



W.P.(MD) No.26406 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.26406 of 2022

and

W.M.P.(MD) Nos.20588 and 20590 of 2022

Naina Mohammed

.. Petitioner

Vs.

1.The Tamil Nadu Waqf Board,
Rep., by its Chairman,
Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai-600 001.

2.The Chief Executive Officer,
Tamil Nadu Waqf Bard,
Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai-600 001.

.. 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 proceedings of the second respondent in Na.Ka.No. 7649/01/A3/Viruthu dated 15.11.2022 and quash the same as illegal.



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For Petitioner : Mr.M.Mahaboob Athiff

For Respondents : Mr.S.J.Ajmal Khan
Standing Counsel

ORDER

The very short point that invited the attention of this Court is whether a person, who is no longer a Mutawalli, can be issued with a notice of enquiry by the second respondent, particularly when the notice is issued under Section 64 of the Waqf Act, 1995.

2. Section 64 of the Waqf Act, reads as follows:

“Section 64. Removal of mutawalli.—

(1) Notwithstanding anything contained in any other law or the deed of [wakf], the Board may remove a mutawalli from his office if such mutawalli—

(a) has been convicted more than once of an offence punishable under section 61; or

(b) has been convicted of any offence of criminal breach of trust or any other offence involving moral turpitude, and such conviction has not been reversed and he has not been granted full pardon with respect to such offence; or



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(c) is of unsound mind or is suffering from other mental or physical defect or infirmity which would render him unfit to perform the functions and discharge the duties of a mutawalli; or

(d) is an undischarged insolvent; or

(e) is proved to be addicted to drinking liquor or other spirituous preparations, or is addicted to the taking of any narcotic drugs; or

(f) is employed as a paid legal practitioner on behalf of, or against, the wakf; or

(g) has failed, without reasonable excuse, to maintain regular accounts for two consecutive years or has failed to submit, in two consecutive years, the yearly statement of accounts, as required by sub-section (2) of section 46; or

(h) is interested, directly or indirectly, in a subsisting lease in respect of any [wakf] property, or in any contract made with, or any work being done for, the [wakf] or is in arrears in respect of any sum due by him to such wakf; or

(i) continuously neglects his duties or commits any misfeasance, malfeasance, misapplication of funds or breach of trust in relation to the [wakf] or in respect of any money or other wakf property; or

(j) wilfully and persistently disobeys the lawful orders made by the Central Government, State



Government, Board under any provision of this Act or rule or order made thereunder;

(k) misappropriates or fraudulently deals with the property of the [wakf].

(2) The removal of a person from the office of the mutawalli shall not affect his personal rights, if any, in respect of the [wakf] property either as a beneficiary or in any other capacity or his right, if any, as a sajjadanashin.

(3) No action shall be taken by the Board under sub-section (1), unless it has held an inquiry into the matter in a prescribed manner and the decision has been taken by a majority of not less than two-thirds of the members of the Board.

(4) A mutawalli who is aggrieved by an order passed under any of the clauses (c) to (j) of sub-section (1), may, within one month from the date of the receipt by him of the order, appeal against the order to the Tribunal and the decision of the Tribunal on such appeal shall be final.

(5) Where any inquiry under sub-section (3) is proposed, or commenced, against any mutawalli, the Board may, if it is of opinion that it is necessary so to do in the interest of the [wakf], by an order suspend such mutawalli until the conclusion of the inquiry: Provided that no suspension for a period exceeding ten



days shall be made except after giving the mutawalli a reasonable opportunity of being heard against the proposed action.

(6) Where any appeal is filed by the mutawalli to the Tribunal under sub-section (4), the Board may make an application to the Tribunal for the appointment of a receiver to manage the [wakf] pending the decision of the appeal, and where such an application is made, the Tribunal shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), appoint a suitable person as receiver to manage the [wakf] and direct the receiver so appointed to ensure that the customary or religious rights of the mutawalli and of the [wakf] are safeguarded.

(7) Where a mutawalli has been removed from his office under sub-section (1), the Board may, by order, direct the mutawalli to deliver possession of the [wakf] property to the Board or any officer duly authorised in this behalf or to any person or committee appointed to act as the mutawalli of the [wakf] property.

(8) A mutawalli of a [wakf] removed from his office under this section shall not be eligible for re-appointment as a mutawalli of that [wakf] for a period of five years from the date of such removal.



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3. The very opening sentence of this Section clarifies that the Section can be used only for “removal of mutawalli” and it cannot be used against a person, who is not a Mutawalli on the date of the issue of the notice. Therefore, the very basis on which the notice has been issued is without jurisdiction and is liable to be set aside and is accordingly, set aside. Therefore, this Writ Petition is allowed.

4. Learned Standing Counsel appearing for the respondent-Board tried to clarify to this Court that serious allegation of misappropriation and mismanagement has been made against the petitioner.

5. It is needless to state that if the said allegation is true, the Board and the Waqf have to take appropriate action against the petitioner and it is not through a Section 64 notice enquiry that this end can be achieved. No costs. Consequently, connected miscellaneous petitions are closed.

26.06.2023

NCC : Yes/No
Index : Yes/No
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To

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P.T.ASHA, J.

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