



W.P.(MD).Nos.16157 and 17921 of 2023
and
Review ApplW(MD).No.168 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 20.09.2023

DELIVERED ON: 06.10.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.16157 and 17921 of 2023

and

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and

W.M.P.(MD).Nos.13552, 13553, 14977, 14979 and 17283 of 2023

W.P.(MD).No.16157 of 2023:

Mohaideen Jumma Mosque,
Mohamed Sadalipuram Mahalla,
Represented by its President,
N.S.Munavar Dheen

... Petitioner

Vs.

1.The Tamil Nadu Waqf Board,
Represented by its Chairman,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 009.

2.The Chief Executive Officer,
Tamil Nadu Waqf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 009.



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3. The Superintendent of Waqf / Executive Officer,
Office of the Superintendent of Waqf,
No.51/80, K.A.P.Complex,
Kulavaikarapuram Railway Gate,
Palayamkottai,
Tirunelveli District.

4. Jamia Masjid,
Represented by its Ad-hoc Committee,
W.G.C.Road,
Thoothukudi District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned notification published by the first respondent Board in Tamil Nadu Government Gazette in Lr.Rc.No.813/08/B1/TNV vide No.VI -3(a)/13/2023 dated 15.03.2023 and quash the same as illegal insofar as the same relates to the amendment of para 6 of the scheme/byelaws of the fourth respondent Waqf is concerned and consequentially directing the first respondent to hold elections to the Jamia Masjid Waqf, Thoothukudi, the fourth respondent Waqf to elect its office bearers in strict compliance of the order made in W.A.(MD).No.1124 of 2022 dated 23.11.2022 and on the basis of the Bye-Law in force as on the date of passing the order made in W.A.(MD).No. 1124 of 2022 dated 23.11.2022 within the time that may be stipulated by this Court.



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For Petitioner : Mr.M.Ajmal Khan,
Senior Counsel,
For M/s.Ajmal Associates

For R-1 to R-3 : Mr.S.Haja Mohideen Gisti,
For Mr.S.A.Ajmal Khan,
Standing Counsel.

For R-4 : Mr.G.Prabhu Rajadurai

W.P.(MD).No.17921 of 2023:

- 1.Masjidur Rahman Executive Committee,
Represented by its President,
K.M.A.Shahul Hameed
- 2.Al Masjidun – Noor Executive Committee,
Represented by its President,
S.S.G.Abubacker
- 3.Muhaidheen Aandakai Jumma Masjid Executive Committee,
Represented by its Secretary,
M.Sheik Mohammed
- 4.Al Masjidhul Bilal Jummah Mosque Executive Committee,
Represented by its Secretary,
A.Riyas Abdul Barakath
- 5.Masjidhu Thaqwa,
Represented by its Honorary Advisor,
M.Mohammed Hasan
- 6.Al Masjidhul Mukarram Executive Committee,
Represented by its President,
K.Musthagali



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7.Masjidul-Ahlaa Jumma Masjid Executive Committee,

Represented by its Secretary,

S.Abdul Azeez

8.Al Masjidus Salha Jumma Mosque,

Sunnath-Al Jamath Committee,

Represented by its President,

N.Jamaluddin

9.Masjide Muqaddhas (Sunnathawal) Jama-ath Committee,

Represented by its Secretary,

H.Samsudeen

10.Masjidul Jumma Juma Sunnathval Pallivasal Executive Committee,

Represented by its Secretary,

M.Kapoor Deen

... Petitioners

Vs.

1.The Tamil Nadu Waqf Board,

Represented by its Chairman,

No.1, Jaffer Syrang Street,

Vallal Seethakathi Nagar,

Chennai – 600 009.

2.The Chief Executive Officer,

Tamil Nadu Waqf Board,

No.1, Jaffer Syrang Street,

Vallal Seethakathi Nagar,

Chennai – 600 009.

3.The Superintendent of Waqf / Executive Officer,

Office of the Superintendent of Waqf,

No.51/80, K.A.P.Complex,

Kulavaikarapuram Railway Gate,

Palayamkottai,

Tirunelveli District.



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4.Jamia Masjid,
Represented by its Ad-hoc Committee,
W.G.C.Road, Thoothukudi District.

5.A.Syed Ibrahim Basha

6.Abdul Kader

(R-5 and R-6 are impleaded vide Court Order dated 29.08.2023 in W.M.P. (MD).No.17086 of 2023 in W.P.(MD).No.17921 of 2023).

7.M.Syed Ibrahim Moosa

... Respondents

(R-7 is impleaded vide Court Order dated 06.10.2023 in W.M.P.(MD).No. 16639 of 2023 in W.P.(MD).No.17921 of 2023)

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned resolution of the first respondent vide his proceedings in Na.Ka.No.813/08/Aa1/Thu.Kudi dated 21.12.2022 and the consequential impugned notification published by the first respondent Board in Tamil Nadu Government Gazette in Lr.RC.No.813/08/B1/TNV vide No.VI-3(a)/13/2023 dated 15.03.2023 and quash the same as illegal insofar as the same relates to the amendment of para 6 of the scheme/byelaws of the fourth respondent Waqf is concerned and consequentially directing the first respondent to hold elections to the Jamia Masjid Waqf, Thoothukudi, the fourth respondent Waqf to elect its office bearers in strict compliance of the order made in W.A.(MD).No.1124 of 2022 dated 23.11.2022 and on the basis of the Bye-Law published by the first respondent in the Tamil Nadu Gazette dated 13.02.2019 vide notification No. VI-3(a)/44/2019 which is in force as on the



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date of passing the order passed by the Division Bench of this Court in W.A.(MD).No.1124 of 2022 dated 23.11.2022 within the time that may be stipulated by this Court.

For Petitioner : Mr.M.Ajmal Khan,
Senior Counsel,
For M/s.Ajmal Associates

For R-1 to R-3 : Mr.N.Mohideen Basha,
Standing Counsel.

For R-4 and R-7 : Mr.G.Prabhu Rajadurai

For R-5 and R-6 : Mr.M.Mahaboob Athiff

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In

W.P.(MD).No.18845 of 2023

The Ad-hoc Committee,
Represented by its President,
Jamia Masjid Waqf,
Tuticorin.

... Petitioner/2nd respondent

Vs.

1.H.Najumudeen

... 1st Respondent / Petitioner

2.The Tamil Nadu Waqf Board,
Represented by its Chief Executive Officer,
No.1, Jaffer Syrang Street,
Vallalseethakathi Nagar,
Chennai – 600 001.

... 2nd Respondent / 1st Respondent



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Prayer : Review Petition filed under Order 41 Rule 1 & 2 r/w. Section 114 of C.P.C., to review the order dated 08.08.2023 in W.P.(MD).No.18845 of 2023 on the file of this Court.

For Petitioner : Mr.G.Prabhu Rajadurai

For R-1 : Mr.M.Mahaboob Athiff

For R-2 : Mr.S.A.Ajmal Khan,
Standing Counsel.

COMMON ORDER

The Writ Petition in W.P.(MD)No.17921 of 2023 is filed by ten writ petitioners representing ten Masjids to quash the impugned resolution of the first respondent dated 21.12.2022 and the consequential impugned Notification published in Tamil Nadu Government Gazette dated 15.03.2023, insofar as the same relates to the amendment of para 6 of the scheme/bye-laws and consequently directs the first respondent to hold election in strict compliance of the order passed in W.A.(MD).No.1124 of 2022 dated 23.11.2022 and on the basis of the bye-law published by the first respondent in the Tami Nadu Gazette dated 13.02.2019 which was in force when the Writ Appeal Order was passed.



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2. The facts as stated in the affidavit filed in W.P.(MD)No.17921 of 2023 is that there are more than 10,000 Muslim families permanently residing in Tuticorin and for their benefits ,an old mosque in the name and style of “Jamia Masjid Mosque” was established in the year 1953. It is a notified Waqf in G.S. No.269 under Section 6 of Waqf Act, 1995. As per proforma, the rule of succession to the office of Mutawalli is “By election of members by constituting an Executive Committee”. The elections were conducted regularly until 2015. But due to certain allegations against the then President, the Waqf Board has taken direct management of the fourth respondent wakf on 18.08.2015. Pursuant to the same, the first respondent Board has directed the third respondent Superintendent of Wakf to administer the Wakf as per the provisions of the Act and also directed to submit a scheme for administration of the said Wakf. However, without framing a scheme, the second respondent Chief Executive Officer, vide proceedings dated 30.10.2015 proposed to conduct an election. A member of the Wakf namely, Najumudeen filed W.P.(MD)No.20861 of 2015 and this Court vide order dated 25.07.2016 directed the official respondents to conduct election after framing a scheme.



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Thereafter, the first respondent had framed a scheme in proceedings dated 04.08.2018 under the resolution of the first respondent Wakf in Item No.80 of 2018 dated 04.12.2018 and the same was published in the Tamil Nadu Government Gazette dated 13.02.2019. Accordingly, there are 13 Mahallas consisting of 21 Executive members and the same is stated in the tabulation below:

S.No.	Name of the Mahalla	No. of Executive Members
1.	Jamia Mahalla	5
2.	Theras Puram	3
3.	Mohammed Shadali Puram	2
4.	Rahmathulla Puram	2
5.	Anna Nagar	1
6.	Briyant Nagar	1
7.	Miller Puram	1
8.	P&T Colony	1
9.	Sivanthakulam	1
10.	State Bank Colony	1
11.	Jahir Hussain Nagar	1
12.	Rahmath Nagar	1
13.	Muthukrishna Puram	1
	Total	21 members



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While that being so, the first respondent without preparing the voters list tried to conduct an election and the same was challenged by one Samsudeen in W.P.(MD)No.6690 of 2017 seeking to prepare the eligible voters and the same was allowed vide order dated 16.07.2020 directing the Election Officer to publish the final list of eligible voters. Even though the same was issued, the third respondent did not conduct any election inspite of several representations. On the pretext of some issues the official respondents did not conduct elections for the period from 2015 to 2022. Hence, again W.P.(MD)No.6245 of 2022 was filed to conduct election and the same was disposed of on 05.04.2022, wherein the respondents submitted before the Court that scheme have been framed and preparation of voters list is being undertaken and hence the elections would be conducted within six months from the date of receipt of a copy of the order. One A.M.Yousuf and four others filed W.P.(MD).No.8446 of 2022 to consider his representation and the same was disposed of vide order dated 28.04.2022. While that being so, the second respondent appointed Adhoc Committee vide proceedings dated 03.08.2022 for a maximum period of six months under the guise of complying the order dated 28.04.2022 passed in W.P.(MD)No.8446 of



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2022. It is pertinent to point out here that neither the order passed in the above writ petition nor the representation preferred by the said Yousuf sought for appointment of Adhoc Committee. Moreover, out of seven persons of the Adhoc Committee, five members belongs to Indian Union Muslim League which is an Indian political party and all the seven members belong to only one Mahalla namely, Jamai Masjid Mahalla by neglecting other 12 Mahallas. Even though voters list was prepared and an undertaking was also given by the second respondent that the election will be conducted within six months which was recorded in W.P.(MD).No.6245 of 2022, but the election was not conducted. While that being so, a writ petition in W.P.(MD)No.19028 of 2022 was filed challenging the appointment of Adhoc Committee and directed to conduct election and this Court vide order dated 01.09.2022 disposed of the writ petition by observing that six months period is only an outer limit and election would be conducted within three months and directed to conduct election within three months. Aggrieved over, W.A.(MD).No.1124 of 2022 was filed and Hon'ble Bench vide order dated 23.11.2022 disposed of the appeal by appointing a retired District Judges as an Election Officer to conduct election as per the scheme framed and published in the Government Gazette dated



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13.02.2019. However, the District Judges were not inclined to conduct election for the personal reason. Therefore, the administration of the fourth respondent has now come to the grinding halt. The Hon'ble Court permitted the Adhoc Committee to continue under the hope that the said committee is only for six months period and the election would be conducted within three months and a new committee would take the control of the administration. Unfortunately, the period of Adhoc Committee was extended without conducting election. Now, the Adhoc Committee appointed by the Board has proposed amendments to the scheme of the fourth respondent Waqf for reducing the strength of the members of the executive committee from 21 to 18. Also, allocating 10 members to the Jamia Mosque Mahalla as against 5 allotted to them, thereby creating an artificial majority for the purpose of usurping the power by neglecting the representation of nine Mahallas. Since all the members of the Adhoc Committee belongs to the said Mahalla, they unilaterally increased their number of representatives without even consulting the members of other Mahallas, which is utter demolish of democracy. The petitioner further submits that objections were called for to the said amendments by affixing a notice dated 24.11.2022 only in the fourth respondent premises and no notice was



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issued to other Mahallas. When this was brought to the knowledge of the petitioners, they had preferred representations requesting them to call for objections from all of them. Though the first respondent Board passed a resolution dated 09.01.2023 to call for objections from all the Mahallas, it came to the knowledge of the petitioners through the RTI information on 31.03.2023, that the first respondent Board has already passed the impugned resolution on 21.12.2022 unilaterally affirming the proposal made by the Adhoc Committee, the fourth respondent herein without hearing the petitioners. Through the impugned resolution, the first respondent has further stated the President, Secretary and Treasurer to the fourth respondent should be selected only from the ten members belonging to the Jamia Masjid Mahalla which is arbitrary and illegal. The fourth respondent being an Adhoc Committee has no jurisdiction to propose any amendment in the scheme of the Wakf, as it is not empowered to take any policy decision as directed by this Court in W.P.(MD)No.19028 of 2022. The third respondent issued a belated notice dated 11.01.2023. Pursuant to the same, all the petitioner Mahallas have submitted a detailed objections dated 21.01.2023 stating that the amendment is contrary to the judgment of the Hon'ble Division Bench in W.A.(MD).No.1124 of 2022 dated 23.11.2022. The



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petitioners have also objected for allocating ten seats to Jamia Mahalla, since the same would unjustly increase their majority and the same is highly arbitrary and against democracy. From this, it is evident calling for objections is only empty formality. Since the fourth respondent with a predetermined mind has proposed the amendment on the sole ground of violation of principles of natural justice, the amendment should be set aside. The petitioners were of fond hope that based on the objections, the first respondent would drop the proposed amendment, but the first respondent without considering the objections, has subsequently issued notification in the Tamil Nadu Government Gazette dated 15.03.2023 approving the bye-law of the fourth respondent. Though the official respondents have called for objections from 13 Mahallas, they have not even considered the same, the petitioners are not even called for any enquiry. Hence, the impugned amendment is liable to be quashed, since the amendment is passed by violating the principles of natural justice. Moreover, the Adhoc Committee was appointed for a limited purpose has no jurisdiction to submit proposal to amend the bye-law unilaterally and the said power is vested with the General Body consisting of all the members of the wakf i.e. representing entire Muslim residents of whole Tuticorin. When the writ petition and writ



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appeal filed challenging the Adhoc Committee, the Writ Court and Hon'ble Division Bench had disposed of the cases without disturbing the Adhoc Committee on the fond hope that the tenure of the Adhoc Committee would not be extended and the election would be conducted within three months. Moreover, the Writ Court has specifically held no policy decision can be taken by the Adhoc Committee. But the Adhoc Committee keeping on taking major policy decision such as fixing of subscription amount, appointing teaching and non-teaching staff in the school, constructing ablution pond and constructing various buildings without getting any approval, thereby spending crores of rupees by exceeding their jurisdiction. Now they have gone to the extent of making amendment to the scheme so as to unjustly enrich the Jaima Mahalla alone. Hence, the present Writ Petition is filed to quash the impugned resolution and notification.

3. The Writ Petition in W.P.(MD)No.16157 of 2023 is filed by Mohideen Jumma Mosque to quash the Gazette publication dated 15.03.2023 insofar as the same relates to the amendment of para 6 of the scheme/bye-laws of the fourth respondent Waqf is concerned and consequently direct the fourth



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respondent to hold elections in strict compliance of the order passed by this Court in W.A.(MD)No.1124/2022 dated 23.11.2022.

4. The prayer in both the writ petitions i.e. W.P.(MD)No.17921 of 2023 and W.P.(MD)No.16157 of 2023 is to quash the impugned Gazette publication dated 15.03.2023. But in W.P.(MD)No.17921 of 2023 apart from the prayer is to quash the gazette publication, the writ petitioners have sought to quash the resolution of Wakf Board dated 21.12.2022. The facts stated in the affidavit filed in W.P.(MD)No.16157 of 2023 is similar to the facts stated in W.P.(MD)No.17921 of 2023. Hence both the writ petitions are heard together.

5. As far the Rev.Aplw.(MD)No.168 of 2023 is filed by P.Meerasa, the President of Adhoc Committee to review the order dated 08.08.2023 passed in W.P.(MD)No.18845 of 2023. The review applicant is aggrieved by the order, wherein it is held that the Adhoc Committee has changed the scheme of the Waqf by exceeding its mandate and the Adhoc Committee's period of six months is only an outer limit and the same is over. Hence, this Court directed the Wakf Board to bring the Jamia Masjid Mahallas under direct management and conduct election within a period of six months. Aggrieved over the same,



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the Adhoc Committee has filed this Review Application. Since the review application is filed by the Adhoc Committee, the same is also tagged along with above writ petitions and the writ petitions and review application are heard together and a common order is passed.

6. Heard Mr.M.Ajmal Khan, the Learned Senior Counsel, for M/s.Ajmal Associates appearing for the writ petitioners, Mr.S.Haja Mohideen Gisti, the Learned Standing Counsel, for Mr.S.A.Ajmal Khan, Mr.N.Mohideen Basha, the Learned Standing Counsels appearing for the Wakf Board, Mr.G.Prabhu Rajadurai, the Learned Counsel appearing for the Adhoc Committee, Mr.M.Mahaboob Aathiff, the Learned Counsel appearing for the individual respondents and perused the records.

7. It is seen that the Jamia Masjid Wakf was under direct management of Wakf Board from 2015 onwards and the 3rd respondent Superintendent of Wakf was mandated to administer and also mandated to frame a scheme. But when the 3rd respondent without framing a scheme attempted to conduct election, W.P.(MD) No.20861 of 2015 was filed and this Court vide order dated



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25.07.2016 directed to frame a scheme first and then conduct election. Then the scheme was framed by the 1st respondent and Board Resolution dated 04.12.2018 was passed and published in Tamil Nadu Gazette on 13.02.2019. Then steps were taken to conduct election but without preparing voter list and the same was challenged in W.P.(MD)No.6690 of 2017 and this Court vide order 16.07.2020 directed to publish final list. Even though final list was published, no election was conducted, hence again W.P.(MD)No.6245 of 2022 was filed and this Court vide order dated 05.04.2022 directed to conduct election within six months. Then also election was not conducted. In the meanwhile, one A.M. Yusuf had submitted a representation and filed W.P. (MD)No.8446 of 2022 stating that Jamia Masjid Mohalla's representation dated 14.04.2022 alleging that the executive members were reduced to 5 as against 18 and there is a correspondent increase in the number of posts to 24 from 18 and this Court directed to consider and pass orders on the representation. Under the guise of considering representation, the respondents appointed Adhoc Committee for a period of six months. Challenging the said Adhoc Committee W.P.(MD)No. 19028 of 2022 was filed, this Court after seeing the tenure of Adhoc Committee is only for six months, has held the tenure is only outer limit



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and further directed to conduct elections within three months. Against the said order W.A. (MD)No.1124 of 2022 was filed and the Hon'ble Division vide order dated 23.11.2022 had specifically directed to conduct election. The relevant portion of the order is extracted hereunder:

“9. In view of the submission made by the learned standing counsel for the respondents 1 to 3, without going into any of the contentions raised by the appellant, we appoint Mr.Mohammed Ali, District Judge(Retired), Thanjavur, as Election Officer so as to conduct election to Jamia Masjid Wakf as per the Scheme/Bye Law framed for the aforesaid wakf in a smooth and transparent manner. The Election Officer is directed to conduct election to Jamia Masjid Wakf strictly adhering to the Scheme/Bye Law of the wakf within a period of three months from the date of receipt of a copy of this judgment. The Election Officer shall be paid a Honorarium of Rs.1,00,000/- per month, which shall be paid by Jamia Masjid Wakf. Registry is directed to mark a copy of this order to the Election Officer forthwith.”

As on the date of passing the aforesaid order by the Hon'ble Division Bench, the available scheme is the scheme published in Government Gazette dated 13.02.2019. When the Hon'ble Division Bench had directed to conduct election as per the scheme which only means the published scheme in Gazette dated 13.02.2019, whether the respondents are having power to give a go by to the scheme and frame a new scheme, then the answer would be an emphatic “No”. When the Wakf Board submitted before the Hon'ble Division Bench that they would conduct the election based on the scheme dated 13.02.2019,



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recording the same when the Hon'ble Division Bench had directed to conduct election, then the Wakf Board is bound to conduct election based on the scheme dated 13.02.2019. This Court is also of the considered opinion that by not conducting the election and by deviating from the same, amounts to contempt.

8. The Learned Counsel appearing for the Wakf Board Mr.S.Haja Mohideen Gisti submitted that earlier Superintendent of Wakf had framed the scheme, hence the Wakf Board is having power to withdraw the scheme and frame new scheme and the same cannot be considered as illegal. The Learned Senior Counsel Mr.Ajmal Khan appearing for the writ petitioners pointed out that earlier scheme was framed by the Wakf Board, but now the scheme is framed by the Adhoc Committee. It is seen that the mandate of the Adhoc Committee is only to manage the day-to-day affairs of the management of the Wakf, that too for six months. Under clause (1) of the order dated 03.08.2022, it has been specifically stated that the Adhoc Committee shall function until the election or to a maximum of six months. As the name itself suggests that the committee is only for temporary purpose for temporary period and hence any policy decision or any major decision cannot be taken by the Adhoc Committee.



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Therefore, this Court is of the considered opinion that the Adhoc Committee is not having any power to take any policy decision or take any major decision regarding the wakf. Especially changing the nature of the wakf by increasing or reducing the number of executive members (who are representing different Mahallas) is a major change and hence the Adhoc Committee cannot submit any proposal for changing the scheme. Hence, the very basis of changing the scheme through the impugned Resolution 21.12.2022 and Gazette dated 15.03.2023 is illegal and liable to be quashed.

9. Further it is submitted that the members of the Adhoc Committee are from Jamia Mahalla alone, there is no representation from other Mahallas. The Jamia Mahalla members under the guise of Adhoc Committee has recommended to frame a new scheme by increasing their own Jamia Mahalla members and by giving them the post of President, Secretary, Treasurer. Consequently, the others Mahallas are not given representation, even if given representation they cannot become President, Secretary, Treasurer. As rightly pointed out by Mr.Mohamed Athiff, the Learned Counsel appearing for the individual respondents that the impugned scheme is hitting the democracy in administration of the wakf. Therefore, this Court is of the considered opinion



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that there is serious flaw in constituting the managing committee to administer the Jamia Masjid Wakf. Hence, the impugned resolution and impugned gazette are liable to be interfered.

10. Once the scheme is published in gazette on 13.02.2019, then the respondents cannot change it by citing some representation by the members. It is pertinent to note the time line of the events.

- i. The scheme was published in gazette on 13.02.2019
- ii. The representation of A.M.Yousuf on 14.04.2022
- iii. The W.P.(MD)No.8446 of 2022 was disposed of on 28.04.2022
- iii. The W.A.(MD)No.1124 of 2022 order dated 23.11.2022 directing to conduct election as per scheme dated 13.02.2019

The Wakf Board had failed to bring it to the knowledge of the Hon'ble Division Bench about the representation and the disposal of the writ petition. Moreover, the respondents had suffered an order in the writ appeal. Without reviewing the order passed in the writ appeal, the respondents had again passed the impugned resolution and impugned Gazette, which this Court had already held as contempt. Had the respondents conducted election immediately after the



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scheme dated 13.02.2019, all these controversies could have been avoided.

When the Wakf Board failed to conduct election inspite of the fact that voter list was finalized and inspite of Court's order in writ petition and writ appeal, then the allegation put forth by the Learned Counsel appearing for individual respondents about the political interference in the management of the wakf ought to be accepted. As rightly pointed out, the Wakf Board would receive a representation suddenly from unknown quarters, then the Wakf Board would not conduct elections, then the Wakf Board without deliberations confirm some new scheme, so that the politicians or politically affiliated persons could be inducted in the management. It would be really unfortunate if politicians or politically affiliated persons are managing the wakf. It is high time the State ought to be separated from the Religion. In the Medieval period, the Europe contemplated the concept of "separation of Church and State". When the Indian constitution states "secular state", then the Religion ought to be separated from State. This separation of Religion from State is one of the facets of "Freedom of Religion" guaranteed under the constitution.



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11. The Learned Counsel appearing for the Wakf Board submitted that earlier the Jamia Masjid Wakf was consisting four mosques and hence the new scheme was framed for the said four mosques alone. This was vehemently refuted by the writ petitioners, wherein it is stated that the Jamia Masjid itself consists of two mosques. The said 13 Mahallas may have more than one Mosques and the same is not the criteria. Irrespective of number of mosques all the 13 Mahallas would come under one umbrella called “Jamia Masjid Wakf”. This Court is of the considered opinion that these facts need elaborate consideration. It is interesting to see the time line, the representation dated 14.04.2022, Court order on 28.04.2022, writ appeal order dated 23.11.2022 and the impugned resolution on 21.12.2022. Until the writ appeal order there was no deliberation on the new scheme, but suddenly the impugned resolution was passed. The members of other Mahallas were waiting for election, but suddenly the respondents have issued the impugned resolution changing the scheme. Therefore, this Court is of the considered opinion that absolutely there is no deliberation on the new impugned scheme at all. Therefore the contention of the Wakf Board that the A.M.Yousuf representation was considered to rectify the mistake cannot be accepted.



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12. As far as the review application filed by the Adhoc Committee is concerned, the Learned Counsel submitted that he is aggrieved by the observation in the said order, wherein it is observed that the Adhoc Committee had misappropriated an amount of one crore from the bank. On perusing the order, this Court has not observed that the Adhoc Committee had misappropriated the amount. This Court had only recorded the allegation of the writ petitioner thereunder. This Court has neither rendered any finding of nor observed misappropriation against the Adhoc Committee. Hence such plea is without any basis.

13. However, this Court in definite terms had held that the period of Adhoc Committee is only six months and the period cannot be extended since the scheme is published on 13.02.2019, voter list is finalized and only election ought to be conducted. Hence this Court directed the Wakf Board to conduct election by bringing the Jamia Masjid Wakf under direct management. Moreover, this direction is issued by following the Hon'ble Division Bench order dated 23.11.2022 passed W.A.(MD)No.1124 of 2022. Hence the grounds



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raised by Adhoc Committee is not legally sustainable. It is pertinent to note that under clause (1) of the appointment of Adhoc Committee vide order dated 03.08.2022 it is stated that the Adhoc Committee would function until election or at the most (maximum) six months alone. When the appointment had stated “at the most six months”, the writ court in W.P.(MD)No.19028 of 2022 and the W.A.(MD)No.1124 of 2022 had confirmed the Adhoc Committee would function for only six months, then the extension of the Adhoc Committee beyond six months is illegal.

14. The Learned Counsel further submitted that before passing the order in W.P.(MD)No.18845 of 2023, the Adhoc Committee was not heard. This Court is of the considered opinion that the Adhoc Committee has no separate rights, since it is formed by Wakf Board. When the Wakf Board is a party in all the litigations and when the Wakf Board was heard, the Adhoc Committee cannot have any grievance at all.

15. When the order in W.P.(MD)No.18845 of 2023 was passed after hearing the arguments of the Wakf Board, when the Adhoc Committee is



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formed by the Wakf Board, then alleging that the Adhoc Committee was not heard cannot be accepted. But this Court is bound to record the fact that the Adhoc Committee was vehemently fighting with this case. As stated supra, the Adhoc Committee has no independent rights, even then the Adhoc Committee is fiercely fighting the case, hence this Court could read in between the lines and necessarily record that there are vested interests, if not politicization of management of wakf.

16. For the reasons and observations stated supra, this Court is passing the following order:

- i. The impugned resolution dated 21.12.2022 and the impugned Gazette publication of scheme dated 15.03.2023 are hereby quashed.*
- ii. The Jamia Masjid Wakf shall brought under direct management of Wakf Board forthwith.*
- iii. The Wakf Board shall conduct election based on the scheme dated 13.02.2019.*
- iv. The Wakf Board shall conduct election based on the finalized voter list.*



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v. *The election shall be completed within a period of two (2) months from the date of receipt of the copy of the order.*

vi. *Once the new management has taken charge, the new management shall conduct a general body meeting to solve the issue whether the Jamia Masjid Wakf needs demarcation, whether the number of executive members ought to be revised and any other issues etc.*

vii. *If no consensus is arrived in the general body meeting, then the parties are at liberty to approach appropriate forum to divide, to demarcate and to increase or reduce the number of executive members of the Jamia Masjid Mahalla and other Mahallas in accordance to law.*

17. With the above directions, the impugned resolution dated 21.12.2022 and the impugned scheme dated 15.03.2023 is quashed and the W.P.(MD)No. 16157 of 2023 and W.P. (MD)No.17921 of 2023 are allowed. The Rev.Aplw. (MD)No.168 of 2023 is dismissed. No Costs. Connected Miscellaneous Petitions are closed.



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18. Before parting with the judgment, this Court is of the considered opinion if the Wakf Board had conducted election based on 13.02.2019 scheme, then inducted the new management and thereafter entertained the plea of demarcation etc. there would not be several litigations at all. The new scheme is formulated hurriedly by Adhoc Committee, in which the committee is formed by the members of Jamia Mahalla alone, who have created the entire issue. Therefore, this Court hopes that in future the Wakf Board would act transparently in accordance to law alone.

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Index : Yes / No
Internet : Yes/ No
Nsr



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To

- 1.The Chairman,
The Tamil Nadu Waqf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 009.
- 2.The Chief Executive Officer,
Tamil Nadu Waqf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 009.
- 3.The Superintendent of Waqf / Executive Officer,
Office of the Superintendent of Waqf,
No.51/80, K.A.P.Complex,
Kulavaikarapuram Railway Gate,
Palayamkottai,
Tirunelveli District.
- 4.Jamia Masjid,
Represented by its Ad-hoc Committee,
W.G.C.Road,
Thoothukudi District.



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S.SRIMATHY, J.

Nsr

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