



W.P(MD)No.27883 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.01.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.27883 of 2022

and

W.M.P.(MD)Nos.21960, 21961 and 22367 of 2022

S.Abdul Jabbar

... Petitioner

Vs.

1.The District Collector,
Kanyakumari District,
Kanyakumari.

2.The Sub Collector,
Padmanabapuram,
Kanyakumari District.

3.F.Kaleel Rahman

4.The Chief Executive Officer,
Tamil Nadu Waqf Board,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 001.

... Respondents

*(R4 is suo motu impleaded vide order dated
09.12.2022 in W.P.(MD)No.27883 of 2022 by GRSJ)*

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned order made by the 2nd respondent in Na.Ka. A2/8243/2022 dated 02.12.2022 and quash the same as illegal.



W.P(MD)No.27883 of 2022

For Petitioner : Mr.M.Mahaboob Athiff

For Respondents : Mrs.S.Jaya Priya,
Government Advocate for R1 & R2.
Mr.G.Prabhu Rajadurai for R3.
Mr.S.A.Ajmal Khan for R4.

ORDER

Heard the learned counsel on either side.

2.The basic facts are not in dispute. The subject matter pertains to the affairs of Thukalay Anjuvanam Peer Mohammedya Waqf. The notification for electing the office bearers of the Waqf was issued on 27.11.2020. Election was scheduled to be held on 12.12.2020. Since only 15 persons had filed nominations, all of them were declared as unopposed. Questioning the said outcome, Mohammed Ansari and three others including the third respondent herein filed O.A.No.184 of 2020 before the Tamil Nadu Waqf Tribunal at Chennai. Vide order dated 18.02.2022, the election was set aside and the original application was allowed in the following terms:-

“7.In the result, this Original Application is allowed,



W.P(MD)No.27883 of 2022

(i) declaring that the Election Notification No.8 dated 27.11.2020 issued by the 2nd respondent and its subsequent proceedings are illegal, arbitrary and contrary to the circular dated 14.02.2012 issued in Na.Ka.No.1760/1/12/Election of the 1st respondent,

(ii) directing the respondents 1 to 3 to include the names of the applicants in the above voters list of the 4th respondent Jamath,

(iii) directing the 1st respondent to conduct the election afresh for the 4th respondent Waqf under its supervision after following the due process of law and also in terms of the Circular dated 14.02.2012 issued in Na.Ka.No.1760/1/12/Election of the 1st respondent within four months without giving any room for complaints. No cost.”

3. Aggrieved by the same, the petitioner herein along with others filed C.R.P.(MD)No.541 of 2022 before this Court. This Court vide order dated 22.03.2022 granted interim order directing that the voter list cannot be finalized till the disposal of the civil revision petition. The interim order continues to be in force.

4. In other respects, the order passed by the Tribunal was not stayed. Since the elected office bearers had been unseated by the order of the Tribunal and the Tribunal's order had not been stayed by this Court in civil revision



W.P(MD)No.27883 of 2022

petition, there arose vacancy in the office of Mutawalli. Invoking its power under Section 63 of the Waqf Act, 1995, the Waqf Board vide order dated 09.11.2022 appointed an ad hoc committee comprising 11 members. The said order further reads that the earlier order whereby the Waqf was brought under the direct management of Waqf also stood recalled. The Chief Executive Officer of Tamil Nadu Waqf Board also sent a communication dated 22.11.2022 calling upon the President of the ad hoc committee to obtain charge of Waqf under Section 68 of the Waqf Act, 1995.

5.The Sub Collector, Pamananabapuram after referring the aforesaid proceedings dated 09.11.2022, passed the impugned order dated 02.12.2022 directing the jurisdictional Deputy Superintendent of Police, Thuckalay to provide protection to the aforesaid ad hoc committee to open the administrative office of Waqf and take charge. It is this communication that is put to challenge in this writ petition.

6.The learned counsel on either reiterated their respective contentions.

7.Any order of an Executive Authority must be traceable to some statutory provision. The Executive Authorities are not vested with any inherent



W.P(MD)No.27883 of 2022

powers. The specific stand of the learned counsel for the petitioner is that the impugned communication is very much traceable to Section 68 of the Waqf Act, 1995. My attention has not been drawn to any other provision where under the impugned order can be said to have been issued. In fact, the learned Additional Government Pleader for the respondents 1 and 2 also affirmed that the impugned order is traceable only to Section 68 of the Waqf Act. Section 68 of the Waqf Act reads as follows:-

“68. Duty of mutawalli or committee to deliver possession of records, etc.—(1) Where any mutawalli or committee of management has been removed by the Board in accordance with provisions of this Act, or of any scheme made by the Board, the mutawalli or the committee so removed from the office (hereinafter in this section referred to as the removed mutawalli or committee) shall hand over charge and deliver possession of the records, accounts and all properties of the I[waqf] (including cash) to the successor mutawalli or the successor committee, within one month from the date specified in the order.

(2) Where any removed mutawalli or committee fails to deliver charge or deliver possession of the records, accounts and properties (including cash) to the successor mutawalli or committee within the time specified in sub-section (1), or prevents or obstructs such mutawalli or committee, from obtaining possession thereof after expiry of the period aforesaid, the successor mutawalli or any member of the successor committee may make an application,



W.P(MD)No.27883 of 2022

accompanied by a certified copy of the order appointing such successor mutawalli or committee, to any 1[District Magistrate, Additional District Magistrate, Sub-Divisional Magistrate or their equivalent] within the local limits of whose jurisdiction any part of the 2[waqf] property is situated and, thereupon such 1[District Magistrate, Additional District Magistrate, Sub-Divisional Magistrate or their equivalent] may, after giving notice to the removed mutawalli or members of the removed committee, make an order directing the delivery of charge and possession of such records, accounts and properties (including cash) of the 2[waqf] to the successor mutawalli or the committee, as the case may be, within such time as may be specified in the order.

(3) Where the removed mutawalli or any member of the removed committee, omits or fails to deliver charge and possession of the records, accounts and properties (including cash) within the time specified by 3[any Magistrate] under sub-section (2) the removed mutawalli or every member of the removed committee, as the case may be, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to eight thousand rupees, or with both.

(4) Whenever any removed mutawalli or any member of the removed committee omits or fails to comply with the orders made by 3[any Magistrate] under sub-section (2), 3[any Magistrate] may authorise the successor mutawalli or committee to take charge and possession of such records, accounts, properties (including cash) and may authorise such person to take such police assistance as may be necessary for the purpose.



W.P(MD)No.27883 of 2022

(5) No order of the appointment of the successor mutawalli or committee, shall be called in question in the proceedings before 3[any Magistrate] under this section.

(6) Nothing contained in this section shall bar the institution of any suit in a competent civil court by any person aggrieved by any order made under this section, to establish that he has right, title and interest in the properties specified in the order made by 3[any Magistrate] under sub-section (2).”

8.Of course, in this case, the removal of the earlier committee of management was by virtue of the order of Tribunal. Section 68(1) of the Waqf Act talks about removal of mutawalli or committee of management by the Board in accordance with the provisions of the Act or of any scheme made by the Board. I would hold that the provision cannot be narrowly or technically applied. It will apply even to a case where a committee of management or mutawalli is removed or made to vacate his office. In the case on hand, the very election of the earlier committee of management to the office had been nullified by the Tribunal. In other words, only through legal process, the earlier committee of management had been unseated. Therefore, even to such a case, Section 68(1) of the Waqf Act will apply without the consequence of disqualification.



W.P(MD)No.27883 of 2022

9.Once I hold that Section 68(1) of the Waqf Act is applicable even to a case of this nature, then the procedure set out in the remaining provisions of the Waqf Act will kick in. As per Section 68(2) of the Waqf Act, the District Magistrate or Additional District Magistrate or Sub Divisional Magistrate or their equivalent can give effect to the order of removal by directing the persons holding possession to deliver charge and possession. However, before doing so, notice will have to be given. The second respondent has straightaway passed the order in a peremptory manner. He has not put the petitioner on notice. Only on this ground, I am constrained to interfere. The impugned order is clearly violative of the principles of natural justice. It is on this short ground, I interfere and the impugned communication is set aside.

10.The second respondent can pass an order afresh after given a formal notice to the petitioner. Seven days notice can be given to the petitioner to hand over charge and possession of Waqf. If the petitioner or the other members of the earlier committee of management fail to comply with the same, the consequences set out in the other provisions will follow. They are liable for prosecution as contemplated under Section 68(3) of the Waqf Act.



W.P(MD)No.27883 of 2022

11.If still the petitioner does not comply with the order, the third respondent is given liberty to move the jurisdictional Magistrate under Section 68(4) of the Waqf Act. Such a petition will be numbered forthwith and the learned Magistrate shall pass an order in terms of Section 68(4) of the Waqf Act. I make it clear that the jurisdictional Magistrate will not take more than ten days to pass such a order on an application being filed by the third respondent.

12.These directions given in this writ petition will of course be subject to any other order that may be passed in C.R.P.(MD)No.541 of 2022. It is also open to the petitioner to question the order passed by the Waqf Board on 09.11.2022. If any such challenge is entertained and any interim or final order is passed therein, the present directions will of course abide by them.

13.The writ petition is allowed on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

04.01.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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Issue order copy on 06.01.2023.



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W.P(MD)No.27883 of 2022

G.R.SWAMINATHAN, J.

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To:

- 1.The District Collector,
Kanyakumari District,
Kanyakumari.
- 2.The Sub Collector,
Padmanabapuram,
Kanyakumari District.

W.P(MD)No.27883 of 2022

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