



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.01.2022

PRONOUNCED ON : 31.01.2022

CORAM

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

W.P.(MD)Nos.14435 of 2012, 22683 of 2021 and 98 of 2022

and

M.P.(MD)Nos.1 and 2 of 2012

and

W.M.P.(MD)Nos.19162 of 2021, 77, 80, 81, 156, 164, 211, 331, 332 and 357 of 2022

W.P.(MD)No.14435 of 2012:-

Hajima B.Amroz Tahira

: Petitioner

vs.

1. The Secretary to Government,
Backward Classes, Most Backward Classes and
Minorities Department,
Government of Tamil Nadu,
Fort St.Geroge, Chennai-9.

2. Tamil Nadu Wakf Board,
represented by its Chairman,
No.1, Jaffar Sirang Street,
Vallal Seethakathi Nagar, Mannadi, Chennai.

3. The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffar Sirang Street,
Vallal Seethakathi Nagar, Mannadi, Chennai.

4. The Wakf Superintendent,
Tamil Nadu Wakf Board,
South Zone, Town Hall Road, Madurai.

5. The Jumma Periya Pallivasal,
Main Road, Batlangundu

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order Na.Ka.No.616/06/Aa8/Dindigul, dated 12.09.2012 passed by the third respondent read with the order passed by the fourth respondent bearing No.Na.Ka.No.Ji.S/236/Va.Ka.The.Aa./Madurai/2012, dated 21.09.2012 and quash the same and consequently, to direct the third respondent to include the names of the eligible Muslim Women



including the petitioner in the voters' list of Jumma Periya Pallivasal, Batlagundu, Dindigul District.

For Petitioner :Mr.Anwar Sameem
For R1 :Mr.D.Ghandiraj
Special Government Pleader
For R2 to R4 :Mr.Veerakathiravan
Additional Advocate General
assisted by Mr.K.K.Senthil

W.P.(MD)No.22683 of 2021:-

Haji A.Abdul Rahman

:Petitioner

vs.

1.Tamil Nadu Wakf Board,
represented by its Chairman,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar, Chennai-600 001.

2.The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar, Chennai-600 001.

3.The Wakf Superintendent,
Madurai Zone Office,
Tamil Nadu Wakf Board,
No.1, Town Hall Road,
2nd Floor, Mosque Building, Madurai-1.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Declaration to declare the taking over of the direct management of the Jumma Periya Pallivasal Waqf Batlangundi (GS No.236/Madurai) culminating in the proceedings of the third respondent in Na.Ka.Gs.No.236/Va.Ka.Ne.Aa/Madurai/2021, dated 17.12.2021 to be illegal and ultra vires the Waqf Act, 1995.

For Petitioner :Mr.AR.L.Sundaresan
Senior Counsel
for Mr.M.Mohaboob Athiff

For Respondents :Mr.Veerakathiravan
Additional Advocate General
assisted by Mr.K.K.Senthil



W.P.(MD)No.98 of 2022:-

Haji A.Abdul Rahman

: Petitioner

VS.

WEB COPY

1. Tamil Nadu Wakf Board,
represented by its Chairman,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar, Chennai-600 001.
2. The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar, Chennai-600 001.
3. The Wakf Superintendent,
Madurai Zone Office,
Tamil Nadu Wakf Board,
No.1, Town Hall Road,
2nd Floor, Mosque Building, Madurai-1.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call the records of the third respondent pertaining to the impugned Notice in Na.Ka.G.S.236/Wa.Ka./The.Aa/Madurai/2021, daetd 23.12.2021 and quash the same as illegal and without jurisdiction, illegal, arbitrary and ultra vires of the Waqf Act, 1995.

For Petitioner :Mr.AR.L.Sundaresan
Senior Counsel
for Mr.M.Mohaboob Athiff

For Respondents :Mr.Veerakathiravan
Additional Advocate General
assisted by Mr.K.K.Senthil

C O M M O N O R D E R

All the three Writ Petitions surround issues relating to Batlagundu Jumma Periya Pallivasal. Common arguments were advanced relating to the circumstances necessitating the filing of the Writ Petitions. It would therefore only be prudent that a common order is passed in all the three Writ Petitions.

Background facts:-

2.Batlagundu Jumma Periya Pallivasal is a Waqf surveyed and notified under the Muslim Waqf Act, 1954. The Collector, Madurai District by proceedings, dated 08.08.1955, in 80/W.A./55, had notified the said Waqf. The rule of succession to the office of Muthavalli was by "selection of the Muslim Jamath".



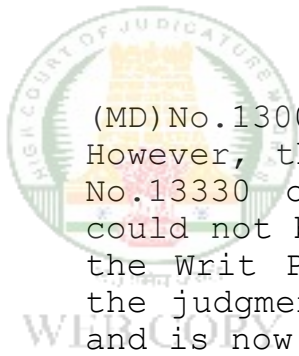
3. On 13.04.1985, K.S.M.Mohammed Kasim was appointed as Muthavalli. He continued to hold the said office till the year 2000. Thereafter, K.S.M.A.Mohammed Manzoor was appointed as Muthavalli. On 14.10.2009, the Tamil Nadu Waqf Board took over direct management of Waqf after removing K.S.M.A.Mohamed Manzoor from the management. For two years thereafter, a Committee of three persons managed the Waqf.

4. By order, dated 24.02.2011 of the Chief Executive Officer of Tamil Nadu Waqf Board, Janab A.Mohamed Jamaluthin, appointed an *ad hoc* Committee and one A.Abdul Rahman was appointed as Chairman and V.A.A.Syed Mohammed, M. Kudbuddin and A.Mohammed Ghouse Mydeen were appointed as members. It was specifically stated that the *ad hoc* Committee can function for a period of one year. Among the conditions of the appointment of the *ad hoc* Committee, it was mentioned that the outer limit of the period of the Committee would be three years and after that, the Committee would stand dissolved. If any extension is not given, and it can be presumed that such extension indicated extension of the one year period, then the Committee would have no authority to function. The salient aspect is that the Chief Executive Officer of the Tamil Nadu Waqf Board had appointed the *ad hoc* Committee with A.Abdul Rahman as Chairman. In spite of the specific condition that the Committee would stand dissolved by efflux of time after three years, he still continues to control the Waqf and its properties and also a School, till this date, however, under the garb of President of Managing Committee.

5. In February 2012, the aforementioned A. Abdul Rahman filed W.P.(MD)No.2651 of 2012 seeking a Mandamus to direct the Tamil Nadu Waqf Board to grant extension of the period of *ad hoc* Committee. A learned Single Judge of this Court, by order dated 06.02.2012, permitted him to give a representation in this regard and directed the Tamil Nadu Waqf Board to consider the said representation and pass orders within a period of two months. A representation was given. Orders have not been passed till this date. Taking advantage of that limbo, he continued to be the Chairman.

6. Thereafter, complaining of various acts of mis-management, Writ Petitions came to be filed. A complaint was also lodged with the Tamil Nadu Waqf Board and a show cause notice was issued to the *ad hoc* Committee, which was questioned before the Waqf Tribunal in O.A.No.77 of 2012. A First Information Report in Cr.No.301 of 2012 also came to be registered alleging attack of the Manager of the Mosque by named individuals.

7. In the meanwhile, the Chief Executive Officer issued a memorandum on 12.09.2012 appointing the Superintendent of Waqf, Madurai, as Election Officer to conduct elections for the Managing Committee of the Waqf. Questioning this particular notification, W.P.(MD)Nos.13004 of 2012 and 13330 of 2012 came to be filed. W.P.



(MD)No.13004 of 2012 was dismissed by order dated 19.01.2022. However, though it is informed that the Writ Petitioner in W.P.(MD) No.13330 of 2012 has unfortunately expired, consequential orders could not be passed, since questioning an interim direction given in the Writ Petition, a Writ Appeal came to be filed and questioning the judgment in the Writ Appeal, S.L.P(C)No.21833 of 2016 was filed and is now pending before the Hon'ble Supreme Court.

8.Pursuant to the notification calling for elections to be conducted and authorising the Waqf Superintendent, Madurai, to conduct the election, a further notification was issued by the Waqf Superintendent, Madurai on 21.09.2012, wherein, it was stated that the electorate would consist of male members over the age of 18 years. Claiming right of female members to participate in the elections, W.P.(MD)No.14435 of 2012 was filed.

9.In W.P(MD)Nos.13004 of 2012 and 13330 of 2012, a learned Single Judge of this Court passed an interim order on 18.10.2012 directing election to go on, but, restrained declaration of results. Questioning that particular order, the Writ Petitioner in W.P(MD) No.13330 of 2012 filed W.A.(MD)No.934 of 2012. When that Writ Appeal was pending, W.P.(MD)No.22895 of 2015 was filed directing constitution of Managing Committee in accordance with the proforma adopted at the time of notification of Waqf as the basis.

10.Both the Writ Appeal and Writ Petition were taken up together. Several individuals filed impleading applications. A Division Bench of this Court heard all of them and passed final judgment on 20.01.2016. Questioning that particular judgment, the aforementioned S.L.P.(C)No.21833 of 2016 had been filed and the same is now pending before the Hon'ble Supreme Court.

11.In the judgment of the Division Bench, delivered by Justice V.Ramasubramanian (As his Lordship then was), three issues were taken up for consideration, namely,

- (i)How the elections are to be conducted;
- (ii)Who would constitute the electorate; and
- (iii)who would continue to be in the management till elections are held and the newly elected body takes over.

12.With respect to the first issue, the Division Bench appointed two Advocates of the Madurai Bench of Madras High Court as Commissioners to prepare the voters list and to conduct elections. It must be mentioned that the electorate consists of three groups, namely, (i)Daknishi, who, the Division Bench opined, were originally Deccanis; (ii) Lebbai Rowthars, who are Tamil speaking Muslims; and (iii) Parimala Sunnath Muslims, who, the Division Bench opined, were Merchants.

13.The two Commissioners were directed to prepare the voters list for each of the three groups and thereafter, to



conduct elections to choose two members from each group. Thereafter, the members so elected should elect a President from among themselves. Various other directions and conditions were also issued to enable conducting the elections. It must be mentioned that the Division Bench in the course of judgment had also observed as follows:

"20.The next issue is as to whether the Adhoc Committee should continue till elections are over. Under normal circumstances, a committee which is in management should be allowed to continue till the elections are held. But, in this case, a peculiar situation has arisen. It is stated that the Chairman of the present committee may also contest the elections. If he is allowed to contest the elections, even while holding the management, it may lead to all kinds of allegations later on. Therefore, we put a question to Mr.Velumani, learned counsel appearing for the President of the Adhoc Committee as to whether his client is insisting upon contesting the elections or he would choose to continue till the elections are held.

21.After we passed over the matter from the pre-lunch, session to post-lunch session, we were informed by Mr.Velumani, learned counsel for the 4th respondent in the writ appeal, that his client is not willing to contest the elections. Therefore, there could be no impediment for allowing him to continue in the management till elections are held."

14.In **State of Maharashtra v. Ramdas Shrinivas Nayak**, reported in **(1982) 2 SCC 463**, the Hon'ble Supreme Court had held as follows:

"4.When we drew the attention of the learned Attorney-General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. **We are afraid that we cannot launch into an enquiry as to what transpired in the High Court. It is simply not done. Public policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation."** [Per Lord Atkinson in **Somasundaram Chetty v. Subramanian Chetty**, AIR 1926 PC 136 : 99 IC 742] **We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court.** We cannot allow the statement of the



Judges to be contradicted by statements at the Bar or by affidavit and other evidence. **If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject.** The principle is well-settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. [**Per Lord Buckmaster in Madhu Sudan Chowdhri v. Chandrabati Chowdhraia, AIR 1917 PC 30 : 42 IC 527**] That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an appellate court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment.

(Emphasis supplied)

Therefore, the recording by the Division Bench that A.Abdural Rahman was not willing to contest the elections has to be taken as a solemn undertaking given to the Court. I would leave it to the conscience of the individual whether he had respected such undertaking.

15.This judgment was taken up in appeal by A.Abdul Rahman, Chairman of the ad hoc Committee by filing S.L.P(C)No.21833 of 2016. When the SLP came up for hearing on 05.08.2016, the Hon'ble Supreme Court had passed the following order :

"The learned senior counsel for the petitioner submits that right from 1955, despite the Resolution of the Wakf Board, the elections have been conducted by Muslim Jamath.

The petitioner to file an affidavit to that effect."

16.Thereafter, an affidavit was filed by A.Abdul Rahman and on examination of the same, the Hon'ble Supreme Court passed the following order on 08.08.2016:

"Issue notice.

An affidavit has been filed by the petitioner that ever since 1955, the election was being conducted with the participation of the entire Jamath with representations from three different groups as per the Resolution of the



In the meantime, there shall be stay of further proceedings pursuant to the impugned order for the election of the representatives.

We make it clear that the interim protection shall not stand in the way of the election being conducted from among the three groups by participating the entire Jamath.

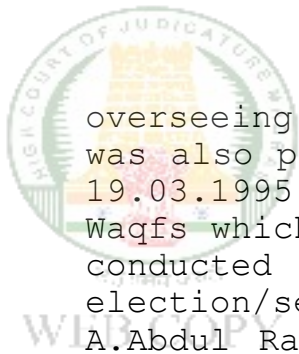
In view of the above development, we permit the petitioner also to participate in the proceedings."

17.The records available do not indicate any further orders passed by the Hon'ble Supreme Court. It must be again mentioned that S.L.P.(C)No.21833 of 2016 originally flowed from the order in W.P.(MD)Nos.13330 of 2012 and the Writ Petitioner in W.P.(MD)No.13330 of 2012 had unfortunately died and steps to substitute any other person have not been taken.

18.After the aforementioned order of the Hon'ble Supreme Court, taking advantage that elections had been permitted to be conducted from among the three groups, an executive meeting was convened on 11.08.2016 by the Jumma Periya Pallivasal management, which infact was the *ad hoc* Committee with all the Jamathars' President consisting of all the three groups. M.Kudbudeen, was appointed as Selection Officer to select two members from each group. Ironically, he was actually a member of the *ad hoc* Committee. Two members from each group submitted applications. The said applicants were selected. A.Abdul Rahman was then selected as the President of the Management Committee. In effect, the Chairman of the *ad hoc* Committee now became the President of the Management Committee. He had been appointed as Chairman of the *ad hoc* Committee by the Chief Executive Officer, Tamil Nadu Waqf Board and as President of the Managing Committee by the Selection of Officer, who was a member of the *ad hoc* Committee.

19.An affidavit by A.Abdul Rahman informing about the proceedings of such selection of managing committee was then filed on 09.11.2016 before the Hon'ble Supreme Court. A counter was then filed by the Chief Executive Officer of Tamil Nadu Waqf Board, on behalf of the second, third and fourth respondents in the Honourable Supreme Court, namely, Tamil Nadu Waqf Board, Chief Executive Officer, Tamil Nadu Waqf Board and Waqf Superintendent, Madurai, who questioned such selection by the Jamathars and lamented that a fair and transparent election had not been conducted and should have been conducted by secret ballot of genuine voters by an independent authority.

20.It was stated in the counter, that the interim order passed by the Hon'ble Supreme Court, if read in letter and spirit was for elections to be held in accordance with the provision of Waqf Act, 1995 and the management of the Waqf having been taken over by the Tamil Nadu Waqf Board, the Waqf Board should have had a role in



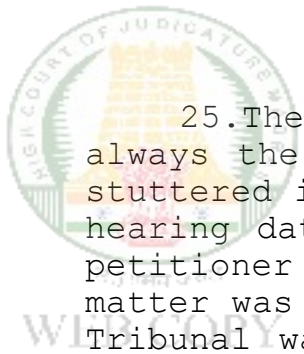
overseeing the election or selection of the Managing Committee. It was also pointed out that the Waqf Board had passed a resolution on 19.03.1995 itself, stipulating that for all the institutions and Waqfs which are under the control of Waqf Board, elections should be conducted in the presence of Waqf officials, failing which, the election/selection will not be recognized. It had been pointed out that A.Abdul Rahman, Chairman of *ad hoc* Committee had appointed one of his own members as Selection Officer and had himself been selected as President of the Managing Committee.

21.A further perusal of the affidavit filed by A. Abdul Rahman also reveals that only two individual from each group had submitted applications. The said two applicants were then declared selected from each group and thereafter, A. Abdul Rahman was selected as President, another as Vice President, the third as Secretary, the fourth as Treasurer and the fifth and sixth as Executive Committee members. There had been a complete ouster of the larger section of electorate in such proceedings.

22.Both the affidavit filed by A.Abdul Rahman and the counter of the Chief Executive Officer of the Waqf Board seeking such selection on 02.09.2016 as illegal, unlawful, invalid and null and void and in defiance of the resolution of the Waqf Board passed on 07.03.1995, are still on the records of the Hon'ble Supreme Court.

23.Thereafter, the Tamil Nadu Waqf Board passed an order stating that the Waqf has to be managed and more importantly, the School, which was under the control of the Waqf necessarily required a Management Committee for administration, and therefore, for a period of one year, or till the elections are conducted for selecting a new Management Committee, whichever is earlier, the existing Managing Committee shall continue in office. Again, this would indicate that such arrangement was of necessity and only till the elections are conducted or for one year, whichever is earlier. It was not a recognition the Managing Committee. They were to function only as an interim arrangement.

24.Thereafter, since the Tamil Nadu Waqf Board had indicated elections will have to be conducted, the Chief Executive Officer, on behalf of the Tamil Nadu Waqf Board, issued a memorandum on 30.11.2020 appointing the Superintendent of Waqf, Madurai as Election Officer to conduct secret ballot election within a period of two months from the date of the memorandum, from the three groups by participating the entire Jamathars. It was also indicated that the direction shall be subject to the outcome of the result in S.L.P.(C)No.21833 of 2016 pending before the Hon'ble Supreme Court. This memorandum was challenged by A.Abdul Rahman before the Tamil Nadu Waqf Tribunal by filing O.A.No.178 of 2020. An ad interim stay was granted by the Tribunal on 07.12.2020.



25.The proceedings then continued before the Tribunal and as is always the case, there was no smooth flow in the proceedings. It stuttered in its own way and the interim order was extended on every hearing date. The matter was posted for recording evidence and the petitioner A.Abdul Rahman was directed to file documents. When the matter was listed on 16.11.2021, the Chairman of the Tamil Nadu Waqf Tribunal was on leave and the incharge Officer did not extend the interim order. On 17.12.2021, in view of that fact that there was no stay, the Superintendent of Waqf, issued a notice stating that the tenants of the Waqf properties should pay the rents to the Superintendent of Waqf and that the School had been taken under control of the Waqf Board. Questioning this particular notice, W.P. (MD)No.22683 of 2021 was filed by A.Abdul Rahman.

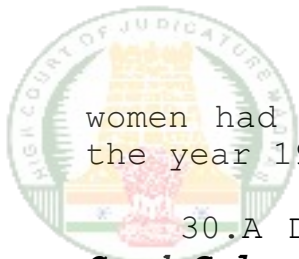
26.By order, dated 24.12.2021, this Court had noted that the aforementioned order/notice was issued owing to the fact that the interim order was not extended by the Tribunal on 16.11.2021, therefore, had directed that the office of the Pallivasal which had been locked by the Superintendent of Waqf should be opened and the order of the District Educational Officer taking control of the School should be kept in abeyance till further orders of the Court are passed. It was also informed to the Court that on 23.12.2021, an election notification had been issued by the Tamil Nadu Waqf Board and it was observed that further proceedings pursuant to the election notification can continue and the notification would be examined after the same is disclosed by way of affidavit. It is to be noted that pursuant to the direction of this Court, the office of the Pallivasal had been opened and the keys have been given to A.Abdul Rahman. Questioning the election notification, dated 23.12.2021, A.Abdul Rahman, filed W.P(MD)No.98 of 2022.

27.In the background of aforementioned facts, the three Writ Petitions are now be taken for consideration.

W.P. (MD)No.14435 of 2012:-

28.This Writ Petition has been filed questioning the order dated 21.09.2012 directing preparation of electorate and indicating that the electorate will be male members above the age of 18 years. This Writ Petition has been filed claiming that women should also be given suffragette rights and there should be no discrimination on the basis of gender.

29.In ***Syed Abdul Hameed Sahib and another vs Syedunnisa Bibi and another***, reported in ***AIR 1934 Mad 692: 1935 LW Vol.41 33***, it had been held that *"as a matter of fact in this case it is admitted htat one of the yeomiahdhars is woman. This will show that it will not be safe to say generally as a rule that women cannot hold the office of Asari Sheriff. The evidence in the present case is that the duties of the office are such as can be performed women."* Participation of



women had thus been recognized. This opinion had been expressed in the year 1934.

30.A Division Bench of Andra Pradesh High Court in the case of ***Syed Gulam Sarwar Biabavi vs Afzalunnisa Begum***, reported in ***AIR 2004 AP 485***, after examining the precedents on the issue held as follows:

"The office of Muthawalliship and Sajjadananship can be held by a woman. She can perform the functions which are secular in character as a Muthawalli of her own, whereas for Sajjandanshivi, where purely religious and spiritual functions are to be performed can be performed by her through a deputy or by a proxy."

It is thus seen that Courts have recognised that women can also be in management of a Waqf.

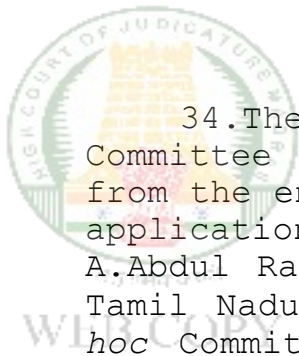
31.Since O.A.No.178 of 2020 is now pending before the Waqf Tribunal, it would only be appropriate that the Tribunal takes a decision on the issue raised in the Writ Petition. I would therefore give necessary liberty to the petitioner herein to approach the Tribunal in the pending O.A.No.178 of 2020 and seek necessary relief in that original application itself. The Writ Petition is therefore disposed of with such liberty granted to the petitioner.

W.P. (MD)Nos.22683 of 2021 and 98 of 2022:-

32.Both these Writ Petitions have been filed by A.Abdul Rahman, who had been appointed as Chairman of the *ad hoc* Committee in the year 2011 by the Chief Executive Officer, Tamil Nadu Waqf Board, and in the year 2016, had claimed to have been selected as the President of the Managing Committee. He had filed the Writ Petitions questioning a notice dated 17.12.2021 issued by the Superintendent of Waqf directing taking over the Waqf properties and the School and directing the tenants to pay rents to the Superintendent of Waqf and also a subsequent notification, dated 23.12.2021, whereby, eligible males members over the age of 18 years belonging to the said Pallivasal were given the opportunity to file applications to facilitate the conduct of the elections for the Management Committee.

33.The petitioner was appointed as Chairperson of the *ad hoc* Committee on 24.02.2011 by the Chief Executive Officer of the Tamil Nadu Waqf Board. He continued to hold that post on the strength of the authority given by the Chief Executive Officer. The Hon'ble Supreme Court in S.L.P(C)No.21833 of 2016 had observed as follows:

"We make it clear that the interim protection shall not stand in the way of the election being conducted from among the three groups by participating the entire Jamath".



34. Thereafter, one of the committee members of the *ad hoc* Committee was appointed as the Selection Officer. Only two members from the entire electorate of each of the three groups had forwarded applications to be selected and they were automatically selected. A. Abdul Rahman became the President of the Managing Committee. The Tamil Nadu Waqf Board issued proceedings stating that the said *ad hoc* Committee will continue only for one year or till such time elections are called, whichever is earlier. The Waqf Board had also filed a counter before the Hon'ble Supreme Court stating that they did not recognise this particular selection of the Managing Committee. However, to maintain sanctity and dignity, they had accepted the same, but had placed a caveat that the committee so selected shall continue only till elections are called for or only for one year, whichever is earlier. They then issued a notification on 30.11.2020 regarding initiation of the election process. This notification is now under challenge before the Waqf Tribunal.

35. In **(2010) 14 SCC 588**, in the case of **Board of Wakf, West Bengal and another and Anis Fatima Begum and another**, the Hon'ble Supreme Court had held as follows:

"7. The dispute in the present case relates to a wakf. In our opinion, all matters pertaining to wakfs should be filed in the first instance before the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995 and should not be entertained by the civil court or by the High Court straightaway under Article 226 of the Constitution of India. It may be mentioned that the Wakf Act, 1995 is a recent parliamentary statute which has constituted a Special Tribunal for deciding disputes relating to wakfs. The obvious purpose of constituting such a Tribunal was that a lot of cases relating to wakfs were being filed in the courts in India and they were occupying a lot of time of all the courts in the country which resulted in increase in pendency of cases in the courts. Hence, a Special Tribunal has been constituted for deciding such matters.

8. Section 83(1) of the Wakf Act, 1995 states:

"83. Constitution of tribunals, etc.-(1) The State Government shall, by notification in the Official Gazette, constitute as many tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals."

9. Section 84 of the Act states:

"84. Tribunal to hold proceedings expeditiously and to furnish to the parties copies of its decision.-Whenever an



application is made to a tribunal for the determination of any dispute, question or other matter relating to a wakf or wakf property it shall hold its proceedings as expeditiously as possible and shall as soon as practicable, on the conclusion of the hearing of such matter give its decision in writing and furnish a copy of such decision to each of the parties to the dispute."

10. Thus, the Wakf Tribunal can decide all disputes, questions or other matters relating to a wakf or wakf property. The words "any dispute, question or other matters relating to a wakf or wakf property" are, in our opinion, words of very wide connotation. Any dispute, question or other matters whatsoever and in whatever manner which arises relating to a wakf or wakf property can be decided by the Wakf Tribunal. The word "wakf" has been defined in Section 3(r) of the Wakf Act, 1995 and hence once the property is found to be a wakf property as defined in Section 3(r), then any dispute, question or other matter relating to it should be agitated before the Wakf Tribunal.

11. Under Section 83(5) of the Wakf Act, 1995 the Tribunal has all powers of the civil court under the Code of Civil Procedure, and hence it has also powers under Order 39 Rules 1, 2 and 2-A of the Code of Civil Procedure, 1908 to grant temporary injunctions and enforce such injunctions. Hence, a full-fledged remedy is available to any party if there is any dispute, question or other matter relating to a wakf or wakf property.

12. We may further clarify that the party can approach the Wakf Tribunal, even if no order has been passed under the Act, against which he/she is aggrieved. It may be mentioned that Sections 83(1) and 84 of the Act do not confine the jurisdiction of the Wakf Tribunal to the determination of the correctness or otherwise of an order passed under the Act. No doubt Section 83(2) refers to the orders passed under the Act, but, in our opinion, Sections 83(1) and 84 of the Act are independent provisions, and they do not require an order to be passed under the Act before invoking the jurisdiction of the Wakf Tribunal. Hence, it cannot be said that a party can approach the Wakf Tribunal only against an order passed under the Act. In our opinion, even if no order has been passed under the Act, the party can approach the Wakf Tribunal for the



determination of any dispute, question or other matters relating to a wakf or wakf property, as the plain language of Sections 83(1) and 84 indicates.

13. We may clarify that under the proviso to Section 83(9) of the Wakf Act, 1995 a party aggrieved by the decision of the Tribunal can approach the High Court which can call for the records for satisfying itself as to the correctness, legality or propriety of the decision of the Tribunal. **This provision makes it clear that the intention of Parliament is that the party who wishes to raise any dispute or matter relating to a wakf or wakf property should first approach the Tribunal before approaching the High Court.**

14. It is well settled that when there is a special law providing for a special forum, then recourse cannot be taken to the general law, **vide Justice G.P. Singh's Principles of Statutory Interpretation (9th Edn., 2004, pp. 133-34).**

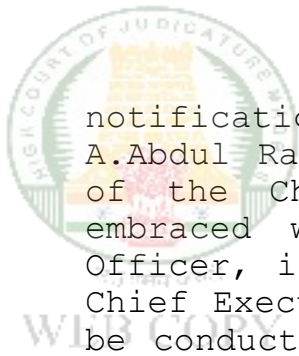
15. In **Chief Engineer, Hydel Project v. Ravinder Nath [(2008) 2 SCC 350 : (2008) 1 SCC (L&S) 940]** this Court held that when the matter fell in the area covered by the Industrial Disputes Act, the civil court would have no jurisdiction. In the above decision the Court has referred to several earlier decisions on this point.

16. In view of the above, **we are of the opinion that since the matter fell under the purview of the Wakf Act, only the Wakf Tribunal has jurisdiction** in the matter, and not the civil court. However, in view of the decision of this Court in **Sardar Khan v. Syed Najmul Hasan (Seth) [(2007) 10 SCC 727 : AIR 2007 SC 1447]**, the Wakf Act will not be applicable to suits/appeals/revisions/proceedings commenced prior to 1-1-1996 when the Wakf Act came into force."

(Emphasis supplied)

36. The law is thus clear. Questioning the notification, dated 30.11.2020, O.A.No.178 of 2020 had been filed and is now pending. There is no order of injunction as on date. Consequential orders have been passed on 23.12.2021 pursuant to the notification dated 30.11.2020. On 24.12.2021, this Court had passed an interim order in W.P(MD)No.22683 of 2021 that the election proceedings shall go on. Let the election proceedings proceed.

37. Arguments were advanced that the Chief Executive Officer was not the competent authority to issue an election notification or any proceedings and it was only the Board which could so pass such



notifications/orders. This contention is rejected. The petitioner, A.Abdul Rahman had originally drawn authority from the proceedings of the Chief Executive Officer dated 24.02.2011. When he had embraced with much glee such an order of the Chief Executive Officer, it does not behove of him to turn around and question the Chief Executive Officer, when he had directed that elections should be conducted. It is to be mentioned that the *ad hoc* Committee was formed only for one year and thereafter, though the period can be extended it will automatically dissolve after a period of three years. Continuation by A.Abdul Rahman as Chairman of *ad hoc* Committee after the sad three years is disputable and questionable. His claim to be the President of the Managing Committee, is disputed by the Waqf Board. The Battlagundu Periya Pallivasalf being a notified and surveyed Waqf under the control of the Tamil Nadu Waqf Board should adhere to the rules and regulations of the Tamil Nadu Waqf Board. Any decision taken should be subject to the resolution of the Waqf Board of the year 1995, whereby it had been resolved that any election or selection should be conducted only after obtaining prior approval from the Waqf Board.

38.In view of the above reasons, I hold that both W.P.(MD) Nos.22683 of 2021 and 98 of 2022 are both not maintainable and are speculative Writ Petitions and are both dismissed. The interim order granted earlier is vacated. This indicates that W.M.P(MD)No.211 of 2022 filed to vacate the interim order is allowed. The parties are directed to agitate all the issues before the Waqf Tribunal.

W.M.P. (MD)No.164 of 2022:

39.This petition has been filed by the Writ Petitioner in W.P. (MD)No.22683 of 2021 seeking amendment of the relief sought to convert the Writ as a Writ of Certiorarified Mandamus questioning the order dated 17.12.2021. Examination whether such amendment can be granted has become redundant in view of the fact that the Writ Petition itself has been dismissed and the parties have been directed to proceed further with O.A.No.178 of 2020 before the Waqf Tribunal and therefore this petition is dismissed.

W.M.P. (MD)Nos.77, 156, 331 and 332 of 2022:-

40.All these applications have been filed seeking that the respective petitioners be impleaded as further respondents in W.P. (MD)No.22683 of 2021. However, the discussions above have led to the conclusion that the Writ Petition itself is not maintainable since the notification, dated 30.11.2020 has been challenged in O.A.No.178 of 2020. These applications seeking to implead are superfluous and therefore they are dismissed.

41.It is fervently hoped that the parties would cooperate with the Tribunal to conduct O.A.No.178 of 2020 without any further delay and to give a disposal as expeditiously as possible.



42.In the result,

1)W.P.(MD)No.14435 of 2012 is disposed of with the liberty to the petitioner to raise the issues before the Waqf Tribunal in manner known to law. Consequently, connected miscellaneous petitions are closed.

2)W.P(MD)No.22683 of 2021 is dismissed. W.M.P.(MD)Nos.77, 156, 164, 331 and 332 of 2022 are dismissed. W.M.P.(MD)No.211 of 2022 filed to vacate the interim order is allowed. Consequently, connected miscellaneous petitions are closed.

3)W.P(MD)No.98 of 2022 is dismissed. Consequently, connected miscellaneous petitions are closed.

4)Respective parties to bear their own costs in all the Writ and Miscellaneous Petitions.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

cmr

To

1. The Secretary to Government,
Backward Classes, Most Backward Classes and
Minorities Department,
Government of Tamil Nadu,
Fort St.Geroge, Chennai-9.
2. The Chairman,Tamil Nadu Wakf Board,
No.1, Jaffar Sirang Street,
Vallal Seethakathi Nagar, Mannadi, Chennai.
3. The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffar Sirang Street,
Vallal Seethakathi Nagar, Mannadi, Chennai.
4. The Wakf Superintendent,
Tamil Nadu Wakf Board,
South Zone, Town Hall Road, Madurai.

+2 CC to M/s.S.ANWAR SAMEEM, Advocate (SR-3483,3484[F] dated 01/02/2022)

+1 CC to M/s.K.K.SENTHIL, Advocate (SR-3386[F] dated 01/02/2022)

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



W.P.(MD)No.14435 of 2012:-

+6 CC to M/s.M.MAHABOOBATHIFF, Advocate (SR-3195,SR-3196[F] dated 31/01/2022)

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W.P.(MD)Nos.14435 of 2012, 22683 of 2021 and 98 of 2022
31.01.2022

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