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Writ Petition No.5622 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Writ Petition No.5622 of 2023
and
W.M.P.Nos.5651 & 5654 of 2023

B.Abdul Kather
S/o.Baba John

... Petitioner

Vs.

1.Tamil Nadu Wakf Board,
represented by its Chief Executive Officer,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai - 600 001.

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

3.The President,
Hazerath Nabi Sallallahu Allaihi O
Sallam Fathiha Wakf,
Trichy District, Trichy - 620 001.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records in connection with the resolution and order passed by the respondents in Serial No.134 of 2022, Na.Ka.No.10996/03/A5/Trichy, dated 13.07.2022 and Che.Mu.Aanai.10996/03/A5/Trichy, dated 08.08.2022 and quash the same and consequently, direct the respondents to appoint the new trustees to the Hazarath Nabi Sallalaho Allaihi O Sallam Fatihah Wakf as per the scheme decree dated 05.08.1954 made in O.S.No.44 of 1952 on the file of I Additional Sub Court, Trichy and modified by the Division Bench of this Court dated 25.10.1960 in A.S.No.666 of 1954.

For Petitioner : Mr.Y.Kaja Navas

For Respondents : Mr.G.Mohamed Aseef

ORDER

The petitioner, who is one among the descendants of the Wakif through the female line, is aggrieved by the proceedings of the first respondent dated 08.08.2022, wherein the first respondent has effected certain modifications to the scheme decree that was passed in O.S.No.44 of 1952 by the I Additional Sub Court, Trichy.

2. The case of the petitioner is that the wakf, viz., Hazarath Nabi



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Sallalaho Aleichi O Sallam Fatihah Wakf, is a registered wakf bearing No.609/Trichy. The said wakf was administered as per the scheme decree passed in O.S.No.44 of 1952 by the I Additional Sub Court, Trichy, dated 05.08.1954 and which was subsequently confirmed by the Division Bench of this Court in A.S.No.666 of 1954 by judgment and decree dated 25.10.1960. The scheme decree provided for appointment of trustees. According to the petitioner, one among the descendants of the wakif through the female line is also entitled to be appointed as trustee and the petitioner falls under that category.

3. The grievance of the petitioner is that the first respondent through the impugned proceedings dated 08.08.2022 had modified the scheme decree and one such modification that was suggested to be implemented by the first respondent was that the trustees must come only from the male descendants and the descendants of the wakf through the female line was sought to be completely removed. Aggrieved by the same, the present writ petition has been filed before this Court.

4. Heard Mr.Y.Kaja Navas, learned counsel for petitioner and



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Mr.G.Mohamed Aseef, learned counsel for respondents.

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5. The main issue that arises for consideration in the present writ petition is as to whether the Tamil Nadu Wakf Board has powers to cancel or modify the terms of the scheme formed by a competent civil Court. To arrive at a conclusion on this issue, certain provisions under the The Waqf Act, 1995 (hereinafter referred to as 'the Act') must be considered.

6. Section 32 of the Act provides for the powers and functions of the Board. Section 32(2)(d) of the Act gives powers to the Board to settle schemes of management of a wakf. This power is directly linked to Section 69 of the Act. The Board on its own motion or on application made by interested persons in any wakf, after conducting an enquiry, can frame a scheme for proper administration of the wakf by passing appropriate orders. Section 69(4) of the Act provides that the Board from time to time can pass orders and thereby can cancel or modify the scheme framed by the Board. A combined reading of Sections 32 and 69 of the Act makes it clear that the



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Wakf Board has wide powers insofar as cancelling or modifying the scheme that are framed by the Wakf Board. Section 69(4) of the Act is the power that has been traced by the first respondent while issuing the impugned proceedings dated 08.08.2022.

6. The question is as to whether the Board can exercise such powers where the scheme is settled by an order of the competent civil Court. The Wakf Board can trace its powers only from the Act and not beyond it. Therefore, the Act itself should provide the power to the Board to modify or cancel the terms of the scheme settled by a competent civil Court. No such power has been given under the Act and Section 69(4) of the Act will not come to the aid of the Board to modify or cancel the terms of the scheme settled by a civil Court.

7. In the present case, there is no dispute with regard to the fact that the scheme was settled by a competent civil Court in O.S.No.44 of 1952 in the year 1954 and it was subsequently confirmed by this Court in A.S.No.666 of 1954 by judgment and decree dated 25.10.1960.



8. On carefully going through the provisions of the Act, there is only one provision which enables the State Government to modify the scheme even where such scheme was settled by a decree or an order passed by a Court. For this purpose, Section 66 of the Act is extracted hereunder:

"66. Powers of appointment and removal of *mutawalli* when to be exercised by the State Government. - Whenever a deed of waqf or any decree or order of a Court of any scheme of management of any waqf provides that a Court or any authority other than a Board may appoint or remove a *mutawalli* or settle or modify such scheme of management or otherwise exercise superintendence over the waqf, then notwithstanding anything contained in such deed of waqf, decree, order or scheme, such powers aforesaid shall be exercisable by the State Government:

Provided that where a Board has been established, the State Government shall consult the Board before exercising such powers."

9. Even though the nomenclature of the above provision sounds as if it deals only with the appointment and removal of a *mutawalli*, on carefully going through the provision, it can be seen that it covers a wider spectrum of even the management and superintendence of a wakf governed by a scheme. Such a power has been given only to the State Government. The proviso to the said provision also suggests that the State Government will consult the Wakf Board while exercising such powers.



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10. In the light of the above provision, if at all any modification or cancellation of the terms of the scheme is desired, such power should be exercised only by the State Government with the consultation of the Wakf Board. Even while undertaking this exercise, if any person will be aggrieved by the modification or cancellation of the terms of the scheme, he must be put on notice and he must be heard before the modification or cancellation of the terms of the scheme. Thus, the principles of natural justice will have to be necessarily read into the above provision.

11. In the light of the above discussion, this Court finds that the impugned proceedings of the first respondent in Che.Mu.Aanai.10996/03/A5/Trichy, dated 08.08.2022, is liable to be quashed. If at all any attempt is made to modify the scheme, it can only emanate from the State Government after consultation with the wakf. If such a step is taken, it goes without saying that the persons interested must be put on notice and they should be heard before passing final orders.



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In the result, this Writ Petition stands allowed. No costs.

Consequently, connected miscellaneous petition is closed.

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Index : Yes

Speaking Order / Non Speaking Order

Neutral Citation: Yes

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To

- 1.The Chief Executive Officer,
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N. ANAND VENKATESH, J

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