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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.08.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.8302 of 2023

and

W.M.P.(MD)Nos.7641 and 11723 of 2023

S.Sayed Sayeed

... Petitioner

vs.

1.Tamil Nadu Waqf Board,
represented by its Chairman,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai-600 001.

2.The Principal Executive Officer,
Tamil Nadu Waqf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai-600 001.

3.The Superintendent of Waqf,
Thanjavur, Thanjavur District.

4. Sayed Maideen

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the second respondent in his proceedings in Se.Mu.Anai:15902/22/A7/Thanjai dated 06.03.2023 and to quash the same as illegal and consequentially to direct the respondents 1 & 2 to appoint the petitioner as Muthavalli of Khaja Banthe Nawas Aulia Dargha, Papanasam Taluk, Thanjavur District.

For Petitioner : Mr.Ajmal Khan
Senior counsel
for M/s.Ajmal Associates

For R-1 to R-3 : Mr.D.S.Haroon Rasheed

For R-4 :M/s. E.Mohamed Abbas

ORDER

The Writ Petition is filed for writ of Certiorarified Mandamus, to quash the impugned order dated, 06.03.2023 and consequently, to direct the respondents to appoint the petitioner as Mutawalli.



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2. The Khaja Banthe Nawas Aulia Dargha is a registered wakf under G.S.No.360 and as per proforma it is administered by “eldest male member as per custom”. In the proforma the name of the Muthavalli is mentioned as Rahimansa @ Yethullasa Saibu son of Hyder Saibo Kulichapattu, Papanasam. The said Rahimansa died in the year 1964 leaving behind his three sons viz., R.E.Abdul Majid, R.E.Abdul Kareem and R.E.Abdul Kadar. As per the custom, the eldest male member namely R.E.Abdul Majid had taken the charge as Muthavalli and he died on 11.08.2002, leaving behind his wife Bhjadi Begum and his daughter Mrs.Tajunisha. Since the said R.E.Abdul Majid has no male heir, his only daughter Mrs.Tajunisha has taken charge of the waqf and the petitioner is the son of the said Mrs.Tajunisha. The other two sons of Rahimansa, have migrated to neighboring cities during 1985. Since the petitioner's mother being the sole member of the family and residing in the said village has taken care of the waqf and managed the wakf. The said Muthavalli has filed a suit to evict encroachers from the wakf properties in O.S.No.43 of 2012 on the file of District Munsif Court, Papanasam. After a full-fledged trail, the suit was allowed in favour of the petitioner's mother by granting permanent injunction. After the demise of the



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petitioner's mother Mrs.Tajunisha on 06.02.2020, the petitioner being the eldest son, has taken charge as Muthavalli and the petitioner submitted a petition to recognize him as the Muthavalli of the Waqf.

3. However, the Wakf Board had issued a notice, dated 29.11.2022, for appearing before the second respondent on 05.12.2022. Thereafter, it came to the knowledge of the petitioner that the fourth respondent has given a representation to the Board to appoint the fourth respondent as Muthavalli claiming that he is the eldest son in the family. Since the same was not considered, the fourth respondent had filed writ petition in W.P.(MD)No. 23202 of 2022 for considering the fourth respondent's representation, dated 15.06.2022. This Court directed the first respondent Board to consider the same within a period of three months. The Board had directed the second respondent to conduct an enquiry and after completion of enquiry, the second respondent, vide proceedings dated 14.02.2023, had submitted a report to the first respondent Board for consideration and orders. The respondents have passed the impugned order, dated 06.03.2023 appointing the fourth respondent as the Mutawalli. Aggrieved over the said order,



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the present writ petition is filed.

4. The Learned Counsel appearing for the petitioner as well as the Learned Counsel appearing for the 4th respondent submitted that as per G.S.No.360 proforma it is stated that the Rule of Succession is the eldest male member as per custom. However, the contention of the fourth respondent is that the petitioner's mother Mrs.Tajunisha, being a female is not empowered to hold the post of Mutawalli, but she had served as Muthavalli from 11.08.2002 to 06.02.2020, which is against the proforma and custom. But the claim of the petitioner is that the fourth respondent has claimed the post of Muthavalli after lapse of 12 years, which is beyond the limitation, hence the fourth respondent has no right to claim the post of Mutawalli. Moreover, the petitioner has submitted by referring to the legal heir certificate that the Ajji Basha he is the eldest son. Now, the 4th respondent being the second son cannot claim the right over the post of Muthavalli, but this contention was not raised by the petitioner before the Board.



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5. Therefore, the Board is directed to consider the rival claims of the petitioner and the 4th respondent along with the report submitted by the 2nd respondent dated 14.02.2023 by giving opportunity to the rival parties and also grant personal hearing and thereafter, pass a speaking order. The said exercise shall be completed within a period of four months from the date of receipt of the copy of the order. The said four months shall be the outer limit of time.

6. As far as appointing the 4th respondent as Muthavalli is concerned, the same is quashed. The petitioner and the 4th respondent shall not hold the post as Muthavalli until the Board considers the issue. The Board shall manage the wakf under “direct management” until the issue is considered and decided by the Board.

7. As far as retaining the land of the waqf board is concerned, the 4th respondent is permitted to submit an interim application to the Board and the Board shall consider the same and pass orders.



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8. As far as the point of limitation, the 4th respondent submitted that he had already submitted an application to confer Muthavalli to him as early as 2012, but the respondents have slept over the application. The respondents shall take into consideration of the application submitted by the 4th respondent as early as 2012 itself.

9. With the above said directions and observations, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
NCC : Yes / No
Sml/Tmg

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S.SRIMATHY, J

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