



W.P.No.26801 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.26801 of 2004

and

W.M.P.No.32632 of 2004

1.A.Farooq (Deceased)

2.Rahamathullah

[P2 substituted as LR of the deceased P1 vide order dt.02.04.2019
made in W.M.P.No.23284 of 2017 in W.P.No.26801 of 2004]

... Petitioners

Vs.

1.The Tamil Nadu Wakf Board,
represented by its Chief Executive Officer,
9th Street, Indira Nagar,
Madras – 600 020.

S.M.M.Abdul Salam (deceased)

2.The Wakf Tribunal,
Ramanathapuram District,
Ramanathapuram.

3.Syed Meerammal

4.Syed Raviyath



W.P.No.26801 of 2004

5.Thaslima Beevi

6.Ahamed Ibrahim

7.Ahamed Jalaludeen

[R3 to R7 substituted as LR's of deceased

S.M.M.Abdul Salam vide order dt.16.08.2024 in

W.M.P.No.33132 of 2019 in W.P.No.26801 of 2004] ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the 3rd respondent in its proceedings W.O.P.1/2002 dated 08.03.2004 and quash the same as illegal, incompetent and without jurisdiction and further direct the 1st respondent to frame a scheme for the “Peer Mohammed Walliullah Dargah” of Valinokkam Village, Kadaladi Taluk, Ramanathapuram District.

For Petitioners : Mr.N.A.Nissar Ahmed

For Respondents : Mr.Haja Mohideen Gisthi [R1]

Mr.N.S.M.MD.Jafarullah [R2 to R7]

ORDER

This Writ Petition has been filed seeking for a Writ of Certiorarified Mandamus, to call for the records on the file of the 3rd respondent in its proceedings W.O.P.1 of 2002 dated 08.03.2004 and quash the same as illegal, incompetent and without jurisdiction and



W.P.No.26801 of 2004

further, direct the 1st respondent to frame a scheme for the “Peer Mohammed Walliullah Dargah” of Valinokkam Village, Kadaladi Taluk, Ramanathapuram District.

2. According to the petitioner, Muslim Jamath Pallivasal of Valinokkam is a surveyed wakf and it consists of all the muslims in the village and this wakf is managed by a committee of persons who jointly function as Muthavalli. The rule of succession governing the committee is by way of election from the Jamath. The petitioner claims that he is a subscriber, i.e. Thalaikattu, holder of the jamath. The Pallivasal is under the direct management of the 1st respondent. One Peer Mohammed Sahim Valiyullah, who is the father of the deceased S.M.M.Abdul Salam, was a former President of the Jamath and taking advantage of this, he set up a wakf, known as “Peer Mohammed Sahib Valiyullah Dargah of Valinokkam' and filed an application for registration of this property as a separate wakf and rule of succession is by hereditary. After demise of said Peer Mohammed on 16.02.1996, the said deceased S.M.M.Abdul Salam attempted to cloud over the right of the Jamath and this was contested by the President and finally, it would up before the 1st



W.P.No.26801 of 2004

respondent in 1998. The matter was taken up as item 80/1997 in Rc. 2359/B2/Rmd/95 and as item 27/1998 in Rc. 2359/B2/Rmd/95. They were disposed off by a common order on 24.07.1998. Before the Board, on the basis of the proforma given by his father, the said deceased S.M.M.Abdul Salam sought to project as case as if the Dargah situate at Survey No.187 of Kadaladi village belongs to their family. The said deceased S.M.M.Abdul Salam sought to draw strength from a document said to have been executed by Muthuvijay raghunathan Raja or Shanmugha rajeshwaran Sethupathi, the Raja of Ramnad. As per this document dated 30.06.1932, the property is said to have been assigned in favour of Peer Mohammed Oliyullah Dargah and that one Janab Sethu Sammati had paid kist "for and on behalf" of the dargah.

3. Later, the said deceased S.M.M.Abdul Salam himself filed an application in 2001 seeking an order to be appointed as Mutavalli. This order was passed on 02.03.2001. It was specifically held that he is entitled to be in office for a period of 3 years. In other words, the rejection of his claim for heredity was confirmed in 2001. After acting as a mutavalli under this order, he filed two applications namely W.O.P.1 of



W.P.No.26801 of 2004

WEB COPY

2002 and W.O.P. 6 of 2002. In the first application, he sought for a declaration that he is the hereditary Mutavalli of the dargah and in the second one, he challenged the order appointing him for three years. In utter collusion with the Wakf Inspector, Ramanathapuram, he played a fraud on the 3rd respondent. The 1st respondent did not bring before the Tribunal any of the relevant particulars and had admitted that the post of the Mutavalli is hereditarily governed and the order of the Board in 1998 was also not brought to the notice of the Tribunal. On the basis of the collusion, the properties of the Wakf are being knocked off by him. Therefore, aggrieved by the order of the Tribunal passed in W.O.P No.1 of 2002, the petitioner has come forward with the present Writ Petition.

4. Learned counsel for the petitioner submitted that he is the Thalaikattu holder of the Jamath, which was a declared wakf vide order dated 24.07.1998 by the 1st respondent, in which, it is specifically observed that the Wakf is consisting of Pallivasal, Madharasa and Kabaristan. Subsequently, the Kabaristan is used to call Peer Mohammed Walliullah Dargah and the said pallivasal is in the part of Muslim Pallivasal, in which, the private respondent was appointed as Muthavalli



W.P.No.26801 of 2004

WEB COPY

for a period of 3 years vide order dated 23.02.2001. Challenging the same, the said deceased S.M.M.Abdul Salam filed W.O.P.No.1 of 2002 on the file of Wakf Tribunal claiming that he is the hereditary trustee as if his grand father donated the land and subsequently, his father maintained the Dargah land and now, he is maintaining the same. Hence, fixing 3 years period is not sustainable. However, the said order was passed without hearing the Muslim Jamath Pallivasal or any other thalaikattu holder. Accordingly, he prays for allowing the writ petition.

5. Learned counsel appearing for the 1st respondent submitted that the Inspector has been examined on behalf of the Muslim Jamath Pallivasal and he deposed that the Dargah property was donated by the grandfather of the said deceased S.M.M.Abudl Salam. However, the learned counsel fairly submitted that, as per the earlier order passed by the Wakf Board, dated 24.07.1998, though there was a observation in the order dated 24.07.1998 that the entire land was donated by the Last Raja of Ramanad for the benefit of the Muslim Jamath Pallivasal, however, prior to passing the order in W.O.P.No.1 of 2002, no opportunity was given to the Muslim Jamath Pallivasal, but the opportunity was given to



W.P.No.26801 of 2004

WEB COPY

the Inspector of Wakf Board. Accordingly, he prays for appropriate orders.

6. Learned counsel for the respondents 3 to 7 submitted that the grandfather of the said deceased S.M.M.Abdul Salam donated the property for Kabaristan, in which, the Dargah is maintained by the petitioner's grandfather, namely Peer Mohammed Walliullah Dargah. Subsequently, the petitioner's father maintained the Dargah and thereafter, the petitioner is maintaining the Dargah. As per the resolution dated 24.07.1998, the Peer Mohammed Walliullah Dargah is part of Muslim Jamath Pallivasal, Valinakkam, however, based on which, on 23.02.2001, the said deceased S.M.M.Abdul Salam was given 3 years term, which is wholly unsustainable, since the petitioner's grandfather and father maintained the Muslim Jamath Pallivasal, Valinakkam as well as Peer Mohammed Walliullah Dargah, which was properly adjudicated by the Wakf Tribunal and passed the impugned order, which cannot be interfered with. Accordingly, he prays for appropriate orders.



W.P.No.26801 of 2004

WEB COPY

7. Heard the learned counsel for the petitioner, learned counsel appearing for the 1st respondent and the learned counsel appearing for the respondents 3 to 7 and perused the materials available on record.

8. Discussing any merits of the case would adversely affect the interest of the petitioner as well as the respondents. However, the writ petition is disposed on the sole ground that before passing the impugned order, the 3rd respondent was not heard. The petitioner being claimed as a thalaikattu holder of the Muslim Jamath Pallivasal, Valinakkam, he has right to question the order, passed against the Muslim Jamath Pallivasal, Valinakkam. Admittedly, the said Peer Mohammed Walliullah Dargah is part of Muslim Jamath Pallivasal, Valinakkam and thereby, there cannot be two wakfs. However, the Wakf Tribunal passed the impugned order as if the Peer Mohammed Walliullah Dargah is a separate Wakf contrary to the order dated 24.07.1998. On the sole ground, the impugned order passed by the 3rd respondent is set aside and the matter is remanded to the 3rd respondent. While re-considering the same, the 3rd respondent is directed to hear the petitioner as well as the Muslim Jamath Pallivasal, Valinakkam and the respondents and pass appropriate orders on merits.



W.P.No.26801 of 2004

WEB COPY

and in accordance with law, as expeditiously as possible. Till such time, the 1st respondent is directed to appoint the Board for maintaining the Pallivasal as well as the Dargah.

9. With the above directions, this Writ Petition is disposed of. No costs. Consequently, the connected writ miscellaneous petition is closed.

16.08.2024
(2/2)

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
sp

To

1.The Chief Executive Officer,
Tamil Nadu Wakf Board,
9th Street, Indira Nagar,
Madras – 600 020.

2.The Wakf Tribunal,
Ramanathapuram District,
Ramanathapuram.



WEB COPY



W.P.No.26801 of 2004

M.DHANDAPANI, J.

sp

W.P.No.26801 of 2004

16.08.2024
(2/2)



WEB COPY



W.P.No.26801 of 2004

W.M.P.No.33132 of 2019

in

W.P.No.26801 of 2004

M.DHANDAPANI, J.

This Writ Miscellaneous Petition has been filed seeking to substitute the respondents 3 to 7 herein/3rd parties as legal heirs of deceased 2nd respondent S.M.M.Abdul Salam as respondents 3 to 7 in the above writ petition in W.P.No.26801 of 2004, is ordered as prayed for.

16.08.2024

sp

($\frac{1}{2}$)

Note: Registry is directed to carry out the necessary amendment in the cause title.