



W.P.No.27730 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.27730 of 2018

K.M.Shahul Hameed

... Petitioner

Vs.

- 1.The Tamilnadu Wakf Board,
Rep. by its Chief Executive Officer,
No.1, Jawfar Srirang Street,
Vallal Seethagathi Nagar,
Behind Custom Office,
Chennai – 600 001.
- 2.The Chief Executive Officer,
Tamil Nadu Waqf Board,
No.1, Jawfar Srirang Street,
Vallal Seethagathi Nagar,
Behind Custom Office,
Chennai – 600 001.
- 3.The Superintendent of Waqf/Election Officer,
Office of Superintendent of Wakf,
Madurai and Ramnad District,
No.159/3, Therpasayanam Road,
Vellipattinam, Ramanthapuram – 623 504.
- 4.S.S.Mohamed Farooq
- 5.Munaf Basheer Ahamed
- 6.A.A.Mohammed Zuffi
- 7.K.M.Rafique Dawood
- 8.T.K.Naina Mohamed



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9.A.A.Mohamed Jamaludeen

10.Ilayangudi Nesavu Pattatai
Muslim Educational Association,
Represented by its President,
K.M.Rafique Dawood,
Having registered office at
No.11, Pakkir Rowther Street,
Ilayangudi – 630 702,
Sivagangai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents 1 to 3 to re-take possession of the schedule wakf and schedule Annexure – A properties directly under its management in conformity with the resolution No.13/08, under proceeding Na.Ka.No.6291/99/AA16, which is published in the Government Gazette No.3, dated 28.01.2009 and as recorded by the 3rd respondent in its proceeding dated 03.02.2009.

For Petitioner : Mr.S.H.Syed Anwar

For Respondents : Mr.G.Mohammed Aseef [R1 to R3]

ORDER

This Writ Petition has been filed by the petitioner seeking for a Writ of Mandamus, to direct the respondents 1 to 3 to re-take possession of the schedule wakf and schedule Annexure – A properties directly under its management in conformity with the resolution No.13/08, under proceeding Na.Ka.No.6291/99/AA16, which is published in the Government Gazette



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No.3, dated 28.01.2009 and as recorded by the 3rd respondent in its proceeding dated 03.02.2009.

2. The case of the petitioner is that, he is a member of Ilayangudi Nesavi Pattatai Thozhugai Medai Mosque (hereinafter referred to as wakf) at Ilayangudi, a wakf, which is morefully described in the schedule. The schedule wakf is possessed of various properties which is described in Annexure – A in the schedule and the schedule properties are in occupation of various persons including the respondents 4, 6 and 7, who are in occupations for meagre rents. On 29.10.2002, the 1st respondent board had conducted election for the office bearers of the Wakf based on the election officer's report and the proceedings No.6291/B2/SVG/1999 dated 13.12.2002 and as such appointed 9 members committee in managing the Wakf for the period from 27.10.2002 to 26.10.2005. On 19.06.2007, the petitioner obtained the proceedings of the District Registrar under Right to Information Act. Thereafter, the 1st respondent after enquiry by way of resolution bearing reference No.49/2007 dated 26.06.2007 ordered appointment of the 3rd respondent as election officer in conducting election for the wakf within a period of 2 months from the date of the order. The 1st respondent recommended the 3rd respondent to conduct election as per the



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circular bearing Na.Ka.No.6291/99/SVG/Aa2. On 07.02.2008, the 3rd respondent issued Election Notification for the wakf along with voters list and received objections and the 3rd respondent sent the same to the 1st respondent for clarification. Thereafter, on 11.04.2008, the 1st respondent rejected the objections and finalized the 622 members voters list as final and the same was affixed on the board. As per the order passed by this Court in W.P.No.4527 of 2008, the 1st respondent was directed to take over direct management of the wakf by removing the said S.S.Mohamed Farooq from the management of the wakf. The 1st respondent by way of proceedings bearing No.Na.Ka.No.6291/99/Aa16/SVG dated 24.12.2008 taken over management of the wakf from the said S.S.Mohamed Farooq terminating him as Managing Trustee and thereafter, on 28.01.2009, the appointed the 4th respondent as Executive Officer of wakf and published the same in the Government Gazette. On 03.02.2009, the 3rd respondent had received letter from the respondents 4 and 5 with regard to handing over possession of the wakf. However, on 12.03.2008, the respondents 4 to 8 along with their accomplice illegally grabbed the management of the School of the Wakf and manhandled the Executive Officer of the wakf when he questioned the illegal acts of the respondents 4 to 8. The respondents 4 to 8 through one Zahir Hussain, who is the brother of the 8th



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respondent lodged a false complaint on 12.03.2009 against the petitioner before the Ilayangudi Police. On 25.10.2010, the 9th respondent being under the influence of the 4th respondent illegally protected the 4th respondent and issued various fraudulent orders including the proceedings bearing Na.Ka.No.6291/Aa16/Sivagangai/99, dated 25.10.2010 appointing the 7th respondent and other accomplice of the respondents 4 to 8 as members of the managing committee of the 10th respondent society. On 11.01.2011, the petitioner acquitted from the false complaint given by the said Zahir Hussain vide order passed in C.C.No.73 of 2009 by the learned Judicial Magistrate Court, Ilayangudi and on 18.03.2015, the petitioner was also acquitted from the false complaint given by the 9th respondent in C.C.No.5391 of 2010 passed by the learned Metropolitan Magistrate, George Town, Chennai. Challenging the illegal acts of the private respondents, the petitioner had filed W.O.P.No.2 of 2016, which was successfully dragged by the respondents till date. The respondents 1 to 3 instead of taking actions against the respondents 4 to 8 and their accomplice, joined the hands in gloves with them and at their instance, repeatedly preparing false and fabricated voters list as per their instruction removing the name of the original members from the votes list, who are residing within the Mohala area of the wakf and prepared the voters list by



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enlisting their own members. Therefore, left with no other alternative, the petitioner has filed the present writ petition before this court.

3. Learned counsel for the petitioner submits that, taking advantage of the pendency of the W.O.P.No.2 of 2016 filed by the petitioner, the respondents 1 to 3 issued election notification dated 28.09.2018 based on the illegal voter lists which is similar to the list prepared for the election allegedly conducted for the year 2010 ignoring the genuine list prepared on 07.02.2008 by the respondents 1 to 3. Further, the entire machinery that is the 1st respondent and its officers including the sub-ordinate office totally failed and as such lost its credibility in holding the fiduciary capacity in protecting the public wakf from the unscrupulous persons and thus, only this Court interference will ensure the existence of the schedule wakf and its Annexure-A properties from being misappropriated in the hands of the respondents 4 to 8 and their accomplices. Accordingly, he prays for appropriate orders.

4. On the above contentions, this Court heard the learned counsel appearing for respondents 1 to 3 and perused the materials available on record.



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WEB COPY 5. It is brought to the notice of this court that by order dated 21.08.2024 in W.P.No.23848 of 2024, this Court had directed the conduct of the elections, the outcome of which is not known. Once the elections are conducted, it is for the elected body to act in accordance with law and no direction can be given for retaking possession of the properties with respondents 1 to 3. In the aforesaid backdrop, no specific direction can be given by this Court directing the respondents to retake possession of the properties as it is for the elected body, who had come out successful in the elections to decide on the same and no specific direction can be issued in this regard.

6. In such view of the matter, the present writ petition is dismissed granting liberty to the petitioner to work out his remedy in accordance with law.

19.09.2024

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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M.DHANDAPANI, J.

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To

- 1.The Chief Executive Officer,
No.1, Jawfar Srirang Street,
Vallal Seethagathi Nagar,
Behind Custom Office,
Chennai – 600 001.
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