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WP No. 4327 of 2025

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-06-2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

WP No. 4327 of 2025

T.Mubeen

Petitioner(s)

Vs

1. The Tamilnadu Wakf Board
Rep By Its Chief Executive Officer,
No.1 Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai-1

2.The Chief Executive Officer
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai-1

3.S.Syed Kamardeen

Respondent(s)

PRAYER Writ Petition filed under Article 226 of the Constitution of India



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for issuance of a Writ of Certiorari, calling for records of the 1st respondent ending with the order dated 14.10.2024 in item No.212/23 in Na.Ka.No.6119/21/AA7 nagai and consequential proceedings of the 2nd respondent dated 5.11.2024 in Se.Mu.Order No.6119/21/AA7/Nagai.

For Petitioner(s): Mr.N.A.Nassir Hussain

For Respondent(s): Mr.R.Abdul Mubeen
Standing Counsel for R1 and R2

Mr.S.Meenakshi Sundaram
for R3

ORDER

This writ petition has been filed challenging the proceedings of the 1st respondent dated 14.10.2024 and the consequential proceedings of the 2nd respondent dated 05.11.2024, wherein, the petitioner was removed from his position as a Muthawalli and the 3rd respondent was appointed in his place for the period from 14.10.2024 to 13.10.2027.

2.The case of the petitioner is that the Wakf was created by Janaba.

Ammashahib Ammal under deed of Wakf dated 27.10.1926 registered as

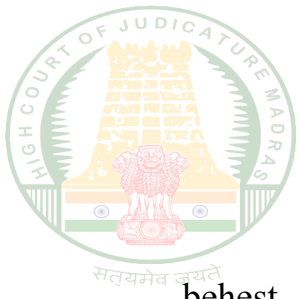


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Document No.1714 of 1996. One Sheik Mohideen Sahib was the great grand father of the petitioner and he was administering the Wakf. Ultimately, the petitioner succeeded to the office of Muthawalli and he held the position from 24.11.2021 onwards. According to the petitioner, he succeeded hereditarily to the office of Muthawalli.

3.The further case of the petitioner is that the property belonging to the Wakf were encroached and no income was forthcoming for the Wakf and hence, the petitioner moved the Wakf Board for being recognized as a Muthawalli and the Wakf Board through proceedings dated 24.11.2021 recognized the petitioner as the Hereditary Muthawalli for a period from 24.11.2021 to 23.11.2024.

4.It is claimed by the petitioner that he took sincere steps to recover the Wakf property and augment the income of the Wakf. He also initiated eviction proceedings against encroachers. One such person against whom eviction proceedings were initiated is one Syed Shahib Shahjahan. On his



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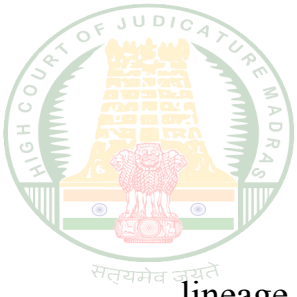
behest, a complaint came to be given by the 3rd respective before the Wakf Board as if the petitioner does not belong to the hereditary line and wanted him to be appointed as a Hereditary Muthawalli. Based on the complaint given by the 3rd respondent, the 1st respondent issued Show Cause Notice dated 30.01.2024 and called upon the petitioner to show cause as to why action should not be initiated under Section 64 of the Wakf Act. Totally five charges were laid against the petitioner. The petitioner on receipt of the same, submitted his reply dated 12.02.2024. The petitioner received yet another notice from the Wakf Board stating that hearing is on 14.10.2024 and the petitioner sought for time on the ground that he had no notice of enquiry. But however, the 2nd respondent issued order dated 05.11.2024 removing the petitioner as a Muthawalli under Section 64 of the Wakf Act. Thereafter, the 1st respondent through proceedings dated 14.10.2024 confirmed the removal of the petitioner and the appointment of the 3rd respondent as the Hereditary Muthawalli from 14.10.2024 to 13.10.2027. The same has been put to challenge in the present writ petition.



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5.The 1st and 2nd respondents have filed a counter affidavit. They have taken a stand that as per the Wakf Deed dated 27.10.1926, the eldest surviving male through a Wakif should succeed to the office of the Hereditary Muthawalli and since no male were available through the lineage of the Wakif, the male heirs born through the first wife was appointed as the First Hereditary Muthawalli. Once again, there was no eldest male heir to succeed the office of the Hereditary Muthawalli after the life time of Syed Mohiadeen. Hence, the eldest surviving male heir through the first wife of the first muthawalli succeeded to the office and thereby, Sheik Mohiadeen succeeded to the office of the Hereditary Muthawalli. Even thereafter, since male surviving legal heirs became extinct through the Wakif, the surviving legal heir of Sheik Mohiadeen viz., the 3rd respondent was elected to the office of the Hereditary Muthawalli.

6.The 1st and 2nd respondents have taken a further stand that the petitioner is a stranger to the family of the Wakif and he never established his



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lineage and therefore, the petitioner was removed from the post of Muthawalli and the 3rd respondent was appointed as the Muthawalli for the period from 14.10.2024 to 13.10.2027.

7.Insofar as the allegations made against the 3rd respondent by the writ petitioner, it is stated in the counter affidavit that the Board had insisted for the recovery of the alienated Wakf properties and the 3rd respondent immediately took steps and recovered the Wakf properties from one Shajahan. Thereby, the allegation made against the 3rd respondent was cleared and the 3rd respondent who was found qualified was appointed as the Muthawalli. Accordingly, the 1st and 2nd respondents have sought for the dismissal of the writ petition.

8.The 3rd respondent has filed a counter affidavit and he has also toed the line of the 1st and 2nd respondents. He has also explained as to how he is entitled to be appointed as the Muthawalli considering his lineage and



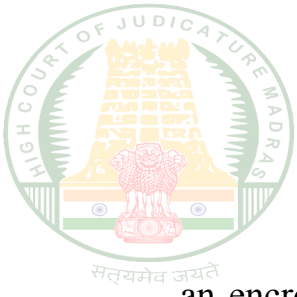
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according to the 3rd respondent, it was strictly in terms of the Wakf Deed dated 27.10.1926. The 3rd respondent has also made certain allegations against the petitioner and ultimately, the 3rd respondent has also sought for the dismissal of this writ petition.

9.Heard Mr.N.A.Nassir Hussain, learned counsel appearing on behalf of the petitioner, Mr.R.Abdul Mubeen, learned Standing Counsel appearing on behalf of respondents 1 and 2 and Mr.S.Meenakshi Sundaram, learned counsel appearing on behalf of the 3rd respondent.

10.The only issue that arises for consideration in the present writ petition is as to whether the petitioner could have been removed under Section 64 of the Wakf Act on the ground that the petitioner did not belong to the hereditary line and established his lineage.

11.The petitioner has made certain allegations against the 3rd respondent as if the complaint made by the 3rd respondent was on behest of

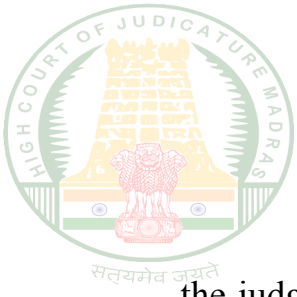


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an encroacher named Shajahan against whom the petitioner had taken steps for eviction. It is not necessary to go into the personal dispute between the petitioner and the 3rd respondent, since the very power and jurisdiction exercised by the 1st and 2nd respondents has been put to challenge.

12. Section 64 of the Wakf Act deals with removal of Muthawalli. Section 64 (1)(a) to (k) provides for various grounds on which the Muthawalli can be removed from his office. The only reason that has been assigned both in the impugned order as well as in the counter filed by the 1st respondent is that the writ petitioner did not establish his lineage and his hereditary line and without satisfying this minimum requirement as required under the Wakf Deed dated 27.10.1926, he will not be entitled to function as a Muthawalli.

13. The above ground put against the petitioner does not fall within any of the Clauses under Section 64 of the Wakf Act. This Court is also aware of



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the judgement of the Division Bench of this Court in *Managing Trustee vs.*

Haja Noordeen Sahib @ Alhaj Dr.S.Syed Kamil Sahib and Others reported

in *2018 3 CTC 801*, wherein, the Division Bench of this Court in no

uncertain terms held that wherever there is a dispute regarding

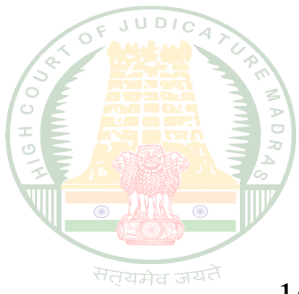
lineage/hereditary line, it can only be resolved before the Civil Court. It was

categorically held that the same cannot be decided either by the Board or by

the Tribunal. While rendering this finding, this Court took into consideration

many of the earlier judgements passed on this issue.

14. In view of the above discussion, the order passed by the 1st and 2nd respondents suffers from lack of jurisdiction. They have specifically relied upon Section 64 of the Wakf Act to justify the removal of the petitioner and the ground that has been put against the petitioner, does not fall within the requirements of Section 64 of the Act. In view of the same, the removal of the petitioner from his Muthawalliship and appointment of the 3rd respondent as the Muthawalli in his place has to be necessarily interfered by this Court.

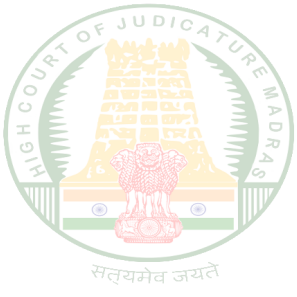


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15.If there is a dispute on the lineage/hereditary line, it has to be necessarily resolved only before the competent Civil Court and this exercise cannot be undertaken by the Board or by the Tribunal.

16.The learned Standing Counsel appearing on behalf of the Wakf Board submitted that if the order passed by the Wakf Board is interfered, it will cause more confusion in running the Wakf, since there will be no clarity as to who will hold the position of the Muthawalli.

17.In the considered view of this Court, the confusion is a self-inflicted one, since the 1st and 2nd respondents exercised the jurisdiction which was not available under Section 64 of the Act and the impugned order reads as if all out efforts were taken to induct the 3rd respondent as Muthawalli and as a result, both the 1st and 2nd respondents lost sight of the scope and ambit of Section 64 of the Act. Hence, if any such confusion arises, the blame cannot be put on the Court or on the petitioner and the Board must blame itself.



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18. In the light of the above discussion, the impugned proceedings of the 1st and 2nd respondents are hereby quashed and this writ petition stands allowed. No Costs. Consequently, connected miscellaneous petitions are closed.

26-06-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To

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