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W.P.No.15076 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.07.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.15076 of 2023
and
W.M.P.Nos.14574 & 14575 of 2023

A.Sirajuddin

...Petitioner

Vs.

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

2.The Election Officer/Superintendent of Wakfs
Office of the Superintendent of Wakfs,
Salem.

..Respondents.

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent ending with Na.Ka.G.S.No. 184/The.A./V/Ka/Namakkal/2023 dated 25.04.2023 and quash the same and



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consequently forbear the respondents from any manner interfering with the peaceful administration of the Erumapatti Jamiya Masjid, Senthamangalam Namakkal District.

For Petitioners : Mr.N.A.Nassir Hussain

For Respondents :Mr.Mohammed Fayaz Ali

ORDER

The writ petition is filed challenging the order passed by the 2nd respondent dated 25.04.2023 issuing notification for conduct of election in Jamiya Masjid Waqf, Erumapatti, Senthamangalam, Namakkal District.

2. According to the petitioner, Jamiya Masjid Wakf at Erumapatti, Senthamangalam, Namakkal District is a registered Wakf under the supervisory control of Tamil Nadu Wakf Board. The petitioner is claiming himself as Deputy Secretary of the managing committee of the Wakf elected in the General Body meeting convened on 15.07.2022. As per the custom and usage of the Wakf, the managing committee will be constituted by the general body of the Wakf, after jumma prayers. The tenure of the committee is for a



period of three years and lastly such managing committee was constituted through the General Body on 15.07.2022 and therefore the tenure of the incumbent committee is for a period of three years from 15.07.2022. It is further stated by the petitioner that all of a sudden, the 2nd respondent issued an impugned election notification on 25.04.2023 for preparation of final voters list for conducting election to the Wakf.

3. The learned counsel for the petitioner assails the impugned order passed by the 2nd respondent mainly on the ground of jurisdiction. According to the petitioner, the election of managing committee is an internal affair of the Wakf and the 1st and 2nd respondents, who have got supervisory role have no right to interfere with the internal affairs of the Wakf namely conduct of elections. The learned counsel for the petitioner relied on the order passed by this Court in W.P.No.18959 of 2022 wherein this Court after considering various provisions of Wakf held that election to the managing body of the Wakf is an internal affair of the Wakf and consequently the Wakf Board has no role in conduct of elections in the Wakf.



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4. The learned counsel for the respondents submits that under Section 32(o) of Wakf Act, the respondent Wakf Board has got power to conduct election to the managing body. He further submitted that in case of dispute among various factions in the jamath and a request is made to the Wakf Board to conduct election, the Wakf Board can very well take the role of conducting the election to the Wakf. The learned counsel by taking this Court to the proceedings of the general body meeting of the Wakf dated 21.10.2022 submitted that majority of the members wanted the election to be conducted by secret ballot and based on the request made by the general body of the Jamiya Masjid, the respondent is entitled to conduct election.

5. In the impugned order, the 2nd respondent by referring to the order passed by the Chief Executive Officer of the 1st respondent Wakf Board dated 12.08.2022 called for finalization of voters list for conducting election to Jamath. In the impugned order, there is no reference about any request made by the Jamath to the Wakf Board for conducting election. The proceedings of



the general body dated 21.10.2022 will not advance the case of the respondent because the said general body meeting was convened subsequent to the impugned order. Therefore, by relying on the decision taken in the general body meeting of the Wakf which was conducted in pursuance of the impugned notice, the respondent cannot contend that Jamath authorized the Wakf Board to conduct election. The learned counsel for Wakf Board submitted that under Section 32(o) of Wakf Act, the Board can exercise power to conduct election. The managing committee of wakf has to be elected as per custom and usage. After such election, the elected members shall notify the same to Board under Section 42 of Act. In case wakf is unable to elect Managing Committee and a request is made by members of wakf to Wakf board to conduct election, the power under Section 32(o) may be resorted to. In the case on hand, there is nothing in impugned order to suggest, members of Jamath requested Wakf Board to conduct election. In such circumstances, argument made by learned counsel based on Section 32(o) of Wakf Act is not acceptable to this Court.

6. The main issue to be decided in this writ petition is whether the 4th respondent can conduct election to the Wakf. The said issue was considered in



detail in ***K.V.M.A.Mohammed Salahuddin Vs The Chairman, Tamil Nadu***

Wakf Board in W.P.No.18959 of 2022 by this Court. The relevant observations

of this Court in the above case law reads as follows:-

48. The General Body is supreme, the Wakf Board is merely required to exercise the power under the Act and has power of superintendence only. Thereafter, it was for the Wakf Board to merely recognise the elected body. It is not open for the Wakf Board to meddle with the internal affairs of the Wakf as they are to be sorted by the Wakf itself.

49. The only exercise which the Wakf Board can take as to recognize the elected body in the general body meeting to see whether they enjoy the confidence of law in the Jamadar. In case, the Wakf Board comes to a conclusion that in the interest of the majority of the General Body is not going to be served they may refuse to recognize such elected body in which case the elected member aggrieved by such decision of Wakf Board can work out their remedy before the Tribunal under Section 83 of the Wakf Act, 1995.

50. In my view, elections to the Managing Body of a Wakf is an internal affair.

51. If any elections held are not proper, the



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aggrieved party has to approach Wakf Tribunal under Section 83 of the Wakf Act, 1995.

52. In case, a person is aggrieved by election conducted, doors of the Wakf Tribunal is always open to challenge the same. Only remedy for an aggrieved party by an election held is to invoke the jurisdiction of the Court under Section 83 of the Waqf Act, 1995”.

7. Therefore in the above mentioned case, this Court has come to a definite conclusion that election to the managing body of the Wakf is an internal affair. If elections are not properly held, the aggrieved party can go to the Wakf Tribunal for redressal of the grievances.

8. In the case on hand, according to the claim made by the petitioner, the managing committee was elected by Jamath in the general body meeting conducted on 15.07.2022 and the tenure of the present committee is for three years from 15.07.2022. Any person aggrieved by the said election is entitled to approach the Wakf Tribunal for redressal of their grievances.

9. In view of the discussion above, the impugned notice issued by the



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2nd respondent is without jurisdiction and consequently the same is set aside.

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10. Accordingly, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

25.07.2023

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation Case : Yes/No

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