



W.P.(MD)No.5894 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.09.2024

Pronounced on : 06.11.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.5894 of 2024

A.Mohammed Abdul Khader

... Petitioner

Vs.

1. The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai.
2. The Superintendent of Police,
Office of Superintendent of Police,
Sivagangai District.
3. The Inspector of Police,
Ilayangudi Police Station,
Sivagangai District.
4. The Waqf Inspector,
Sivagangai-Ramanathapuram Circle,
Sivagangai District.



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5. The Managing Committee,
Nesavupettai Shafi Jamath Mosque,
represented by its President
Ilayangudi Taluk,
Sivagangai District.

... Respondents

Prayer : This Writ Petition filed under Article 226 of Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondents 2 and 3 to consider the petitioner's representation dated 29.01.2024 and further direct the respondents 2 and 3 to give adequate police protection to take over the possession of Mohammed Thambi Waqf property comprised in old S.No.30/2, Ilayangudi Taluk, Sivagangai District based on the Se.Mu.Order No.17466/08/A3/SV dated 19.07.2023 passed by the first respondent.

For Petitioner	: M/s.Nagalakshmi for Mr.J.Pooventhera Rajan
For R1 & R4	: Mr.G.Chandrasekar
For R2 & R3	: Mr.E.Antony Sahaya Prabahar Additional Public Prosecutor
For R5	: Mr.Porkodi Karnan

ORDER

The Writ Petition has been filed, invoking Article 226 of the Constitution of India, directing the respondents 2 and 3 to consider the writ petitioner's representation dated 29.01.2024 and further direction to



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the respondents 2 and 3 to give adequate police protection to take over the possession of Mohammed Thambi Waqf property comprised in old Survey No.30/2, Ilayangudi Taluk, Sivagangai District based on the order dated 19.07.2023 passed by the first respondent.

2. The case of the writ petitioner is that the writ petitioner's great grandfather T.O.Mohammed Thambi endowed 1.75 acres of property comprised in Survey No.30/2 of Ilayangudi Taluk, Sivagangai District as Waqf property and appointed his daughter Mohammed Mariath Beevi as Mutawalli of the above said Waqf property under a registered settlement deed dated 20.04.1948, that the object of the Waqf is to bury the founder and construct gori and light the same and also construct an accommodation for sadus and do prayers and to carry out religious practices, that the said T.O.Mohammed Thambi directed his daughter and her descendants to reside in the remaining portion of the property and to maintain the Waqf out of the income from it, that the Waqf Board vide proceedings dated 22.11.1966 directed the Managing Committee of Nesavupettai Shafi Jamath Mosque/fifth respondent herein to take charge of the said Waqf property and directed to register the same in Waqf Board



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since the said Mohammed Mariath Beevi acted against the interest and objects of the T.O.Mohammed Thambi Waqf and also refused to register the same with the Waqf Board, that the said Mohammed Mariath Beevi filed a suit for declaration and injunction before the Subordinate Court, Ramanathapuram in O.S.No.84 of 1967 but the suit was dismissed vide judgment dated 11.11.1968 with findings that the above said property was a Waqf and not a gift in favour of the daughter by the said T.O.Mohammed Thambi, that the said Mohammed Mariath Beevi has preferred an appeal in A.S.No.64 of 1969 and the same came to be dismissed by the District Court, Ramanathapuram and that subsequently the said Mohammed Mariath Beevi preferred a review petition before the Waqf Board and the same was also dismissed on 23.04.1977 and directed that the said Waqf should be treated as a separate one in the name of T.O.Mohammed Thambi Waqf.

3. It is the further case of the writ petitioner that the fifth respondent has been in possession and in charge of the said Waqf property, that since the fifth respondent had also acted against the interest and object of the T.O.Mohammed Thambi Waqf by allowing to conduct adal padal



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programmes in the Waqf property, the writ petitioner filed a petition before the Waqf Board to appoint him as a hereditary Mutawalli as he is the great grandson of the said T.O.Mohammed Thambi but the said petition was dismissed vide order dated 21.07.2018 with direction to the fifth respondent not to allow such programmes in the Waqf property, that the writ petitioner preferred an application before the Tamil Nadu Waqf Tribunal in O.A.No.70 of 2018, challenging the order passed by the Waqf Board and also to declare the writ petitioner as a hereditary Mutawalli of the said property, that the Waqf Tribunal partly allowed the writ petitioner's application vide order dated 24.03.2023 and thereby set aside the order of the Waqf Board and further directed the Tamil Nadu Waqf Board to register T.O.Mohammed Thambi Waqf as a separate Waqf and prepare a proforma report showing Rule of Succession to the post of Mutawalli as hereditary and to conduct a detailed enquiry among the legal representatives of the late T.O.Mohammed Thambi and appoint Mutawalli for the said Waqf by following the procedures, that the first respondent conducted detailed enquiry and appointed the writ petitioner as a hereditary Mutawalli of the above said property for a period of three years with effect from 14.06.2023 to 13.06.2026 vide order dated 19.07.2023,



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that the writ petitioner has thereafter approached the fifth respondent several times in person and also through post and requested to hand over the possession of the said Waqf property as he was appointed as Mutawalli but the fifth respondent and its members refused the same and threatened him not to interfere in the said property, that the writ petitioner has preferred a representation dated 29.01.2024 before the respondents 2 and 3 to take necessary action and to provide adequate police protection to take over the possession of the said Waqf property but no action was taken till now and that therefore the writ petitioner is constrained to file the present writ petition seeking direction for police protection invoking Article 226 of the Constitution of India.

4. The fifth respondent has filed a counter affidavit stating that one T.Uthuman had played a vital role in the administration of collecting funds from the local people and traders and for construction of Madarassa and Mosque, that the said T.Uthuman had purchased an extent of 1.75 acres at Salaiyur, Ilayangudi in his name during 1920, that one T.O.Mohammed Thambi, son of the said Uthuman had executed a gift deed in the nature of Waqf deed gifting his property to his daughter Mohammed Mariath Beevi



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vide document dated 20.04.1948 mainly for carrying out the activities such as to conduct Fathiyah, to recite quron, to lit lamps in his grave, to bury him in the said property and construct a musaffirkhana and to carry out other pious and charitable activities, that the said Mohammed Mariath Beevi, after the death of the said T.O.Mohammed Thambi, had treated the property as her own property and tried to change the character of the property, that the fifth respondent, which was in the administration of the above said property, had filed an application before the first respondent to appoint the fifth respondent as Mutawalli of the said property, that the first respondent had removed the said Mohammed Mariath Beevi as Mutawalli Trustee as she had acted against the interest of the Waqf and directed the fifth respondent to take charge of the Waqf property and administer the same vide order dated 21.11.1966, that the said Mohammed Mariath Beevi had filed a suit in O.S.No.84 of 1967 before the Subordinate Court, Ramanathapuram for setting aside the order passed by the first respondent and the suit was dismissed, that the said Mohammed Mariath Beevi had preferred an appeal in A.S.No.64 of 1969 and the same was also dismissed by the District Court, Ramanathapuram, that thereafter the said Mohammed Mariath Beevi had filed a review application before the first



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respondent and the same was also dismissed on 23.04.1977 and that thereafter the fifth respondent has been continuously administering the Waqf till date.

5. In the counter affidavit, the fifth respondent has further stated that the writ petitioner claiming himself to be the descendant of the said Mohammed Mariath Beevi raised some allegations before the first respondent that some cultural events are being conducted in the Waqf property and he had sought for handing over the same to him, that the first respondent had dismissed the application of the writ petitioner vide order dated 19.09.2018 and directed the fifth respondent not to permit any cultural events in the Waqf property, that the writ petitioner had filed an application in O.A.No.70 of 2018 before the Tamil Nadu Waqf Tribunal challenging the said order dated 19.09.2018 and to declare him as hereditary Mutawalli of the Waqf property, that the Waqf Tribunal had set aside the order of the first respondent and directed the Waqf Board to conduct an enquiry among the legal heirs of the said T.O.Mohammed Thambi and to appoint a Mutawalli from the descendants of the said T.O.Mohammed Thambi and also directed to create a proforma in the



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name of T.O.Mohammed Thambi Waqf vide order dated 24.03.2023, that the Waqf Tribunal had passed the said order without considering the fact that a competent civil decree had been passed in the year 1967 itself and hence, the fifth respondent had filed a revision in C.R.P.No.2000 of 2023 before the Madras High Court and the same is pending now, that the writ petitioner, after entering into appearance, had approached the first respondent to conduct enquiry and the first respondent had also in a hurried manner passed an order dated 19.07.2023 and appointed the writ petitioner as a hereditary Mutawalli, that the said order has been passed without issuing any notice to the respondents and without following the principle of natural justice, that they have also filed an O.A. before the Tamil Nadu Waqf Tribunal challenging the order of the first respondent dated 19.07.2023, that the present writ petition for implementing the order of the first respondent is not at all permissible, that the main contention of the fifth respondent is that the order of the Waqf Tribunal dated 24.03.2023 is bereft of material particulars and the same is liable to be set aside and that therefore the present writ petition is premature one and the same is liable to be dismissed.



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6. It is pertinent to note that the writ petitioner has filed an application in O.A.No.70 of 2018 before the Tamil Nadu Waqf Tribunal under Section 83(1) and (2) of the Waqf Act for setting aside the order of the first respondent dated 21.07.2018 and to declare the writ petitioner as a hereditary Mutawalli of T.O.Mohammed Thambi Waqf, Sivagangai District. The first respondent as well as the fifth respondent have filed their counter statement raising objections. The Tribunal, after hearing both sides, has passed an order dated 24.03.2023 partly allowing the application and thereby setting aside the order of the first respondent dated 21.07.2018 as prayed for and dismissing the relief with regard to the declaration. The Tribunal has further directed the first respondent to register the T.O.Mohammed Thambi Waqf, Ilayangudi Taluk, Sivagangai District as a separate Waqf and prepare a proforma report showing the “Rule of Succession” to the post of Mutawalli as 'hereditary', conduct a detailed enquiry among the legal representatives of the Waqif/founder namely late T.O.Mohammed Thambi and appoint Mutawalli for the said Waqf by following the procedures prescribed under the Waqf Act, 1995. In pursuance of the order passed by the Tribunal, the first respondent has passed resolution appointing the writ petitioner as Mutawalli and directed



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the fifth respondent Management to hand over the T.O.Mohammed Thambi Waqf and its properties vide order dated 19.07.2023.

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7. The main contention of the writ petitioner is that since the direction issued by the first respondent vide order dated 19.07.2023 was not complied with, the writ petitioner approached the fifth respondent to hand over the Waqf and its properties several times but they have refused to hand over the same but on the other hand, they have threatened the writ petitioner not to interfere with the said property.

8. As already pointed out, the fifth respondent in their counter has taken a stand that the order of the Waqf Tribunal is bereft of particulars and the same is liable to be set aside. Whether the order passed by the Tribunal is bereft of particulars and the same is liable to be set aside or not is the aspect that cannot be gone in the present proceedings. Moreover, even according to the fifth respondent, they have filed a revision in C.R.P.No.2000 of 2023 and the same is pending before the Madras High Court. As rightly contended by the learned counsel appearing for the writ petitioner, it is not the case of the fifth respondent that the order of the



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Waqf Tribunal dated 24.03.2023 had been stayed by the High Court.

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9. The fifth respondent has also further stated that they have also filed an application in O.A.No.70 of 2018 before the Waqf Tribunal challenging the order of the first respondent dated 19.07.2023. The fifth respondent has not even furnished the case particulars and whether any interim order came to be passed by the Tribunal.

10. The learned counsel appearing for the writ petitioner would submit that the writ petitioner is the descendant of T.O.Mohammed Thambi, that though the said T.O.Mohammed Thambi has appointed his daughter Mohammed Mariath Beevi as Mutawalli, she has acted against the interest of Waqf and hence, she was removed and the fifth respondent was directed to take charge of the Waqf property and that the civil proceedings taken by the said Mohammed Mariath Beevi were ended against her and on that basis, the fifth respondent was allowed to be in charge of the Waqf property.

11. As rightly contended by the learned counsel appearing for the



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writ petitioner, the Waqf Tribunal has specifically observed that just because the fifth respondent continues to manage the Waqf in question pursuant to the order of the Waqf Board dated 21.11.1966 and 23.04.1977, it does not mean that the said orders are eternal and also directed the Waqf Board to conduct a detailed enquiry and to frame a scheme for the said Waqf showing the Rule of Succession can only be hereditary.

12. As rightly contended by the learned counsel appearing for the writ petitioner, though the Tribunal has passed the order dated 24.03.2023 and in pursuance of the same, the first respondent has passed the order dated 19.07.2023, the fifth respondent has not chosen to comply with the directions of the first respondent.

13. In the absence of any stay granted by the competent Court, the fifth respondent is duty bound to comply with the directions of the first respondent as the first respondent alone had handed over the Waqf and its properties to the fifth respondent.

14. The learned Additional Public Prosecutor appearing for the



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respondents 2 and 3 would submit that on the basis of the representation given by the writ petitioner, enquiry was conducted on 01.03.2024 and after coming to know that the writ petitioner has to approach the Revenue Department, directing him to approach the Revenue Department, the complaint was ordered to be closed.

15. The learned counsel appearing for the respondents 1 and 4 would submit that despite the specific orders of the Tribunal and the proceedings of the first respondent, the fifth respondent has wantonly and purposely refused to comply with the directions and that the police authorities may be directed to give adequate police protection for taking possession of the Waqf and its properties.

16. Considering the above facts and circumstances and taking note of the submissions made on either side, the third respondent is directed to issue notice to the writ petitioner as well as to the fifth respondent and take a decision, taking note of the orders passed by the Tamil Nadu Waqf Tribunal and the first respondent, within a period of one week from the date of receipt of a copy of this order.



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17. With the above direction, this Writ Petition stands disposed of.

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No costs.

06.11.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
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To

1. The Superintendent of Police,
Office of Superintendent of Police,
Sivagangai District.
2. The Inspector of Police,
Ilayangudi Police Station,
Sivagangai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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**Pre-Delivery Order made in
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Dated : 06.11.2024