



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED **03.01.2023**

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No. 4073 of 2021
And
W.M.P.Nos. 4646 & 4647 of 2021

1. A.Shahira Naseem
2. K.Abbas Ali ... Petitioners

..Vs..

1. The State of Tamil Nadu
Rep. by its Secretary
Most Backward and Minority Welfare Department
Fort St. George
Chennai – 600 009.
2. The Government Chief Kazi
Office of the Chief Kazi
to the Government of Tamil Nadu
Madarasa-I-Muhamadi
Dewan Sahib Garden Street,
No.323, T.T.K.Road,
Royapettah, Chennai – 600014.
3. The Tamilnadu Wakf Board
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 001.
4. Mr. S.Thajar Mulk @ Mohammed Thajir Hasni
5. Mohamed Nizamudeen ... Respondents



PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus directing the respondents 1 to 3 to take appropriate action against the 4th respondent for his misconduct and consequently forbear the 4th respondent from interfering and adjudicating the private disputes at the instance of the 5th respondent or any body else by considering petitioner's representation dated 24.12.2020.

For Petitioners	:: Mr. R.Prabakar
For 1 st Respondent	:: Ms. P.Rajarajeswari Government Advocate
For 2 nd Respondent	:: No appearance
For 3 rd Respondent	:: Mr. Haja Mohideen Gistri

ORDER

The petitioners are spouses. The fifth respondent is the brother of the first petitioner. There had been disputes between the petitioners and the fifth respondent. This Court need not examine the genesis of such dispute. However, the fifth respondent appears to have given a representation before the fourth respondent, who is the Khazi for Tiruppur District and is now at J.S.H Arabic College at Tiruppur.



2. The fourth respondent, is limited in his authority by The Kazis Act 1880. He appears to have over reached himself and the communications issued by him have been the reason for the petitioner to approach this Court by filing the present Writ Petition.

3. Mr.R.Prabakar, learned counsel for the writ petitioners vehemently argued that the fourth respondent has no authority to issue the communications complained of and therefore, urged that the Writ Petition which had been filed in the nature of a Mandamus seeking direction against the first to third respondents to take appropriate action against the fourth respondent for acts of misconduct, should be considered to the adverse interest of the fourth respondent. More particularly the learned counsel insisted that this Court should ensure that Khazhis across the State do not over reach their authority and interfere with disputes among the members of the Muslim Community.

4. With that as a background, let me examine the averments in the affidavit little more detail.

5. As stated, the petitioners and the fifth respondent had some disputes particularly with respect to a property. The fifth



respondent is also alleged to have defamed the second petitioner in various places in the presence of relatives. These issues had necessitated the petitioners to send a legal notice on 12.12.2020. The first petitioner also demanded partition of an ancestral property to which she claims a right by birth.

6. Aggrieved by such notice, the fifth respondent instead of approaching a Court of law had approached the fourth respondent and had given a complaint on 07.12.2020. It is stated that the said complaint had been deliberately predated by the fourth respondent as if it had been issued prior to the legal notice dated 12.12.2020. A notice dated 21.12.2020 was sent by the fourth respondent to the second petitioner calling upon him to attend an enquiry and submit an explanation within one week from the date of receipt of that particular notice.

7. In the affidavit, it had been specifically stated that the petitioners had contacted the fourth respondent through phone on 23.12.2020. The fourth respondent asserted that he was appointed by the Government and that the petitioners should submit before him for enquiry.



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8. It is complained that the fourth respondent by such act had exceeded the authority granted to him under The Kazi's Act 1880. The authority given to him according to the petitioners only related to marriage and related ceremonies but certainly not to settle private disputes or rather act as a Kangaroo Court without any authority.

9. In this connection, the petitioner had sent a representation to the first to third respondents on 24.12.2020 seeking necessary action to be taken against the fourth respondent. The Writ Petition has been filed in the nature of Mandamus seeking consideration on that particular representation.

10. The first to third respondents have filed their counter affidavit. In the counter affidavit, it had been stated as follows:-

“3. It is submitted that Government issued instructions in Government letter No. 7468/S1/2020, dated 05.01.2021 to the District Collector, Tiruppur to take necessary action on the petitioners representation dated 24.12.2020 and to send a report. An enquiry was conducted at the Tiruppur Collectorate with the petitioner and then with the District Kazi on 18.01.2021.



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4. *It is submitted that subsequently Government issued directions to the District Kazi, Tiruppur, the 4th respondent to function specified in the Kazis Act, 1880 and to the District Collector vide letter dated 22.11.2021 as detailed below:-*

“In Kazis Act, 1880 (Central Act XII of 1880), in Section 4, it has been stipulated as follows:-

“4. Nothing in Act to confer judicial or administrative powers or to render the presence of Kazi necessary or to prevent any one acting as Kazi:-

Nothing herein contained, and no appointment made hereunder, shall be deemed:

a) *to confer any judicial or administrative powers on any kazi or Naib Kazi appointed hereunder: or*

b) *to render the presence of a Kazi or Naib Kazi necessary at the celebration of any marriage or the performance of any rite or ceremony; or*



c) *to prevent any person discharging any of the functions of a Kazi."*

Further in W.P.No. 13539 & 17991 of 2013 and W.P.(MD).No. 15664 of 2013, the Hon'ble High Court of Madras in its order dated 10.01.2017 directed as follows:-

a) *pending consideration of the matter by the Muslim Pesonal Law Board, no certificate n respect of Talaq would be issued as an opinion by the Chief Kazi;*

b) *It is clarified for purpose of Courts of legal proceedings that the certificate issued by the Chief Kazi is only an opinion and has no legal sanctity more specifically in view of Section 4 of the Kazis Act, 1880;*

c) *The order be circulated by the Registrar of the Court to the Judicial forums for clarity and it is open to the concerned petitioners to give adequate publicity to the same.*

The above instructions was communicated to all District Kazis through District Collectors vide Government Letter No.4262/S1/2013-13, dated 07.03.2018 for



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strict compliance.

In the above circumstances, the District Kazi, Tiruppur, is requested to carry out the functions specified in the Kazis Act, 1880.”

5. With regard to averments made in paragraph 2 and 3 of the affidavit, it is respectfully submitted that the Kazis Act, 1880 (Central Act XII of 1880) Government is empowered to appoint Kazis, whereas by the usage of the Muthammadan Community in some parts of India the presence of Kazis appointed by the Government is required at the celebration of marriages and the performance of certain other rites and ceremonies and it is therefore expedient that the Government again be empowered to appoint persons to the office of Kazi and enacted the Kazis Act, 1880.”

11. It is clear that the first to third respondents placed reliance on the Kazis Act 1880 and in the aforementioned extracted paragraphs have also stated about the administrative powers of a Kazi. The powers are clear. They do not extend to settling private disputes or acting as a Kangaroo calling upon the complainants or anybody else who have preferred complaints and attempting to settle the disputes. The issuance of such notice dated 21.12.2020 by the



fourth respondent certainly calls for interference and a direction is very specifically given that neither the petitioners nor the fifth respondent need appear before the fourth respondent with respect to the complaints levelled against each other. The fourth respondent should withdraw the said notice. He has no right or authority to call either the petitioner or anybody else for such an enquiry.

12. The fifth respondent had also filed a counter affidavit wherein he had elaborated about the disputes which he has with the petitioners. But again if there are disputes, the proper step taken by the fifth respondent would have been to approach a Court of law. He cannot invite the fourth respondent to exercise adjudicatory powers. The fifth respondent should realise that by going to the fourth respondent, he had only dragged the fourth respondent before this Court. The fifth respondent should realise his responsibilities and should act within the four corners of the law and should not go beyond that.

13. In so far as the direction sought, namely, to take action against the fourth respondent, let me be a little cautious on that aspect. I would however direct the second respondent to issue necessary clarity circulars to Kazis across the State sensitising them about the limitations of their authority which they can lawfully exercise and also to be cautious not to exceed their powers and to act



within the confines of the Kazis Act 1880. This would only add to their dignity and responsibility holding the revered post. It is only appropriate that they uphold the dignity and sanctity of their post. It is in their own hands to uphold such dignity. They must also realise that they should not exceed their authority and act as a Kangaroo Court and try to settle private disputes among members of their own community.

14. I am confident that the second respondent would do needful in this regard.

15. The Writ Petition stands disposed. Let a cautionary advise be sent to the fourth respondent. I am confident that the fourth respondent would not exceed any of the powers vested but would act only within the confines of the law.

16. The petitioners are protected against any notice issued by the fourth respondent particularly the notice dated 21.12.2022. Holding as above, the Writ Petition stands disposed of. Consequently, connected Miscellaneous Petitions are closed. No costs.

03.01.2023

vsg
Index: Yes/No
Internet: Yes/No
Speaking / Non Speaking Order

To



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C.V.KARTHIKEYAN, J.,

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