



WEB COPY



W.A.No.166 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 16.02.2023

Judgment Pronounced on : 20.03.2023

CORAM :

**THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.A.No.166 of 2023

and

C.M.P.Nos.1575, 1578 & 1582 of 2023

Dr. K.M. Kalifa Masthan Sahib Kadiri,
Nagore Dargah Hereditary Trustee and Dargah Kalifa, Nagore.
D.No.9, Thalaimattu Street,
Nagore – 611 002,
Nagapattinam District.

... Appellant

Versus

1.Tamil Nadu Waqf Board,
Rep.by its Chief Executive Officer,
No.1, Jaffer Syrang Street,
Mannady, Chennai – 600 001.

2.Alhaj Haja Noordeen Sahib @ Dr.S.Syed Kamil Sahib



W.A.No.166 of 2023

3.S.Sulthan Kalifa Sahib Alias Kannu Vappa Sahib

4.Muhalli mutawalli Haja Najumudeen Sahib

5.Haji Mohalli H.K.Syed Yusoof Sahib

6.Haji N.S.Syed Abul Fathah Sahib

7.Haji Kaji S.A.Shaik Hassan Sahib

8.M.S.Muhamed Backer Sahib

9.H.N.Syed Haja Muhaideen Sahib

10.Haji S.M.B.Sulthan Kabeer Sahib

11.S.Syed Muhamed Kaji Hussain Sahib

12.Syed Mohammed Kalifa Sahib Quadiri Hashmi
Kalifathul Quadri of Nagore Sheriff,
Having Office at Kalifa Manzil,
No.3, Kalifa Sahib Street,
Nagore, Nagapattinam Taluk & District,
Pin – 611 002.

13.B.T.Noordeen Sahib

14.Yaseen Moulana

... Respondents



W.A.No.166 of 2023

Writ Appeal filed under Clause 15 of the Letters Patent Act, to set aside the order dated 19.01.2023 passed by the Learned Judge in W.P.No.1187 of 2023.

For Appellant :: Mr. C. Selvaraj
For Respondents :: Mr. R. Abdul Mubeen (for R1)
:: Mr. P.V. Balasubramaniam, (for R2)
Senior Counsel
for M/s. A.Ajimath Begam
:: Mr. G. Anandaraj (for R13 & R14)
:: Mr. L. Gavaskar (for R12)

JUDGMENT

D.BHARATHA CHAKRAVARTHY, J.,

A. Brief Facts Leading to the filing of the Appeal :

Nagore Dargah, Nagore, Nagapattinam District is a surveyed, notified, and registered Waqf bearing G.S.No.347/TNJ and Registration No.282/TNJ. The Rule of Succession to the Office of the *mutawalli* is the eldest male member as per custom. The Waqf is administered by a scheme



W.A.No.166 of 2023

decree passed by this Court in A.S.No.289 & 576 of 1948, dated 16.03.1955. Among the hereditary trustees, the appellant herein, namely, *Dr.K.M. Kalifa Masthan Sahib Kadiri*, is also functioning as *Kalifa* (leading priest) of the *Dargah*.

1.1 While so, on receipt of representations from the trustees dated 05.07.2022, 20.07.2022, 13.08.2022 and on the strength of the resolutions passed in the meeting of the Board of Trustees that (i) the appellant herein is illegally using the name of *Dargah* for his personal gain against its decorum and sanctity; (ii) he is insulting all the other Board of Trustees in a filthy language and tarnishing their images; (iii) he created discredits and chaos in the administration of *Dargah*; (iv) he has posted the *Dargah* rituals in social media like Facebook, Youtube etc., for his personal benefit and collected donations in his personal bank account; (v) he usurped the powers of the Board of Trustees to fortify his position; and the said conduct was found to be objectionable and against the interest of the Waqf, therefore, the Chief Executive Officer, Tamil Nadu Waqf Board, the first respondent herein,



W.A.No.166 of 2023

passed an order dated 20.12.2022. The operative portion is extracted hereunder :

“ The point to be considered in this matter is that there are proved allegations against Janab. Kalifa Masthan Sahib only on his holding the post of Kalifa and not as the member of Board of Trustees. Whilesso this being the internal issue resolvable within the ambit of the Board of Trustees who are authority to appoint Kalifa for Nagore Dargah as per scheme it will be appropriate for this forum to direct the Board of Trustees of Nagore Dargah to take disciplinary action against Janab. Kalifa Masthan Sahib keeping in view the sanctity of Dargah and also direct the Board of Trustees to ensure all the public donation received are brought into the bank account of Dargah only and also maintain peace and harmony in order to comply maintenance of decorum in the Nagore Dargah.”

1.2 Aggrieved by the same, the appellant preferred W.P.No.1187 of 2023 and by the Judgment under Appeal dated 19.01.2023, the learned Single Judge was pleased to hold that the Chief Executive Officer has powers to pass the order impugned in the Writ Petition. Since based on the Order of the Chief Executive Officer, a final order has been passed removing the petitioner as *Kalifa*, the remedy of the petitioner lies before



W.A.No.166 of 2023

the Waqf Tribunal under Section 83 of the Waqf Act,1995 and dismissed the Writ Petition. Aggrieved by the same, the present intra court appeal is preferred by the appellant/writ petitioner.

B. The Submissions :

2. Heard *Mr. C. Selvaraj*, learned Counsel, appearing on behalf of the appellant; *Mr. R. Abdul Mubeen*, learned Counsel, appearing for the first respondent; *Mr. P.V. Balasubramaniam*, learned Senior Counsel, appearing for the second respondent; *Mr. Gavaskar*, learned Counsel, appearing for the respondent No.12; and *Mr. G. Anandaraj*, learned Counsel, appearing for the respondent Nos.13 & 14.

2.1 *Mr.C.Selvaraj*, learned Counsel, appearing on behalf of the appellant taking exceptions to the order of the learned Single Judge submitted that there was absolutely no jurisdiction whatsoever for the Chief Executive Officer under Section 25 of the Waqf Act, 1995 to pass the order impugned in the Writ Petition. He further submitted that there are no



W.A.No.166 of 2023

specific provisions regarding the manner of removal of *Kalifa* in the scheme decree. On the other hand, the scheme decree contains specific provisions that the parties have to approach this Scheme Court in respect of any matter which is not expressly provided in the scheme decree. By considering the effect of the coming into force of the Waqf Act, 1995, a Division Bench of this Court in W.A.No.1640 of 2016 (& batch cases), in respect of the very same *Nagore Dargah*, had categorically declared that the Waqf Board had replaced the Scheme Court and, therefore, it is only the Waqf Board which is entitled to consider the allegations as against the appellant herein and issue directions.

2.2 *Mr. V. Selvaraj*, Learned Counsel would submit that under Section 32 of the Act, the general superintendence of all the Waqfs vest with the Waqf Board. More particularly, under Section 32(2) (c) & (d), it is only the Waqf Board which can issue directions regarding the administration of the Waqf and also to settle the schemes of management in the Waqf. The powers of the Chief Executive Officer under Section 25



WEB COPY

relates to the investigation and inspection of the Waqf and doing such acts may be necessary for the control and maintenance of the Superintendence of Waqf. When it is only the Waqf Board which has jurisdiction, the impugned order is passed without jurisdiction and the learned Judge has omitted to consider the same. As a matter of fact, the learned Counsel submitted that on an earlier occasion, when the respondents approached this Court in respect of the very same subject matter by an order dated 28.09.2022 in W.P.No.26101 of 2022, this Court specifically directed that only Waqf Board can consider the matter and pass the orders on merits in accordance with law. Therefore, when the order of the Chief Executive Officer is completely without jurisdiction, then, the learned Judge ought not to have relegated the appellant for the alternative remedy to the Waqf Tribunal.

2.3 Learned Counsel also submits that in as much as the copies of the representations and other materials on record which were considered by the Chief Executive Officer were not being specifically furnished to the appellant and he was not given a fair opportunity to contest the allegations



on merits, the order is also in violation of principles of natural justice and, therefore, on that score also, the learned Judge ought to have entertained the Writ Petition on merits.

2.4 Per contra, *Mr. R. Abdul Mubeen*, learned Counsel, appearing on behalf of the Waqf Board took this Court through various provisions of the Act, and submitted that the Office of the *Kalifa* cannot be equated to that of *mutawalli*. The Office is to be equated to that of *Sajjidanashin* and as such *Kalifa* is only an employee of the Waqf. The appellant is not removed from the office of hereditary trustee but the order of the Chief Executive Officer is only relating to his work as *Kalifa*, therefore, that would squarely fall within the powers of the Chief Executive Officer under Section 25(c) of the Act. As a matter of fact, the impugned order further relegates the matter to the Trust Board to take disciplinary action and the order is passed only with the limited purpose of keeping the petitioner away from the Office of the *Kalifa*, given the nature of the allegations against the petitioner. Therefore, he would submit that the order of the learned Single Judge does not require



W.A.No.166 of 2023

any interference.

WEB COPY

2.5 *Mr. P.V. Balasubramanian*, learned Senior Counsel, appearing on behalf of the second respondent, would submit that pursuant to the order of the Chief Executive Officer, the final order dated 07.01.2023 was also passed by the Board of Trustees removing the appellant from the Office of *Kalifa*. Therefore, the only remedy available to the petitioner is to approach the Waqf Tribunal, if he is aggrieved. The learned Senior Counsel would submit that the impugned order squarely falls within the power of the Chief Executive Officer under Section 25 of the Act. He would submit that under Section 25(c) of the Act, the Chief Executive Officer is empowered to generally perform such acts as may be necessary for the control and maintenance and the Superintendence of the Waqf under Section 25(2) of the Act and it enjoins him to act in conformity with the deed of the Waqf and the customs.

2.6 *Mr.P.V. Balasubramanian*, Learned Senior Counsel, would



W.A.No.166 of 2023

submit that Section 25(3) of the Act, specifically mandates the Chief Executive Officer to exercise such powers as assigned to him under the Act.

While the Board of Trustees has to deliberate regarding the misdeeds committed by the appellant herein, the effect of the order of the Chief Executive Officer to only to keep him away from the Office of the *Kalifa*, which is in the nature of the employment of Waqf. The Chief Executive Officer of the Waqf Board certainly has powers to take action against the employees of the Waqf and, therefore, the impugned order passed is very much within the jurisdiction. He also conducted an enquiry, therefore, it cannot be contended that the order has been passed in violation of the principles of natural justice. Therefore, he would submit that the impugned order does not call for any interference. He would submit that the decree dated 17/02/1933 passed in O.S. No.57 of 1932 itself would recognize that the post of *Kalifa* is amenable to the action by the trustees.

2.7 In support of his contentions, learned Senior Counsel relied upon



W.A.No.166 of 2023

the Judgment of the High Court of Andhra Pradesh, in ***D.Md.Ashfaq Vs. State of Andhra Pradesh***¹, more particularly relying upon paragraph No.6, to contend that the Chief Executive Officer generally can do such things in exercising the power under Section 25 of the Act. He would also rely upon the Judgment by one of us (The Hon'ble Acting Chief Justice) in W.P.No.7362 of 2013, (***The Executive Committee Rep. by its mutawalli S.K.Syed Abdullah Vs. The Tamil Nadu Waqf Board, Rep.by its Chief Executive Officer and Others***) more particularly relying upon paragraph No.25, to contend that when the Tribunal has got all the powers of the Civil Court, the action of the respondent invoking Article 226 of the Constitution of India, cannot be permitted. After Orders were reserved, Learned Senior Counsel also brought to the notice of this Court that the appellant herein has filed O.S. No.3 of 2023 before the Principal District Judge, Nagapattinam, in which I.A. No. 2 of 2023 is moved for the self same relief.

2.8 *Mr.Gavaskar*, learned Counsel, appearing on behalf of the

1 2022 SCC OnLine AP 960



W.A.No.166 of 2023

respondent No.12, brought the attention of this Court to Section 64 of the Act and submitted that removal of *mutawalli* is different from the present exercise which is only removal from the Office of *Kalifa*. He would submit that the Board of Trustees is entitled to consider the misdeeds and misgivings of the appellant and when the matter has been further remitted to the Board of Trustees, the grievance of the appellant is without any basis.

C. The Discussion & Findings :

3. We have considered the rival submissions made on either side and perused the material records of this case.

3.1 At the outset, it is to be mentioned that in respect of *Nagore Dargah*, there were several *interse* disputes between the Board of Trustees, some of which are pending and some of which have been decided by this Court. While so, it is essential to reproduce the Judgment of the earlier Division Bench of this Court made in W.A.No.1640 of 2016 (& batch of cases), in respect of the *Dargah*, more particularly the relevant portion of



the paragraph Nos.45 & 46 of the Judgment, which is extracted hereunder:

WEB COPY

“45....

On the face of it, it only means the scheme decree will continue. But the issue here is not about anything by which the existing Scheme is sought to be replaced now but who should have the residual power of superintendence over the working of the Scheme? Until now, the Court retained to itself the residuary power to administer the Scheme it framed and from now it is going to be replaced by the Waqf Board. But the Nagoor Durgha seems to believe that the compromise operates as an estoppel against the Waqf Board from replacing the Court in its role to ensure the working of the Scheme. In H.H. The Prince of Arcot case [(2006) 3 MLJ 856], a Division Bench of this Court had an occasion to hold:

“The compromise cannot read to mean that any particular authority or institution would become above law and no action would be taken in accordance with law notwithstanding any transgression or violation of law. No immunity above law would have been contemplated to be given by way of compromise.”

*To this, this Court now intends to add that no statutory authority has the power to barter away his statutory responsibility, duty or authority merely to facilitate a compromise, howsoever **honourable** the intentions that peace may reign in a cause be.*



46.1 To sum up, even where the Courts have framed a scheme under Sec.92 CPC for the administration of the Waqf, on the establishment of Waqf Board, the residual power of superintendence of the Waqfs which hitherto remained with the Court as the conscience keeper of the public trusts founded on the principle of parens patriae would shift from the Scheme Court to the Waqf Board. In effect, the Waqf Board replaces the Principal District Court, Nagapattinam, in administering the Scheme settled in O.S.30 of 1946. However, its power of superintendence stops on determination of surplus income meant for the kasupangudars. The authorities which the counsel for the Waqf Board has cited and listed in paragraph 32 above may be referred to. One immediate effect is that the Waqf Board cannot claim contribution in relation to the surplus funds meant for distribution to the Kasupangudars. ”

(emphasis supplied)

3.2 Thus, by virtue of Section 32 of the Waqf Act, 1995 and the above decision of this Court, the proposition that the Waqf Board had replaced and had taken the position of the Scheme Court is well settled. The present *Dargah* is governed by the Scheme Decree framed by this Court on 16.03.1955 in Appeal Nos.289, 576 of 1948. On a careful perusal of the said scheme decree, it is clear that it does not contain express provisions regarding the appointment and removal from the Office of the *Kalifa*. As a



matter of fact, learned Senior Counsel, *Mr.P.V.Balasubramanian*, relied upon Clause 5, 6 of the decree which are extracted hereunder:

“5.The Board of Trustees shall have power to lay down all general principles or policies in regard to the administration of the Durga in accordance with the custom and usage of the institution and in regard to the conduct of the worship and the celebration of the festivals and shall have such further powers as are given hereunder.

6. The Board of Trustees shall meet in the Durga office once a month or more often, if need be, for the passing of the accounts of the previous month, for the transaction of the business of the Durga, such as the settlement of the conditions of the lease of the Durga properties hundials, etc, the initiation and consideration of proposals for the budget of each year, the consideration of audit reports and objections, repairs to buildings, lands and the paraphernalia of the Durgh, and the conduct of festivals, and all other matters concerning the management and the administration of the Durgah”

3.3 The above clauses do not in any manner vest the power of appointment or removal of *Kalifa* with the Trust Board. As a matter of fact, Clause 52 of the decree clearly holds that for any further orders and directions, the trustees or others have to apply to the Scheme Court. Clause



52 is extracted hereunder:

WEB COPY

“52. Any of the trustees or kasupangudars or any member of the Advisory Board may by petition apply to court for all further orders or directions as may be necessary to carry out the provisions of the scheme and the court shall have full power to give all such directions as may be necessary to effectuate and carry out the scheme.”

3.4 In the above factual matrix, we are unable to agree with the reasons given by Learned Single Judge and hence, the same is liable to be interfered for the following reasons :

(a) If we look at the nature of decision made in the impugned order the impugned order, it holds that the power to appoint and to take disciplinary action against *Kalifa* is vested with the Board of Trustees. There is no such express provision in the Scheme Decree. On a careful reading of the order of the Chief Executive Officer, it decides as to nature of the office of the *Kalifa* , to be an office at the pleasure of the Trustees. However, it is a matter of serious contest by the parties that the Office of *Kalifa* is hereditary in nature. Even in



WEB COPY



W.A.No.166 of 2023

O.S. No. 57 of 1932, an express issue has been framed and is answered that the office of *Kalifa* is hereditary in nature. In the course of answering the issue, though it is discussed by the Trial Court as to whether the hereditary nature is automatic or whether it would need an appointment and will be subject to control of trustees, ultimately, no categorical finding on merits was given since the issue was decided primarily on the arrangement between the parties. In any event, the Scheme Decree is dated 16/03/1955, subsequent to the above decree dated 17/02/1933. There is absolutely nothing in the scheme decree regarding the same. Thus, for the first time, it is only the Chief Executive Officer who is laying down the rule that *Kalifa* is to be appointed by the Board of Trustees and that they have the power to take disciplinary action against him and as such, the directions issued are clearly in the nature of clarifying/modifying the scheme for the administration of the Waqf which power vests only with the Waqf Board;

(b) Further, it can be seen that the subject matter is in essence a *lis*



WEB COPY



W.A.No.166 of 2023

between the trustees, as some of the trustees make allegations against another trustee. In view of the Judgment of the Division Bench of this Court extracted above read with Section 32 of the Act, it is very clear that the matter cannot be left to be decided by the same Trust Board and it is the Waqf Board, which has the power of superintendence, should decide the issue.

(c) Even assuming for a moment that the Office of the *Kalifa* is just an employment, the Chief Executive Officer over-looked the fact that if the person holding the post in the Office of the *Kalifa* is also a hereditary trustee, being part of the Board of Trustees, again it would be proper only for the Waqf Board to take up the issue within its power of superintendence under Section 32 of the Act.

(d) Even while remitting the matter to the Board of Trustees, the Chief Executive Officer holds that the allegations are proved and thereby making the entire exercise to be carried out by the Board of Trustees an empty formality. No proper enquiry was also conducted by him by framing a charge and furnishing of documents in order to



W.A.No.166 of 2023

WEB COPY

render such a finding that the allegations are proved.

(e) The powers under Section 25 of the Act, are the powers of administration and superintendence of day to day administration and are in the nature of the powers and duties in implementing and carrying out the scheme and not meddling with or modifying the scheme as such.

(f) When the order passed by the Statutory authority is questioned on the ground of want of competency/jurisdiction such a challenge is very much maintainable before this Court under Article 226 of the Constitution of India. As a matter of fact, in the scheme of things, it is only the Waqf Board which has to decide the matter and the aggrieved party has to approach the Waqf Tribunal thereafter. Hence, moving of an interlocutory application in a suit with different scope would not by itself be a bar for maintaining this appeal against the Order of the Learned Single Judge.



W.A.No.166 of 2023

3.5 Therefore, we are of the view that the impugned order passed by the Chief Executive Officer amounts to clarifying/modifying/framing additional Clauses to the scheme decree itself and as such, those powers would vest only with the Waqf Board itself and not the Chief Executive Officer under Section 25(c) of the Waqf Act, 1999.

D. The Result :

4. In view thereof, the Writ Appeal deserves to be allowed and, accordingly, allowed on the following terms:

4.1 The Judgment of the learned Single Judge dated 19.01.2023 in W.P.No.1187 of 2023 stands set aside;

4.2 The order dated 20.12.2022 bearing proceedings in R.C.No.13548/15/B7/TNJ passed by the Chief Executive Officer of the Tamil Nadu Waqf Board is quashed and the consequential final decision of the Trust Board dated 07/01/2023 shall also stand set side;

4.3 The Chief Executive Officer shall place all the records before the first respondent/Waqf Board and the Waqf Board shall consider the issue in



W.A.No.166 of 2023

accordance with the law by duly conducting an enquiry into the allegations made against the appellant herein and pass orders in accordance with law. In the process it shall also be within its realm to lay down about the nature and conditions of the office of *Kalifa*;

4.4 It is needless to mention that the parties aggrieved by the order of the Waqf Board will be entitled to move before the Tribunal in the manner known to law;

4.5 There shall be no order as to costs;

4.6 Consequently, the connected miscellaneous petitions are closed.

(T.R.,A.C.J.) (D.B.C, J.)
20.03.2023

Index : yes
Speaking order
Neutral citation : yes

klt



WEB COPY



W.A.No.166 of 2023

**THE HON'BLE ACTING CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.,**

klt

W.A.No.166 of 2023
and

C.M.P.Nos.1575, 1578 & 1582 of 2023

20.03.2023