



W.A.(MD).No.514 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 23.11.2023

CORAM

**THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN**

W.A.(MD).No.514 of 2023
and
C.M.P.(MD).Nos.5244 and 7213 of 2023

The Majilisul Bhuhari Sheriff Waqf,
represented by its Secretary,
Moosa Nina,
Kayalpattinam,
Tuticorin District.

.. Appellant/Third Party

Vs.

1.J.Mohamed Ismail

..Respondent/Petitioner

2.The Tamil Nadu Waqf Board,
represented by its Chairman,
No.1, Jaffer Syrang Street,
Vallalseethakathi Nagar,
Chennai.

3.The Chief Executive Officer,
The Tamil Nadu Waqf Board,
No.1, Jaffer Syrang Street,
Vallalseethakathi Nagar,
Chennai.



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4.The Superintendent of Waqf,
Tirunelveli Division,
Tamil Nadu Waqf Board,
Khadar Owlia Pallivasal Complex,
Tirunelveli.

5.The Majilisul Bhuhari Sheriff Waqf,
represented by the Inspector of Waqf,
Kayalpattinam,
Tuticorin District.

.. Respondents 2 to 5/
Respondents 1 to 4

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order passed in W.P.(MD).No.3071 of 2023 dated 15.03.2023.

For Appellant	: Mr.NA.Nissar Ahamed Senior Counsel for Mr.I.Abdul Basith
For R-1	: Mr.K.Navaneetharaja
For R-2 to R-5	: Mr.S.A.Ajmal Khan

JUDGMENT

(Judgment of the Court was delivered by V.LAKSHMINARAYANAN,J.)

The present Writ Appeal has been filed against the order passed in W.P.(MD).No.3071 of 2023 dated 15.03.2023.



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2. The Writ Petition was filed seeking for issuance of a Mandamus to the Tamil Nadu Waqf Board to take over the Majilisul Bhuhari Sheriff Waqf, Kayalpattinam under direct management by considering the representation dated 10.01.2023.

3. The Majilisul Bhuhari Sheriff Waqf is a surveyed and notified Waqf in Serial No.33 TDR. Survey was conducted by the Assistant Commissioner of Survey, Collectorate of Tirunelveli and the proforma was released on 15.02.1956. The Commissioner of Waqfs approved the said survey on 24.02.1958. For the purpose of this dispute, Clause 10 of the proforma is necessary, which relates to, succession to the office of a Muthawalli. As per this Clause, the rule of succession to the office of Muthawalli is “by election conducted by Jamath according to custom once in a year”.

4. For the purpose of this case, it is relevant to note that election notification was issued on 17.12.2022 and the appellant claims that election was conducted on 19.12.2022. Not accepting the election, a representation



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was given on 10.01.2023 followed by the present Writ Petition for the aforesaid prayer. By the time, this Writ Appeal has been taken up for hearing, nearly 11 months have lapsed. The ensuing elections have to be held on 18.12.2023. Therefore, by the efflux of time, the order of the learned Single Judge in paragraph No.8 cannot be implemented, as the time schedule said therein has already gone by.

5. In the light of the above, we pass the following order:

(i) The election to the appellant Waqf shall be held on 19.12.2023 by the Tamil Nadu Waqf Board by following the due procedure, in particular, the special resolution passed by the Board in exercise of the powers conferred on it under Section 32 of the Waqf Act on 10.02.2023.

(ii) The election shall be conducted in a fair and proper manner, in which both the appellant as well as the respondents, if they so desire, can participate.

(iii) After the election, if there are any disputes relating the same, the aggrieved person may approach the Tamil Nadu Waqf Tribunal, Santhome High Road, Chennai for the purpose of working out their rights.



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6. With the above observations, this Writ Appeal stands disposed of.

There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(S.M.S.,J.) (V.L.N.,J.)
23.11.2023

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

To

The Tamil Nadu Waqf Tribunal,
Santhome High Road,
Chennai.



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S.M.SUBRAMANIAM,J.
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