



W.P.(MD)No.21738 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.09.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.21738 of 2024

and

W.M.P.(MD)Nos.18360 and 18362 of 2024

R.Doulath Hussain Khan

... Petitioner

Vs.

1.The Chief Executive Officer,
The Tamil Nadu Waqf Board,
Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 001.

2.The Waqf Inspector,
Office of the Waqf Superintendent,
8/124, Quaid-e-millath Street,
2nd Floor, Palakarai,
Trichy – 620 008.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings of the second respondent in Na.Ka.G.S: 162/Thiru/VaAa/Trichy/2024 dated 02.09.2024 and quash the same as illegal and consequently forbear the respondents from holding any enquiry in respect of the petitioner's Muttawalliship or administration.



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For Petitioner : Mr.M.Mahaboob Athiff

For Respondents : Mr.S.A.Ajmal Khan

ORDER

The present Writ Petition is filed challenging the impugned notice dated 02.09.2024, whereby the petitioner who is a Mutawalli of the subject Waqf is called upon by the second respondent for enquiry on 10.09.2024, on the premise that the impugned action is beyond and in excess of jurisdiction of the second respondent.

2. It is submitted by the learned counsel for the petitioner that the impugned notice makes reference to certain complaints/representations made against the Mutawalli which prompted the issuance of the impugned notice.

3. It is submitted by the learned counsel for the respondents that the complaint which has not been disclosed to the petitioner contains allegation of mismanagement and it is on the basis of the complaint / representation made by Manapparai Islamia Ilaignargal Urimai Meetpukuzhu (மணப்பாறை இஸ்லாமிய இளைஞர்கள் உரிமை மீட்புக்குழு and another person viz.,



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A.Mohammed Kasim that the impugned proceedings are issued.

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4. It is submitted by the learned counsel for the petitioner that the Inspector does not have any authority whatsoever to conduct any enquiry in the case of mismanagement or to examine any complaints/representations against Mutawalli. It was thus submitted that the impugned notice is wholly bad for want of jurisdiction.

5. To the contrary, it was submitted by the learned counsel for the respondents that the enquiry notice was only pursuant to and on the basis of the representation /complaint made by the Manapparai Islamia Ilaingargal Urimai Meetpukuzhu and another person viz., A.Mohammed Kasim.

6. It is trite law that jurisdiction cannot be conferred by consent. Mere submission of representation to the authority would not confer on such authority, jurisdiction to examine and act on such representation, unless and until power is conferred by the statute on such authority to carry out enquiry of the nature, which it proposes or which the representation necessitates. It may be relevant to bear in mind that it is trite law that jurisdiction cannot be conferred by consent, waiver or acquiescence.



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7. To a pointed question whether there is any provision which empowers/ enables the Inspector to call for or issue notice for enquiry of the charges/allegations of mismanagement of Mutawalli by the Inspector, the learned Standing Counsel was unable to point out any such provision, nor show valid delegation of such power to the Inspector by an appropriate authority.

8. In view thereof, the impugned proceedings dated 02.09.2024 is set aside. However, the learned counsel for the respondents at this stage would request that the material before the Inspector of Waqf may be permitted to be transmitted to the appropriate authority. This Court is not inclined to express any opinion on the above request and it is open to the authority concerned to proceed in accordance with law.

9. Accordingly, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

11.09.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr



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To:

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MOHAMMED SHAFFIQ, J.

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