



W.P(MD)No.7707 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.7707 of 2024
WMP(MD) Nos.7051 & 7053 of 2024

1.V.S.T.Nazeer
2.V.S.T.Shamsul Alam
3.V.S.T.Mohideen Sheik Mansoor ... Petitioners

Vs

1.The Tamil Nadu Wakf Board,
Rep.Through its Chief Executive Officer,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai.

2.The Superintendent of Wakf,
Tirunelveli.

3.M.R.Mohideen Gnaniyar ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the original impugned order of the 1st respondent in No.VI-3(a) /18/2024 published in Tamil Nadu Gazette Notification dated 28.02.2024 and quash the same.



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For Petitioners : Mr.H.Arumugam
For R1 & R2 : Mr.Kishore Ram for
M/s.R.B. Law Associates

ORDER

The petitioners are the Huqdars of a private Waqf, namely, Hammempalli Madarasa Waqf Alal Aulad, situated at Melapalayam, Tirunelveli. As against the order passed by the first respondent in the impugned notification dated 28.02.2024 that this private Waqf has been taken over for direct management of Tamil Nadu Waqf Board from 13.02.2024, the petitioners have filed this writ petition.

2.The learned counsel appearing for the petitioners submits that this Waqf was established by his forefather one V.S.T. Thamusthaseen Tharaganar and he has established this Waqf for the benefit of his family and also for pious and performance of charities to a sum of Rs.4278.80/- out of the income from the properties and



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with a specific direction to the lineal descendants of his three sons be the beneficiaries of the Waqf and shall enjoy the property after meeting the expenses for the said charities. According to the petitioners, these three petitioners are administering the Waqf as Huqdars.

3.The learned counsel further submits that the third respondent, who belongs to another Jamath has attempted to encroach upon the petitioner's property, for which one of the petitioners has filed a writ petition before this Court in W.P(MD) No.19547 of 2016 and the same was allowed in his favour. The petitioners have also filed a civil suit in O.S.No.226 of 2016 as against the third respondent, before the I Additional District Munsif Court, Tirunelveli for the relief of recovery of possession. Even then, the third respondent has again attempted to interfere with the administration and therefore, another writ petition was filed in W.P(MD) No.19254 of 2023 and the same was disposed of with a direction to remove the construction put up by the third respondent.



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In this context, at the instance of the third respondent, the respondent Waqf Board issued a notification, taking over the administration of the Waqf without providing an opportunity to these petitioners and in a cryptic manner.

4.The learned counsel has relied on the order passed by this Court in W.P.No.1500 of 1964 and submits that when a similar attempt was made by the Superintendent of Waqf Board of Madras in the year 1964, this Court has passed an order on 26.08.1968 that this Waqf is a private Waqf and the Board's power is to an extent of Rs.4278.80 alone. While so, the respondent is not having any power to interfere with the administration and to take over the administration of the Waqf. The relevant paragraphs from the above order is extracted as under:-

“The petitioner who is the Muthavalli of a Waqf called V.S.Thamus Thaseem Hameem Palli Madarasa, Melapalayam, Tirunelveli District, has filed this writ petition, for the issue of a writ of Mandamus directing the respondent, the State Waqf Board to forbear from



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further proceedings with its action dated 17th August, 1964, calling upon the petitioner to produce the entire upto 1963-1964. The case of the petitioner is that under the original wakf – nama deed, only a sum of Rs.4278-80 has been provided for the purpose of religious charitable and pious obligations and that the Wakf Board is not entitled to call upon the petitioner to pay the entire income derived from the wakf estate.

Recently, I have held in cases of this nature O.M.A BHAIMLA V.Madras State Wakf Board (1968 (1) MLJ 410 that the Wakf Board can call upon the Muthaallis of the respective to pay contribution only in respect of properties set apart for pious religious and charitable purposes in the Wakf Deed.

Therefore, following the decision mentioned above, the impugned order is quashed. The Wakf Board is only entitled to call upon the petitioner to produce the income and accounts only in respect of the sum mentioned in the Wakf name deed, beyond that the Board has no jurisdiction.”



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5.The learned counsel appearing for the Waqf Board submits that this is only a notification and the Board is yet to take a decision.

6.In view of the earlier order passed by this Court in W.P.No.1500 of 1964, dated 24.08.1968, this writ petition is allowed. The impugned Notification insofar as this Waqf is set aside and this issue is remanded back for fresh consideration by the respondent Board, after providing an opportunity to the petitioners and take any decision in the light of the earlier order passed by this Court in W.P.No.1500 of 1964, dated 24.08.1968. No costs. Consequently, connected Miscellaneous petitions are closed.

27.03.2024

NCC: Yes/No
Index:Yes
Internet:Yes
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B.PUGALENDHI, J.

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