



C.R.P.No.93 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2025

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.93 of 2025 &
CMP.No.807 of 2025

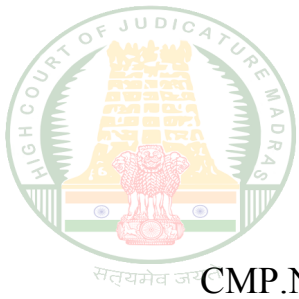
A.Ali Akbar

.. Petitioner

Versus

- 1.The Tamil Nadu Waqf Board,
Rep. by its Chief Executive Officer,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar, Chennai – 1.
- 2.The Chief Executive Officer,
Tamil Nadu Waqf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar, Chennai – 1.
- 3.The Waqf Superintendent/Executive Officer,
Madurai Waqf Board Office Circle,
Tamil Nadu Waqf Board, Madurai – 1.
- 4.M.Abdul Nazeer .. Respondents
(R4 is suo motu impleaded
vide court order dated
23.01.2025)

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 23.12.2024 and made in



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CMP.No.17 of 2024 in A.A.No.4 of 2024 on the file of the Tamil Nadu
Waqf Tribunal, Chennai.

For Petitioner : Mr.Nissar Ahmed, Senior Counsel,
Mr.I.Kowser Nissar

For Respondents
1 to 3 : Ms.Yasmin Ali

For Respondent 4 : Mr.Raja Mohamed

ORDER

This civil revision petition challenges the order passed by the Tamil Nadu Waqf Tribunal at Chennai in CMP.No.17 of 2024 in AA.No.4 of 2024 dated 23.12.2024.

2. The appellant before the Waqf Tribunal is the civil revision petitioner herein. He is the managing trustee of the Mohideen Andavar, Puradhana Dargah and Pallivasal, and Mina Noordeen Puradhana Dargah and Pallivasal, Therkuvasal, Madurai.

3. In terms of the scheme, which governs the two religious institutions, an election is to be held to elect the members to the Committee



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of management. Totally 20 posts are available in the Committee. An election was held and the petitioner was declared elected along with 19 other persons. The newly impleaded fourth respondent is one such person. The period of office is three years i.e., between 11.09.2022 and 10.09.2025.

4. A complaint was lodged by the fourth respondent with the Waqf Board, on 20.04.2023, alleging certain acts of commission and omission by the civil revision petitioner. According to the fourth respondent, the acts alleged to have been committed by the civil revision petitioner attract the provisions of Section 64 of the Waqf Act. As enquiry on this complaints was not commenced by the Waqf Board, a writ petition was filed before this Court. An order came to be passed directing the Waqf Board to conduct an enquiry and pass orders.

5. Accordingly, on 23.08.2023, an enquiry was conducted. Thereafter, the Waqf Board decided to conduct a personal inspection of the Waqfs. The Chairman and four other members, together with the Chief Executive Officer of the Board, conducted an inspection on 03.09.2023. Pursuant to the inspection on 27.10.2023, the Chief Executive Officer submitted a

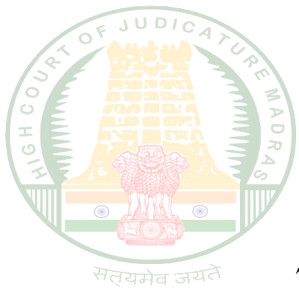


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report. On the basis of the Chief Executive Officer's report, a fresh enquiry was conducted by the Waqf Board on 31.10.2023. During the course of enquiry, the civil revision petitioner participated. He was also represented by a counsel. On 27.11.2023, the Waqf Board decided that *prima facie*, the acts of the petitioner attract Section 64 and directed issuance of a show cause notice.

6. The Waqf Board issued show cause notices on 06.02.2024 to the concerned parties. Replies were sent on 23.02.2024. In addition, to find out the current state of affairs, the Superintendent of Waqf, Madurai was called upon to submit a report on 18.04.2024. The Local Fund Audit, during the course of its duties, submitted a report on 02.05.2024. A reply was given by the office bearers on 06.05.2024 to the report submitted by the Superintendent of Waqf. The Waqf Board took up the matter for enquiry again on 02.07.2024. The Local Fund Audit's report was considered and a copy was also given to the civil revision petitioner. He was granted two weeks time to file a reply. Though the time to file the reply expired on 15.07.2024, his reply dated 18.07.2024 was received by the Waqf Board.



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7. Final arguments in the show cause notice and reply were made on 15.10.2024. On that date, the petitioner was represented by Mr.N.A.Nassir Hussain. It was pointed out by Mr.N.A.Nassir Hussain that even when the notice of hearing was served on the petitioner, he had made an endorsement on the notice stating that Urs festival for the Durgah has to be held between 04.10.2024 and 17.10.2024 and therefore, a request for adjournment was sought. He further added as his client is a managing trustee of the two Durgahs and since the Urs is going to be completed only on 17.10.2024, he sought for adjournment. The Waqf Board, considering the fact, the proceedings had been initiated sometime in August 2023, rejected the request for adjournment and proceeded to reserve orders in the matter. Subsequently, the Waqf Board passed an order and dated it, on the date on which arguments were heard i.e, on 15.10.2024.

8. This order was served on the civil revision petitioner and other Mutawallis. By virtue of the order, the committee was removed and the Waqf Board assumed direct management. In exercise of the power under Section 38 of the Waqf Act, 1995, an Executive Officer was appointed to take charge of the affairs of the Waqf.



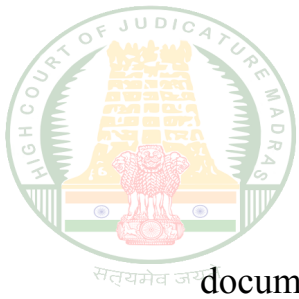
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9. A writ petition came to be filed before the Madurai Bench of this Court challenging the order passed by the Waqf Board. As statutory right of appeal is available to the petitioner, the writ petition was dismissed directing the parties to approach the Waqf Tribunal. Aggrieved by the same, an appeal was preferred before the Division Bench of this Court.

10. The Division Bench confirmed the order of the learned Single Judge directing the parties to avail the alternate remedy, but granted an order of “status quo” for a period of one week. Within the time granted by the High Court, an appeal came to be filed before the Waqf Tribunal in AA.No.4 of 2024. Along with the said appeal, an application was filed in CMP.No.17 of 2024 seeking for stay of all further proceedings issued by the Tamil Nadu Waqf Board removing the petitioner from the office of Mutawalli and also the consequential proceedings that had been issued by the Chief Executive Officer.

11. The Tamil Nadu Waqf Tribunal issued notice in the application and received a counter from the second respondent. Both the parties marked



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documents before the Waqf Tribunal. On the side of the petitioner, Ex.P1 to Ex.P10 were marked and on the side of the respondent, Ex.R1 to Ex.R23 came to be exhibited.

12. After hearing the arguments of the petitioner and the respondent, the Waqf Tribunal came to a conclusion that *prima facie* the order passed by the Waqf Board is valid and hence, dismissed the said petition for stay. Aggrieved by the same, the present civil revision petition.

13. I heard Mr.N.A.Nissar Ahmed, learned Senior Counsel for Mr.N.A.Nassir Hussain for the civil revision petitioner, Ms.Yasmin Ali for the Tamil Nadu Waqf Board and Mr.Raja Mohamed for the impleaded fourth respondent.

14. Mr.N.A.Nissar Ahmed pleads that despite the orders passed for removal, his client continues to be in possession of the property. He adds that for the mere fact the committee has been removed and an Executive Officer has been appointed, it does not mean that the Executive Officer can walk into the premises and take possession.



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15. Mr.Nissar Ahmed referring my attention to Section 68 of the Waqf Act, 1995, urges that an order must be passed by the Executive Magistrate for the purpose of taking possession. He states that in terms of Section 68(1), he has one month's time to hand over possession and only thereafter, Section 68(2) will apply.

16. Per contra, Ms.Yasmin Ali and Mr.Raja Mohamed plead, here is a case of removal of Mutawalli under Section 64(1)(k) of the Waqf Act of 1995 and therefore, the very appeal filed by the civil revision petitioner before the Waqf Tribunal is barred. According to them, an appeal lies only when the removal is covered by Section 64(1)(c) to (g) and 64(1)(k). Being outside the scope of the provision for appeal, the question of granting an interim order does not arise when the appeal is itself unsustainable.

17. Ms.Yasmin Ali adds, the Executive Officer appointed by the Waqf Board had attempted to take possession of the property and he was prevented by the civil revision petitioner and his companions, and therefore, a police complaint was lodged on 19.12.2024. After the dismissal of the stay



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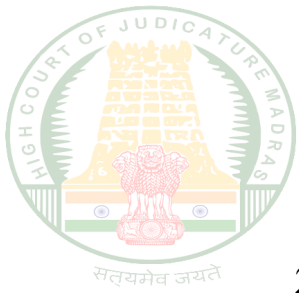
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petition on 23.12.2024, the Executive Officer approached the revenue authorities and jurisdictional police station for protection. He obtained sufficient force and took possession of the Waqf on 25.12.2024.

18. In addition, Mr.Raja Mohamed submits that the Waqf Board rightly refused an adjournment to the request made by Mr.N.A.Nassir Hussain, since two orders of this court passed in WP(MD).No.11089 of 2024 dated 03.06.2024 and WP(MD).No.4773 of 2024 dated 19.08.2024 were operating against the Waqf Board.

19. I have carefully considered the submissions of both sides.

20. Before I enter to discuss the aspects of the case, I should point out that this is a revision which is preferred against an interlocutory order passed by the Waqf Tribunal, pending an appeal. This is akin to an order passed under Order XLI Rule 5 of the Code of Civil Procedure. The grant or denial of an interlocutory order is entirely discretionary and the scope of interference with such an order in revision is obviously limited.



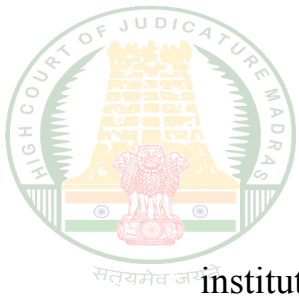
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21. I will be in a position to interfere, only if it is shown that the order is *ex facie* illegal or is arbitrary or the order has been passed ignoring any statutory provision or rules made thereunder. If I were to delve deep into the matter and give any finding, it will affect the rights of both the parties. Hence, whatever finding I am going to render herein is only for the purpose of disposal of this revision and it will not bind the parties or the Tribunal at the time final disposal of the appeal.

22. The plea that sufficient opportunity had not been granted to the civil revision petitioner to make the submissions before the Waqf Board is an issue which has to be considered. The sequence of events, which has been set forth above, shows that prior to the final orders that were passed, the Waqf Board conducted an enquiry on 23.08.2023, 31.10.2023, 02.07.2024 and finally, an order came to be passed on 15.10.2024.

23. It is surprising that when allegations of misappropriation and mismanagement were made, the Waqf Board had given such a long rope to the petitioner. The Waqf Board should remind itself of its duty. It has been created for the purpose of protecting the property and monies of religious



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institutions. In case the allegations were true, as found by the Waqf Board, to keep the matter pending from 20.04.2023 till 15.10.2024 is certainly not acceptable. It is not expected of the Waqf Board to ensure that the keys of the safe continued to be with a person, against whom it has initiated proceedings, for alleged malversation.

24. However, as pointed out above, it is only an observation with respect to the failure of the duty of the Waqf Board in not acting with all promptitude. It is not a finding that the petitioner is, in fact, liable for being proceeded as against the said charge. The Waqf Board was put on notice as early as in April 2023, yet it kept quiet for a period of nearly one year and six months, before actually acting on the complaint. This court only hopes that the Waqf Board will not fall asleep as a modern-day Rip Van Winkle when complaints, as in the present case, are given to it.

25. When actions were not initiated by the Waqf Board, three writ petitions have come to be filed before this Court seeking direction for disposal of the complaints. This court taking into consideration that it is a religious institution promptly directed the Waqf Board to pass orders.

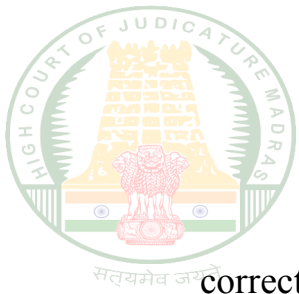


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26. When such directions have been passed directing the Waqf Board to comply with the orders, being a statutory authority subordinate to this Court, obviously it is bound by them and has to comply with them. In case, the request of Mr.N.A.Nissar Hussain had been granted on that date, then the Waqf Board would be in contempt of the orders of this court. Hence, being left with no other option, the Waqf Board decided to pass orders. Whether the course of action adopted by the Waqf Board is correct or not is for the Waqf Tribunal to finally analyse and render a finding.

27. Though Mr.N.A.Nissar Ahmed attempted to point out that the charges that have been framed against his client are absolutely baseless and do not attract the provisions of Section 64 as there has been no default for two consecutive years, this too is a matter which has to be gone into by the Waqf Tribunal. It is the case of Ms.Yasmin Ali and Mr.Raja Mohamed that it is not Section 64(1)(c) to (g) which is attracted in the case, but Section 64(1)(k) which has been attracted. The Waqf Tribunal in the impugned order has left it open to both sides to agitate on this issue at the time of final disposal. The approach taken by the Waqf Tribunal does not appear to be

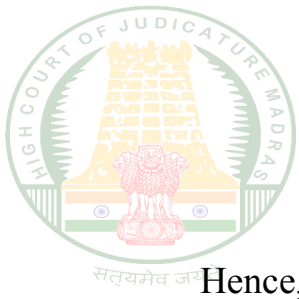


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correct. This Court had dismissed the writ petition and the writ appeal, holding that the remedy for the civil revision petitioner is to approach the Tribunal by way of an appeal. At that time, this Court agreed with the respondents, and directed the petitioner to avail the remedy under Section 64. It implies that the Bench was conscious that an appeal is maintainable. This order has become final. Hence, it would not be open to the respondents and to the Tribunal to reopen an issue concluded by the Division Bench. After all, a party cannot be remediless. He cannot be told no writ can be issued as he has an alternative remedy and when he avails that remedy, to be informed no appeal is sustainable would not be appropriate. Hence, the finding of the Tribunal that it will have a re-look at the maintainability of the appeal is set aside.

28. Turning to the point that Section 68 of the Waqf Act, 1995 had not been resorted to by the Executive Officer, I have to say the following. The sequence of events narrated above shows that the Waqf Board had removed the 20 member committee by way of an order dated 15.10.2024. On account of the removal of the Mutawallis, it resulted in creation of vacancies in the office of Mutawalli. The Waqf cannot be left unattended.



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Hence, the Waqf Board, in its wisdom, decided to invoke Section 38 and appointed an Executive Officer to take charge of the Institution.

29. Dehors Section 68, as per Section 65(5), pursuant to the amendment of the Waqf Act, made by Act 27 of 2013 with effect from 01.11.2013, the Waqf Board, in case, comes to a conclusion that the administration of the Waqf contravenes the provisions of the Act, it can take over direct management of the Waqf.

30. In order to invoke Section 65(1), there should be a vacancy in the office of Mutawalli and filling up such vacancy would be prejudicial to the interest of the Waqf. Insofar as Section 65(5) is concerned, the Waqf Board is entitled to take over direct management of the Waqf, if it has evidence before it that the management of the Waqf is contrary to any provisions of the Act. The former applies where there is a vacancy and filling up of such vacancy is prejudicial to the Waqf. The latter applies where such a vacancy need not exist, but the very continuation of the Mutawalli in management of the Waqf is against the provisions of the Act. In this case, the Waqf Board has exercised Section 64 and has removed the Mutawalli and therefore, a

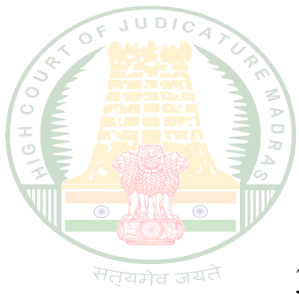


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vacancy has arisen. It has, before it, an audit report. Whether the report is correct or not is for the Waqf Tribunal to decide.

31. If that be the situation, then the Waqf Board necessarily has to ensure that a responsible person takes care of the affairs of the Waqf. An Executive Officer owes a duty only with respect to the administration of the Waqf property. Even while exercising such powers and performance of the duties, he is duty bound by any direction, control and supervision of the Waqf Board. The further restriction on him is that she / he cannot interfere with any religious duties or any customs or usage of the Waqf sanctioned by the Muslim Law. This provision shows that the Executive Officer is not a wholesale replacement to the office of the Mutawalli, but is only a temporary arrangement, contemplated by the Act and exercised by the Waqf Board, in the interest of the Waqf. As who should be appointed under Section 38 is entirely the discretion of the Waqf Board. An Executive Officer can be appointed to a religious institution by the Waqf Board, whenever it feels it is necessary, that such a person should be appointed in the interest of the Waqf.



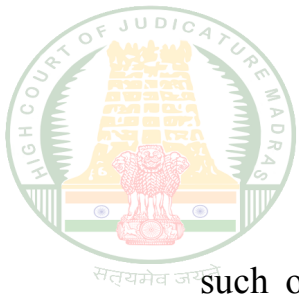
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32. Furthermore, Section 38 of the Waqf Act begins with a non obstante clause. It states that “Notwithstanding anything contained in this Act”, the Board may appoint, in the interest of the Waqf, any person professing Islam as an Executive Officer of the Waqf. This shows the power of the Board to appoint an Executive Officer is not restricted but is a very large one.

33. If as argued by Mr.Nissar Ahmed, an Executive Officer and Mutawalli are treated on par with a Mutawalli, then even an Executive Officer appointed by the Waqf Board can only be removed by resorting to Section 64. This is not the situation. The Waqf Act contemplates removal of an Executive Officer under Section 38(6) of the Act. The restriction imposed under Section 38 (2) and (3) shows that the Executive Officer does not exercise the wide powers exercisable by a Mutawalli.

34. It is here that I will take notice of Section 3(i) of the Waqf Act. Under Section 3(i), any person appointed, either verbally or legally, under a deed or any instrument by which the Waqf is created or by a competent authority to be a Mutawalli can hold that office of the Waqf. It includes



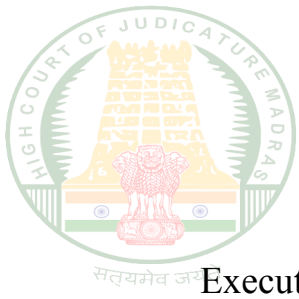
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such other persons who perform the duties of the Mutawalli including a Committee or a Corporation. As pointed out earlier, the power of an Executive Officer is restricted one while the power of Mutawalli is much wider. The offices are not interchangeable.

35. The first portion of Section 3(i) deals with a situation where a person is appointed by a Waqf Nama and the latter portion is where a person is appointed by a competent authority. Under Section 32(2)(g), a Mutawalli is appointed by the Waqf Board. Similarly, under Section 63, where there is a vacancy, the Board appoints Mutawalli. The other Section which gives power of appointment and removal of Mutawalli is Section 66. Lastly, under Section 69 of the Waqf Act, while framing a scheme, the Waqf Board also has the power to remove a Mutawalli from the Office. These are the provisions which give the power to an authority to appoint or remove Mutawalli.

36. A careful reading of the Section 68(1) shows that it speaks about the removal of Mutawallis by Board, in accordance with the provisions of this Act or by any scheme made by the Board. This does not include an



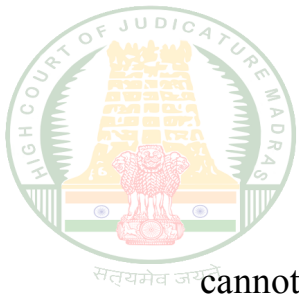
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Executive Officer. Therefore, the attempt of Mr.Nissar Ahmed to plead that the Executive Officers, who were appointed in terms of Section 38, also have to be removed by resorting to Section 68(2) is misplaced.

37. If I were to accept that argument, then I would literally be amending Section 68 to include not only the word “Mutawalli” but also the word “Executive Officer” appointed by the Board. The Parliament, which has commenced Section 38 with a non obstante clause, was well aware about this category of persons who are to be in charge of the Waqf for a certain period of time. It did not include the word “Executive Officer” under Section 68. Therefore, by interpretation, I did not want to bring an Executive Officer within the said category under Section 68.

38. Mutawalli is more like a manager of the Waqf rather than a trustee. Insofar as the Waqf property is concerned, he has to see that the beneficiaries get the advantage of the usufruct equally. Such is not the role of the Executive Officer. His role has been clearly spelt out under Section 38. Therefore, even contextually as well as legally, an Executive Officer



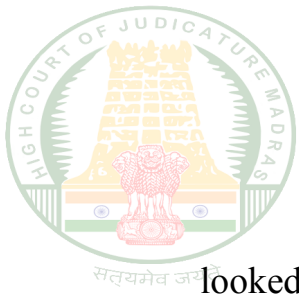
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cannot be compared with Mutawalli. Hence, Section 68 does not apply, while an Executive Officer assumes charge of an institution.

39. Further Section 64 of the Waqf Act prevails only for removal of Mutawalli and not for removal of an Executive Officer. This too is not far to see because the removal of the Executive Officer is captured under Section 38(6). When a Mutawalli is removed and a vacancy arises, the Waqf Board has two options. Either to proceed under Section 63, or to take over direct management under Section 65 and appoint an Executive Officer under Section 38. The latter is the option that the Waqf Board has resorted to in the present case. As Section 68 does not cover the circumstance dealt either under Section 65 or Section 38, the argument of Mr.N.A.Nissar Ahmed that in all cases where Mutawalli is removed and an Executive Officer is appointed, he should resort to Section 68(2) stands rejected.

40. Ms.Yasmin Ali has produced the records to show that the Executive Officer has taken charge of the Waqf on 25.12.2024. He had been assisted by the police and revenue authorities in this regard. Though Mr.Nissar Ahmed vehemently contended that these documents cannot be



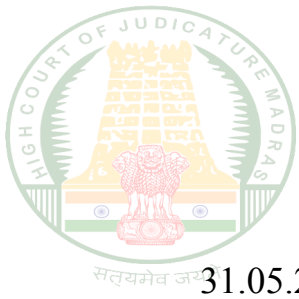
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looked into at this stage, I only have to refer to Section 114 of the Indian Evidence Act. I am not basing my decision on these records. These are official records maintained by the officials during the course of their official nature of work. This has to be accepted *prima facie* to be true, unless there is a definite and a specific plea of fraud. See, ***C.Ramasami Vs. Kuruva Boyan and other, 1991 (1) LW 244.***

41. It is always open to Mr.Nissar Ahmed's client to prove before the Waqf Tribunal that he continued to be in office, despite the records that have been produced by the Waqf Board. I am referring to these records only for the purpose of arriving at a *prima facie* conclusion that the Executive Officer has assumed charge. I am of the opinion that the Executive Officer has taken charge and therefore, reading these records together with Section 114 of the Evidence Act, I am not able to agree with the argument of Mr.Nissar Ahmed.

42. Before I conclude, I have to add Ms.Yasmin Ali states that post Ramzan 2025, i.e., on and after 03.03.2025, the Waqf Board will commence the preparation for holding elections to the Waqfs and will conclude it by



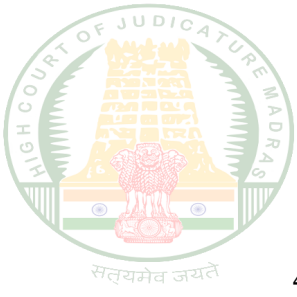
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31.05.2025. As the rights of the civil revision petitioner will be affected, in terms of Section 64(8), interest of justice requires that the appeal itself has to be disposed of at an early date.

43. By order dated 23.01.2025 in CRP.No.48 of 2025, I impleaded the fourth respondent in the appeal. The amended appeal grounds shall be filed before the Tribunal on or before 31.01.2025. Once the amended appeal grounds are filed, Mr.Raja undertakes to enter appearance immediately. He states that he will file his counter by 07.02.2025. As the pleadings would have been completed by 07.02.2025, the Waqf Tribunal is requested to take up A.A.No.4 of 2024 and dispose of the same on or before 30.04.2025. These directions are given, since if the appeal is disposed of after the elections are held, it would seriously prejudice the rights of the removed Mutawallis.

44. In the light of the above discussion and observation, the civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.



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45. It is made clear that, as recorded by me in the beginning portion of the order, I have only discussed the issues for the purpose of the stay application. All issues, including the non-service of notice on parties, other than the maintainability of the appeal, are left open for the parties to agitate before the Waqf Tribunal.

28.01.2025

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Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no

To

The Tamil Nadu Waqf Tribunal, Chennai



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