosque, Madurai either by demanding or collecting fee for burying the dead of the interested person of the Wakf.

2. When the matter came up for admission on 14.06.2021, this Court passed the following order:

*'Mr.S.A.Ajmal Khan, learned standing counsel, takes notice for the first and second respondents. Mr.Mahaboob Athiff, learned counsel takes notice for the fourth respondent. Notice to the third respondent returnable by 12.07.2021.*

*2. It is seen from records that this case has a checkered history and ultimately, an order came to be passed by the Hon'ble Division Bench in W.A. (MD) Nos.702 and 703 of 2016, wherein the erstwhile Hukdar was directed to hand over the charge and deliver possession of all the records and properties of the Wakf to the second respondent. There was a further direction to the Board to frame a Scheme. It is brought to the notice of this Court that Contempt Petition No.390 of 2021 has been filed and the same is pending before the Hon'ble Division Bench for the alleged non-compliance of the directions issued in the Writ Appeals.*

*3. The grievance of the petitioner in the present writ petition is that inspite of the orders passed by the Hon'ble Division Bench, the third and fourth respondents are demanding and collecting money while burying the dead bodies within the Wakf premises.*

*4. The learned counsel appearing on behalf of respondents 1 and 2 submitted that the complaint given by the petitioner has been received and it is under consideration by the first respondent and a decision will be taken.*

*5. The learned counsel appearing on behalf of the fourth respondent submitted that there was a subsequent order passed by the Board, which was concealed and even an earlier writ petition filed by the same petitioner was disposed of by this Court and the petitioner was asked to work out his remedy in the pending contempt petition.*

*6. Taking into consideration the facts and circumstances of the case, the first respondent is directed to consider the representation made by the*

*petitioner on 13.05.2021 after giving an*



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opportunity to the petitioner and the fourth respondent and take a decision and report before this Court. It is made clear that the parties shall appear before the first respondent on the date of hearing without fail. In the meantime, the petitioner can also work out his remedy in the pending contempt petition.

7. Post this case under the caption 'for orders' on 12.07.2021."

3. Pursuant to the order passed by this Court on 14.06.2021, an enquiry was conducted by the Chief Executive Officer of the Tamilnadu Wakf Board. Thereafter the Chief Executive Officer through proceedings dated 09.07.2021 has passed an order. The relevant portions in the order are extracted hereunder:

"Hence from the facts narrated above it is concluded that it is the Executive Officer who has control over the said Waqf and the 4<sup>th</sup> respondent has not authority to deal with the administration of the Waqf. It is understood from the Report of the Waqf Inspector dated 22.06.2021 that there is no practice for fixing and collecting amount for burial of dead bodies in the said Waqf earlier and Board has already reiterated by proceedings dated 24.10.2002 that the trustees of the Kazimar Periya Pallivasal, Madurai not to discriminate the Haqdars and Nono-Haqdars and allow them to do their customary practice in the Waqf as done previously and status quo of the relation between Haqdars and Nono-Haqdars to be maintained till the disposal of the framing of scheme by the Board and it is also confirmed that the 4<sup>th</sup> respondent is doing such acts only from the year 2019.

It is also mentioned in the Report of the Superintendent of Waqfs, Madurai that the other Waqfs in the said locality are collecting money for burial of dead bodies since 2005. If that is the practice it is only the Executive Office who is the competent authority is liable to collect the amount in respect of this Waqf and issue the certificates as followed by the Waqf but this could not be done since the physical possession is not handed over yet.

Though Direct Management was ordered Executive Officer could not take possession of the said Waqf due to the dispute between the Haqdars of the said Waqf and Law and order problem. The main dispute is only the male line descendants of the Haqdars are provided with opportunity for the management of the Waqf and



female line decendants are not provided with. The said issue is still pending for consideration before the Board.

In the circumstances, it is concluded that the 4<sup>th</sup> respondent is not liable to fix and collect the amount from the petitioner Jamath till such time the issue in respect of the Haqdars are settled and scheme is framed''.

4. Heard Mr.G.Prabhu Rajadurai, learned counsel appearing for the petitioner, Mr.S.A.Ajmal Khan, learned Standing Counsel appearing for the respondents 1 & 2 and Mr.Mahaboob Athif, learned counsel appearing for the respondents 3 & 4.

5. In the considered view of this Court, many of the issues that were raised by the learned counsel for the petitioner and the learned counsel appearing on behalf of the third and fourth respondents are now being canvassed before the Division Bench in Cont.P(MD).390 of 2021 which has been filed on the ground that the earlier Division Bench order passed in W.A.(MD).Nos.702 and 703 of 2016 has not been complied with. This Court therefore does not want to go into those issues touching upon the merits of the claims made by either side.

6. The proceedings of the Chief Executive Officer, Tamilnadu Wakf Board, dated 09.07.2021 makes it very clear that the fourth respondent does not possess any right to fix or collect any amount from the Jamath till the scheme is framed. One main reason that has been assigned for coming to such a conclusion is that the direct management has been taken over by the Executive Officer and he is not able to take possession of the Wakf due to the dispute between the Haqdars of the Wakf which is resulting in law and order problem and already two FIRs have been registered in this regard.

7. The proceedings of the Chief Executive Officer virtually answers the claim made by the petitioner in the present writ petition and it has been specifically held that the fourth respondent is not entitled to demand or collect any fees for burying the dead from the Jamath till the scheme is framed. In view of this finding given by the Chief Executive Officer, this Court directs the second respondent to ensure that no fees is demanded or collected from the Jamath.

8. This writ petition is disposed of accordingly. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

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/ /2021

Sub Assistant Registrar(CS)



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**Note :** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Chief Executive Officer  
Tamilnadu Wakf Board,  
No.1, Jaffer Shrirang Street,  
Vallal Seethakathi Nagar,  
Chennai-600 001.

2. The Superintendent of Wakf,  
Kazimar Street Big Mosque,  
Having office at  
No.1, Town Hall Road,  
Madurai.

+1 CC to M/s.SPL GP (SR-19432[F] dated 16/06/2021)

+1 CC to M/s.G.PRABHU RAJA DURAI, Advocate (SR-22619[F] dated 15/07/2021)

**W.P (MD) No.10070 of 2021  
14.07.2021**

**RC (30.07.2021) 5P-5C**