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W.P.Nos.5154 of 2022 & 25172 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.Nos.5154 of 2022 & 25172 of 2021

W.M.P.Nos.5262 & 5263 of 2022 and 104671 & 104672 of 2021

W.P.No.5154 of 2022

M.Abdul Rahim

.. Petitioner

Vs.

1. The Chairman,
Tamil Nadu Wakf Board,
No.1, Jaffer Sherong Street,
Vallal Seethakathi Nagar,
Chennai - 600 001.

2. The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffer Sherong Street,
Vallal Seethakathi Nagar,
Chennai - 600 001.

.. Respondents

Prayer in W.P.No.5154 of 2022 : Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus calling for the records of the impugned orders i) Notice in Na.Ka.No.733/2021/B4/KPM, dated 30.03.2021 of the 2nd respondent ii) Boards Resolution in Item No.129/21 R.C.No.733/2021/B4/KPM, dated



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30.09.2021 of the 1st respondent, iii) Notice in R.C.No.733/2021/B4/KPM dated 22.10.2021 of the 2nd respondent and iv) Notice in Rc.No.10287/04/B4/KPM, dated 15.02.2022 of the 2nd respondent and quash the same and consequently, permit the petitioner to submit proper representations/reply in respect of the above said matters and take a decision in accordance with law.

For Petitioner : Mr.A.Ilayaperumal

For Respondents : Mr.C.Shankar
Standing Counsel for Waqf Board

W.P.No.25172 of 2021

The Vice President,
Tamil Nadu Wakf Board Employees
Colony Mosque,
Masjid Al Haramain,
Vallal Yousuf Nagar, Selaiyur Post,
Chennai - 73.

.. Petitioner

Vs.

1. The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai - 1.

2. The Tamil Nadu Wakf Board,
Rep by its Chairman,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai - 1.

.. Respondents



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Prayer in W.P.No.25172 of 2021 : Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorari calling for records of the 2nd respondent proceedings dated 30.09.2021 made in R.C.No.733/2021/B4/KPM and proceedings dated 22.10.2021 in R.C.No.733/2021/B4/KPM of the 1st respondent dated 22.10.2021 made in R.C.No.733/2021/B4/KPM and to quash the same.

(Prayer amended vide order of this Court dated 29.11.2021 made in Additional Affidavit dated 25.11.2021 in W.P.No.25172 of 2021)

For Petitioner : Mr.N.A.Nissar Ahmed
Senior Advocate for
Mr.N.A.Nassir Hussain

For Respondents : Mr.C.Shankar
Standing Counsel for Waqf Board

COMMON ORDER

Since the issue involved in both these writ petitions is one and the same, with the consent of parties on either sides both the writ petitions were heard together and disposed of by means of this common order.

2. The writ petition in W.P.No.25172 of 2021 has been filed seeking to quash the impugned order dated 30.09.2021, in and by which, the Waqf



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Board has acquired the petitioner lands and vide impugned order dated 22.10.2021, the Waqf Board has cancelled its earlier order dated 24.10.2000 and issued certain directions.

3. The writ petition in W.P.No.5154 of 2022 has been filed challenging the show cause notice dated 30.03.2021 issued by the second respondent and the impugned order dated 30.09.2021 in and by which the Waqf Board has acquired the petitioner lands and the consequential orders dated 22.10.2021 and 15.02.2022 respectively.

4. The case of the petitioner is that Masjid-e-Anwari is a registered Waqf under the supervisory control of the Tamil Nadu Waqf Board and the said Waqf Board as assumed direct management of the said Mosque as the existing Mutawalli relinquished his post and surrendered possession of the Mosque and its properties voluntarily on 30.12.1977 and the same came to be published in the Government Gazette on 03.05.1978.

5. Thereafter, the respondents by proceedings in RC.No.9326/B1/81, dated 17.06.1982, resolved to allot 20 x 60 Sq.ft. in T.S.No.39/1, Raja Kilpakkam village to the employees of the Tamil Nadu Waqf Board on



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perpetual lease for residential purpose and published the same in the Government Gazette dated 25.08.1982. Subsequently, the Waqf Board modified the extent to 40 x 60 Sq.ft. instead of 20 x 60 Sq.ft. to each employee of the Tamil Nadu Waqf Board to satisfy MMDA Rules vide its proceedings in RC.No.9326/B1/82, dated 31.07.1982 and resolved to fix monthly rent at the rate of Rs.5/- for each plot vide proceedings dated 23.12.1982.

6. Thereafter, a writ petition in W.P.No.6772 of 1992 has been filed seeking a declaration that the notification issued under Section 3(a) Part VI dated 06.08.1982 which was published in Government Gazette dated 25.08.1982 as null and void. However, this Court by an order dated 21.02.2000, dismissed the said writ petition.

7. Thereafter, another writ petition in W.P.No.24347 of 2017 has been filed challenging the resolution of the Waqf Board dated 24.10.2000 and this Court by an order dated 18.09.2017 dismissed the same on the ground of delay.

8. Thereafter, the Waqf Board has passed a resolution dated



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30.09.2021 holding that there is an illegality in respect of the registration of the new Waqf and stated that the Waqf Board has acquired the petitioner lands and has also resolved to cancel the resolution dated 24.10.2000 of the Waqf Board and that directed all the lessees to deposit the rent to the respondent Tamil Nadu Waqf Board directly and also to deduct the lease amount from the salary/pension of the staff directly. Challenging the same the present writ petitions have been filed.

9. The respondents have filed counter, wherein, it is contended that Muthawalli of Masjid-e-Anwari decided to surrender the said Waqf along with its properties to the Tamil Nadu Waqf Board and accordingly surrendered the Waqf and its properties by obtaining a sum of Rs.10,000/- and further the loan obtained by him amounting to Rs.5,000/- from the Waqf Board was also waived off. The respondent Waqf Board accepted the surrender and since then, the Waqf Board became the absolute owner and administrator of the said properties.

10. It is further contended that a request was received from the Tamil Nadu Waqf Board Staff Association to allot the said land situated at S.No.39/1 measuring an extend of 12.80 acres on lease and permission to



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construct houses in the said land. The said request was accepted by the Waqf Board and rent was fixed at Rs.5/- per month as per Resolution dated 23.12.1982 and from then onwards the Waqf Board allotted 132 plots to various allottees and also executed lease deeds in favour of them.

11. It is further contended by the respondents that out of the extent of 12.80 acres, 20 grounds was allotted for public use and from the 20 grounds of land, the Waqf Board granted permission to construct a prayer hall in part of the land in the year 1993 and accordingly a prayer hall was also constructed.

12. It is further contended that the staffs of the Tamil Nadu Waqf Board placed their request to register the newly constructed prayer hall as a separate Waqf and accordingly bypassing the Waqf Board by resolution dated 24.10.2000, a separate Waqf namely Masjide-Al-Haramaine was created illegally in S.No.39/1. According to the respondents, the property in S.No.39/1, Rajakilpakkam measuring 12.80 acres belongs to Masjid-e-Anwari and does not belongs to Masjid-Al-Haramaine and the same can be identified in the Gazette Notification dated 25.08.1992.



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13. It is further contended by the respondents that since the land belongs to the Waqf Board, the Board has allotted the land to its staff for a meager rent for the welfare of the staff. As from the date of allotment no rent was deposited to the Waqf Board, which is against law and also revenue loss to the Board therefore it was decided to recover the same from the staff. Hence, a notice dated 30.03.2021, was sent to all the lessees/occupants of the said land to deposit the rent directly to the Tamil Nadu Waqf Board.

14. Further it is contended that since the properties in S.No.39/1 measuring an extent of 12.80 acres originally belongs to a Waqf namely Masjid-e-Anwari which was subsequently surrendered and purchased by the Tamil Nadu Waqf Board and now only the Waqf Board has authority to deal with the property and the so called Waqf namely Masjide-Al-Haramain has no right or authority to deal with the said property. As the land in S.No.39/1 belongs to Masjid-e-Anwari Waqf, the respondents seeks dismissal of the writ petitions.

15. It is the contention of the learned senior counsel appearing for the petitioner in W.P.No.25172 of 2021 that after the Tamil Nadu Waqf Board assumed direct management of the Mosque alias Masjid-e-Anwari in the year



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1978, on 17.06.1982, the Waqf Board resolved to allot plots to its employees.

Thereafter, on 24.10.2000, the Waqf Board registered the new Mosque viz., Masjid-Al-Haramin and attached all the properties measuring around 12.08 acres in Survey No.39/1 with the newly formed Waqf and the same has been Gazetted on 05.09.2021. Thereafter, a Public Interest Litigation (PIL) has been filed challenging the said notification in W.P.No.24347 of 2017 and the same was dismissed by an order of this Court dated 18.09.2017.

16. Further according to the learned senior counsel, while dismissing the above writ petition, the Division Bench of this Court held that the challenge has been made with inordinate delay. That being the position, now the impugned order has been passed to recall the resolution originally passed in the year 24.10.2000. Hence it is his contention that there is no power vested on the Waqf Board to review its own order and it has no right to recall the order and ask the allottees to handover possession. At the most, the Waqf Board can frame a Scheme in respect of the administration of the Waqf properties and they cannot restore the properties.

17. The learned counsel appearing for the petitioner in W.P.No.5154 of 2022 would submit that Show Cause Notice has been issued to the



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petitioner to pay the rent to the respondents. According to the learned counsel appearing for the petitioner, the petitioner was all along paying the rent to the newly formed Waqf as soon as the property was vested with the newly formed Waqf. Hence, it is his contention that such notice cannot be sustained in the eye of law.

18. The learned Standing Counsel appearing for the respondent Waqf Board would submit that though the new Waqf was created and Gazetted there was no transfer of title in favour of any of the member or newly created Waqf. It is his further contention that as per Section 37(2) of the Waqf Act, once a Auqaf has been created and property attached, the Waqf Board shall forward the details of the properties entered in the Register of Auqaf to the concerned land record office having jurisdiction of the Waqf property. Further according to the learned Standing Counsel, in this case, no such application has been forwarded to the concerned officer for name transfer in the revenue record. Hence according to him, the Waqf Board is still the owner of the property and they are entitled to restore the properties. It is his further contention that under Section 32 of the Waqf Act, the Waqf Board can do any act which may be necessary for the control, maintenance and administration of the Auqaf. Hence, the learned Standing Counsel prays for



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dismissal of the writ petitions.

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19. I have heard the learned counsel on either side and also perused the entire records.

20. The impugned order dated 30.09.2021, has been passed for reviewing the resolution dated 24.10.2000 passed by the respondent Tamil Nadu Waqf Board, wherein, by virtue of the resolution a new Waqf namely Masjid-Al-Haramaine was created. Therefore, to recall the above order, the impugned resolution has been passed.

21. It is relevant to note that originally a large extent of property was owned by Masjid-e-Anwari in Rajakilpakkam village, Chingleput District. The then Muthawalli of the said Mosque relinquished his post and surrendered possession of the Mosque and its properties voluntarily to the respondent Tamil Nadu Waqf Board on 30.12.1977. Pursuant to such surrender, the respondent Waqf Board issued a notification in Tamil Nadu Government Gazette on 03.05.1978 and thereby the respondent Waqf Board assumed direct management of Rajakilpakkam Mosque alias Masjid-e-Anwari.



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WEB COPY 22. After taking over the management, the respondent Waqf Board has resolved to allot certain plots to its employees by resolution dated 17.06.1982 in R.C.No.9326/B1/81. Further by another resolution dated 31.07.1982, the extent of the plots were also modified and increased. Thereafter, the property was also granted to the staff members of the respondent Waqf Board on monthly rent.

23. In the meanwhile, when the permission of the Tamil Nadu Waqf Board was sought for construction of a new Mosque, permission was accorded by the Tamil Nadu Waqf Board vide its proceedings in Pro.No.3756/C1/CGT/93, dated 16.03.1993. Thereafter, vide resolution dated 24.10.2000, the Tamil Nadu Waqf Board granted registration to the new Mosque namely Masjid-Al-Haramin situated at S.No.39/1, Rajakilpakkam Village and attached the property in S.No.39/1 with the newly created Mosque namely Masjid-Al-Haramin which was constructed in the Waqf Board employees Colony. Thereafter, a Gazette notification was issued on 12.07.2001 stating that the Waqf Board has resolved to attach the property in S.No.39/1 belonging to the Mosque Masjid-e-Anwari, Rajakilpakkam to the newly registered Waqf namely Masjid-Al-Haramin.



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Thus, the newly registered Waqf came into existence with the prior permission and sanction accorded by the respondent Tamil Nadu Waqf Board. The registration also notified that the property has already been dedicated to the new Mosque.

24. Challenging the said notification attaching the property to the newly created Mosque, a Public Interest Litigation (PIL) came to be filed before this Court in W.P.No.24347 of 2017 and the Hon'ble First Bench of this Court dismissed the said writ petition on the ground that the registration of Masjid-Al-Haramin is hopelessly barred by delay. Furthermore, the allocation was also notified and therefore the registration and issuance of Gazette Notification has reached finality.

25. At this stage, the impugned order has been passed on 30.09.2021, to recall the earlier resolution which was passed for creation of a new Waqf and attaching the property with the new Waqf. It is relevant to note that once the new Waqf has been created with the permission of the respondent Tamil Nadu Waqf Board and registered in accordance with law, all the properties vests in the Waqf and Gazette notification has also been issued and therefore now it cannot be contended that the respondent Waqf



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appearing for the respondents that the Waqf Board has power to act as necessary for the control and management of the Waqf as per Section 32 of the Waqf Act cannot be countenanced. It is relevant to note that Section 32 of the Waqf Act deals with the powers and functions of the Waqf Board. No doubt the Waqf Board under the Act generally do all such acts as may be necessary for the control, maintenance and administration of the Auqaf. Such general power does not empower the Waqf Board in taking over the property which has already been vested with the newly formed Waqf and registered in accordance with law.

29. Yet another contention raised by the learned Standing Counsel appearing for the respondent Waqf Board that since the Waqf Board has not forwarded the details of the properties entered in the register of Auqaf to the concerned land record office for mutation of records and therefore they can retrieve the possession, also has no basis. Merely because the Waqf Board failed in its duty to forward the application and details to the concerned revenue officer for effecting mutation in the revenue records that does not mean that the property still vest with the respondent Waqf Board.

30. Such view of the matter, this Court is of the view that at the most



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the Waqf Board can frame necessary Scheme under Section 69 of the Waqf Act for proper administration of the Waqf, to preserve the property and prevent any misappropriation or damages or further alienation etc., without resorting to such procedure, by way of resolution, they cannot undo the newly created Waqf after granting permission and notifying the same in the Government Gazette. As the writ petitioners are paying rent to the newly formed Waqf Committee the question of directing them to pay rent to the respondent Waqf Board also does not arise.

31. With the above observations, the writ petitions are allowed and the impugned orders are set aside and it is needless to say that it is always open to the respondents Tamil Nadu Waqf Board to frame necessary Scheme as contemplated under Section 69 of the Waqf Act. Consequently, the connected miscellaneous petitions are closed. No costs.

31.01.2023

Index : Yes
Neutral Citation : Yes
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To



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1. The Chairman,
Tamil Nadu Wakf Board,
No.1, Jaffer Sherong Street,
Vallal Seethakathi Nagar,
Chennai - 600 001.

2. The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffer Sherong Street,
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N.SATHISH KUMAR, J.

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2021 W.M.P.Nos.5262 & 5263 of
2022 and 104671 & 104672 of 2021**

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