



W.P.(MD).Nos.6373, 7402 and 15478 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.07.2023

PRONOUNCED ON : 10.10.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.6373, 7402 and 15478 of 2023

and

W.M.P.(MD)Nos.6029, 6030, 6933, 6935,
13032, 14750, 14890, 14897 and 14911 of 2023

W.P.(MD).No.6373 of 2023:

M.S.Mohamed Nymudeen

... Petitioner

Vs.

1.The Chairman,
Tamil Nadu Wakf Board,
Chennai.

2.J.S.Leyronne Morais

3.Khajamian Wakf Estate,
represented through its Mutawalli,
having Office at No.5,
Khaja Moideen Shahib Street,
Palakarai, Trichy-8.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India,
praying this Court to issue a *Writ of Certiorarified Mandamus*, calling for the



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records of the 1st respondent, dated 21.06.1986 in item No. 241/85 proceedings Rc.No.7985/84/B7/Tiruchy, to quash the same, as the same is arbitrary, ultravires, in excess of the powers conferred under Section 15(j), Section 36 of Tamil Nadu Wakf Act and contrary to Section 51 and Section 101(A) of the Tamil Nadu Wakf Act, 1985.

For Petitioner	: Mr.R.G.Sankar Ganesh
For R1	: Mr.S.A.Ajmal Khan
For R2	: Mr.T.Lajapathi Roy
	Senior Counsel
	for M/s.Lajapathi Roy and Associates

W.P.(MD).No.7402 of 2023:

M.S.Mohamed Nymudeen

... Petitioner

Vs.

- 1.The Chairman,
Tamil Nadu Wakf Board,
Chennai.
- 2.The Chief Executive Officer,
Tamil Nadu Wakf Board,
Chennai.
- 3.J.S.Leyronne Morais
- 4.Khajamian Wakf Estate,
represented through its Mutawalli,
having Office at No.5,
Khaja Moideen Shahib Street,
Palakarai, Trichy-8.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India,



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praying this Court to issue a ***Writ of Certiorari***, calling for the records of the 2nd respondent, dated 25.01.2023, in proceedings Na.Ka.No. 786/2022/AA5/Trichy to quash the same, as the same is arbitrary, ultravires, in excess of the powers conferred under Section 15(j), Section 36 of Tamil Nadu Wakf Act and contrary to Section 51 and Section 101(A) of the Tamil Nadu Wakf Act, 1985.

For Petitioner	: Mr.R.G.Sankar Ganesh
For R1 & 2	: Mr.S.A.Ajmal Khan
For R3	: Mr.T.Lajapathi Roy
	Senior Counsel
	for M/s.Lajapathi Roy and Associates

W.P.(MD).No.15478 of 2023:

M.S.Mohamed Nymudeen

... Petitioner

Vs.

- 1.The Chairman,
Tamil Nadu Wakf Board,
Chennai.
- 2.The Chief Executive Officer,
Tamil Nadu Wakf Board,
Chennai.
- 3.The Inspector General of Registration,
Registration Department,
100, Santhome High Road,
Mullima Nagar,
Mandavelipakkam,
Raja Annamalaipuram,
Chennai-600 028.



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4.The Deputy Inspector General of Registration,
Office of DIG of Registration,
Trichy.

5.The District Registrar,
Court Campus, Cantonment,
Trichy-620 001.

6.The Sub-Registrar,
4th Street, Vin Nagar Main Street,
Vin Nagar, Pappakurichi Kattur,
Trichy.

7.J.S.Leyronne Morais

8.Khajamian Wakf Estate,
represented through its Mutawalli,
having Office at No.5,
Khaja Moideen Shahib Street,
Palakarai, Trichy-8.

9.Chellamuthu

10.T.Kokila

11.Arunkumar Palaniappan

12.Kasthuri Manoharan

13.M.Manoharan

14.Nivethitha Dulipati

15.Sriram Seetharaman Vemparla

16.C.Sethurajan

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Mandamus***, to direct the 6th respondent to take necessary action for stopping the registration of the documents pertaining to the properties of KHAJAMIAN WAKF ESTATE i.e., the 8th respondent



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herein in consonance with the communication, dated 13.04.2023, in proceedings Na.Ka.No. 2388/AA2 /2023 sent by the 4th respondent.

For Petitioner : Mr.R.G.Sankar Ganesh
For R1 & 2 : Mr.S.A.Ajmal Khan
For R3 to 6 : Mr.M.Ramesh
Government Advocate
For R7 : Mr.K.Hema Karthikeyan
For R10 : Mr.T.Lajapathi Roy
Senior Counsel
for M/s.Lajapathi Roy and Associates

COMMON ORDER

The writ petition in W.P.(MD)No.7402 of 2023 is filed for writ of Certiorari to quash the order dated 25.01.2023 passed by the 2nd respondent as arbitrary, ultra vires, in excess of the powers conferred under Section 15(j), Section 36 of Tamil Nadu Wakf Act and contrary to Section 51 and Section 101(A) of the Tamil Nadu Wakf Act, 1985.

2. The brief facts as stated in the affidavit of W.P.(MD)No.7402 of 2023 are that one N.M.Kajamian Rowther dedicated several properties for carrying out the pious, religious and charitable activities specified in Schedule "A" and executed a Wakf Deed dated 29.05.1946. The said N.M.Kajamian



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Rowther have four sons and four daughters as legal heirs. As per the Wakf Deed, under Schedule "A" the charities to be carried out were mentioned and under Schedule "B" the properties are mentioned. The "Wakf" was named by the "Wakif" as KHAJAMIAN WAKF ESTATE. The Wakif had nominated and appointed his four sons and four daughters as "Muthawallis" and they are 1. K.Abdul Samath, 2. K.Abdul Khader, 3. K.Abdul Khalik, 4. K.Abdul Jaleed, 5. Amina Beebi, 6. Maimoona Beebi, 7. Hamida Beebi and 8. Mahamuda Beebi. The petitioner is from one of the descendants namely Maimoona Beebi (Maimoona Beebi's daughter A. Zakia and petitioner is the son of A. Zakia's) and beneficiaries under the Wakf.

3. After meeting out the pious, religious and charitable purposes, as set out in schedule "A", the remaining annual income shall be utilized for the maintenance, support of his children, descendants in such proportion. On and from the year 1946, till the year 1986 the pious, religious and charitable activities had been carried in a smooth manner as recited in the "Wakf Deed". However, the then Muthawallis who are the petitioner's ancestors had chosen to approach the 1st respondent Board under Section 15 (j) and Section 36-A of the



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Wakf Act, seeking modification in the Wakf Deed and also sought certain reliefs which reads as follows:

“a) To allot three properties mentioned in the affidavit permanently for performance of charities, specified in the schedule "A" to the Wakf Deed dated 295/1946.

b) To partition the remaining properties of the Khajamian Wakf Estate, with absolute rights between themselves and to pass such other orders as may be deemed fit.”

The petitioner states that the above application had been made only with a malafide intention to misappropriate the properties set apart for the purpose of pious, religious and charitable activities. Apart from the same, the first respondent does not have any rights to release the properties earmarked for pious, religious and charitable purposes under Sec. 15(j) and 36-A of the Wakf Act.

4. Based on the application presented by the then Mutawallis, the 1st respondent had chosen to pass a resolution in proceedings No.241/85-Rc.No.7985/84/B7/Trichy, dated 21.06.1986 and the operative portion reads as follows:



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"In the result, the Board resolves to permit the petitioner to allot three properties viz (1). Bungalow bearing Door No.3/189 in S.No.34/1E of K.Abishagapuram Village, Khaja Nagar, Race Course, Thiruchirapalli (2) Three shops bearing Door No. 2/185 in S.No.234/1D of K.Abishagapuram Village, Khaja Nagar, Race Course, Thiruchirapalli and (3) Land and building bearing No. 144 Thiruvettiur High road, Tandiarpet, madras measuring about 11 grounds of lands, and bungalow comprised in S.No.3433 and C.C.No. 1641- permanently for performance of charities specified in Schedule A to the wakf deed dated 29/5/1946 and to release the remaining properties of the Khaja Mian wakf Estate from the Wakf character for the absolute enjoyment of beneficiaries subject to the following terms and conditions.

- 1. The present Mutawallis in office of Khaja Mian Wakf Estate will execute a deed declaring in unambiguous terms that the above three properties will be exclusively used for performance of charities specified in Schedule A to the Wakf deed dated 29.05.1945 conferring power on Tamil Nadu Wakf Board to appoint Mutawallis from the descendants of the Late N.M.Khaja Mian Rowther and get the deed registered at the cost of the petitioners.*
- 2. The petitioners will pay all taxes due on the three properties upto the date of deed of declaration.*
- 3. The petitioners will submit a list of the names of the tenants of the three properties and the quantum of rent and advances paid by them*



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4. *The petitioners will produce the tiled deeds relating to the above properties with upto date encumbrance certificates for perusal of the Board.*
5. *The petitioners are directed to submit the draft deed of declaration for Board's approval. One month time is given for compliance of conditions."*

5. The contention of the petitioner is that apart from the above 3 properties, as far as the remaining properties, a right of enjoyment alone had been conferred to the beneficiaries of the 1st respondent. Hence, as per the order, the beneficiaries are not entitled to deal with the properties and there is a clear bar for alienation. Hence the respondents ought to have issued direction as per the conditions stated in the "Wakf Deed" and the relevant portion of condition in the wakf deed is as follows:

"Subject to the conditions set out in paragraph XX, the Mutawallis shall have no power jointly or severally to effect any alienation by way of sale, mortgage, exchange or gift or a lease for a period in excess of five years nor shall the properties hereunder dedicated or their income be liable to be proceeded against for the debts contracted by the Mutawallis hereinafter constituted or by their successors",



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6. By virtue of this order dated 21.06.1986 the Mutawallis have sold the properties in bits and pieces, thereby the Mutawallis have misappropriated the properties. Whenever a sale deed was executed, it was mentioned as if the seller's ancestors were having title over the property, for which the petitioner relies on the sale deed executed by one Sankaranthi Panangounder and one Ayyakannu in favor of the 3rd respondent showing that the properties comprised in Survey Nos. 199/1B20194/3B are their ancestors' properties, which would be evident that the documents are forged documents.

7. The further contention of the petitioner is that the beneficiaries / descendants of the "Wakif" have entered into a partition and they have started to deal with the properties on and from the year 1986 misinterpreting the order dated 21.06.1986. Hence, the petitioner started to initiate several litigations and filed a suit in O.S.No.980 of 2006 on the file of Additional District Munsif Court, Trichy, seeking for the relief of permanent injunction. The suit came to be decreed in favor of the petitioner. Challenging the same, the defendants preferred an appeal in A.S.No.152 of 2011 contending that except the above mentioned 3 properties, the remaining properties have lost the character of



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wakf. Pending first appeal, the petitioner had preferred a complaint to the 1st respondent. Since the 4th respondent Mutawalli assured to continue the charitable activities and also assured that properties allotted for enjoyment of the beneficiaries will not be alienated and hence the petitioner withdrew his complaint. But subsequently the 4th respondent forging the petitioner's signature had chosen to present a letter dated 19.03.2020 as if the petitioner has agreed to sell the remaining 54 properties and hence the said properties shall be released from the character of "Wakf". Hence, the petitioner preferred O.A.No. 36 of 2021 on the file of Tamil Nadu Wakf Tribunal seeking for the relief of recovery of possession. The defendants therein had chosen to file an application in I.A.No.260 / 2021 under Order 7 Rule 11 stating that the suit lacks cause of action. The forged letter dated 19.03.2020 presented by the 4th respondent came to the petitioner's knowledge only in the month of May 2021, when such plea was taken in O.A. No.36 of 2021. Hence, the petitioner filed C.R.P.No.1884 of 2022 on the file of the Principal Bench against the order passed in I.A.No.260 / 2021 and the said CRP is pending. Since O.A.No.36 of 2021 came to be rejected, vide order, dated 29.04.2022 on a different ground that the suit lacks cause of action. Had the plea of forging was taking the O.A.No.36 of 2021



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would not have been rejected. The alienation of wakf property is against section 51 and 104 of the Wakf Act. Apart from that the 1st respondent is not having any authority to authorize or sanction against the intentions of the Wakif and the 1st respondent is only having power to supervise the wakf. Moreover the Chief Executive Officer of Waqf Board has filed a counter affidavit in O.A.No.36 of 2021 stating that the order, dated 21.06.1986, is under reconsideration.

8. The further contention of the petitioner is that the 1st respondent does not have any authority to authorize or sanction against the intention of the Wakif. The petitioner filed O.S.No.905 of 2017 on the file of Additional District Munsif Court, Trichy for the relief of permanent injunction and also filed another suit in O.S.No.85 of 2019 on the file of the District Court, Trichy, seeking the relief of recovery of compensation but the petitioner chosen to withdraw both the suits as there was a bar under Section 85 of Waqf Act. But taking advantage of the letter, dated 24.02.2020, once again, the 4th respondent started to indulge in several illegal activities of alienation and alienated several lands to the 3rd respondent. The 3rd respondent in turn filed W.P.(MD)No.21073 of 2022 with a prayer to register the sale deed, dated 22.08.2022 without



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insisting NOC from the Wakf Board. The 3rd respondent also filed W.P.(MD) No.23263 of 2022, seeking to delete the described property from the list of endowed properties and the same came to be disposed of, vide order, dated 10.10.2022, wherein this Court directed the respondents to consider and pass orders. In a similar fashion, suppressing the fact of pendency of W.P.(MD) No. 21073 of 2022, some other purchasers have chosen to file W.P.(MD)Nos. 25160 and 25161 of 2022 and obtained similar orders.

9. The petitioner has filed a writ petition challenging the order, dated 21.06.1986, made in Item No.241/85 in proceedings, RC.No.7985/84/B7/ Trichy, since several alienations are taking place contrary to the intention of the settler. When the facts are being so, all of a sudden, the 2nd respondent has chosen to pass the impugned order, dated 25.01.2023, stating that there is no bar for alienation / registration of the documents in respect of 55 items of properties. Moreover, without any valid reasons the 1st respondent had withdrawn the earlier order dated 11.08.2022, wherein through this order the Registrar was directed not to register the Khajamain Wakf properties. Hence, aggrieved over the said order, the petitioner is alleging that the first respondent



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is not empowered to pass the said order and has filed this writ petition. The petitioner has submitted a representation not to register the documents pursuant to the stay order, dated 05.04.2023 in W.P.(MD)No.7402 of 2023.

10. The same petitioner has filed another writ petition in W.P. (MD)No.6373 of 2023, challenging the order, dated 21.06.1986 in Item No. 241/85 proceedings, Rc.No.7985/84/B7/Trichy. And also filed another writ petition with same facts in W.P.(MD)No.15478 of 2023 for issuance of writ of Mandamus, to direct the 6th respondent to take necessary action for stopping the registration of the documents pertaining to the properties of KHAJAMIAN WAKF ESTATE i.e., the 8th respondent therein in consonance with the communication, dated 13.04.2023, in proceedings Na.Ka.No.2388/ AA2 / 2023 sent by the 4th respondent.

11. Since these three writ petitions are based on the same facts, all the three writ petitions are taken up for hearing and a common order is passed.



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12. The Learned Senior Counsel appearing for the 2nd respondent in W.P.(MD)No.6373 of 2023 vehemently opposed the submissions of the petitioner and submitted that the petitioner has challenged the order passed by the 1st respondent on 21.06.1986 hence, the writ petition is hit by delay and laches. Moreover, the petitioner has misconstrued the order passed on 21.06.1986, wherein it has clearly categorized the A schedule property as endowed for pious and charitable purpose and the concerned Mutawallis have not violated the conditions of the Waqf. The said three properties were not purchased by J.S.Leyronne Morais and but had purchased only the B schedule property which were handed over to the Mutawallis for their own enjoyment for which the respondents relied on the operative portion of the order, dated 21.06.1986, wherein it clearly states that the remaining properties are released from the character of waqf for the absolute enjoyment of the beneficiaries subject to the certain conditions. And the conditions are to file declaration to declare the three properties will be used for performance of charities specified in schedule A. Further the “absolute enjoyment of beneficiaries” would mean even for selling the property. The Board has not imposed any other condition for the absolute enjoyment and the Board has imposed conditions only for A



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- “1.Rs.50/- per mensem to the Majlis-ul-ulama, Trichy.*
- 2. Supplying Kanji to the poor Muslims for thirty days in the Ramzan month in the precincts of Khaja Mohideen Pallivasal of palakarai at a cost of Rs. 600/- per annum.*
- 3. Feeding the per Muslims in the Rabiul Avval month on the 12th day in Sacred memory of the Holy Prophet at a cost of Rs.750/-*
- 4.Offering Fathiah and distributing alms on the 11th day of the month of Rabi-As-Sani in the memory of Hazrath Sheik Abdul Kader Jailani at a cost of Rs.250/-”*

Moreover, for carrying the aforesaid charitable activities, the income from ‘A schedule’ property is sufficient, by taking this fact into consideration the Board had passed the order dated 21.06.1986. Therefore, on a comprehensive reading of “absolute enjoyment” and the prescribed charitable activities, the Board has taken conscious decision to release the other waqf properties except the three properties under A schedule.



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13. After hearing the rival submissions and after perusing the order 21.06.1986, it is seen that except for the above said three properties, the waqf was created for the benefits of the family and the descendants of the creator of the Waqf. In such circumstances, it cannot be stated that the pious activities have been stopped. In fact, the pious and charitable activities are intact by retaining the three properties under A schedule and it is also sufficient to carry on such pious activities with the aforesaid three properties. Moreover, the order states “to release the remaining properties of the Khaja Mian Wakf Estate from the Wakf character for the absolute enjoyment of beneficiaries subject to the following terms and conditions” ought to be read comprehensively. When the order releases the property from wakf character, then the interpretation stated by the petitioner that the enjoyment is only a limited enjoyment and the property cannot be alienated cannot be sustained. It is also seen that the conditions prescribed thereunder, it is nothing to do with the released property. It only states that deed of declaration ought to be executed that the three properties would be used exclusively for charity. Therefore, as rightly pointed out by the Learned Senior Counsel appearing for the 3rd respondent J.S.Leyronne Morais, the property purchased by her is not wakf property.



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Therefore, this Court is of the considered opinion that as far as the properties in “B schedule” is concerned, the same is covered under the order dated 21.06.1986 and the properties are released from the character of wakf and the petitioner is not having any case regarding the other properties.

14. At this juncture, the learned Counsel appearing for the petitioner brought to the notice of this Court that the property earmarked for pious purpose under “A schedule”, was sold by the 4th respondent Mutawallis. For which the petitioner relied on the Property Tax Receipt No. 2018-2019/N042 /0896292 dated 29.11.2018 issued in the name of one G.Ambeermull. If the 4th respondent has sold any properties which are earmarked for pious purpose under “A schedule”, it is clear violation of order passed by the Board, dated 21.06.1986. Then, the duty is cast upon the respondents 1 and 2 to recover the said three properties and restore to the Wakf. Therefore the 1st respondent is directed to take necessary steps to conduct an enquiry, after issuing notice to the interested parties and if there is any sale regarding the said three properties, then appropriate steps shall be taken to recover the property and restore the said three properties to the wakf. The Wakf



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Board shall also take action against the Mutawallis who had sold the said three properties.

15. The learned Counsel appearing for the petitioner further submitted that even though some of the properties under the B schedule were dealt with by the 4th respondent, still there are some other properties which are not sold. Moreover, the Chief Executive Officer of Waqf Board has filed a counter affidavit in O.A.No.36 of 2021 stating that the order, dated 26.06.1986, is under reconsideration. Hence the petitioner prayed to issue direction to Wakf Board to restore the B schedule properties which are not sold. But this prayer of the petitioner is opposed by the Learned Counsel appearing for the 7th respondent in W.P.(MD)No.15478 of 2023, since the Board has passed the order after issuing notice to more than 150 Mutawallis, who were available at the time of passing the order dated 21.06.1986. In such circumstances, the Board is not having any power to recover the other properties which are released from the character of Wakf. Therefore, this Court is not inclined to issue positive direction to the Wakf Board to recover the other properties. If all the present Mutawallis and beneficiaries are inclined to retain the



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unencumbered properties, then may submit an application and the Wakf Board may decide the issue in accordance to law. It is made clear if the parties have acted upon the order dated 21.06.1986 and sold the properties to third parties and a third party right is created, then the same shall not be disturbed under the guise of reopening the issue.

16. With the above said directions, the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

10.10.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No

Tmg



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1. The Inspector General of Registration,
Registration Department,
100, Santhome High Road,
Mullima Nagar,
Mandavelipakkam,
Raja Annamalaipuram,
Chennai-600 028.
2. The Deputy Inspector General of Registration,
Office of DIG of Registration,
Trichy.
3. The District Registrar,
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