



W.P(MD)No.18045 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.08.2022
PRONOUNCED ON : 29.09.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P(MD)No.18045 of 2021 and
W.M.P(MD)Nos.14907 & 14908 of 2021

- 1.K.SahulHameed, (M/68),
S/o.Mr.Kamal Batcha,
Secretary,
A1 JamiulMunavvar Masjid Jamath Committee Waqf,
Kattuthalaivasal,
Karaikudi – 630 001,
Sivagangai District.
- 2.A.Abdul Bazeer, (M/48),
S/o.Mr.Abdul Muthalifu,
Treasurer,
A1 JamiulMunavvar Masjid Jamath Committee Waqf,
Kattuthalaivasal,
Karaikudi – 630 001,
Sivagangai District.
- 3.A.SahulHameed, (M/63),
S/o.Mr.Abdul Salam,
Vice President,
A1 JamiulMunavvar Masjid Jamath Committee Waqf,
Kattuthalaivasal,
Karaikudi – 630 001,
Sivagangai District.



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4.M.SahulHameed @ Siddiq, (M/46),
S/o.Mr.Mohamed Ali,
Joint Secretary -
JamiulMunavvar Masjid Jamath Committee Waqf,
Kattuthalaivasal,
Karaikudi – 630 001,
Sivagangai District.

... Petitioners

Vs.

- 1.The Chairman,
Tamil Nadu Waqf Board,
No.1, Jaffersyrang Street,
Chennai – 600 001.
- 2.The Tamilnadu Waqf Board,
Rep. by its Chief Executive Officer,
No.1, Jaffersyrang Street,
VallalSeethakathi Nagar,
Chennai – 600 001.
- 3.Superintendent of Waqf,
Tamil Nadu Waqf Board,
Karaikudi, Sivagangai District.
- 4.Haji ACR. Nazeer,
Rep. by its President,
A1 JamiulMunavvar Masjid Jamath Committee Waqf,
Kattuthalaivasal,
Karaikudi – 630 001,
Sivagangai District.
- 5.A.Noor Mohammed,
S/o.Abdullah Rowther, Incumbent Secretary,
A1 JamiulMunavvar Masjid Jamath Committee Waqf,
Kattuthalaivasal,
Karaikudi – 630 001, Sivagangai District.

... Respondents

[R5 is impleaded as per order of this
Court, dated 27.06.2022 in



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W.M.P(MD)No.16966 of 2021 in
W.P(MD)No.18045 of 2021.]

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned proceedings vide Se.Mu.Order: 4367/A3/21/Siva, dated 14.09.2021 passed by 2nd respondent and quash the same.

For Petitioners : Mr.Raja Mohamed.A
For R1 to R3 : Mr.N.Mohideen Basha,
Standing Counsel for the
Tamil Nadu Wakf Board
For R4 : Mr.A.Yousuff Imran
For R5 : Mr.Jerin Mathew.M

ORDER

The petitioners, who are the Secretary, Treasurer, Vice President and Joint Secretary of the A1 Jamiul Munavvar Masjid Jamath Committee Wakf, Kattuthalaivasal, Karaikudi, have filed this Writ Petition challenging the proceedings in Se.Mu.Order:4367/A3/21/Siva, dated 14.09.2021 passed by 2nd respondent.



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2.For the sake and convenience and clarity, the A1 Jamiul Munavvar Masjid Jamath Committee Wakf, Kattuthalaivasal, Karaikudi is referred to as 'Jamath Committee'.

3.The case of the petitioners is that the Jamath Committee Wakf is notified and registered wakf in G.S.No.235/RMD/2021 under the supervisory control of the Tamil Nadu Wakf Board. The Jamath committee used to perform religious duties of Muslim community people for several years and there are more than 400 families attached to the Jamath Committee. Since inception, the Jamath Committee members for the petitioners' wakf are selected during the General Body Meeting by way of voice voting. Announcement of General Body Meeting and election for committee members for the Petitioners' Wakf will be made for two weeks prior to election and selection will be made by the members of the Petitioners' Wakf by voice voting at the General Body Meeting in presence of the 3rd respondent and the Inspector of Wakf. Further, the selection of the committee members will be authorized by the 3rd respondent and Inspector of Wakf and then it will be sent to the 1st respondent for approval and for recording the election process.

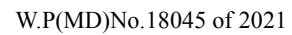


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Accordingly, the elected committee members will hold the office for a period of three years. The last election was conducted on 08.04.2021 in the General Body Meeting and accordingly, the petitioners and the 4th respondent were elected as Officer Bearers. Subsequently, as a regular practice, the election committee members selected the office bearers and executive members. After the election, the members of the Wakf conducted general meeting twice on 26.06.2021 and 15.08.2021 under the Chairmanship of the 4th respondent. The minutes of the meeting was recorded.

4.While being so, it came to the knowledge of the petitioners and Jamath Committee members that few people with malafide motive to create havoc due to their personal differences, sent a representation to the 2nd respondent to change the management of the Petitioners' Wakf without the knowledge of the existing officer bearers. Subsequently, the 4th respondent, as a President and Jamath Committee members sent representation, dated 09.09.2021 to the 2nd respondent not to take any action based on the request made by some unauthorized persons and further informed that if any change is required in the committee members



5.The learned counsel for the petitioners submitted that in the
igned order, without any materials, it is recorded that the petitioners



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are acting arbitrarily. If there is any complaint against the elected office bearers, the 2nd respondent ought to have issued show cause notice to the concerned and ought to have conducted fair enquiry under Section 64 of the Wakf Act, and thereafter only necessary orders to be passed. He further submitted that no Jamath Committee members gave any complaint against the petitioners. If there is any order to be issued, then it can be done only by passing resolution by the Board of Members of the Tamil Nadu Wakf Board under the Wakf Act. It is the Board and not to any individual person, who has authority to pass the impugned order. In the impugned order, there is a reference to the meetings held on 18.08.2021 and 23.08.2021, which was held under the Chairmanship of the 4th respondent. But, the 4th respondent denies the same and further stated that his signatures were obtained in blank papers, which are used to create false records.

6.The learned counsel for the petitioners further submitted that in the the General Body Meeting held on 08.04.2021, the petitioners and others were elected to hold the office for a period of three years. The Inspector of Wakf, Ramanathapura, Sivagangai, had sent a report in



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Na.Ka.No.GS:235/Rama/Wakf/2021, dated 04.05.2021 through the 3rd respondent. In the report, the Inspector of Wakf recorded the General Body Meetings and the election held on 08.04.2021 and the selection of petitioners and others as officer bearers of Jamath Committee. In the list of Committee Members, the names of said four newly appointed persons does not find place and the report recommends only the petitioners as the Secretary, Treasurer, Vice President and Joint Secretary. The report of the Inspector of Wakf, Ramanathapura, Sivagangai was approved and forwarded to the 3rd respondent along with video recordings CD confirming the election was conducted in a free and fair manner. The learned counsel further submitted that the period of petitioners holding the office is from 08.04.2021 to 07.04.2024. The impugned order of the 2nd respondent is arbitrary, without sanction of the Tamil Nadu Wakf Board. No order much less the impugned order, can be passed by the Tamil Nadu Wakf Board in the absence of any vacancy. In case of orders passed with malafide and without jurisdiction, the concept of alternate remedy does not arise and the aggrieved can invoke writ jurisdiction under Article 226 of Constitution of India, which is permissible.



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7.To substantiate his submissions, the learned counsel for the petitioners relied on the decision of the Hon'ble Apex Court in the case of ***“Magadh Sugar & Energy Ltd., Versus State of Bihar and others reported in 2021 SCC OnLine SC 801”*** for the principle that the right of Mutawalli can be nullified only when the order of removal is passed under the provisions of the Wakf Act, and also placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Ali Hussain Versus Parangipettai S.Ali Mosque reported in 2001 SCC OnLine SC 81***. The power of appointment conferred by Section 42 of Wakf Act, could only be exercised when there is a vacancy. For this point, he relied on the decision of this Court in the case of ***“Syed Ibrahim K.T.M Versus Tamil Nadu Wakf Board reported in 1992-2-L.W-108”***. Hence, he prayed for quashing of the proceedings passed by the 2nd respondent.

8.Mr.A.Yosuff Imran, learned counsel for the 4th respondent, President of the Jamath Committee, filed his counter in support of the petitioners and submitted that the 4th respondent along with the petitioners were elected on 08.04.2021 at the General Body Meeting by the Jamath Committee members under the supervision of the 3rd



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respondent and in presence of the Wakf Inspector. The petitioners and the 4th respondent were selected as Secretary, Treasurer, Vice President, Joint Secretary and President of the Petitioners' Wakf respectively. He further submitted that the Jamath Committee headed by the 4th respondent was elected by Jamath members as per the custom followed since inception. After the election two General Body Meetings were conducted, one on 26.06.2021 and the other on 15.08.2021, which were led by the 4th respondent and the meeting were recorded accordingly. This being so, the 4th respondent came to know that some intruders having support of some Wakf Board members, sent false representation as though under the Chairmanship of the 4th respondent, a meeting was held and the petitioners were removed from the Jamath Committee. The 4th respondent gave explanation that in some blank papers, his signature was obtained, which is forged and misused. The 4th respondent and the Jamath Committee members sent separate representation on 09.09.2021 to the 2nd respondent not to take any action based on the request made by some unauthorized people, which was received by the 2nd respondent. Failed to consider the same, on the contrary, on 14.09.2021, the impugned order passed. On coming to know about the same, the 4th



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respondent sent another representation to the Tamil Nadu Wakf Board on 20.09.2021 informing that the members elected vide the election held on 08.04.2021 was by following all procedures and the members were elected with majority at the General Body Meeting under the supervision of the 3rd respondent, but no action taken by the 2nd respondent. Hence, he prayed for quashing of the proceedings passed by the 2nd respondent.

9.Mr.N.Mohideen Basha, learned Standing Counsel appearing for the respondents 1 to 3 submitted that on 15.08.2021, the Jamath Committee meeting was held under the chairmanship of the 4th respondent and the resolution was passed. From the resolution, it is seen that the petitioners, who elected as Secretary, Treasurer, Vice President and Joint Secretary, failed to cooperate with the other Jamath Committee members. Notice was sent to the petitioners for conducting the General Body Meeting and the same was refused. The said meeting was conducted under the chairmanship of the 4th respondent and elected I.Mujibur Rahman as Vice President, A.Noor Mohamed as Secretary, A.Abubacker Siddiq as Joint Secretary and P.Nagooran as Treasurer. Following the same, another resolution was passed on 18.08.2021



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directing the 1st petitioner to handover the charge and the accounts of the Jamath Committee. Thereafter, another General Body Meeting held on 23.08.2021 under the chairmanship of the 4th respondent removing the petitioners from their respective post.

10.He further submitted that despite the petitioners receiving notice for the said three meetings, they failed to participate and thereby, allowed the Jamath committee to pass resolution against them. Based on the resolutions passed by the Jamath Committee, the impugned order, dated 14.09.2021 came to be passed. In the impugned order, the resolution passed by the Jamath Committee, dated 15.08.2021, 18.08.2021 and 23.08.2021 removing the petitioners from their respective post and appointing I.Mujibur Rahman as Vice President, A.Noor Mohamed as Secretary, A.Abubacker Siddiq as Joint Secretary and P.Nagooran as Treasurer, are recorded. The petitioners after getting elected, they acted indifferently in a biased manner and not cooperating with the management of Jamath Committee. Hence, for better administration, in the interest of Jamath Committee, the resolutions were passed and they were removed. He further submitted that if the



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petitioners are aggrieved, as per the Wakf Act, they have to approach the concerned tribunal by filing appropriate petition for their grievance and not to file a Writ Petition. Hence, he prayed for dismissal, confirming the order of the 2nd respondent.

11.Mr.M.Jerin Mathew, learned counsel appearing for the 5th respondent submitted that the election to the Jamath committee for the year 2021-2024 was held on 08.04.2021. On 08.04.2021, 21 members elected as Jamath Committee members to manage the affairs of the Jamath Committee. The 1st petitioner had been holding the post of Secretary for the past 30 years and as such, he had committed several omissions and commissions, it was found that he swindled funds of the Jamath. On 02.07.2021, the Jamath Committee was constituted, in the said meeting, it was decided that the 1st petitioner had chosen the office bearers for Jamath committee arbitrarily without the consent of the other office bearers, as such there is no cordial relationship of the Jamath members with the petitioners. He further submitted that the petitioners acted arbitrarily in an authoritative manner. Hence, it was unanimously decided to bring no confident motion against the petitioners and the same



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came to be passed not once, it was passed thrice. On 15.08.2021, it was unanimously decided to remove the petitioners as the officer bearers of the Jamath Committee and on 18.08.2021, handing over of charge to the new office bearers was recorded and on 23.08.2021, two resolutions were passed removing the petitioners from their respective post and constitution of new office bearers. The 2nd respondent on the basis of the resolution and the application made by the majority members, approved the constitution of new board by its proceedings, dated 14.09.2021. The petitioners have lost the confidence of majority in the Jamath Committee by their own action. If the petitioners are aggrieved by the impugned order, they ought to have approached the concerned tribunal, wherein the factual aspects and rival contentions can be decided, which cannot be done in this Writ Petition. Hence, he prayed for dismissal of this Writ Petition.

12.In support of his submissions, the learned counsel relied on the decision of this Court in the case of “***R.Muralidaran & 6 others Versus The District Registrar, South Madras and others reported in 2008-2-L.W.75***”, for the principle that the Tamil Nadu Wakf Board recorded the

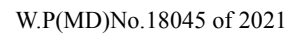


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election of the office bearers, it is only a Ministerial Act, to scrutinize the same and to verify the correctness of the particulars or to adjudicate the dispute, it is for the petitioners to approach the concerned tribunal and not by way of Writ Petition.

13.This Court considered the rival submissions and perused the materials available on record.

14.It is seen that the petitioners were elected as officer bearers of the Jamath Committee by the General Body Meeting. Prior to the General Body Meeting held on 08.04.2021, public notice was issued, which is not in dispute. Thereafter, the General Body Meeting held, which is also not in dispute. The election was conducted in presence of the 3rd respondent and the Inspector of Wakf. The Inspector of Wakf, Ramanathapuram, Sivagangai in his report in Na.Ka.No.GS: 235/Rama/Wakf/2021, dated 04.05.2021 records the details of the election held on 08.04.2021. There are two contesting groups consisting of 21 members, who participated in the election. One led by Janab.K.Sahul Hameed and another one led by Haji.M.Abdullah. Later,



15. The Wakf Inspector, Ramanathapuram, Sivagangai forwarded his report through the 3rd respondent. The 3rd respondent approved and forwarded the same along with video recordings CD to the 2nd respondent. This being so, rival group sent a representation along with the resolutions, dated 15.08.2021, 18.08.2021 and 23.08.2021 removing the petitioners from their respective post. The said three meetings though termed as General Body Meetings, it has not been conducted in the presence of the Wakf authorities namely the Inspector of Wakf and the 3rd respondent. Hence, the said three meetings has no credence.

16. Though in the impugned order, the report of the Inspector of Wakf, dated 04.05.2021 is referred, there is no reason given, why the report was not considered and why the petitioners, who have been



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elected as office bearers in the General Body Meeting, for what reason, their selection has been rejected. If at all the 2nd respondent finds the election held on 08.04.2021 is improper, appropriate reasons to be given with tangible materials, which is missing in the impugned order. Further, howcome and for what reason I.Mujibur Rahman, A.Noor Mohamed, A.Abubacker Siddiq and P.Nagooran names have been included in the elected members of the Jamath Committee, is not known. The General Body Meeting cannot be overruled and substituted by the Committee resolution. There is no vacancy requiring the 2nd respondent to invoke powers to appoint office bearers to the Jamath Committee.

17.In the light of the above discussion, the order of the 2nd respondent on the face of it, is without jurisdiction and in violation of the procedure and rules contemplated under the Wakf Act. Hence, the proceedings in Se.Mu.Order:4367/A3/21/Siva, dated 14.09.2021 passed by 2nd respondent is quashed and this Writ Petition is allowed, accordingly. Consequently, the connected Miscellaneous Petitions are closed. No costs.

29.09.2022



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Internet : Yes / No

Index : Yes / No

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To

- 1.The Chairman,
Tamil Nadu Waqf Board,
No.1, Jaffersyrang Street,
Chennai – 600 001.
- 2.The Chief Executive Officer,
The Tamilnadu Waqf Board,
No.1, Jaffersyrang Street,
VallalSeethakathi Nagar,
Chennai – 600 001.
- 3.The Superintendent of Waqf,
Tamil Nadu Waqf Board,
Karaikudi, Sivagangai District.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDER IN
W.P(MD)No.18045 of 2021

29.09.2022