



W.P.(MD)No.22271 of 2024

WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON : 06.11.2024

DELIVERED ON : 04.12.2024

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD)No.22271 of 2024
and
W.M.P.(MD)Nos.18833 and 18835 of 2024

K.Abbas Ali

... Petitioner

vs.

- 1.Tamil Nadu Wakf Board,
through its Chairman,
Wakf House, No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai 600 001.
- 2.The Chief Executive Officer,
Tamil Nadu Wakf Board,
Wakf House, No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai 600 001.
- 3.The Superintendent of Waqfs,
Madurai Zone, No.1 Town Hall Road,
Mosque Building, 2nd Floor,
Madurai 625 001.



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4.The Superintendent of Waqfs,
Dindigul.

5.The Inspector of Waqf,
Theni District.

6.Haji A.Abbas

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records relating with the order of the 1st respondent, in SI.No.11 Inam No.123/2024 vide proceedings in Na.Ka.No.14684/02/Aa8/Dhigal dated 02.07.2024 and quash the same as it is illegal and in consequence to direct the 1st respondent to appoint the petitioner as hereditary Muthawalli of Kattunaina Darga Waqf and Ashurkhana or Pathunombu Chavadi Waqf.

For Petitioner : Mr.R.Suriya Narayanan

For R1 to R5 : Mr.S.A.Ajmal Khan

For R6 : Mr.M.M.I.Khaleel

ORDER

The challenge in this writ petition is to the order passed by the first respondent in his proceedings in Na.Ka.No.14684/02/Aa8/Dhigal dated



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02.07.2024 and seeking for a direction to the first respondent to appoint the petitioner as hereditary Muthawalli of Kattunaina Darga Waqf and Ashurkhana or Pathunombu Chavadi Waqf, the above writ petition has been filed.

2. Heard Mr.R.Suriya Narayanan, learned counsel for the petitioner, Mr.S.A.Ajmal Khan, learned counsel for the respondents 1 to 5 and Mr.M.M.I.Khaleel, learned counsel for the 6th respondent.

3. The learned counsel for the petitioner would submit that the petitioner's paternal grandmother had created a Wakf for conducting Pookuli function and dedicated certain properties. The Wakf had been named as Kattunainar Pallivasal and Durga. A proforma report maintained by the Official respondents indicates that the Rule of Succession to the Office of Mutawalli is hereditary. His father was appointed as Mutawalli and continued to hold the office of Mutawalli till his demise on 15.04.1987.

4. After the death of the petitioner's father, two individuals tried to interfere with the possession of the property of Wakf claiming that they have been



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appointed as President of Pallivasal, against whom the petitioner's mother had instituted a suit in O.S.No.839 of 1988, in which the said two individuals had filed a memo to submit a decree and thereafter the property of the Wakf is in possession of the petitioner, but however the sixth respondent herein was appointed as Mutawalli on 31.03.2022. On being appointed as Mutawalli, the 6th respondent had acted against the interest of the Wakf, had removed the trees standing in the Wakf properties. Hence, the petitioner's brother who was line in succession, challenged the order of appointment of the sixth respondent and also made a representation to take action against the 6th respondent. As no action was initiated, the petitioner's brother had moved this Court in a writ petition in W.P. (MD) No.15832 of 2019 in which direction was issued to consider the representation of his brother. Thereafter, an enquiry had been conducted by the second respondent and he had forwarded a report to the first respondent to pass final orders. However, the same is still pending. The said report also indicates that the petitioner is also entitled to be appointed as Mutawalli, as he stands in the line of succession and his brother had also passed away.



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5. The petitioner had filed a writ petition in W.P.(MD) No.29890 of 2023 to direct the first respondent to pass final orders pursuant to the report filed by the second respondent dated 01.08.2023 and the said writ petition was also disposed of on 12.08.2024. However, in the interregnum, the first respondent had conducted an enquiry, wherein he had called upon the petitioner, his brothers, sisters, the 6th respondent and one other third party, who also claims hereditary Mutawalliship. Based upon the enquiry conducted, a resolution had been made by the Board to get legal opinion for framing a Scheme in respect of the Kattunainar Pallivasal and Durga along with three other Wakfs.

6. He would submit that when the proforma itself indicates that the appointment of Mutawalliship is only by hereditary, there is no question of framing any Scheme for appointment including the appointment of Mutawalli. He would submit that the framing of such Scheme would be contrary to the dedication made to the Wakf and the intention of the propounder of the Wakf. Hence, he had challenged this resolution which according to him is illegal. Hence, he would pray this Court to quash the resolution dated 02.07.2024.



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7. Mr.S.A.Ajmal Khan, learned counsel appearing for the respondents 1 to 5 would submit that the enquiry had been initiated on the application of the petitioner's brother. The final orders are yet to be passed in the said application. In the interregnum, in view of the various complaints as regards to the management of the Kattunainar Pallivasal and Durga, notice had been issued by the second respondent and an enquiry had also been conducted. Based upon the enquiry report, after hearing the parties concerned, it was decided by the first respondent and a resolution was also passed to get the legal opinion and thereafter proceed to frame a Scheme based upon the legal opinion. Even before the legal opinion had been obtained, the petitioner had approached this Court. He would submit that the first respondent Board would only proceed after obtaining the legal opinion. Therefore, the writ petition is premature.

8. The learned counsel for the 6th respondent would submit that after the death of the father of the petitioner in the year 1987, a Management Committee was appointed to manage the Trust and presently the 6th respondent has been carrying out the responsibilities of Mutawalliship. He would further submit that the second respondent had no authority whatsoever. However, the second



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respondent can file a report to the first respondent and it is only the first respondent, who can appoint a Mutawalli. When there is a question of dispute to the Office of Mutawalliship, the petitioner cannot claim himself to be appointed as Mutawalli. Further, in the absence of a Wakf nama and that when the practise of hereditary Mutawalliship has not been in existence, the petitioner cannot maintain his claim and therefore, he would submit that the writ petition is not maintainable and he has to approach only the Wakf Tribunal to establish the right of the Mutawalliship. Hence, there is no error in the resolution issued by the first respondent to frame a Scheme for administration of the Wakf.

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

10. The proforma report of the Kattunainar Pallivasal and Durga indicates that the Rule of succession is by hereditary for holding the Office of Mutawalli. In that context, it will be useful to refer to the judgment of this Court in a batch of writ petitions dated 19.04.2023 made in W.P.(MD) Nos.13695 of 2020 and etc., ***(Mohammed Yusuf and others Vs. The Tamil Nadu Waqf Board and another)***.



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11. The learned Judge of this Court after analyzing the various factors in detail had finally concluded that when the mode of appointment had been set out in the Wakf deed/proforma or custom followed in appointing the Mutawalli, it was not open to the Board or CEO to change the mode of appointing a Mutawalli. In the said case, when elections were sought to be conducted for Mutawalliaship of a Wakf, which had the Rule of succession indicating the proforma as hereditary, the learned Judge had set aside the decision to conduct the elections.

12. As already indicated, the proforma of the Trust indicates that the Rule of succession to the Office of the Mutawalli is by hereditary. When that be so, only persons in the line of succession could be appointed as Mutawalli and no other third party, who will not fall within the line of succession, would be entitled to hold the Office of Mutawalli with regard to the Wakf.

13. In the present case, a resolution had been made by the first respondent to frame a Scheme to the Wakf, which, in my view, cannot be made firstly in view of the fact that the proforma indicates that the Mutawalliship could only be by hereditary and secondly as held by the Court in the judgment (*referred supra*), the



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authority under the Act does not have any authority to choose another mode of selection/election for filling up the Office of Mutawalliship.

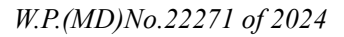
14. In view of the aforesaid findings and reasonings, I am inclined to set aside the resolution impugned as far as Kattunainar Pallivasal and Durga is concerned.

15. In fine, the Writ Petition stands allowed and the resolution dated 02.07.2024 in respect of Kattunainar Pallivasal and Durga alone is set aside. The respondents are directed to dispose of the application pending as against the 6th respondent within a period of 12 weeks from the date of receipt of a copy of this order. The first respondent shall comply with the directions issued on the enquiry that had been initiated as against the 6th respondent as indicated above. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Speaking : Yes / No
Internet : Yes / No
Index : Yes / No
NCC : Yes / No
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04.12.2024

9/11



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through its Chairman,
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K.KUMARESH BABU, J.

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Order made in
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