



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.11.2021

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P(MD).Nos.25388 of 2018 and 18286 of 2019

and

W.M.P(MD).Nos.22970 of 2018 and 14730 of 2019

B.Mehtaj

... Petitioner

(in both writ petitions)

-Vs.-

1.Tamil Nadu Wakf Board
rep. by its Chairman,
No.1, Jaffer Sirang Street,
Vallal Seethakathi Nagar,
Custom House Back Side,
Chennai - 600 001.

... 1st Respondent

(in both writ petitions)

2.The Chief Executive Officer,
Tamil Nadu Wakf Board
No.1, Jaffer Sirang Street,
Vallal Seethakathi Nagar,
Custom House Back Side, Chennai - 600 001.

3.The Superintendent, Trichy Region,
Office of the Superintendent of Wakf,
No.8/124, 2nd floor, Qaide Millath Road,
Palakarai,
Trichy.

... 2nd & 3rd Respondents in

W.P(MD).No.18286 of 2019

Prayer in W.P(MD).No.25388 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondent to extend the period of the petitioner as Muthavalli of Hazarath Kadar Avulia Wakf, Trichy for the period of three years, within a time stipulated by this Court.

Prayer in W.P(MD).No.18286 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to permit the petitioner to continue in the office of Muthavalli in the female line of Hazarath Kadar Avulia Wakf, Trichy till the formation of committee for appointment of Muthavalli to the Wakf.



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The Waqf and Janaba.B. Mehta, female line of Janaba.Makka. Bed has sent her petitions dated 13.07.2019 and 17.07.2019 and requested to extend her muthawalliship and Janaba.B.Mehta has also filed WP(MD)No.18286/2019 before the Hon'ble High Court Madras (Madurai Bench) with a prayer to direct the respondents (The Chairman Tamil Nadu Waqf Board, The Chief Executive Officer Tamil Nadu Waqf Board, The Superintendent of Waqfs Trichy) to permit the petitioner to continue in the office of muthawalli in the female line of the family of Janaba. Aulia Waqf Trichy till the formation of committee for the appointment of muthawalli to the Waqf and the Hon'ble High Court Madras (Madurai Bench) in its order dated 28.12.2019 has ordered to maintain status Quo till the date of next hearing and the Hon'ble High Court Madras (Madurai Bench) in its order dated 17.05.2019 has extended the interim order till then. The Waqf Inspector Trichy has further stated that Janaba.B.Mehta and 6 persons belonging to other groups may be summoned to appear before the Board and also the opinion of Hon'ble Law Officer may be obtained regarding the Status Quo order of the Hon'ble High Court Madras (Madurai Bench) in WP(MD)No.18286/2019.

The Waqf Superintendent Trichy in his remarks dated 12.12.2019 has stated that as per the orders of the Madras High Court Trichy in OS.No.782/23, and due to the mismanagement, the Board has brought the above Waqf under direct management during the year 2004 and appointed the Waqf Superintendent Trichy as its Executive Officer and in this situation, the legal heirs of Janaba. Aulia Waqf have sent petitions for appointment of muthawalli and the Board had scrutinised all the points and revoked the direct management and also appointed Janaba.B.Mehta, female line of Makka. Bed for the period of three years from 12.10.2004 to 11.10.2007 vide RC.No.8580/CL/2003/TRD dated 13.10.2004. Thereafter she has been appointed Janaba.B.Mehta for the period of three years from 12.11.2007 to 11.11.2010 vide RC.No.8779/OS/05/Trd dated 22.12.2008 and thereafter the Board had appointed again Janaba.B.Mehta for the period of three years from 28.11.2010 to 27.11.2013 and vide RC.No.13671/15/OS/Trd dated 03.01.2013 and the Board had appointed again Janaba.B.Mehta for the period of three years from 28.11.2013 to 27.11.2016 vide RC.No.13671/15/OS/Trd dated 03.01.2006 and Janaba.B.Mehta has been appointed as a muthawalli by the Board for the past 14 years continuously and now also she is acting as a muthawalli of the above Waqf and she has filed a suit in OS.No.1299/2016 on the legal heirs of female line who have been out of waqf property for the period of 99 years and the suit has been transferred to the Waqf Tribunal Chennai and the same is pending and Janaba.B.Mehta has constructed shops at T.S. Road in Jallai Kudal Street with an extent of 3010 Sqft. vide this office proceeding No.15262/14/OS dated 09.04.2015 and she has also filed a suit to remove the shops and the same is pending and she has also filed suits in AS.12/2017 and AS.13/2017 before the Sub Court Trichy, two suits before the High Court Madras (Madurai Bench), two suits in EP.No.35/17 and EP.No.53/17 before the Sub Court Trichy to recover the Waqf Properties and she has also sent petitions dated 19.11.2018, 27.11.2018, 05.12.2018, 12.07.2019 and 17.07.2019 to extend her muthawalliship to dispose the above suits and also implement the duties of muthawalli perfectly and she has also filed suit in WP(MD)No.18286/2019 before the High Court Madras (Madurai Bench) and obtained Status Quo on 26.06.2019 and Janaba.B.Mehta and other persons mentioned in the report of the Waqf Inspector may also be summoned to appear before the Board. As per section 32(1)(c) of the Waqf Act 1993, the Board is the competent authority to appoint or remove the muthawalli.

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The above subject is taken up for consideration today(15.02.2020). Janaba.Mehta, muthawalli, Janaba.Mehta, lawyer Begam, Janaba.Gowthamissa, Janab.Lakshmi Nisha and Janaba.Annamalai, Janaba.Ayasha, Janab.Indira, Janab.Indira Nisha and Janaba.Maharaj Begam, Janaba.Mehta, Advocate, and vakalat for Janab.Mehta, Janaba.A. Reddy Aidi, Advocate vakalat for Janab.Ayad Sathahudun (petitioner Begam), Janaba.Annamalai and 3 others.

The counsel for the petitioner states that his client obtained an order of Hon'ble High Court in W.P.No.25387/19 dated 19.10.2019 directing the Board to pass appropriate orders of the petitioner's representation dated 27.8.2019. In the petition, the petitioner has stated that the current muthawalli, the respondent in the instant case has been the muthawalli from the year 2004 till date. Finally, she has pleaded that the Board should either conduct elections or take the waqf into direct management in the interest of administration since it has valuable properties and such valuable properties for good administration should not be in the hands of one individual for long time.

The counsel for the respondent submits that the respondent was appointed as muthawalli originally in the year 2004 by the Board for a period of three years. She was again appointed for a period of three years from 2008 to 2011. She approached the Hon'ble High Court for extension of term in W.P.(MD)14276/2011 and the Court had ordered extending the term of the respondent till a new set of trustees are appointed by the Board. In order dated 3.2.2015 the respondent was appointed again as muthawalli for a period from 28.11.2015 to 27.11.2018. She again filed a writ petition quashing the matter and the status quo order still continues. The counsel says that the petitioner has purchased property of Hazrath Nabi Sallallahu Alaihisalam Trust. The muthawalli/the respondent applied for permission for construction of a building. The Board granted permission. The municipal corporation has also granted permission. The respondent has been filing cases in courts to recover properties from tenants who had not been paying rents. She has now obtained delivery of possession of 5 hut portions of land through court process and for the remaining 5 hut portions she is still conducting cases. The construction has been put up in the portion of land that has been recovered so far. She has used her own money and mobilised money by obtaining donations and loans. Against the original estimate of Rs.63 lakhs, construction has been put up for about Rs.10 lakhs. These portions have been leased out. She has been submitting all accounts through her auditor without omission. She has been unfailingly performing the rites required by the waqf.

The counsel for the respondent further states that the petitioner had purchased property of Hazrath Nabi Sallallahu Alaihisalam Trust from the individual who had been in the possession of the property. He also sold out certain other properties of Hazrath Nabi Sallallahu Alaihisalam Trust to one Thiru.Sankar Patel and Thiru.Kannu Patel in the year 2008 vide Dist.No.3564/2008. He also sold another property to one Thiru.Sivaraman in the year 2009 vide Dist.No.2743/2009. He has purchased yet another Hazrath Nabi Sallallahu Alaihisalam Trust property in the year 2015. The Board has already directed the Hazrath Nabi Sallallahu Alaihisalam Trust to recover the properties and take action against the petitioner. The case is pending before the Waqf Tribunal. He applied for made him trustee to the Hazrath Nabi Sallallahu Alaihisalam Trust by suppressing these facts and



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has been appointed as the Trustee by the Board. For record, Hazrath Naoi Sallalahu Alahivassiam Trust is managed by three member committee comprising a public trustee, a male line trustee and a female line trustee. The managing Trustee is the public trustee. The counsel for the respondent says that the management committee did not represent in a case filed against the tenant. In O.A.No.58/19 filed by the Hazrath Naoi Sallalahu Alahivassiam Trust earlier in the Trichy Tribunal against the petitioner for recovery of possession and to collect rents from respondents 2 to 5 therein, the petitioner influenced the management committee to not to press the case. The Tribunal refused to oblige the request. Therefore, the counsel states that the petitioner has been acting against the interest of the waqfs and the petition should be viewed in this light.

The counsel for the petitioner states that the allegations arrayed by the counsel for respondents are not relevant to the case. Further there are other applicants for the muthavalliship of the waqf from the female descendants. They are Janaba Heera Begum, Janaba Arifunissa, Janaba M. Ayesha, Janab. M. Dowlat Nisha Begum, Janab. Rahmath Nisha and Janab. Muqthiyar Begum. The last five of them appeared today for the hearing. The counsel says that the five applicants were interested in developing the property for the benefit of the community and pious purpose and that they should also be given an opportunity to participate in the administration of the waqf. While admitting that there have been no complaints against the respondent and that the respondent has done good work in recovering properties, the counsel for the petitioner argued that there is a need to ensure that a multi member body manages the waqf as the property is valuable. He pleaded that a committee should manage the waqf and requested the Board to constitute a committee.

I have heard both sides. It is amply clear that the respondent Janaba Mehtaj has taken efforts for last many years to recover the waqf property from encroachments and has been able to develop the property, to the extent it has been recovered, for deriving income for the waqf to meet the pious purposes of the waqf. The fact that the respondent has done good work of recovering and developing the property is evident. It is also evident that the respondent has not been able to take other female line hereditary huddars along and has been managing it solo. This has resulted in heart burn among others, prompting the present petition through the petitioners who is also a relative of all of them.

It is noted that there is an order of status quo by Hon'ble High Court in Writ Petition filed by the respondent in W.P.(MD) No.18286/2019. I am convinced that the present Muthavalli should continue to manage the Waqf in the interest of its administration in view of her past work and the expediency of legal cases for removal of unauthorised occupants. In view of the above, the petition dated 27.08.2019 is dismissed. The period of Muthavalli of the respondent is extended by three years from today. The prayer of the respondent in Writ Petition W.P.(MD) No.18286 of 2019 is to permit her to continue in office as Muthavalli. By the above order, the prayer is met. The status quo order of the Hon'ble High Court is also with reference to her position as Muthavalli.

Of the 6 ladies who attended today, claiming participation in management, Janaba S. Dowlat Nisha Begum worked as a data entry operator and is now a home maker. She is also a educated youth. As such, it would be appropriate that she be appointed as Naib Muthavalli to assist the respondent Muthavalli in management, and learn the management of waqf alongside the respondent who has adequate experience in conduct of administration. This appointment would not offend the orders of the Hon'ble High Court as the respondent is being appointed as Muthavalli. The Muthavalli shall ensure that the Naib Muthavalli is given appropriate role.

Sd./- Special Officer.

- To:
1. Janab. M. Syed Salahudeen,
10, Jai Lal Kudi Street,
Madurai Road, Trichy-8. (By RPAD)
 2. Janaba Mehtaj,
5, 10 Jai Lal Kudi Street,
Madurai Road, Trichy-8 (By RPAD)
 3. Janab. Muqthiyar Begum,
 4. Janaba S. Rahmath Nisha
 5. Janaba Dowlat Nisha Begum
 6. Janab. M. Ayesha
 7. Janaba Arifunissa Begum
 8. The Superintendent of Waqfs, Trichy.
 9. The Waqf Inspector, Trichy.

He is directed to serve a copy of the order to all the above and submit acknowledgement.

forwarded / by order

[Signature]
Superintendent.
12/12/2019

4. Learned counsel for writ petitioner has been favoured with an advance copy of the aforementioned proceedings. Learned counsel for writ petitioner, on instructions submits that the aforementioned proceedings, gives quietus to the prayers in both the captioned writ petitions. This submission is recorded.

5. Recording the aforementioned submission would mean curtains are down on the captioned writ petitions i.e., both the writ petitions stand concluded by this order.



6. Captioned writ petitions and captioned W.M.Ps therein are disposed of as closed recording the aforementioned sated positions of the respective parties. There shall be no order as to costs.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

- 1.The Chairman,
Tamil Nadu Wakf Board
No.1, Jaffer Sirang Street,
Vallal Seethakathi Nagar,
Custom House Back Side,
Chennai - 600 001.
- 2.The Chief Executive Officer,
Tamil Nadu Wakf Board
No.1, Jaffer Sirang Street,
Vallal Seethakathi Nagar,
Custom House Back Side,
Chennai - 600 001.
- 3.The Superintendent, Trichy Region,
Office of the Superintendent of Wakf,
No.8/124, 2nd floor, Qaide Millath Road,
Palakarai, Trichy.

+2 CC to M/s.J. ANANDHAVALLI, Advocate (SR-35379 & 35381[F]
dated 22/11/2021)

W.P(MD).Nos.25388 of 2018 and 18286 of 2019

19.11.2021

NA(CO)

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