



W.P.No.2396 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2023

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.2396 of 2023
and WMP No.2486 of 2023

Suhali Hyder Khan
S/o.Kumail Hyder Khan
Mutawalli
Hazrath Moula Ali Dargha and Masjid
178, Dargah Road,Pallavaram
Chennai-43.

... Petitioner

-Vs-

1. Tamil Nadu Wakf Board
Rep.by Chief Executive Officer
No.1, Jaffer Syrang Street
Vallal Seethakathi Nagar
Chennai-1.
2. The Adhoc Committee
Hazrath Moula Ali Dargha Wakf (Shia)
Rep. By President
Zamin Pallavaram
Kanchipuram District.

.. Respondents



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Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for records of the 1st respondent dt.5/1/23 in Se.Mu.Order. 2492/19/B4/Kanchi and quash the same.

For Petitioner Mr.N.A.Nasir Hussain

For Respondents Mr.Mohammed Fiaz Ali
for R1
Mr.J.Sathish
for R2

ORDER

This writ petition has been filed by the Muthavalli of Hazrath Moula Ali Dargha and Masjid assailing the proceedings of the 1st respondent in Se.Mu.Order.2492/19/B4/Kanchi dated 05.01.2023, wherein an Ad hoc Committee consisting of seven members have been appointed on a temporary basis to administer the Wakf.

2.The case of the petitioner is that his father was the Muthavalli of the notified Wakf and he nominated the petitioner in the year 2018 and from then on, the petitioner was functioning as a Muthavalli. It is further stated that the same was informed to the Wakf Board under Section 42 of the Wakf Act, 1985.



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3.The further case of the petitioner is that the 1st respondent through order dated 21.02.2019, ordered for the direct management and appointed an Executive Officer to the Wakf. The same was challenged by the petitioner before the Wakf Tribunal in AA.No.26/19. The application was entertained and an order of interim injunction was granted in favour of the petitioner and the petitioner continued as the Muthavalli of the Wakf. Ultimately, the application was finally disposed of by the Wakf Tribunal, by order dated 13.04.2022. The operative portion of the order is extracted hereunder:

4. Point:

Heard both sides. Case records perused. The counsel for the respondents 1 to 3 fairly conceded that, pursuant to the interim injunction granted by this Tribunal in C.M.P.No.35/2019 on 08.11.2019, the respondents did not give effect to the impugned order passed by the 1st respondent in Na.Ka.2492/19/Kanchi dated 21.02.2019 and that the said order has become infructuous. The counsel for the respondents 1 to 3 further represented that, the said interim order passed in C.M.P.No.35/2019 in this Appeal Application was made absolute on 17.03.2022 till the disposal of this Appeal Application and as such the respondents undertake to any further action only by following the due procedures enunciated under the Waqf Act, 1995.) The counsel for the appellant contended that, the above said representation and undertaking may be recorded and this Appeal Application may be



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dismissed as become infructuous. In view of the above discussion, this Tribunal hereby decides that, this Appeal Application is liable to be dismissed after recording the above said undertaking and representation made by the counsel for the respondents 1 to 3.

5. In the result, this Appeal Application is dismissed as become infructuous and the undertaking and representation made by the counsel for the respondents 1 to 3 on behalf of the respondents 1 to 3 is hereby recorded. No costs.

4.The grievance of the petitioner is that the 1st respondent without issuing any notice and contrary to the provisions of the Wakf Act, appointed an Ad hoc Committee for a period of one year from 05.01.2023 to 04.01.2024, through the impugned order dated 05.01.2023. The said proceedings has been put to challenge in the present writ petition.

5.The 1st respondent has filed a counter affidavit. The stand taken by the 1st respondent is that the Wakf has been mismanaged by the unapproved Muthavalli and illegal constructions have been put up without obtaining any permission from the authorities. In order to immediately take control, a Committee was appointed on an Ad hoc basis. It is stated that this was done only as an interim arrangement for the management of the Wakf for a period of one year. The power is traced u/s 63 of the Wakf Act.



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6.The 2nd respondent has also filed a counter affidavit. The specific stand that has been taken by the 2nd respondent in the counter affidavit is extracted hereunder:

4) I respectfully submit that the Petitioner has not approached this Hon'ble Court with clean hands, he has suppressed, misrepresented and mislead the Court on factual and documentary aspects. I submit that the Muthawalliship of the waqf never held hereditary at any point of time. The Muthavalli himself nominates the successor suo moto. At the time of registration of waqf one Mr. Mir Imdad Hussain Sahib was the Muthawalli, neither the Petitioner nor his father is the legal heir or descendant of late Mr. Mir Imdad Hussain Sahib, as such neither the Petitioner nor his father was nominated as Muthawalli or Committee Member at any point of time to the waqf and put the Petitioner strict proof of the same.

7.Heard Mr.N.A.Nasir Hussain, learned counsel for the petitioner, Mr.Mohammed Fiaz Ali, learned counsel for R1 and Mr.J.Sathish, learned counsel for R2.

8.The main ground that has been urged by the learned counsel for the petitioner is that the 1st respondent has proceeded further to pass the impugned order dated 05.01.2023, without putting the petitioner on notice and without giving him an opportunity. It was contended that on this ground alone the impugned proceedings of the 1st respondent is liable



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to be set aside by this Court. The 1st respondent is tracing the right u/s 63 of the Wakf Act.

According to the 1st respondent, the Wakf was mismanaged and constructions were made without any permission and the petitioner was an unauthorised Muthavalli and he had absolutely no right to continue or perform the function of Muthavalli. The 2nd respondent has also taken a stand to the effect that at the time of registration of the Wakf, one Mr.Mir Imdad Hussain Saheb was the Muthavalli and neither the petitioner nor his father are the legal heirs or descendants of the said person and they have nominated themselves as Muthavallies and in view of the same, they should only be considered to be unauthorised Muthavallies.

9.The 1st respondent had earlier initiated proceedings for directly taking over the management of the Wakf and for appointment of an Executive Officer to the Wakf. The same was put to challenge by the petitioner in AA.No.26/19. It seems that the decision taken by the 1st respondent to take over the management of the Wakf was due to the fact that the petitioner was not recognized as Muthavalli and hence, an attempt was made to appoint an Executive Officer to manage and administer the Wakf.

10.If the 1st respondent was serious enough to proceed against the petitioner, they should have contested the application filed by the petitioner before the Wakf Tribunal. Instead, they came up with a stand before the Tribunal to the effect that they did not give effect to the proceedings of the 1st respondent and the proceedings itself has become



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infructuous. Recording the same, the application was disposed of by the Tribunal by an order dated 13.04.2022.

11.It is true that the above order recording the submission made on the side of the Wakf Board, will not stand in the way of the 1st respondent to proceed further in accordance with the Wakf Act, if they find that the Wakf is being administered by an unauthorised Muthavalli or there is mismanagement on the part of the Muthavalli. However, in order to proceed further, the 1st respondent has to follow the mandate u/s 64 of the Wakf Act, for the removal of the Muthavalli. Without following this procedure, the 1st respondent cannot once again appoint an Ad hoc Committee and thereby completely take over the right to administer the Wakf from the petitioner. The impugned proceedings of the 1st respondent, at the best, is only yet another attempt made by the 1st respondent to take over the Wakf from the control of the petitioner.

12.The 1st respondent is tracing the power u/s 63 of the Wakf Act. This provision deals with the appointment of Muthavalli. A reading of Section 63 of the Wakf Act, would amply make it clear that a person can be appointed as Muthavalli in the circumstances stated therein. It is not known as to how the appointment of an Ad hoc Committee to take over the administration of the Wakf is traceable to Section 63 of the Wakf Act. There is a flaw on the very basis on which the 1st respondent has proceeded to issue the impugned order.



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13. Apart from the above infraction, there is yet another reason which impels this Court to interfere with the proceedings which is that there is a gross violation of the principles of natural justice. The 1st respondent was aware of the fact that the petitioner was in control and administration of the Wakf. In fact even during the earlier occasion when the 1st respondent attempted to take over direct management, it was the petitioner, who had contested the same. In such view of the matter, the 1st respondent ought to have at least issued a notice to the petitioner and proceeded further in accordance with law. The impugned proceedings of the 1st respondent has been issued without any notice to the petitioner and the impugned proceedings results in civil consequences to the petitioner since his right to act as Muthavalli is being taken away by replacing the petitioner with an Ad hoc Committee.

14. In the light of the above discussion, the impugned proceedings of the 1st respondent in Se.Mu.Order. 2492/19/B4/Kanchi, dated 05.01.2023, is liable to be interfered by this Court and accordingly, the same is hereby set aside. The petitioner will be permitted to act as Muthavalli of the Wakf. However, it goes without saying that it is left open to the 1st respondent to proceed further against the petitioner in accordance with law after issuing notice to the petitioner and affording him an opportunity. The order passed in this writ petition will not come in the way of the 1st respondent if in the event of the 1st respondent wants to proceed further against the petitioner.



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15. In the result, this writ petition is allowed in the above terms. No costs.

Consequently, connected miscellaneous petition is closed.

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KP

Internet : Yes/No

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No

To

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N.ANAND VENKATESH, J.

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