



WEB COPY



W.A.Nos.2324 and 2326 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2023

CORAM :

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

AND

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

W.A.Nos.2324 and 2326 of 2023

Road Mosque,
Madarsa-E-Nusrathul Islam,
New Mosque, Small Mosque and
Madrassa E Fathima Girls School
rep. by its Mutawalli M.Fazlur Rahman,
1/1, Road Mosque Street,
Peranambut-635 810,
Vellore District.

.. Appellant in
both appeals

Vs

1.The Tamilnadu Wakf Board,
rep. by its Chief Executive Officer,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai-600 001.

2.The Superintending of Wakf,
Vellore Circle,
Bahadursha Masjid Complex,
8, Arani Road,
Sainathapuram,
Vellore-632 001.



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3.Shabbier Ahmed Kaka
4.Fazlur Rahman Nariyam
5.A.Amjed Ahmed
6.A.Parvaze Ahmed

.. Respondents
in W.A.No.2324/2023

1.C.Amjad Ahmed

2.The Tamilnadu Wakf Board,
rep. by its Chief Executive Officer,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai-600 001.

.. Respondents
in W.A.No.2326/2023

Prayer: Appeals under Clause 15 of the Letters Patent against the common order passed by the learned Single Judge in W.P.No.23671 of 2018 and 25077 of 2015 dated 16.6.2023.

For the Appellant : Mr.N.Manoharan

For the Respondents : Mr.Mohammed Fayaz Ali
for respondent No.1
in W.A.No.2324 of 2023
and respondent No.2
in W.A.No.2326 of 2023
: Mr.V.Karthic
Senior Counsel
for Mr.K.P.Suresh Kumar
for respondents 3 to 6
in W.A.No.2324 of 2023

Mr.V.Karthic
Senior Counsel
for Mr.K.P.Jotheeswaran
for respondent No.1
in W.A.No.2326 of 2023



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: R2 in W.A.No.2324 of 2023 –
Not Ready in Notice

COMMON JUDGMENT
(Delivered by the Hon'ble Chief Justice)

We have heard Mr.N.Manoharan, learned counsel for the appellant; Mr.Mohammed Fayaz Ali, learned for the respondent Tamil Nadu Wakf Board; and, Mr.V.Karthic, learned Senior Counsel for Mr.K.P.Suresh Kumar and Mr.K.P.Jotheeswaran, learned counsels for the private respondents.

2. The issue is about the elections of Mutawalli for the Wakf, namely, Road Mosque, Peranambut, Vellore District.

3. The learned Single Judge has directed elections to be held for Mutawalli from Jammatt.

4. The appellant and the private respondents do not dispute that the Mutawalli has to be elected by the Jammatt as per the customary usage.



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5. The only point of debate between the parties is, according to the appellant, the Mutawalli is elected by the Jammatt only from one family i.e. Mookane family; whereas, according to the private respondents, the Mutawalliship is not hereditary and the Jammatt elects it, but not restricted to one Mookane family. Reliance is placed by learned counsel for the appellant on the judgment of the Apex Court in the case of *Aliyathamuda Beethathebiyyappura Pookoya and another v. Pattakal Cheriya Koya and others*, reported in (2019) 16 SCC 1.

6. On perusal of the said judgment, it is manifest that the Apex Court also observed that in the absence of Waqif and, in case of public Wakf, the burden of proof to demonstrate the manner of choosing the Mutawalli is very high. The standard of proof required is very high. Naturally, in writ jurisdiction, the evidence cannot be led to that effect. The parties will have to adduce evidence to prove the same. The same will have to be proved by preponderance of probability. Naturally, the documents will have to be produced and evidence will have to be adduced, which is not permissible under Article 226 of the Constitution of India.



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7. The learned Single Judge has directed elections to be held for the post Mutawalli as per the customary usage by Jammatt.

8. It is for the appellant to establish the customary usage, which can be only established before the Wakf Tribunal. It is for the appellant to avail the remedy, as may be permissible under law. We are not inclined to accept the request for stay of elections, in view of the aforesaid facts and circumstances.

9. The writ appeals, accordingly, stand disposed of. There will be no order as to costs. Consequently, C.M.P.Nos.19821 and 19827 of 2023 are closed.

(S.V.G., CJ.)

(P.D.A., J.)

15.09.2023

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

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- 1.The Chief Executive Officer,
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