



C.R.P.(MD)No.2575 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 11.12.2023

PRONOUNCED ON: 20.12.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2575 of 2023

and

C.M.P.(MD)No.13356 of 2023

Kottar Elankadai Muslim Samuthaya Trust,
represented by its President namely

Janab.Syed Thameem,

S/o Mohamed Thaseen,

Office at Kottar, Nagercoil,

Kanyakumari District.

: Petitioner/Applicant

Vs.

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

2.Tamil Nadu Wakf Board,
represented by its Chief Executive Officer,
No.1 Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai-600 001.

3.P.Mohamed Ibrahim

4.M.M.Peer Mohammed @ Kuyyappa

5.S.M.Athikurrahman

6.S.Jainul Abdeen



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7.A.Mohammed Yosuf

8.A.Ahamed

: Respondents/Respondents

PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India r/w Section 83(9) of the Waqf Act, 1995, against the Fair and Decreetal order dated 04.09.2023, passed in O.A.No.29 of 2023, on the file of the Tamil Nadu Waqf Tribunal at Chennai.

For Petitioner : Mr.M.Saravanan

For Respondents :Mr.S.A.Ajmalkhan
for R.1 and R.2

: Mr.E.Mohamed Abbas
for R.3 to R.8

ORDER

The Civil Revision Petition is directed against the order passed in O.A.No.29 of 2023, dated 04.09.2023, on the file of the Tamil Nadu Waqf Tribunal at Chennai, dismissing the Original Application filed under Section 83(1) and (2) of the Waqf Act, which came to be filed for setting aside the proceedings of the first respondent in Na.Ka.No. 12536/07/AV, dated 17.10.2022 and the consequential notice issued by the second respondent in Na.Ka.No.12536/07/Aa1/Ka.Kumari, dated 09.11.2022 as not maintainable, arbitrary and invalid in the eye of law.



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2. The revision petitioner trust ie., the Kotar Ilankadai Muslim Samudayam Trust is a Waqf governed by a scheme decree framed by the Sub Court, Nagarcoil in O.S.No.119 of 1956, dated 23.10.1973. The said Waqf is a notified Waqf under the Waqf Act, 1995. It is not in dispute that the Waqf is administered by an administrative committee consisting of 13 constituent members representing 13 constituencies / wards forming part of the Kottar Ilankadai Muslim Samudayam locality. It is also not in dispute that on 05.12.2021, 13 members were elected as members of the administrative committee and among them, the revision petitioner G.S.M.Syed Thameem was elected as a Chairman and that the administrative committee is the Mutawalli of the concerned Waqf.

3. The case of the revision petitioner is that some members of the administrative committee have been acting against the interest of the Waqf and indulging in various adverse activities, that they have also created lot of problems during the meetings, that the revision petitioner therefore addressed a letter to the Superintendent of Waqf Board, Tirunelveli on 23.05.2022 to intervene and guide the miscreants, that 6 out of 13 members of the administrative committee were not attending the committee meetings consecutively for 3 times inspite of receiving



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notices and therefore, the executive committee, as per clause 14 of the scheme decree, has passed a resolution dated 15.06.2022 stating that 6 members who had continuously defaulted in attending the meetings, forfeited their posts, that the persons who were aggrieved by the above resolution, have approached the first respondent to take necessary action against the petitioner – administrative committee for removing them from the office, that they have also filed an application in O.A.No.54 of 2022 before the Waqf Tribunal challenging the resolution dated 15.06.2022, that the second respondent, in the meanwhile has issued a show cause notice dated 09.11.2022 calling upon the petitioner as to why action should not be taken against them under the Waqf Ac, 1995 as amended in 2013, referring to a resolution dated 17.10.2022 passed by the first respondent, that the allegations in the show cause notice as well as the resolution dated 17.10.2022 are verbatim of the allegations in the application filed by the aggrieved 6 members in O.A.NO.54 of 2022 and that therefore, the petitioner was constrained to file the application in O.A.No.29 of 2023 for setting aside the proceedings of the first respondent, dated 17.10.2022 and the consequential show cause notice issued by the second respondent dated 09.11.2022, before the Tamil Nadu Waqf Tribunal at Chennai.



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4. The respondents 1 and 2 and 3 and 8 have filed their separate counter statements raising objections. During enquiry, both parties have adduced no oral evidence. But the petitioner has produced 15 documents and exhibited the same as Exs.P.1 to P.15. The respondents have not adduced any documentary evidence. The learned Waqf Tribunal, considering the pleadings of all the parties, the documentary evidence available on record and on hearing the arguments of both sides, has passed the impugned order dated 04.09.2023, by holding that the petition itself is premature, as no executable orders have been passed by the respondents 1 and 2, dismissed the application. Aggrieved by the impugned order, the applicant has preferred the present Civil Revision Petition.

5. The learned Counsel for the revision petitioner would submit that the respondents 3 to 8, who have filed O.A.No.54 of 2022 have already withdrawn the same and as such, the issue relating to the removal of the respondents 3 to 8 on the basis of the resolution passed by the petitioner administrative committee has reached finality, that the first respondent, by the resolution dated 17.10.2022, has directed the second respondent to



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issue show cause notice to the petitioner under Section 64 of the Waqf Act for convening 3 meetings within a short time and removing 6 committee members for not attending 3 consecutive committee meetings and as such, the Tribunal ought to have noticed that withdrawal of O.A.No.54 of 2022 has made the resolution dated 17.10.2022 as infructuous.

6. The learned Counsel would further submit that the second respondent had issued a show cause notice by adding some other charges other than the charge shown in the resolution dated 17.10.2022 and thereby he has exceeded his jurisdiction, as he has no power to go beyond the resolution. The learned Counsel would further submit that any Mutawalli or any person interested in a Waqf or any person aggrieved by an order made under the Waqf Act is entitled to file an application before the Tribunal challenging the same under Section 83(2) of the Waqf Act, that the Tribunal has erred in considering that since the second respondent has passed an order without any jurisdiction, the same can only be questioned under Section 83(2) of the Waqf Act, that the first respondent can initiate the proceedings under Section 64(1) of the Waqf Act, only if any one of the grounds mentioned therein gets attracted and that the Tribunal ought to have noticed that the first respondent has no



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jurisdiction to pass the resolution dated 17.10.2022, as none of the grounds under Section 64(1) of the Act is attracted. He would further submit that the second respondent being the Chief Executive Officer cannot travel beyond the scope of his powers under Sections 25 and 26 of the Wakf Act and that therefore, the impugned order passed by the Wakf Tribunal, dated 04.09.2023 in O.A.No.29 of 23 is liable to be set aside.

7. The learned Counsel for the respondents 1 and 2 would submit that the third respondent who is one of the members of the Administrative Committee has filed a writ petition in W.P.(MD)No.10050 of 2022 seeking direction to the second respondent for removal of the President of the petitioner Trust Waqf, as per the representation dated 27.04.2022 for expressing no confidence motion against the President of the said Waqf to function as the President of the petitioner Trust Waqf and the same was disposed of by this Court on 27.04.2022, directing the authorities to afford a fair hearing to the writ petitioner and also the President of the petitioner Trust Waqf within a period of two months, that one Kaleel Rahman has filed a writ petition in W.P.(MD)No.26824 of 2022 for a Writ of Mandamus directing the respondents therein to retrieve the properties in S.9/2, S.9/7, M6-23/7 and S-1/77 of



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Vadiveeswaram Village, Agasteeswaram Taluk and entrust the same to the petitioner Trust and the same was ordered by this Court on 29.11.2023 directing the respondents therein to consider the petitioner's representation on merits and in accordance with law within a period of 12 weeks from the date of receipt of a copy of that order, that the President of the petitioner Trust Waqf removed 6 members among 13 members on 15.06.2022 for not attending the committee meetings continuously for 3 times and that the above 6 persons had filed a original application in O.A.No.54 of 2022 before the Tribunal to declare the public notice dated 15.06.2022 issued by the applicant waqf trust as illegal and the same was subsequently withdrawn by them.

8. The learned Counsel would further submit that the third respondent has given representation dated 16.08.2022 to conduct enquiry regarding the termination of the members, that enquiry was conducted and all the parties had appeared, that the first respondent has thereafter passed a resolution dated 17.10.2022 directing the second respondent to issue show cause notice under Section 64 of the Waqf Act, that the President of the petitioner Waqf has withdrawn a case pending, against whom the case was registered by the previous Waqf management for 1.5



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acres of property including 15 rental shops situated at the front portion of the Aathangarai Pallivasal, Radhapuram Taluk, that the President has also not submitted the ledger books before the Waqf Board till the date of filing their counter statement and that since the President has not paid the amount of Rs.15,21,975/- which is still pending and is very much against the provision under Section 72(i) of the Waqf Act.

9. The learned Counsel for the respondents 3 to 8 would submit that the President of the petitioner Waqf has been adopting various policies that were not in consonance with the interest of the Waqf or the theological ethics of the Waqf, that the President has been taking various decisions without consulting the administrative committee, that the President has unilaterally withdrawn various litigations pursued by the Waqf to favour the third parties and the above action had evoked misbehaviour among the members of the Waqf, that they have filed O.A.No.54 of 2022 challenging the resolution dated 15.06.2022 removing them as null and void and that thereafter, they withdrew the same, that the President has filed the above petition with unclean hands and that therefore, the application itself is liable to be rejected.



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10. It is evident from the records that the revision petitioner has earlier filed a writ petition in W.P.(MD)No.1351 of 2023 challenging the resolution passed by the first respondent dated 09.11.2022 and when the writ petition was taken up for enquiry, taking note of the submissions made by the writ petitioner that they have already filed O.A.No.29 of 2023 before the Waqf Tribunal, Chennai challenging the same order which is impugned in the writ petition sought permission to withdraw the writ petition, dismissed the writ petition as withdrawn. Since the pendency of O.A.No.54 of 2022 was brought to the notice of the learned Judge, the Waqf Tribunal was directed to hear the applications in O.A.No.54 of 2022 and O.A.No.29 of 2023 simultaneously and till any order, interim or final is passed by the Waqf Tribunal in the said application.

11. The main contention of the revision petitioner is that the resolution passed by the first respondent is only with respect to the removal of 6 members of the administrative committee for not attending 3 consecutive meetings, but the second respondent has added more charges and for that, he has no power or authority.



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12. The learned Counsel for the respondents 1 and 2 would submit that Sections 26 and 27 of the Waqf Act deal with the powers of Chief Executive Officer and the same are extracted hereunder for better appreciation:

*“26. Powers of Chief Executive Officer in respect of orders or resolutions of Board.—Where the Chief Executive Officer considers that an order or resolution passed by the Board—
(a) has not been passed in accordance with the law; or
(b) is in excess of or is an abuse of the powers conferred on the Board by or under this Act or by any other law; or
(c) if implemented, is likely to—
(i) cause financial loss to the Board or to the concerned wakf or to the wakfs generally; or
(ii) lead to a riot or breach of peace; or
(iii) cause danger to human life, health or safety; or
(d) is not beneficial to the Board or to any wakf or to wakfs generally, he may, before implementing such order or resolution place the matter before the Board for its reconsideration and, if such order or resolution is not confirmed by a majority of vote of the members present and voting after such reconsideration, refer the matter to the State Government along with his objections to the order or resolution, and the decision of the State Government thereon shall be final.*



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27. Delegation of powers by the Board.—The Board may, by a general or special order in writing, delegate to the Chairperson, any other member, the secretary or any other officer or servant of the Board or any area committee, subject to such conditions and limitations as may be specified in the said order, such of its powers and duties under this Act, as it may deem necessary.”

13. As rightly pointed out by the learned Counsel for the respondents 1 and 2 and the respondents 3 to 8, the private respondents have raised allegations against the President and the other members of the administrative committee and moreover, the third respondent has filed a writ petition seeking for removal of the President as per the representation dated 27.04.2022 expressing no confidence motion against the President and this Court has directed the authorities to hear the parties and dispose of the same within a period of two months and another writ petition came to be filed by one Kaleel Rahman seeking a direction for retrieving the properties situated in Vadiveeswaram Village, Agasteeswaram Taluk and to entrust the same to the petitioner Trust and for that also, a direction was given to consider the representation of the



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petitioner therein on merits and dispose of the same within a period of 12 weeks from the date of receipt of a copy of that order.

14. No doubt, the action of the President and other members in passing a resolution dated 15.06.2022 for removing the respondents 3 to 8 for not attending the three consecutive meetings by convening three times within a short span of 15 days, finds place in the resolution as well as in the show cause notice issued to the petitioner Trust. It is not in dispute that the respondents 3 to 8 have earlier filed O.A.No.54 of 2022 challenging the resolution dated 15.06.2022 for removing them, but subsequently they have withdrawn the above case. The show cause notice was issued to the petitioner seeking his explanation not only for the removal of the respondents 3 to 8, but also for withdrawing the cases pending against the individual persons to favour them and for not submitting the accounts and for not paying the amount due to the first respondent.

15. As rightly observed by the Waqf Tribunal, that the second respondent has only issued a show cause notice calling for explanation and they have decided nothing. Admittedly the first respondent has not



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passed any orders against the petitioner. As rightly observed by the Tribunal, the applicant, after the receipt of the show cause notice, is duty bound to submit his explanation, so as to enable the respondents 1 and 2 to act upon and pass suitable orders in accordance with the provisions of the Waqf Act and that in case if the applicant is aggrieved by the orders of the respondents 1 and 2, then he can very well approach the Waqf Tribunal. Considering the above facts and circumstances of the case, the Tribunal, by observing that the original application filed before them is of premature, as the Tribunal cannot usurp the powers of the respondents 1 and 2 and that as no executable orders have been passed by the respondents 1 and 2, has rightly dismissed the petition and as such, the impugned order dismissing the Original Application cannot be found fault with.

16. The learned Counsel for the respondents would submit that the revision petitioner may be directed to submit their explanation and the respondents 1 and 2 may be directed to conduct enquiry and pass orders. The learned Counsel for the petitioner would submit that they have already sent an explanation by post, but that was disputed by the respondents' side initially. Whatever it is, the revision petitioner is hereby



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directed to submit his explanation to the show cause notice issued by the second respondent within a period of two weeks from the date of receipt of a copy of this order and on receipt of the explanation, the respondents 1 and 2 are directed to conduct enquiry and pass orders in accordance with law within a period of one month thereafter.

17. With the above directions, the Civil Revision Petition is disposed of. Consequently, the connected Miscellaneous Petition is closed. There shall be no order as to costs.

20.12.2023

Index : Yes : No

Internet : Yes : No

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To

1. The Tamil Nadu Waqf Tribunal at Chennai.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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20.12.2023