



WEB COPY



W.P. No. 23132 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2023

CORAM

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

W.P. No. 23132 of 2023

A.S.Mahaboob Basha

... Petitioner

-VS-

1. The Principal Secretary
Backward Classes, Most Backward Classes and
Minorities Welfare (S2) Department
Government of Tamil Nadu, Secretariat
Chennai – 600009.

2. The Chief Executive Officer
Tamil Nadu Waqf Board
No.1, Jaffer Syrant Street
Chennai – 600001.

...

Respondents

(R2 is impleaded vide order dated 21.08.2023
in W.M.P. No. 23746 of 2023)

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondent in Respondent's Letter No. 1444152/S2/2021-6 dated 006.12.2021 and quash the same, and direct the Respondent to consider the Petitioner's representation dated 13.12.2021 and 10.05.2023 to the Respondent in the light of Section 66 of the Wakf Act, 1995 (amended by Act 27 of 2013).



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For Petitioner : Mr. H.Mohamed Ghouse

For Respondents : Mr. S.Arumugam,
Government Advocate (for R1)

Mr. Haja Mohideen Gisthi (for R2)

ORDER

Heard Mr. H.Mohamed Ghouse, Learned Counsel for Petitioner, Mr. S.Arumugam, Learned Government Advocate appearing for the First Respondent and Mr. Haja Mohideen Gisthi, Learned Counsel appearing for the Second Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition relates to the administration of Hazarath Syed Sha Hameed Awliya Badusha Dargah (hereinafter referred to as 'the Waqf' for short) situated at Kancheepuram.

3. It is borne out from the materials placed on record that a scheme had been framed under Section 92 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC' for short) in respect of the said Waqf in the judgment



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and decree dated 02.02.1939 in O.S. No. 11 of 1934 by the District Court,

Chengalpet, which reads as follows:-

- (1) Defendants 1 to 3 will continue as committee members for a period of 5 years from this date, and they hereby give up their right to continue as such members for life under their existing orders of appointment.
- (2) At the end of the terms of 5 years or earlier of any vacancy, arising in any of the 3 places of the court, will appoint fresh incumbents to hold office for similar terms of 5 years.

The Waqf Act, 1995 (hereinafter referred to as 'the Act' for short) had come into force with effect from 01.01.1996 and Section 66 of the said Act reads as follows:-

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.

It requires to be noticed here that after the coming into force of the Act, whatever power of appointment had been vested by the Court or other



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authorities, has been conferred upon the State Government. In other words, the appointments of the Trustees of the Waqf in this case would have to be made by the State Government.

4. While the matter stands as narrated supra, it has been brought to notice by Learned Counsel appearing for the Waqf Board that the Petitioner had filed I.A. No. 159 of 2011 before the Principal District Court, Chengalpattu to pass orders administering day-to-day affairs of the Waqf and its properties including the appointment of the Trustees as per the scheme decree. The Principal District Court, Chengalpattu by order dated 05.03.2012 had passed the following order:-

17. In the result, the petition is allowed with the following conditions. The Petitioner Tamil Nadu Wakf Board has to examine the scheme decree passed in O.S. No. 11 of 1934 and enforced its authority as provided under the provisions of the Wakf Act, 1995. It is open to the Petitioner Wakf Board to examine whether or not the appointment of fresh office bearers under the scheme should be made afresh or permit the present set of office bearers for any particular length of time. In order to avoid practical difficulty it is further directed that the present set of office bearers have to continue for a period of three months and the Petitioner Board is also at liberty to appoint or authorise any of its Executive Officer to function along with the present set of office bearers for the proper and clean administration of the Wakf and its properties during the above period of three months.



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The said order was challenged by the Petitioners, viz., A.S.Mahaboob Basha and one S.Y.Umar Khan, in C.R.P. Nos. 1816 of 2010 and 2164 of 2012 respectively and this Court, after dealing with the relevant provisions of the Waqf Act, had held as follows:-

17. The lower Court, in the above judgment cited supra, simply assumed and presumed as though despite passing of the Wakf Act, 1995, it had jurisdiction and could give directions as contained in the impugned order. Such a course would be totally antithetical to the object of the Wakf Act and no more elaboration in this regard is required.

18. As such, I would like to set aside the order passed by the lower Court, giving liberty to the Board to act as per Section 32 of the Wakf Act, 1995, adhering to the principle of *audi alteram partem*.

It is represented that the said order, which has not been challenged thereafter, had attained finality. In furtherance to the aforesaid order passed by this Court, the Waqf Board taking notice of the expiry of the tenure of the office-bearers on 29.11.2013, after issuing show cause notice, has removed them from office and brought the Waqf under the direct management of the Tamil Nadu Waqf Board from 28.11.2013 and appointed the Waqf Inspector, Kancheepuram as the Executive Officer for administering the day today affairs of the Waqf.

5. The Waqf Board in the exercise of powers under Section 32 of the Act, by its resolution item No.70/19 in R.C. No. 10588/15/B4/Kancheepuram dated



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21.02.2019 resolved to appoint Managing Trustees as per Scheme by calling applications through Newspaper. At that stage, the Petitioner had on 02.08.2021 made a representation to the State Government seeking the following relief:-

- (1) cancel the notification issued in Daily Thanthi dated 20.07.2021 regarding administrative Committee which is against the Section 66 of the Waqf Act, 1995, and take necessary action against the act of vires by Superintendent of Waqf;
- (2) take necessary action to appoint Management Committee of the Waqf as per Section 66 of the Waqf Act in consonance with Scheme Decree passed by Scheme Decree framed by the District Court No.II, Kancheepuram in O.S. No. 11 of 1934;
- (3) take necessary action against the illegal continuation of Direct Management for more than 5 years against the Section 65 of the Waqf Act, 1995;
- (4) direct the probe by Investigation Agency into the mismanagement maladministration and misappropriation of exchequer of public institution i.e., **Kancheepuram District – Hazrat Syed Sha Hameed Awliya Badusha Dargah** by Executive Officers appointed time to time and other officials who are colluded with the delinquents and punish them in accordance with law;
- (5) till the appointment of Management Committee appoint the Petitioner and other suitable persons as Adhoc Committee for timebeing under your direct surveillance; and
- (6) pass such further or other order or direction to safeguard the waqf and do the needful.

This Court by order dated 08.09.2021 in W.P. No. 18342 of 2021 filed by the



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Petitioner has directed the State Government to pass orders on the said representation after affording opportunity of hearing to the Petitioner and all persons interested within a period of 6 weeks from the date of receipt of its copy.

6. In furtherance to the said order, the State Government by Proceedings in Letter No. 1444152/S2/2021-6 dated 06.12.2021 passed the following order:-

10. In the above circumstances, considering the oral representation of the Advocate during personal hearing and the written statement and the report of the Chief Executive Officer and by examining the provisions of the Waqf Act, the Government under section 97 of the Waqf Act, 1995, directs the Board to review the case of Director Management which is in effect for more than 8 years. The Waqf Act provided for direct management for a maximum of 5 years. Under these circumstances, the Board is to take appropriate action to hand over the Waqf Management, to Management Committee (to be constituted by the Board). The request of the petitioner to be part of Management Committee is also to be considered on merits. An action taken report may be sent to Government, immediately in the matter.



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7. It is brought to notice that the Waqf Board by Resolution Item No.149/21 in R.C.No.10588/B4/2015/Kanchi dated 01.03.2022 had resolved to revoke the direct management of the Waqf and to appoint the 5 members of the Managing Committee of Waqf for a period of three years from 01.03.2022 to 28.02.2025 as per the details shown below:-

(i)	Thiru Mohamed Imtiyas	-	Muthawalli
(ii)	Thiru Haji A.Musthafa	-	Treasurer
(iii)	Thiru S.Y.Umar Khan	-	Member
(iv)	Thiru S.M.Thameemum Ansari	-	Member
(v)	Thiru A.S.Mahboob Basha	-	Member

It would assume significance here that the Petitioner is one of those persons appointing the Management Committee who are now holding that office.

8. The bone of contention between the parties in this Writ Petition relates as to which authority has to fill up the vacancies in the post of Committee Members of the Waqf in terms of the Scheme framed by the District Court, Chengalpattu by judgment and decree dated 02.02.1939 in O.S. No. 11 of 1934 after the commencement of the Act with reference to Section 66 of that Act.



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9. There cannot be any qualms that Section 66 of the Act requires the State

Government to exercise the said powers in consultation with the Waqf Board. In the present case, the appointments have been made by the Waqf Board in pursuance of the directions of the State Government. In order to avoid any vacuum in the administration of the Waqf, it is made clear that the existing appointments made by the Waqf Board shall continue to be in force in terms of the impugned order, but it would not preclude the State Government in consultation with the Waqf Board from passing any fresh orders or modifying the existing arrangement till the current tenure of the Committee Members of the Waqf. On the expiry of tenure of the present Committee Members of the Waqf, it shall be incumbent upon the State Government as per Section 66 of the Act to fill up the vacancies in consultation with the Waqf Board in accordance with law.

In fine, the Writ Petition is disposed on the aforesaid terms. No costs.

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Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 05.06.2024.

Maya



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To

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P.D. AUDIKESAVALU, J.

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