



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2023

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA , CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVU

WA No.1129 and 2023

and

WP No.15585 of 2023

W.A.No.1129 of 2023:

Mohammed Abusali

... Appellant

Vs

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

2.K.Mohamed Mariyam Gani
rep. By power agent
S.M.Sheik Dawood

... Respondents

Prayer: Writ appeal filed under Clause 15 of the Letters Patent to set aside the order dated 13.04.2023 in WP No.35012 of 2022.

WP No.15585 of 2023

Mohammed Abusali

... Petitioner

Vs

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



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2.The Tamil Nadu Wakf Board
Rep. by its Chief Executive Officer
No.1, Jaffar Syrang Street
Vallal Seethakathi Nagar
Chennai -1.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for a writ of mandamus forbearing the respondents from in any manner initiating any action under Section 64 of the Wakf Act 1995 without first considering the representation dated 05/05/2023 made by the petitioner

For the Appellant/ Petitioner	:: Mr.N.A.Nissar Ahmed, Senior Counsel, for Ms.Kowser Sulthana
For 1 st Respondent in WA.1129/2023 and respondents in WP.15585/2023	:: Mr.Haja Mohideen Gisthi, Standing counsel

JUDGMENT

(Made by the Hon'ble Chief Justice)

The appellant assails the judgment of learned Single Judge of this Court, thereby dismissing the writ petition filed by the appellant challenging the show-cause notice dated 13.12.2022, issued by the Chief Executive Officer of the Tamil Nadu Wakf Board.



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2. It appears that inquiry is conducted/contemplated against the appellant, purportedly resorting to Section 64 of the Tamil Nadu Wakf Act, 1995, (hereinafter referred to as 'the Act').

3. The contention of the learned counsel for the appellant is that the action of appointing or removing a Mutawalli can only be taken by the Wakf Board. The Chief Executive Officer is not empowered to take action with regard to removal or appointment of Mutawalli. Reference is made to Section 32(2)(g) of the Act. Learned counsel further submits that the Board cannot take the plea of delegation. Section 27 of the Act clearly bars delegation in respect of matters covered under Section 32(2)(g) of the Act. Learned counsel submits that even under Section 64 of the Act, it is only the Board who can conduct inquiry and pass orders, pursuant to the inquiry. The Chief Executive Officer cannot usurp the powers of the Board.

4. Learned counsel for the Wakf Board submits that it is under the directions of the Wakf Board, the Chief Executive Officer has issued the notice. Inquiry is always conducted by the Board and the decision



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also would be taken by the Board.

5. There cannot be any dispute with the proposition that the powers to appoint or remove a Mutawalli solely vests with the Board.

6. Mutawalli can be removed on any of the grounds as enumerated under Section 64(i) of the Act of 1995. Section 64 lays down the procedure to be followed if the Board intends to take action against a Mutawalli and inquiry is contemplated. After inquiry is conducted, the decision has to be taken by not less than 2/3 majority of the members of the Board, and the order of removal can be passed only by the Board.

7. Collection of evidence is a different matter altogether. Evidence can be collected by the Chief Executive Officer or any other person can submit the evidence to the Board.

8. In the present case, the Board has not taken any decision *qua*



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the appellant. The matter has not yet concluded. The appellant can raise all the defences available to him in the inquiry. Opportunity is given to the appellant to put-forth his stand.

9. It is the contention of the appellant that the properties in question are his private properties and not the wakf properties. The appellant has avenues open to agitate in respect of the same before the appropriate forum. In writ jurisdiction, this Court would not dilate upon the nature of the property.

10. In light of the above, we are not inclined to entertain the present proceedings.

11. It is made clear that we have not dealt with the merits of the contentions and the same are kept open for the appellant to agitate before the authorities and, or, the Board. The defences raised by the appellant certainly will have to be considered by the Board before arriving at a decision.

12. With these observations, the writ appeal and the writ petition



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are disposed of. There will be no order as to costs. Consequently, CMP
No.11348 of 2023 and WMP No.15089 of 2023 are closed.

(S.V.G., CJ.)

(P.D.A., J.)

21.06.2023

Index : Yes/No
Neutral Citation : Yes/No
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To

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



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THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKEVALU, J.

(tar)

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