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W.P.No.22010 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.09.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.22010 of 2023 and
W.M.P.No.21373 of 2023

A.Mohammad Mubarak

...Petitioner

Vs.

1. The Tamil Nadu Waqf Board
Rep by its Chairman,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai 600 001.
2. The Waqf Inspector
Coimbatore Zone,
No.963, Hyder Ali Tippu Sulthan
Sunnath Jamath Pallivasal Complex,
Mettupalayam Road,
Coimbatore – 641 023.

3.T.S.Sirajudeen

...Respondents

(R-3 is impleaded as per order
dated 08.09.2023 by SSJ in
WMP.No.24485 of 2023 in WP.No.22010 of 2023)

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for records of the 2nd respondent herein Na.Ka.G.S.No.62/W.I/Kovai/2023 dated 14.07.2023 with respect to Bhavani Sunnath Jamath Mosque and Bhavani Muslim Burial



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Ground Waqf and quash the same as illegal, unsustainable and without jurisdiction and consequently direct the 1st respondent to allow the petitioner to conduct general body as per rule of succession notified in the proforma of the Bhavani Sunnath Jamath Mosque and Bhavani Muslim Burial Ground Waqf.

For Petitioner	: Mr.M.M.I. Khaleel
For Respondents 1 & 2	: Mr.Mohammed Aseef Standing Counsel for Waqf
For Respondent 3	: Mr.N.A.Nassir Hussain

ORDER

The writ petition is filed challenging the order passed by the 2nd respondent, convening the meeting of Waqf called Bhavani Sunnath Jamath Mosque on 28.07.2023 for election of new Office Bearers.

2.It is seen from the affidavit filed in support of this writ petition, Office Bearers of the above mentioned Waqf were elected in the year 2013 and their period of office expired on 07.12.2016. The petitioner herein is the Secretary of the waqf, whose term of office expired already. The petitioner herein submits that since the successor Office Bearers are not elected, he is continuing in office.



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3.The learned counsel appearing for the petitioner challenged the impugned order mainly on the ground that the 2nd respondent has no power to convene meeting of the Waqf/Jamath for election of Office Bearers. It is his contention that election of Office Bearers of the Waqf shall be made by Jamath as per the proforma. The learned counsel relied on the following orders in support of his contention;

1) Mohammed Yusuf v. The Tamil Nadu Wakf Board represented by its Chief Executive Officer and other in W.P.(MD).Nos.13695 of 2020, 11081, 24058 of 2018, 23455, 14084, 22535, 25021 of 2022, dated 19.04.2023

2) KVMA Mohammed Salahudin v.The Chairman Wakf Board and 7 others in W.P.No.18959 of 2022, dated 19.10.2022.

3) A.Sirajuddin v. The Tamil Nadu Wakf Board, represented by its Chief Executive Officer and other in W.P.No.15076 of 2023, dated 25.07.2023

4.The learned Standing Counsel appearing for the respondents 1 &2 and Mr.N.A.Nassir Hussain, learned counsel appearing for the 3rd respondent tried



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to support the impugned order on the ground that the 2nd respondent was invited to the meeting of the Jamath as a observer to oversee the election to be conducted in the Jamath and therefore, the presence of 2nd respondent will not cause any prejudice to the petitioner. The learned counsel further submit that as per the proforma, Office Bearers are to be elected only by the Jamath and at the request of the Jamath members, the Officials of the Waqf Board can very well oversee the election.

5.The main issue to be decided in this writ petition is whether the 2nd respondent has jurisdiction to issue impugned notice, calling for meeting of Jamath for election of Office Bearers. The issue has been already settled by this Court in ***KVMA Mohammed Salahudin v.The Chairman Wakf Board and 7 others*** in W.P.No.18959 of 2022, dated 19.10.2022. The relevant observation of this Court in the above said case 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 medal with the internal affairs of the Wakf



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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 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”.

6. A similar view was taken by the another learned Judge of this Court in the case of ***Mohammed Yusuf v. The Tamil Nadu Wakf Board represented***



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by its Chief Executive Officer and other in W.P.(MD).Nos.13695 of 2020, 11081, 24058 of 2018, 23455, 14084, 22535, 25021 of 2022, dated 19.04.2023, wherein after scanning through various proceedings of Waqf Board, this Court observed as follows;

"20. In the light of the discussion, there is no doubt in my mind that neither the Wakf Board nor the CEO is conferred with the authority/power to conduct election or to change the mode of election as set-out in the Wakf Deed/Proforma or Custom followed in appointing the Mutawalli nor is it open to the Board/CEO to direct Superintendent to conduct elections nor can the appointment of Mutawalli be declared bad only on the premise that the same was not made in the presence of the officials of the Board. This would not preclude the Respondent Board from initiating action under Sections 65, 69 of the Act or any other provisions of the Wakf Act, if circumstances so exist warranting exercise of such power.

21. In view of the conclusion that the Board/ CEO does not have the power / authority to conduct elections and that the mode of appointment ought to be conformity with the Proforma of the Wakf Deed and the intentions of the Wakif or in accord with the Custom /Usage the following orders/directions are



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made:

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a. The impugned notification in W.P.(MD) No. 24058 of 2018 dated 16.11.2018 in Na.Ka.No.G.S.26/Va.Ka./P.A/Thi.Veli/2018 calling for elections is set-aside. The present administrative committee/Mutawalli shall take steps for appointment of the Administrative committee/Mutawalli in accordance with the Proforma /Wakf Deed i.e., by Selection within a period of 12 weeks from the date of receipt of a copy of this Order.

b. In W.P.(MD). No. 11081 of 2018, the impugned notification dated 08.02.2018 in Proc.No.1837/14B3/VNR calling for elections is set-aside."

7.The issue involved in this matter is squarely covered by the decision of this Court in the above said cases. In view of the settled legal position, the 2nd respondent has no jurisdiction to issue impugned notice calling for meeting of Jamath for election of Office Bearers. Accordingly, the impugned notice is quashed. In the light of the statement made by the learned counsel appearing for the respondents that Office Bearers of the Waqf were elected in the year



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2013 and their term of office expired as early as 2016, there is a necessity to conduct election, to elect Office Bearers for the Waqf immediately. The election of the waqf shall be conducted and the Office Bearers shall be elected as provided in the proforma within a period of twelve weeks from the date of receipt of copy of the order.

8. With the above direction, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

08.09.2023
(2/2)

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

1. The Chairman,
Tamil Nadu Waqf Board
No.1, Jaffer Syrang Street, Vallal Seethakathi Nagar,
Chennai 600 001.
2. The Waqf Inspector
Coimbatore Zone,
No.963, Hyder Ali Tippu Sulthan
Sunnath Jamath Pallivasal Complex,
Mettupalayam Road, Coimbatore – 641 023.



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S.SOUNTCHAR, J.

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