



W.P.(MD) No.7176 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.03.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.7176 of 2023

and

W.M.P.(MD) Nos.6767 and 6769 of 2023

Noor Mohamed

.. Petitioner

Vs.

1.The Tamil Nadu Waqf Board,
Rep., by its Chief Executive Officer,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar, Chennai-01.

2.The Revenue Divisional Officer,
Devakottai,
Sivagangai District.

3.The Tahsildar,
Karaikudi,
Sivagangai District.

4.Haji ACR.Nazeer

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari calling for the records relating to the impugned order made by the first respondent in NA.KA.No. 4367/21/A3/SIVA dated 20.12.2022 and quash the same as illegal.



W.P.(MD) No.7176 of 2023

For Petitioner : Mr.M.Mahaboob Athiff
For R1 : Mr.N.Mohideen Basha
Standing Counsel
For RR2 & 3 : Mr.D.Ghandiraj
Special Government Pleader

ORDER

The petitioner before this Court challenges the order passed by the first respondent in his proceedings dated 20.12.2022 in NA.KA.No. 4367/21/A3/SIVA and seeks issue of certiorari to quash the same as illegal.

2. In order to appreciate the grievance of the petitioner, it is necessary to briefly allude the facts of the case. The writ petition relates to Al Jamiul Munavvar Masjid Jamath Committee Waqf (hereinafter referred to as “the Waqf”), which is a notified Waqf under the control and supervision of the first respondent Board and governed by the provisions of the Waqf Act, 1995. The Mutawalli of the Waqf is a Committee consisting of 21 persons who are selected by the General Body once in three years. The selected members thereafter, would amongst themselves, nominate a President, Secretary, Vice President, Joint



W.P.(MD) No.7176 of 2023

Secretary and Treasurer. These members who are the Office Bearers are not selected by the General Body but nominated by the selected members of the 21 member committee.

3. The petitioner would submit that on the expiry of the term of the earlier Office Bearers on 08.04.2021, the General Body had met and selected the 21 member Committee, which consisted of the petitioner, the fourth respondent and others. The Committee was selected for a period of three years. After the selection of the Committee, since there were rumblings within the Committee with regard to the earlier Office Bearers particularly regarding one Shahul Hameed @ Siddiq, a decision was taken to reshuffle the Office Bearers. Thereafter, the Waqf officials had overseen the selection process and submitted a report before the Board. However, the Board had not approved the same. Meanwhile, two General Body Meetings were convened on 26.06.2021 and 15.08.2021. In the meeting held on 15.08.2021, accounts were demanded to be produced and change in the Office Bearers was also insisted. Thereafter, there was a reshuffle in the Office Bearers and a resolution to this effect dated 23.08.2021 was passed, which was forwarded to the first



W.P.(MD) No.7176 of 2023

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respondent. The President was once again selected as President. The first respondent by his proceedings dated 14.09.2021, was pleased to accord his approval. As per the reshuffle, the petitioner, Mujubur Rahman, Abu Baker Siddiq and Nagooran were nominated as the Secretary, Vice President, Treasurer and Joint Secretary of the Committee respectively with the fourth respondent continuing to be the President. This approval was subject matter of challenge in W.P.(MD) No.18045 of 2021 and this Court by order dated 29.09.2022, was pleased to quash the proceedings dated 14.09.2021 of the first respondent. It was only the selection of the Office Bearers that had been set aside and not the Committee selected by the General Body. Thereafter, by proceedings dated 29.11.2022 in Na.Ka.No.4367/A3/21/SIVA, the first respondent had granted approval to the 21 member Committee to reconstitute Office Bearers. Under these proceedings, the writ petitioner had been removed from the Secretaryship and likewise, the Vice President Mujubur Rahman was substituted by Janab A.Shahul Hameed. K.Shahul Hameed was once again nominated as Secretary.



W.P.(MD) No.7176 of 2023

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4. While so, all of a sudden, by proceedings dated 20.12.2022, exercising powers under Section 68 of the Waqf Act, and on the basis of the letter dated 20.12.2022 of the President viz., the fourth respondent, the first respondent passed the impugned order stating that since the Office Bearers have refused to handover the documents, accounts, cash and bank accounts to the subsequent Office Bearers, a request was made to take back the aforesaid documents from the earlier Office Bearers. Thereafter, as per the provisions of Section 68 of the Waqf Act, the newly constituted Committee can obtain these documents.

5. Meanwhile, the petitioner herein had challenged the earlier order passed by this Court in W.P.(MD) No.18045 of 2021 albeit with a delay in C.M.P.(MD) No.712 of 2023 in W.A.(MD) SR No.76066 of 2022 and notice had been issued to respondents 2 to 8 therein. Private notice was also issued on 05.02.2023 to the aforesaid persons including the fourth respondent herein. After receipt of the notice, it appears that the fourth respondent had filed W.P.(MD) No.4539 of 2023 stating that the representation to the second respondent herein on 20.12.2022



W.P.(MD) No.7176 of 2023

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invoking the provisions of Section 68(2) of the Waqf Act had not been considered and therefore, sought a mandamus to the second respondent to secure the documents. When the matter had come up before this Court on 10.03.2023, the respondents in the said writ petition, who are the first and second respondents herein had conceded that within a period of four weeks, the request would be processed and completed. The writ petition was absolutely silent about the challenge to the earlier proceedings in C.M.P.(MD) No.712 of 2023 in W.A.(MD) SR No.76066 of 2022. Therefore, the petitioner has challenged this notice dated 20.12.2022 directing taking over of accounts.

6. When the matter has come up for admission, the learned counsel for the petitioner informed the Court that the order dated 10.03.2023 has been obtained without impleading the petitioner as a party to the proceedings, though he has been arrayed as a party in the earlier writ proceedings viz., W.P.(MD) No.18045 of 2021 and further, he has also challenged the same in appeal, though with a delay, respondents 1 to 3 are very much aware about the said appeal. However, these facts have



W.P.(MD) No.7176 of 2023

not been brought to the notice of this Court, when the orders were pronounced in W.P.(MD) No.4539 of 2023. This position was also conceded by the learned Standing Counsel and the learned Government Advocate. Therefore, in the light of the pendency of the above proceedings, the order of this Court dated 10.03.2023, in W.P.(MD) No. 4539 of 2023 runs contrary and has to be definitely re-called, since the proceedings now impugned is a sequel to the order passed by this Court in W.P.(MD) No.18045 of 2021. Post the above writ petition in W.P.(MD) No.4539 of 2023 on 10.04.2023 under the caption 'for being mentioned' so as to recall the order.

7. Heard the learned counsel for the petitioner, the learned Standing Counsel for the first respondent and the learned Government Advocate for respondents 2 and 3.

8. The provisions of Section 68 of the Waqf Act would step in only in the following contingencies:

(a) Whether the Mutawalli or the Committee of Management has



W.P.(MD) No.7176 of 2023

been removed by the Board in accordance with the provisions of the Waqf Act; or

(b) By any scheme made by the Board.

9. Once the Mutawalli or Committee of Management is removed in any of the aforesaid situations, then the Mutawalli or Committee so removed from Office shall handover charge and deliver possession of the records, accounts and all properties to the Waqf including cash to the successor Mutawalli or the successor Committee within one month from the date specified in the order. Section 68(2) provides where there is a failure to comply with the mandate of Section 68(1) or where such removed Mutawalli prevents or obstructs such Mutawalli or Committee from taking possession after the expiry of the period mentioned in Section 68(1), the successor Committee can make an application to the Additional District Magistrate, Sub Divisional Magistrate or their equal within whose jurisdiction, the Waqf property is situated to obtain the said property.



W.P.(MD) No.7176 of 2023

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10. The action contemplated in the order now impugned before this Court is one passed under Section 68 of the Waqf Act. Therefore, this Court has to first consider as to whether there has been a removal of the Committee of the Mutawalli/Committee of Management or whether the scheme has been made by the Board. The answer to the above is in the negative. The 21 member Committee, which was constituted and approved by proceedings dated 14.09.2021, continues to be the same after the orders in W.P.(MD) No.18045 of 2021 were passed, since the learned Judge had only set aside the appointment of the Office Bearers after removing the earlier Office Bearers. Therefore, there is neither a removal, nor a framing of scheme. Therefore, the provisions of Section 68 cannot be invoked by the Board or by the fourth respondent. The fourth respondent continues to be the President of the Waqf. It is only the Secretary and one of the Vice Presidents who have been reshuffled.

11. Be that as it may, considering the fact that this Court in the earlier writ petition in W.P.(MD) No.18045 of 2021 has set aside the selection of the Office Bearers and the said order though challenged is



W.P.(MD) No.7176 of 2023

still at the delay stage and no interim orders have been obtained, it would be fair that the petitioner herein who was the Secretary should not retain the documents. The learned counsel for the petitioner however said that the petitioner is not willing to handover the documents to the newly selected Secretary or to the President, since he has been colluding with the others in not allowing the administration to go smoothly. Therefore, this Court directs that the documents, accounts, cash and bank accounts shall be handed over by the petitioner to Janab N.Syed Mohammed Buhari, who has been nominated as the Vice President by proceedings dated 29.11.2022 within a period of one week from today (30.03.2023). It is needless to state that this order will be ultimately subject to the decision and result of the writ appeal.

12. With the above observations and directions, this Writ Petition is allowed, the impugned order dated 20.12.2022 is set aside. No costs.

Note: Issue order copy on 05.04.2023.

30.03.2023

NCC : Yes/No

Index : Yes/No

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W.P.(MD) No.7176 of 2023

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To

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W.P.(MD) No.7176 of 2023

P.T.ASHA, J.

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W.P.(MD) No.7176 of 2023

Dated: 30.03.2023