



W.P.(MD) No.17150 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

**W.P.(MD) No.17150 of 2024
and
W.M.P.(MD) Nos.14788 and 14789 of 2024**

Haji A.G.Syed Mohideen

... Petitioner

/vs./

- 1.The Tamil Nadu Waqf Board,
rep by its Chief Executive Officer,
No.1, Jaffar Syrang Street,
Vallal Seethakatih Nagar,
Chennai.
- 2.The Superintendent,
The Tamil Nadu Waqf Board,
No.1, Jaffar Syrang Street,
Vallal Seethakatih Nagar,
Chennai.
- 3.The Superintendent of Waqf,
Tirunelveli Division,
Khader Owlia Pallivasal Complex,
Palayamkottai, Kula Vanikarpuram,
Tirunelveli District.



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4.The Inspector of Waqf,
Tirunelveli Division,
Khader Owlia Pallivasal Complex,
Palayamkottai, Kula Vanikarpuram,
Tirunelveli District.

5.Moulavi M.A.Mohammed Yousuf

6.V.S.Kamarudeen

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records relating to impugned resolution No.7, Inam No.50/24 in Na.Ka.No.18139/22/A1/Thi.Veli dated 13.02.2024 of the respondent 2 herein in so far restricting the tenure of Muttawalli as 3 years alone.

For Petitioner : Mr.T.Mohan, Senior Counsel for
Mr.T.Pon Ramkumar

For R1 to R4 : Mr.K.Jeyamohan
Standing Counsel

For R6 : Mr.Niranjan S.Kumar

ORDER

The challenge in this writ petition is to the original order of appointment of the petitioner as Mutawalli insofar as it restricts the time period for 3 years and the Board resolution of the first respondent directing the fourth respondent to



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issue a publication calling for details of the persons, who would claim lineage in respect of the Wakf of which the petitioner is the Mutawalli.

2. Heard Mr.T.Mohan, learned Senior Counsel for Mr.T.Pon Ramkumar, learned counsel for the petitioner, Mr.K.Jeyamohan, learned Standing Counsel for the respondents 1 to 4 and Mr.Niranjan S.Kumar, learned counsel for the sixth respondent.

3. The learned senior counsel appearing for the petitioner would submit that the petitioner was appointed as Mutawalli to the Madarasa Hidayathul Islam by proceedings dated 10.07.2008 retrospectively with effect from 10.11.2007 to 09.11.2010 for a period of 3 years. He would further submit that after the said period, he had been continued to act as Mutawalli as it is the general practise that when the appointment of Mutawalli to the Wakf is by hereditary, such appointment is made till the life time of Mutawalli or if the Mutawalli expresses his inability to continue for medical or personal reasons or his disqualification or removal. In this case, the petitioner would submit that the petitioner continues as



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Mutawalli and had been recognized by the Wakf Board by receiving contributions as of the stage.

4. The petitioner would place reliance upon the judgment of the Division Bench of this Court made in W.A.(MD) No.1310 of 2024 dated 07.08.2024 (*The Chief Executive Officer Vs. G.Syed Akbar Hasan and another*) and would contend that the Division Bench had held that the very concept of hereditary Mutawalliship shall always be for life and an order limiting the period of appointment is bad. Hence, he would submit that the period limited in the order of appointment is liable to be set aside.

5. He would further submit that there has been complaints against the petitioner from disgruntled persons alleging that the petitioner does not come within the lineage to be appointed as Mutawalli. He would submit that the father of the petitioner was also appointed as Mutawalli and thereafter, the petitioner was appointed. Such appointment was made in the year 2008 and the petitioner had been functioning as Mutawalli till date. However, the disgruntled persons had sent a representation only recently trying to discharge the petitioner from the



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Mutawalliship and to grab the same by illegal means. When the petitioner had been continuing to be representing the Wakf as Mutawalli, it was unnecessary for the first respondent Board to direct the fourth respondent to issue notification for finding out the lineage of the propounder of the Wakf. Such resolution itself is *ex facie* illegal and therefore would seek to set aside the resolution made by the Board.

6. Countering his argument, Mr.K.Jeyamohan, learned standing counsel for the respondents 1 to 4 would submit that a complaint had been received indicating that the family members of the propounder of the Wakf had entered into the partition in the year 1929. The party, who was given the Mutawalliship of the Wakf under the said partition deed, had died issueless and therefore, the hereditary assumption of office would revert back to the family in general and that neither the petitioner nor his father belonged to the said lineage.

7. He would further submit that various complaints have been received against the petitioner in the mismanagement of the Wakf and the Board has also proposed to initiate appropriate proceedings under Section 54 of the Wakf Act,



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1995. Since the complaint had been received alleging the lineage of the petitioner to claim hereditary Mutawalliship, the Board had resolved to issue a notification to call for any claims of lineage with regard to the propounder of the Wakf and thereafter to take a decision of the same. Therefore, he would submit that there is no infirmity in the resolution passed by the Board.

8. The learned counsel appearing for the 6th respondent would supplant the arguments made by the learned standing counsel for the respondents 1 to 4 by contending that it is well within the powers of the Wakf Board to conduct an enquiry in the manner known to law and take appropriate action if the allegations in the complaint are justified.

9. He would further submit that the petitioner herein had manipulated the records and had transferred the property standing in the name of the Wakf in his name in an attempt to grab the property that was dedicated to the Wakf. He would submit that on that ground itself the petitioner had become disqualified to continue as Muthawalliship and therefore, there is no error in the decision of the Board to call for claims of lineage to the propounder of the Wakf.



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10. I have considered the rival submissions made by the learned counsel on either side.

11. Two issues arise in the present writ petition ie., a) whether the time period indicated in the order of appointing the petitioner as Mutawalliship for a period of 3 years is valid and b) whether the Board resolution passed by the first respondent can be sustained.

Issue No.1

The learned senior counsel appearing for the petitioner had relied upon the judgment of the Division Bench of this Court made in ***W.A.(MD) No.1310 of 2024 dated 07.08.2024 (referred supra)***. In the aforesaid judgment the Division Bench had categorically held that the hereditary Mutawalliship shall always be for life and the order limiting the period is also bad. For better appreciation, relevant para is extracted hereunder:

“4. We have been taken through the order of the Waqf Tribunal also. We are unable to approve the order of the Tribunal inasmuch it



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runs counter to the very concept of Hereditary Mutawalliship.

Hereditary Mutawalliship shall always be for life. Once it is found that the order limiting the period of appointment is bad, there is no question of extension. If there is no question of extension, the order of the Waqf Tribunal cannot be enforced.”

12. The position of law had not been disputed by the learned counsel appearing for the respondents. Further, the petitioner had also substantiated by filing the records that even as if this stage, he had been continuing as Mutawalliship, which would only lead me to a conclusion that the Wakf Board had recognized the petitioner's right to continue the Mutawalliship for life. In view of the judgment of the Division Bench of this Court, the time period indicated in the order of appointment cannot be sustained and the petitioner having been appointed as hereditary Mutawalli is entitled to continue for his life.

Issue No.2

When the petitioner had been appointed as hereditary Muthawalli, there is no necessity for the Board to call for claims from individuals for lineage to the



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propounder of the Wakf. The said exercise is a useless formality, since the Muthawalli had been appointed to the Wakf. If any action is initiated against the petitioner, the current Muthawalli and he has been removed after following the provisions of Section 64 of the Act, then to find out the persons of lineage of the propounder would be a useful exercise. The complainant had a right to challenge the appointment of Muthawalliship before the Wakf Tribunal, which he had not made. Further, when such complaint had been received, the Wakf Board would have to conduct an enquiry and if the Board comes to a conclusion, it is for the Board to take appropriate action. When such action has been initiated against the petitioner, then only the Board could take a decision to find out the lineage as sought to be made now.

13. In view of the aforesaid findings and reasonings, the following directions are issued:-

i) The period mentioned in the order of appointment dated 10.07.2008 is alone set aside. In all other aspects, the said order shall remain valid.



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ii) The Board resolution dated 13.02.2024 is also set aside with liberty to the Board to make an enquiry as it deems fit on the compliant made by the private individuals.

14. With the aforesaid directions, the Writ Petition stands disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes / No

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