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C.R.P.PD.No.460 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on	5/6/2023
Pronounced on	12/9/2023

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Civil Revision Petition PD.No.460 of 2023

a n d

C.M.P.No.3858 of 2023

1. Syed Mazhar Hussain
2. Syed Kasim Sakaaf
3. Dadashamakkan Wakf
rep. By the Present Committee
rep. By the present Secretary ... Petitioners

Vs

1. Syed Latheef
2. G.M.Syed Fasi Mohammed
3. Shabana Ayisha
4. Fathima Begum
5. Syed Thula Basha
6. S.A.Rahman
7. Syed Faizullah
8. Syed Akthar Hussain
9. Habeebunnissa Begum
10. The Tamil Nadu Wakf Board
rep. By its Chief Executive Officer
1 Jaffer Syrang Street
Vallal Seethakathi Nagar
Chennai 1.



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11. The Election Officer/Superintendent of Waqfs
Chennai Zone, No.139 Dr.Besant Road

Ice House, Triplicane
Chennai 5.

12. H.Mohammed Sajath
13. Syed Ajaz Ahmed
14. H.W.Shanaaz
15. H. Gayaz Ali
16. Mubeen Aamina
17. Haseena Bi
18. Syeda Ghousia Begum
19. Showkath Jahan

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 9/2/2023 made in I.A.No.723 of 2022 in O.A.No.79 of 2022 on the file of the Tamil Nadu Waqf Tribunal, Chennai.

For Petitioners

...

Mr.Nissan Ahmed
Senior Advocate
for Ms.Kowser Sulthana

For respondents

...

Mr.Y.Kaja Navas
for R.R.1 to 9
Mr.S.Haja Mohideen Gisthi
for R.R.10 and 11
Mr.N.A.Nassir Hussain
for R.R.12, 13, 16 and 17
Mr.A.Muthukumar
for R.R.14 and 19
Mr.S.Vishnu
for R.15

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ORDER

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This Civil Revision Petition is filed aggrieved by the order passed by the Tamil Nadu Wakf Tribunal, Chennai, in I.A.No.723 of 2022 in O.A.No.79 of 2022 dated 9/2/2023 declining to reject O.A.No.79 of 2022.

2. The facts in brief as per the records are as under:-

The petitioners and the respondents are stated to be the descendants of St.Dada Shah, who died long ago leaving behind many properties and many branches. In respect of the distribution of properties, O.S.No.75 of 1909 was filed and after conclusion of the trial, a Scheme was framed for administration of the Wakf. As per the said Scheme, each branch of the descendants of Dada Shah were expected to administer the Wakf for one year. As some of the beneficiaries are staying away from the Wakf, the Scheme was not implemented, thereby, the Tamil Nadu Wakf Board has stepped in and framed bye-laws for management of the Wakf, on 15/7/2010.



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3. As per the Scheme, out of seven branches of the descendants of Dada Shah, each branch has to select two members and those 14 members are entitled to select the Office bearer, in the presence of Wakf Board officials, with the prior permission of the Tamil Nadu Wakf Board, as per Clauses 9 and 11 of the bye-laws. By adopting the abovesaid procedure, three elections were completed successfully.

4. The Chief Executive Officer of the Tamil Nadu Wakf Board, directed the second respondent to conduct elections, on 3/10/2021. Until the date of elections, second respondent has not informed the members about the manner in which elections were going to be conducted. Accordingly, elections were completed and results were announced on 21/10/2021 and names of the Executive Committee members were declared. All the seven branches have selected 2 members each, as per Clause 12 and Proceedings were passed, on 8/10/2021.

5. Feeling aggrieved by the declaration of results, the members who lost in the elections have filed a representation before the Chief Executive Officer, Wakf Board, calling for the fresh elections, alleging that some of the persons who are elected are not descendants of Dada



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Shah. The Chief Executive Officer of the Wakf Board has considered the request of the aggrieved party and by order dated 3/12/2021, has called for fresh elections setting aside the election which was held on 3/10/2021.

6. One of the successful candidates in the elections has filed W.P.No.26402 of 2021 challenging the orders passed by the Executive Officer Wakf Board in counter manding the elections and calling for fresh elections, as per the order, dated 3/10/2021. An interim order was passed by this Court, on 10/12/2021, in W.M.P.No.27861/2021 in W.P.No.26402 of 2022, thereby, the order of the Chief Executive Officer, Wakf Board, dated 3/12/2021 was stayed. On account of which the elected members were continued to hold the office of the Wakf.

7. Another writ petition in W.P.No.27425 of 2021 was filed by one H.W.Shanaz to consider the representation dated 29/11/2021 to handover the charge to the elected members as per the interim order, dated 10/12/2021 passed in W.M.P.No.27861 of 2021 in W.P.No.26402 of 2021, wherein, certain directions were issued to the CEO to consider the representation.



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8. On a complaint given by some of the members of the Wakf, in respect of mis-management of Wakf properties, the Chief Executive Officer of the Wakf Board, issued notice to 14 elected members, on 29/4/2022. In the meanwhile, W.P.No.26402 of 2021 which was filed by the successful candidates, challenging the orders passed by the Chief Executive Officer, on 3/10/2021, directing for fresh election was dismissed. However, while dismissing, this Court has granted liberty to file a statutory appeal before the Wakf Tribunal, under Section 83 of the Act and interim stay of the order, dated 3/12/2021 was extended for a period of two weeks.

9. Pursuant to the observations and directions in the writ petition, O.A.No.31 of 2022 was filed before the Tribunal, on 13/4/2022, challenging the orders passed by the Chief Executive Officer, dated 3/12/2021 and the Wakf Tribunal has also passed an order of interim stay.

10. Further, on 10/10/2022, this Court has passed a common order, in W.P.Nos.15977 of 2021, 12442, 14935 and 15779 of 2022 with the following observations:-



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“i. W.P.No.15977 of 2021 and W.P.No.15779 of 2022 are dismissed with liberty to the respective petitioners to work out their remedy before the Wakf Tribunal under Section 83 of the Wakf Act,1995.

ii. The respective petitioners in W.P.No.15977 of 2021 and W.P.No.15779 of 2022, if advised, may file such statutory appeal before the Wakf Tribunal, within a period of four weeks from the date of receipt of a copy of this order.

iii. Status quo as on date regarding the right of easement shall continue to remain in force for a period of eight (8) weeks from the date of receipt of a copy of this order. The Tribunal may extend the protection on examination of the case.

iv. The rights of these petitioners shall be subject to further orders to be passed by the Wakf Tribunal.



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v. W.P.No.14935 of 2022 and W.P.No.12442 of 2022 filed by the petitioner are allowed with the above observations.

vi. Liberty is given to the parties to file collateral appeal under Section 83 of the Wakf Act, 1995 before the Wakf Tribunal to challenge the elections, within a period of 30 days from the date of receipt of a copy of this order.

vii. The Wakf Tribunal shall endeavour to bring a finality to the proceedings in O.A.No.31 of 2022 and such other appeals within a period of three months from the date of receipt of a copy of this order.

Viii. Pending further orders by the Wakf Tribunal, the persons elected on 03.10.2021 shall continue to discharge their duties as elected Managing Committee of the Wakf.

ix. Parties are directed to maintain status quo as on date pending further orders by the Wakf



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Tribunal. “

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11. Being aggrieved, the petitioners have filed O.A.No.79 of 2022 on the file of the Tamil Nadu Wakf Tribunal, Chennai, with the following prayers:-

(i). to declare that the elections conducted by the second respondent dated 3/10/2021 and the subsequent proceedings of the second respondent dated 8/10/2021 and 12/10/2021 to elect the applicants 1 to 4 and the respondents 3 to 12 as null and void, illegal and contrary to the bye-laws of the Dadasha Makkan Wakf and set aside the same.

(ii). To declare that the selection of fifth respondent dated 3/10/2012 as null and void and contrary to the bye-laws of the Wakf, on the ground that he is not eligible to participate in the election since he is not a descendant of Dadasha, as per Clause 11 of the bye-laws of the Wakf and set aside the same.

(iii). To declare that the selection of Office bearers/applicants 1 to 4 and the respondents 3 to 12 dated 22/10/2021 as conducted by the second respondent at the office of the Superintendent of Wakf, Ice House, Chennai as null and void, illegal and contrary to the bye-laws of Dadasha



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Makkan Wakf and set aside the same.

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12. On receipt of notice, the respondents in the said O.A.No.79 of 2022, has filed I.A.No.723 of 2022 in O.A.No.79 of 2022 seeking rejection of O.A.No.79 of 2022 and on hearing both sides, the learned Tribunal has dismissed the applications. Aggrieved by the same, the present Civil Revision Petition is filed.

13. Heard Mr.Nissar Ahmed, learned Senior Advocate for the petitioners, Mr.Y.Kaja Navas, learned counsel for the respondents 1 to 9, Mr.S.Haja Mohideen Gisthi, learned counsel for the respondents 10 and 11, Mr.N.A.Nassir Hussain, learned counsel for the respondents 12, 13, 16 and 17, Mr.A.Muthukumar, learned counsel for the respondents 14 and 19 and Mr.S.Vishnu, learned counsel for the fifteenth respondent.

14. On a perusal of the affidavit filed along with I.A.No.723 of 2022, the main grounds on which the petitioners sought for rejection of O.A.No.79 of 2022 are that O.A.No.79 of 2019 is not maintainable as the Tribunal does not have jurisdiction and barred by law. A Scheme framed in the year 2010 and the elections were conducted as per the Scheme on 3/10/2021 and results were declared on 8/10/2021 and 12/10/2021,



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thereby, office bearers were elected on 22/10/2021.

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15. The Tribunal has no jurisdiction to declare the election as null and void. The respondents who have filed O.A.No.79 of 2021 have not mentioned as to on what grounds, elections have to be declared as null and void. Moreover, once the persons who have filed O.A.No.79 of 2022 have actively participated in the election process and also in the election as office bearers, now, they cannot question the election process. It is also alleged that the petitioners are not the descendants of Dada Shah, thereby the petition is not maintainable before the Tribunal and finally, the relief is barred by limitation.

16. The grounds which were raised by the petitioners before the trial Court have been repeated before this Court as well. One of the major grounds on which the learned counsel for the petitioners has submitted that the Tribunal cannot decide as to whether fifth respondent is a descendant of Dada Shah or not and that the said question has to be decided by the Civil Court.

17. The Tribunal is asked to determine whether the Executive



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Committee which was elected are the descendants of Dada Shah and that elections were done as per the procedure required to be done. Taking into consideration the larger issue pending before the Tribunal, it cannot be said that the Tribunal has no jurisdiction to decide as to whether the fifth respondent is the descendant of Dada Shah. Further, the question as to fifth respondent is the descendant of Dada Shah is only incidental to the main issue. Therefore, when the Tribunal decides the issue in respect of the elections that were conducted to the Executive Committee, incidentally, the Tribunal also can enquire into and decide whether the fifth respondent is the descendant of Dada Shah.

18. Even otherwise, this Court, while dismissing W.P.No.26402 of 2021, has directed the first petitioner to approach the Tribunal and challenge the orders passed by Chief Executive Officer. Similarly, while passing common orders on 10/10/2022 also, this Court has given liberty to the petitioners to approach the Tribunal and file appropriate application questioning the elections. Therefore, those orders have become final. The petitioners herein who were also the parties to the writ petitions have not taken the observations or directions of this Court as mentioned above to the Apex Court. In such a view of the matter, now



the petitioners cannot contend that the election petition will not lie.

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19. The learned counsel for the petitioners also submitted that there is no limitation to challenge the elections. The elections have taken place on 3/10/2021 under the supervision of Wakf Board. Results were announced on 21/10/2021 and fourteen persons were taken the charge. The Chief Executive Officer has called for fresh elections on 3/12/2021.

20. Learned counsel appearing for the petitioners cited the following judgments, to substantiate their cases.

(i). In 2018 (3) CTC – 801 (MANAGING TRUSTEE, rep. BY THE BOARD OF TRUSTEES, NAGORE DARGAH, NAGORE 611 002 Vs HAJA NOORDEEN SAHIB @ ALHAJ Dr.S.SYED KAMIL SAHIB, wherein it is held as follows:-

“25. With neither the Wakf Tribunal, nor the Scheme Court found to have jurisdiction, necessarily the Civil Court will have the jurisdiction to decide who among Kamil Sahib,



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Najmudeen Sahib and Sultan Kalifa Sahib would be the next male descendant as per the prevailing custom to succeed to the office of the eighth trustee. It may be stated here that even the Wakf Board cannot determine the issue under Sec.32(2)(g) of the Act, as the Wakf here is essentially of an unknown origin, governed essentially by a Scheme, and one of the questions that is likely to arise for a decision is about the existence of a custom (Ref:Clause 3 of the Scheme) in the context of Islamic law, which is beyond the ambit of Wakf Board's power to decide.

47. Since this Court has held that only the Civil Court has jurisdiction to decide on the successor to the office of the eighth trustee, it directs that the Subordinate Judges Court, Nagapattinam, to dispose of O.S.31 of 2014 pending on its file within six months from today. The Adhoc Board of Administrators would



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continue till then and work with the Wakf Board.

In view of the findings of this Court, the Adhoc Board of Administrators are directed to submit all their reports to the Wakf Board. The Registry is also directed to forward all the reports of the Adhoc Board of Administrators filed before this Court to the Wakf Board.”

21. The learned counsel appearing for the respondents 1 to 9 has produced the following judgments:-

(i). In TAIYAB (MD) AND ORS Vs. MEGHALAYA BOARD OF WAKF AND ORS, wherein at paragraph 21, it has been held as follows:-

“21. From the aforesaid survey of few authorities from the Hon'ble Apex Court it can be said that it is difficult to measure the length and breadth of the inherent powers given to the High Courts under Article 227 of the Constitution of India. In my considered opinion, the inherent



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powers enjoined under Article 227 of the Constitution of India are plenary in nature and akin to inherent powers prescribed under Section 151 of the Code of Civil Procedure. It is true that the revisional powers laid down under Section 83 of the Wakf Act, 1995 cannot be equated with Article 227 of the Constitution of India. Despite this legal position, the revisional powers of the High Court embodied in the Wakf Act, 1995 is no less than the inherent powers laid down under Section 151 of the Code of Civil Procedure and also the revisional powers of the High Court culled out of Article 227 of the Constitution of India. As noted earlier, in both the revision applications, the petitioners have also invoked Article 227 of the Constitution of India along with Section 83(9) of the Wakf Act, 1995. Hence, I hold that High Court's powers to examine the legality of the impugned order are not fettered with the limitations and restrictions prescribed under Section 115 of the Code of Civil Procedure. I also



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reiterate that the High Court is competent to reverse or modify the tribunal's orders and pass any other order as it may think fit under proviso to Section 83(9) of the Wakf Act, 1995.”

(ii). In RASHID WALI BEG Vs. FARID PINDARI AND ORS (Civil Appeal No.6336 of 2021), wherein it has been held thus:-

In the case on hand, the property is admitted to be a waqf property. Therefore, to allow the plaintiff to ignore the Waqf Tribunal and to seek a decree of permanent injunction and mandatory injunction from a civil court, would be ignore the mandate of [section 83](#) and [85](#) which speak of any dispute, question or other matter relating to a waqf or a waqf property. There is also one more issue. In the written statement, the Defendant No.1 has admitted the existence of the waqf and also admitted that the father of the plaintiff by name Riyaz Ahmad is the mutawalli. But the claim of the plaintiff that he is the beneficiary of the waqf



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has been denied. Therefore, a question as to the nature of the waqf and whether the plaintiff is a beneficiary of the waqf, has also arisen in this case. This question has necessarily to be decided by the Tribunal and not the civil court.”

(iii) In BISWANATH BANIK AND ORS Vs. SULANGA BOSE AND ORS (AIR 2022 SC – 1519), it has been held as follows:-

“7.1 From the aforesaid decision and even otherwise as held by this Court in a Catena of decisions, while considering an application under Order VII Rule 11 of the Code of Civil Procedure, the Court has to go through the entire plaint averments and cannot reject the plaint by reading only few lines/passages and ignoring the other relevant parts of the plaint”.

22. According to the learned counsel for the petitioners, the Scheme of Elections were framed in the year 2010 and thereby, the petitioners



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cannot question the conduct of elections. The issue before the Court is whether the Elections were conducted properly as per the bye-laws and whether other than the descendants of Dada Shah have also participated in the elections. The petitioners in O.A.No.79 of 2022 are not questioning the Scheme framed in the year 2010 in respect of Management of the wakf. They are questioning only the way in which elections were conducted on 3/10/2021. Therefore, since elections were conducted on 3/10/2021 and results were declared on 12/10/2021, the petitioners contention that there is no limitation to challenge the elections, cannot be accepted.

23. Once this High Court has permitted the petitioners to challenge the elections, within 60 days from the date of receipt of the orders of the High Court, and when there is a dispute that O.A.No.79 of 2022 is filed within 60 days, from the date of receipt of the order, now, the petitioners herein cannot question and contend that there is no limitation for the petitioner in O.A.No.79 of 2022, to challenge the elections. In view of the above, trial Court has rightly dismissed the application for rejection and all the questions that are raised by the petitioners can be canvassed



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before the Tribunal during course of enquiry. The petitioners can raise

all these issues before the Tribunal during the course of enquiry.

24. It is brought to the notice of this Court that earlier, this Court has directed the Tribunal to expedite the trial and dispose of the same, within a period of six months and the same has been lapsed in filing various application in various Courts. Therefore, the learned Tribunal is directed to dispose of O.A.No.79 of 2022, as expeditiously as possible, keeping in view of the directions, passed by this Court in W.P.No.26402 of 2021.

25. In the result, this Civil Revision Petition is dismissed.

No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

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mvs.

Index: Yes/No

Neutral Citation: Yes/No



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Dr.D.NAGARJUN,J

mvs.

Pre-delivery order made in
C.R.P.D.No.460 of 2023

12/9/2023