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C.R.P.(PD).No.1667 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 29.01.2025	Pronounced on: 28.03.2025
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CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.1667 of 2024

and

C.M.P.No.8802 of 2024

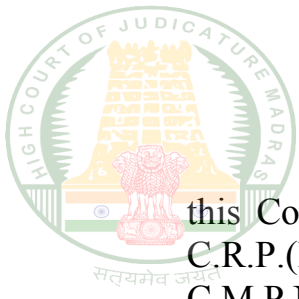
B.T.Noordeen,
Nagore Dargah Advisory Board Member,
No.6, Mubarak Colony,
Chemarakadai Street,
Nagore – 611 002.,
Nagapattinam District.

.. Petitioner

Vs.

- 1.The Managing Trustee,
Nagore Dargah Sheriff,
Nagore Dargah Office,
Nagore – 611 002.
Nagapattinam District.
- 2.The TamilNadu Waqf Board,
Rep. by its CEO,
NO.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 001.

(R2 *suo motu* impleaded vide order of



C.R.P.(PD).No.1667 of 2024

this Court dated 16.08.2024 made in C.R.P.(PD).No.1667 of 2024 and C.M.P.Nos.16890 & 16891 of 2024 and 8802 of 2024)

3.A.T.M.Abdul Samad Sahib

(R3 impleaded vide order of this Court dated 27.01.2025 made in C.M.P.No.28177 of 2024 in C.R.P.(PD).No.1667 of 2024)

4.A.Sultan Abdul Kader

5.M.Syed Nizamudeen Sahib

6.S.Sahul Hameed

(RR 4 to 6 impleaded vide order of this Court dated 27.01.2025 made in C.M.P.No.16890 of 2024 in C.R.P.(PD).No.1667 of 2024)

7.S.Shahul Hameed Sahib

(R7 impleaded vide order of this Court dated 27.01.2025 made in C.M.P.No.16891 of 2024 in C.R.P.(PD).No.1667 of 2024)

8.H.Syed Dhadha Sahib

.. Respondents

(R8 impleaded vide order of this Court dated 29.01.2025 made in C.M.P.No.16890 of 2024 in C.R.P.(PD).No.1667 of 2024)



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Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order passed in D.No.2587/A/2024 dated 13.03.2024 on the file of the District Court, Nagapattinam.

For Petitioner	:	Mr.S.V.Karthikeyan
For R1	:	Mr.A.K.Sriram
		Senior Counsel
		for Mr.R.Vasudevan
For R2	:	Mr.R.Abdul Mubeen
For R3	:	Mr.M.Ganesan
For RR 4 to 6	:	Mr.P.B.Harish
For R7	:	Mr.S.Karthikai Balan
For R8	:	Ms.Keerthana

ORDER

This civil revision petition challenges the proceedings of the District Court, Nagapattinam, in D.No.2587/A/2024 dated 13.03.2024.

2.By that proceeding, the learned District Judge, Nagapattinam, had called persons to apply for appointment to the Advisory Committee of the Nagore Dargah. Aggrieved by the same and pleading that it is only the Tamil



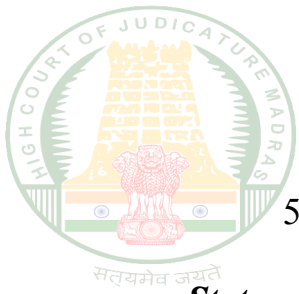
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Nadu Waqf Board which has the jurisdiction to call for such applications, the civil revision petition has been presented.

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3. Pending the proceedings, I impleaded the Tamil Nadu Waqf Board as a party to the proceedings. This is by virtue of Section 90(1) of the Waqf Act, 1995. This order was challenged before the Supreme Court in S.L.P.Nos. 22191 & 22192 of 2024 and by an order dated 04.10.2024, the SLPs were dismissed. At the time of dismissal of the SLPs, it had been urged that I should not hear the matter, because earlier, I was a Standing Counsel for the Tamil Nadu Waqf Board and had represented the Board in matters relating to Nagore Dargah. The Supreme Court permitted the 1st respondent herein to raise this issue before me, at the time of hearing, of the revision.

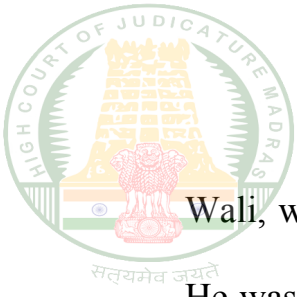
4. When I took up the revision for hearing, Mr.A.K.Sriram, learned Senior Counsel representing Mr.R.Vasudevan, submitted on instructions, that he is not pressing the objection that I should not hear the revision. He stated that his client has no objection if I were to hear the matter. The other counsels too requested me to hear the matter.



5. Apart from this, the Supreme Court in ***R. Balakrishnan Pillai Vs.***

State of Kerala, [(2000) 7 SCC 129], has concluded that a Judge need not recuse himself from hearing a matter merely on account of having appeared as an Advocate for one of the parties therein. The Court was of the opinion that the Judge having represented one of the parties on an earlier occasion would not mean that the Judge would have a personal interest or connection with such parties, and hence would be biased towards them. Such a recusal would undermine the independence of Judiciary. Hence, I took up the revision for final disposal.

6. There is in existence in the town of Nagore, a very important religious institution by the name “Nagore Dargah”. It has been founded in the memory of Hazrath Syed Shahul Hameed Qadir Wali. This saint is proclaimed to be one of the descendants of the Holy Prophet Muhammad. After having undertaken travel across the world, he came to Tanjore. At that time, the then King Achuthappa Nayak was suffering from serious illness. The said King approached several doctors, but it was of no avail. Pain and suffering continued. Finally, he turned to Hazrath Syed Shahul Hameed Qadir



Wali, who was able to perceive that hexerei had been practised on the King.

He was able to trace the source of the sorcery. While removing the source of affliction, it resulted in the improvement of the health of the King. As a mark of gratitude, the King granted vast extents of land to Hazrath Syed Shahul Hameed Qadir Wali. The Saint later went to meet his maker and thereafter, a Tomb has been raised on that land. It is today a place of pilgrimage not only for Muslims, but also for those belonging to non-Islamic persuasions.

7.The Saint had brought up a child by name Yousif Sahib. He had met Yousif Sahib in the City of Lahore. With the permission of his parents, he brought up Yousif Sahib. Yousif Sahib married but the Saint did not. Yousif Sahib's descendants are today known as 'Kasupangudars' in Nagore. This class has also been recognised and has been given certain rights by this Court in the scheme decree governing the Dargah.

8.As it is not unexpected in an institution having vast properties, parties have regularly approached the Courts for some relief or another. The first of the suits was filed in the late 19th century before the Civil Court in the

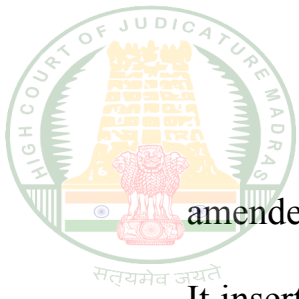


then Tanjore District. A Scheme was framed. Subsequently, another suit was presented for the very same relief. Yet again, another scheme suit was filed in O.S.No.30 of 1946 on the file of the District Court at East Tanjore. The Trial Court framed a Scheme.

9. Aggrieved by the same, appeals were presented to this Court in A.S.Nos.289 & 576 of 1948. This Court modified the Scheme and passed a Scheme Decree on 16.03.1955. It continues to be in force till date.

10. This Scheme had been originally implemented by the District Court at East Tanjore. Subsequently, with the creation of a District Court at Nagapattinam, it was operated by the learned Principal District Judge at Nagapattinam. During the time the Scheme was implemented by the District Judge at Nagapattinam, the Wakf Act, 1954, did not contemplate a situation where a Waqf, governed by a Scheme Decree, to be controlled by the Wakf Board.

10.1. This situation prevailed across this Country. It had a lot repercussions. Taking note of this situation, the Wakf Act of 1954 was



amended by the Parliament through Wakf (Amendment) Act, Act 69 of 1984.

It inserted an Explanation to Section 15 of Wakf Act, 1954 declaring that the Wakfs mentioned in Section 15(1), will also include Wakfs which are governed by any Scheme made by a Court of law, whether before or after, coming into force of the Amendment Act of 1984.

11.Though an amendment was made to Section 15 empowering the Wakf Board to exercise control over the Wakfs governed by a Scheme, the same was not notified.

12.Several amendments to the Wakf Act, 1954, had been made in 1984 by the Parliament. These were pursuant to the recommendations of the Wakfs Enquiry Committee, set up in December, 1970. The amendments made by the Parliament through Act 69 of 1984 were stiffly opposed by several sections of the Muslim community. They opposed the same pleading that the Wakf Commissioner had been given overriding powers, making the Wakf Board subordinate to the Wakf Commissioner. The other criticism was that if the amendments were notified, the State and Central Governments would have



vast powers over the day-to-day administration of the Wakfs, which are under the control of the Trustees and Mutawallis. Hence, apart from two Sections namely,

(i)Increasing the period of limitation for filing a suit with respect to Wakf properties from 12 years to 30 years to claim the plea of adverse possession; and

(ii)Applying Wakf Act, 1954 to evict unauthorized persons from the Waqf properties,

other provisions including the explanation to Section 15(1) were not notified.

13. Therefore, the position that prevailed from 21.05.1954 (date of commencement of Wakf Act, 1954) continued till the enactment of the Waqf Act of 1995. Hence, with respect to Wakfs governed by Schemes settled by Civil Courts, even after the enactment of the Wakf Act of 1954 and its amendment in 1984, the Schemes were being operated only by the respective Scheme Courts.



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14.From 01.01.1996, the Waqf Act of 1995 came into force. The Explanation which had been appended by way of the 1984 Amendment to Section 15(1) of the 1954 Act, took a new avatar, as Section 32(1) Explanation in the 1995 Act. Unlike the 1954 Act, the 1995 Act was notified in its entirety by the Central Government. It came into force across this nation with effect from 01.01.1996.

15.The Tamil Nadu Waqf Board did not immediately approach the Principal District Court at Nagapattinam informing that post 01.01.1996, it is the Waqf Board which has jurisdiction over the Nagore Dargah and not the Scheme Court. Hence, the Scheme continued to be operated by the Scheme Judge at Nagapattinam. 13 years after the Notification of the Waqf Act of 1995, the Waqf Board approached the Scheme Court by way of an application in I.A.No.109 of 2008 in O.S.No.30 of 1946. This application sought the relief of transferring the right of management and control over all the affairs, properties and day to day administration including the power to appoint Mutawallis of the Nagore Dargah, to the Waqf Board.

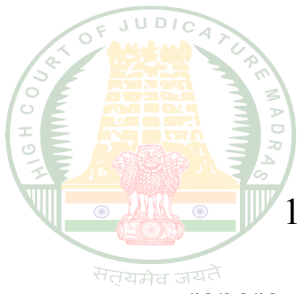


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16.This application was resisted by the Managing Trustee of the Nagore Dargah, primarily pleading that the Nagore Dargah is not exclusively a public Waqf, but a mixture of both public and private Waqf. Therefore, the Scheme Court will continue to retain jurisdiction.

17.The learned Scheme Judge agreed with the Managing Trustee and dismissed the petition on 07.08.2009. Challenging the same, the Waqf Board preferred a revision to this Court in C.R.P.(PD).No.938 of 2010.

18.The Nagore Dargah has a Board of eight hereditary trustees in terms of clause 3 of the Scheme settled by this Court. As per the said clause, all properties vest with the trustees. The Managing Trustee of the Nagore Dargah is elected, from amongst the eight hereditary trustees, referred to in clause 3. In addition to the Board of Trustees, there are also in existence two other entities namely, the Advisory Committee consisting of eleven members and a paid Manager.



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19.I now have to digress to another circumstance, which has repercussions in this revision. One Chinnathambi Sahib @ Haja Vanjore Fackir Sahib was a hereditary trustee. He passed away on 04.12.2013. He did not leave any direct legal heirs. Had he done so, the Waqf would not have been mired in litigation as it has been, for the past decade and more. Several persons claimed to succeed to his estate. Proceedings were initiated before the Scheme Court, Civil Court, Waqf Tribunal as well as before this Court to declare the applicants, plaintiffs and petitioners respectively, as the legal heir of Chinnathambi Sahib. Parties had also obtained orders from the Waqf Tribunal. As the office of the eighth trustee was vacant, writ petitions too came to be filed before this Court seeking several reliefs, including one restraining the managing trustee from conducting elections. Orders were passed in the writ petitions. Writ appeals were preferred before a Division Bench of this Court challenging those orders.

20.The lead writ appeal had been filed by the Managing Trustee. A Division Bench consisting of Hon'ble Mr.Justice NOOTY RAMAMOHANA RAO and Hon'ble Mr.Justice S.M.SUBRAMANIAM, clubbed the writ



appeals along with the writ petitions and civil revision petitions relating to Nagore Dargah and heard them together.

21.By a common interim order dated 10.02.2017, the Division Bench held that despite their efforts to settle the matter, since the parties were not willing to bury their hatchet, they decided to appoint an Adhoc Committee of management, to manage and administer the Waqf pending the proceedings before the High Court. They recorded the finding that there existed an inability amongst the trustees to administer the Waqf in a proper manner and hence, they came to the aforesaid conclusion. They appointed an Adhoc Committee consisting of Mr.K.Allaudin, I.A.S., Additional Chief Secretary (Retd.) and Mr.S.F.Akbar, District Judge (Retd.). The Committee was called upon to administer the Waqf, pending disposal of the proceedings.

22.Meanwhile, taking note of the fact that the writ appeals and the civil revision petition preferred by the Waqf Board in C.R.P.(PD).No.938 of 2010 relate to the same Waqf, the matters were clubbed together and taken up for final hearing. They were heard by a Division Bench consisting of Hon'ble



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Mr.Justice M.SATHYANARAYANAN and Hon'ble Mr.Justice N.SESHASAYEE. The learned Judges pronounced judgment on 08.06.2018.

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They divided the judgment into two portions. The first related to the proceedings *inter se* the trustees and the second related to the civil revision petition preferred by the Waqf Board. They framed two questions to be answered by them. The first being as to which of the forums, Civil Court, Waqf Tribunal, Waqf Board or the Scheme Court, would have the jurisdiction to deal with the issue as to who will succeed to the office of the deceased Chinnathambi Sahib @ Haja Vanjore Fackir Sahib. The second being, whether the Scheme Court will continue to have jurisdiction after the enactment of the Waqf Act of 1995.

23.With respect to the first question, the Division Bench answered that as civil rights are involved, the Waqf Board, Waqf Tribunal and the Scheme Court would not have the jurisdiction to decide on the succession to the estate of Chinnathambi Sahib and that it would only be the Civil Court which would have the jurisdiction to decide the question. Consequently, they directed the Civil Court to complete the suit in O.S.No.31 of 2014 within a period of six



months.

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24.Insofar as the second question is concerned, the Division Bench held that the Waqf Board will replace the Scheme Court in overseeing the administration of the Nagore Dargah in terms of the Scheme framed in O.S.No.30 of 1946.

25.Having answered both the questions, the Division Bench held that till the issue as regards the succession to the office of the eighth trustee is resolved by the Civil Court, the Adhoc Committee of Administrators appointed by this Court on 10.02.2017 would continue to be in office. Aggrieved by the same, three SLPs had been preferred to the Supreme Court.

They are:-

- (i)S.L.P.(C).No.31959 of 2018 – preferred against C.R.P.(PD).No.938 of 2010;
- (ii)S.L.P.(C).No.31960 of 2018 – preferred against W.P.No.7809 of 2010; and
- (iii)S.L.P.(C).No.31961 of 2018 – preferred against W.A.No.1640 of 2016.

26.The Supreme Court entertained the SLPs on 30.11.2018 and *status*



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quo was ordered to be maintained by the parties until further orders.

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27. As noted above, when the matters were pending before the Division Bench, writ petitions had been filed by several persons seeking various reliefs. For the purpose of this case, the relevant writ petition is W.P.No.33181 of 2016. It had been filed by one Haja Noordeen Sahib @ Alhaj Dr.S.Syed Kamil Sahib. In that writ petition, the petitioner sought for an order directing the respondents not to conduct an election to elect the managing trustee or to allow him to participate in the meeting of the Board of Trustees as a representative of the deceased eighth trustee. Interim order was granted by this Court restraining the Managing Trustee from conducting an election on 21.09.2016. Later on, the writ petition came to be allowed on 22.11.2016. It was this order which had been assailed in W.A.No.1640 of 2016, the lead case before the Division Bench.

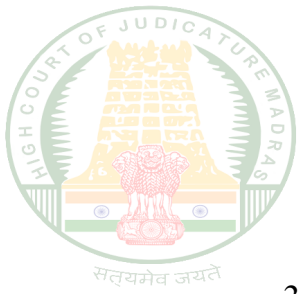
28. Alleging that the Managing Trustee had committed contempt of the orders passed by this Court in W.P.No.33181 of 2016, a contempt petition was initiated in Cont.P.No.3107 of 2016.



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29. After the disposal of the writ appeal and the revision by the Division Bench on 08.06.2018, the contempt petition came up before a learned single Judge. Instead of closing the contempt recording the orders of the Division Bench dated 08.06.2018, the learned single Judge decided to adopt another course of action. He felt that the issue revolving around the successor to the office of the eighth trustee is one which could be resolved by mediation. Hence, he appointed a Mediation Committee headed by three retired Hon'ble Judges. The Mediation Committee was successful in persuading the parties to resolve the dispute. It was agreed between the four claimants that the office of the eighth trustee would be filled by rotation, from amongst themselves. The mediation report was placed before the learned single Judge. He accepted the same and closed the contempt petition on 03.12.2019.

30. As the matter had been resolved, the suit in O.S.No.31 of 2014, which had been directed by the Division Bench in W.A.No.1640 of 2016 to decide the successor to the office of the eighth trustee, was withdrawn by the plaintiff on 13.12.2019.



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31.Challenging the order recording the settlement between the parties in contempt petition No.3107 of 2016, one Syed Meera Hussain Sahib and the Tamil Nadu Waqf Board preferred L.P.A.Nos.1 & 3 of 2020. To complete the narration, L.P.A.No.1 of 2020 came to be dismissed by the Division Bench of this Court on 23.03.2022. The Tamil Nadu Waqf Board withdrew L.P.A.No.3 of 2020 on the same date. Consequently, the order recording the mediation settlement in Cont.P.No.3107 of 2016 stood affirmed by the Division Bench. It is pertinent to point out here that the order of the Division Bench in W.A.No.1640 of 2016 etc., dated 08.06.2018, relating to the second issue on jurisdiction of the Waqf Board over Waqfs governed by Scheme decrees, was not a subject matter of discussion in Cont.P.No.3107 of 2016 or in L.P.A.No.1 of 2020.

32.In the meantime, a writ petition came to be filed in W.P.No.27770 of 2021. This writ petition sought for a writ of mandamus directing the Adhoc Board of Administrators appointed by this Court and the Tamil Nadu



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Waqf Board to permit the petitioner to participate in the 465th Urs festival to be held in the Nagore Dargah. The writ petition came to be disposed of at the stage of admission itself. Notice was not issued to the Adhoc Board of Administrators. A direction was given to the 2nd respondent – Tamil Nadu Waqf Board, to consider the representation that had been made by the petitioner therein.

33.Pleading that they are in management of the Dargah, the Adhoc Board of Administrators preferred writ appeal in W.A.No.327 of 2022. They pleaded that the writ petition ought not to have been disposed of without notice to them. The Division Bench of this Court dismissed the writ appeal on 23.02.2022. It *suo motu* called upon the Adhoc Board of Administrators to answer as to how they are justifying their continuation in the said office, when the purpose of their appointment had been resolved. It also directed the Adhoc Board of Administrators to hand over the charge to the Tamil Nadu Waqf Board. The Board brought the Dargah under its direct management.

34.Subsequently, on 06.04.2022, the Division Bench directed the Tamil Nadu Waqf Board to hand over the management of the Dargah to the



trustees as per the Scheme decree and the mediation award. Acting on the direction, the Tamil Nadu Waqf Board revoked its direct management and handed over the charge to the Board of Trustees.

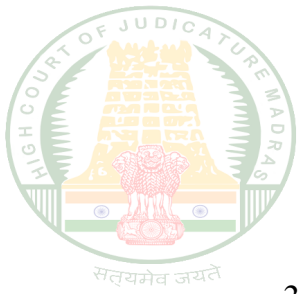
35.Subsequent to these events, the SLPs preferred against the orders of the Division Bench of this Court dated 08.06.2018 came up for disposal before the Supreme Court on 31.10.2023. The SLPs were disposed of by the Supreme Court on the following terms:

“This lis which has chequered history has come to an end in view of the subsequent developments. There are two issues of law raised in the Special Leave Petitions: one is with respect to the jurisdiction of a Forum to decide the dispute and the other is the jurisdiction of the Waqf Board under the Waqf Act over Waqf which is governed by the Scheme.

It is informed by both sides that on the first issue the matters have been resolved with the Trustees of the Waqf. The aforesaid settlement has also been accepted by the Waqf Board. On the second issue, an order has been passed by the Waqf Board in proceedings No.O.S.No.30/1946 dated 12.04.2022 by handing over the administration to the named Board of Trustees.

In view of the aforesaid developments, nothing survives for consideration.

The Special Leave Petitions are disposed of accordingly.”

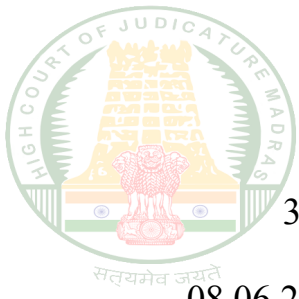


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36.By this time, the tenure of certain members of the Advisory Committee was nearing its end. Elections had to be held to select/elect members from the three constituencies of

- (i)Nattamaigars;
- (ii)Kasupangu Sahibmars; and
- (iii)5 Muslim gentlemen who are neither Nattamaigars or Kasupangu Sahibmars residing in Nagapattinam.

37.The petitioner herein gave a representation on 11.03.2024 bringing it to the notice of the Waqf Board, the tenure of the Advisory Committee is expiring on 21.03.2024. Since it was not considered, W.P.No.7508 of 2024 was filed before this Court. The Waqf Board pleaded that as the general elections of 2024 are to be held shortly, a Board Meeting to decide on this issue could not be conducted. The Board anticipated the next meeting to be in June, 2024. Hence, it stated, by way of a memo, that the present Committee can continue until a new selection takes place by the Waqf Board. Recording this statement, the writ petition was disposed of.



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38. Curiously, despite the orders of the Division Bench dated 08.06.2018, holding the Scheme Court has no jurisdiction and statutorily the jurisdiction to administer the Waqf vests with the Waqf Board; on 13.03.2024, the Scheme Court issued the impugned Notification calling for applications from suitable persons, for being nominated as a member of the Advisory Committee, of the Nagore Dargah. This order is now being challenged in this revision.

39. This Court entertained the revision and granted interim stay of further proceedings before the Scheme Court. Several impleading applications were filed. All of them save one were allowed. The one filed by the President of the Advisory Committee, in his official capacity, came to be dismissed. Liberty was given to the deponent to file an impleading application in his individual capacity. He did not move an application.

40. I heard Mr.S.V.Karthikeyan for the civil revision petitioner, Mr.A.K.Sriram, Senior Counsel for Mr.R.Vasudeven for 1st respondent, Mr.R.Abdul Mubeen for the Tamil Nadu Waqf Board, Mr.M.Ganesan for 3rd respondent, Mr.P.B.Harish for respondents 4 to 6, Mr.S.Karthikai Balan for



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7th respondent and Ms.Keerthana for the 8th respondent.

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41.The simple plea of Mr.S.V.Karthikeyan is that as the Supreme Court had not set aside the order passed in C.R.P.(PD).No.938 of 2010 dated 08.06.2018, the Scheme Court does not possess the jurisdiction to call for applications for filling up the post of the Advisory Committee and it is only the Waqf Board which has the jurisdiction to do so.

42.Mr.A.K.Sriram pleaded that he does not dispute the primacy of the Waqf Board to administer the Waqf, as recognised by the orders of the Division Bench. He seeks for dismissal of the revision on the ground that the petitioner B.T.Noordeen had not only applied to the Scheme Court in the year 2015, but had also applied to the Scheme Court pursuant to the impugned notice, for being considered as a member of the Advisory Committee, in the year 2024. He urges that, having applied to the Scheme Court, it does not lie in his mouth to plead that the Scheme Court has no jurisdiction.

43.His second plea, which is a continuation of his first plea, is that the petitioner is guilty of suppression of material facts. He points out, while



presenting this revision, the petitioner had suppressed the filing of an application before the Scheme Court. He next contends that since the Waqf Board pursuant to W.A.No.327 of 2022 had handed over the charge to the Board of Trustees, it shows the Waqf Board has relinquished its power of superintendence and jurisdiction over the Nagore Dargah to the Scheme/District Court.

44.He then invites my attention to an order passed by the learned District Judge on 20.03.2024. By this order, an impleading application filed by the Waqf Board in I.A.No.11 of 2024 in O.S.No.30 of 1946 came to be dismissed by the Scheme Court holding that as the management had been handed over on 12.04.2022 and final orders have been passed in the SLP, the application to implead is untenable:

(i)He points out the Waqf Board has not challenged the Division Bench order dated 06.04.2022 and hence, it does not have the jurisdiction to deal with the Dargah; and

(ii)He finally invited my attention to Section 69(4) of the Waqf Act. He points out there is a lacuna in the said provision. Insofar as this aspect is



concerned, a bare reading of the provision does show a lacuna. Yet, for the purpose of disposal of this case, I need not go into that issue, for a Court does not normally answer academic questions.

45.On these grounds he urges that the civil revision petition does not deserve consideration and it has to be dismissed.

46.Mr.S.Karthikai Balan and Ms.Keerthana appearing for the impleaded parties, who are applicants before the Scheme Court, pleaded as follows:

(i)The Scheme Court has jurisdiction because, the Waqf Board has not exercised the powers vested in it and appointed members of the Advisory Committee. As per the memo filed in W.P.No.7508 of 2024, the Waqf Board had undertaken to select the members of the Advisory Committee soon after the completion of the General Elections of 2024. It had failed to do so. Hence, it is better that the Scheme court exercises the jurisdiction with respect to the Dargah.

(ii)In addition, Mr.S.Karthikai Balan pleads that the Waqf Board has accepted the jurisdiction of the Scheme Court by handing over charge to the



trustees pursuant to the order in W.A.No.327 of 2022. Hence, it cannot exercise jurisdiction over the Dargah. This submission is more or less on the same lines as argued by Mr.A.K.Sriram.

(iii)He then urges that since S.L.P.Nos.31959 to 31961 of 2018 were disposed of on 31.10.2023, the order of the Division Bench in C.R.P.(PD).No.938 of 2010 dated 08.06.2018 is no longer in existence as that order has merged with the order of the Supreme Court.

47.Mr.Abdul Mubeen argues when the Division Bench in C.R.P.(PD).No.938 of 2010 has held the jurisdiction to work the scheme is available only with the Waqf Board, the fact that an application was filed by the Waqf Board to implead itself in the proceedings before the Scheme Court does not mean the Waqf Board has submitted to the jurisdiction of the Scheme Court. He urges that since the proceedings initiated by the District Judge is one initiated without jurisdiction, an Interlocutory Order (I.A.No.11 of 2024) passed in such a proceedings, does not help any litigant nor does it divest the jurisdiction statutorily vested with the Waqf Board. He states the power to appoint pursuant to the Scheme is referable to Section 69 of the



Waqf Act, 1995 and not to the judgment of the Court. In any event, he argues in terms of Section 66 of the Waqf Act, even if the Waqf Board has no jurisdiction to appoint, it is only the State Government which has to exercise the power of appointment and the order of Scheme Court does not stand scrutiny. Mr.Ganesan and Mr.Harish adopted the arguments of Mr.Abdul Mubeen.

48.I have considered the submissions of all the counsels and I have gone through the records.

Nature of Nagore Dargah

49.The Nagore Dargah is a very unique specie. It is not merely a public Waqf. It is a mixture of public Waqf and a private one. This is clear from clause 44 of the Scheme decree. The 'Kasupangudars', namely, the descendants of Yousif Sahib, presented a Scheme Suit in O.S.No.45 of 1913 and O.S.No.1 of 1923. In terms of the decree passed in those suits, the right of the Kasupangudars to a share in the surplus of the amounts accrued to the Dargah has been settled. The implementation of these decrees has also been



recognised by the present Scheme in the clause referred to above.

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50.As per the Scheme, the Managing Trustee is duty bound to ascertain the net amount payable to the Kasupangudars, post the expenses of the Dargah. After the amount due to each Kasupangudar has been ascertained, it is the duty of the Managing Trustee to allocate the amount to each Kasupangudar. This amount is paid from the income of the Dargah, after the amounts necessary towards its upkeep, have been attended to. The Kasupangudars only have a right to a share in the income of the Dargah, in case there is an excess. If there is no excess, then there is no question of the Kasupangudars getting any amount from the Waqf. Therefore, there is a public Waqf in the form of the Dargah and a duty is fastened on the Managing Trustee to pay the Kasupangudars from the excess, as a private trust.

Statutory power of the Waqf Board to supervise and manage Nagore

Dargah

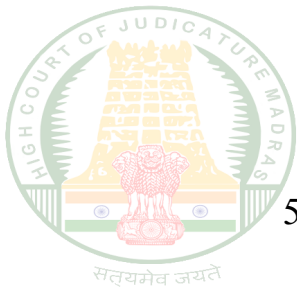
51.While setting forth the facts of the Dargah, I have pointed out that



from 1954 till 01.01.1996, there was a doubt whether the Waqfs, which are governed by a Scheme, come within the superintending control of the Waqf Board. Though an Explanation was inserted to Section 15(1), it was never notified. However, by virtue of Section 32(1) of the Waqf Act, 1995, all Waqfs in a State come within the jurisdiction, control and administration of the Waqf Board. The doubt that prevailed between, 1954 and 1995 has been clarified by the Explanation to Section 32(1). This very issue has been considered by the Division Bench in its judgment dated 08.06.2018.

52.I merely have to extract paragraph No.42 of the said judgment to reach a conclusion on this issue.

“42.Statutorily, a Wakf Board can have jurisdiction over all public wakfs and where it is a wakf-alal-aulad, its jurisdiction is limited to the extent to which a wakf-alal-aulad accommodates a public wakf. In all the authorities on the point on which Mr.Srinath Srideven has placed reliance on, this aspect has been unequivocally stated. The ratio is to the effect that in cases of composite wakfs, Wakf Board has jurisdiction only over that part of the wakf which is public in character and not over the part which is intended for the benefit of the family of the wakif. This Court subscribes to this view with least hesitation.”



53.This is also made clear in the concluding portion. It reads thus:-

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SL.N o.	Case No.	Status of the case
1.	CRP.(PD).No.938 of 2010	Partly-allowed and the order dated 07.08.2009 in I.A.No.109 of 2008 in O.S.No.30 / 1946 on the file of District Judge, Nagapattinam is set aside to the extent that <u>the revision petitioner will replace the District court, Nagapattinam in overseeing the administration of the Wakf Nagoor Durgah in terms of the Scheme framed in O.S.No.30 of 1946.</u>

This shows that over the public character of the Waqf, it is the Waqf Board which has jurisdiction.

54.The plea of the respondents are two fold:

(i)That by virtue of the order passed in W.A.No.327 of 2022, the Waqf Board has lost its jurisdiction and control over the Nagore Dargah.

(ii)As the Waqf Board has filed an implead application before the Scheme Court and got it dismissed, today, it cannot select the members of the Advisory Committee. Consequently, the Scheme has to be implemented only by the Scheme Court.

55.Turning to the first point, I have to point out a reading of the Division Bench judgment in W.A.No.327 of 2022 and the orders passed



thereunder do not show that the Division Bench in W.A.No.327 of 2022 had taken a different view from that in W.A.No.1640 of 2016, etc., batch. On the contrary, the learned Judges had applied the judgment in W.A.No.1640 of 2016, etc., batch while rendering their verdict on L.P.A.No.1 of 2020 dated 23.03.2022. The latter Division Bench did not take a different view on the jurisdiction of the Waqf Board from the one taken in W.A.No.1640 of 2016.

56.Let us now see the *lis* that the Division Bench in W.A.No.327 of 2022, *suo motu* framed for answering. The issue that arose was whether the Adhoc Committee of Administrators appointed by the Court vide order dated 10.02.2017, pending disposal of W.A.No.1640 of 2016, etc. batch had a right to be heard before the order was passed by the learned single Judge in W.P.No.27770 of 2021.

57.The Division Bench in W.A.No.327 of 2022 came to a conclusion that the writ appeal is untenable and dismissed the appeal. A perusal of the order in writ appeal, in particular paragraph No.5, points out that *suo motu* cognizance was taken of the then prevailing situation that the Adhoc Board of



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Administrators were continuing in office, for more than four years, though, they had been appointed only for a short period. The Court took cognizance of the interim order passed by the writ appellate Court on 10.02.2017. I should add here that even as per the final orders passed by the Division Bench in the batch of matters on 08.06.2018, the Adhoc Board of Administrators were allowed to continue only till the disposal of O.S.No.31 of 2014 on the file of the Sub Judge at Nagapattinam. O.S.No.31 of 2014 was withdrawn by the plaintiff on 13.12.2019.

58.The purpose for which the parties were directed to contest the suit in O.S.No.31 of 2014 before the Civil Court was to settle the issue as to who should succeed to the estate of the deceased eighth trustee, Chinnathambi Sahib @ Haja Vanjore Fackir Sahib. The succession to the office of the eighth trustee had been settled pursuant to the mediation efforts of the three retired Hon'ble Judges on 29.10.2019. The Supreme Court, by order dated 28.02.2020, had pointed out the orders of *status quo* would not stand in the way of the parties to approach the High Court and seek for modification of



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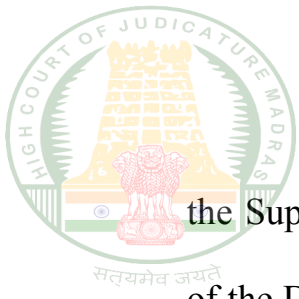
the orders in L.P.A.Nos.1 of 2020 & 3 of 2020.

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59.The Division Bench, when it passed an order on 23.02.2022, took note of the fact that as the issue relating to the succession to the office of the eighth trustee had been resolved, the question of Adhoc Board of Administrators continuing in office does not arise. With the Board of Trustees having been constituted, it did not make sense for the Adhoc Board of Administrators to continue. Therefore, the Bench in W.A.No.327 of 2022 directed the Administrators to hand over charge to the Waqf Board and from the Waqf Board to the Board of Trustees. This does not in any way take away the vitality or validity of the order passed by the Division Bench on 08.06.2018, holding that statutorily, the power of administration and control of all Waqfs in the State of Tamil Nadu including the Nagore Dargah is only with the Waqf Board.

Handing over of administration does not signify surrender of jurisdiction

60.Now turning to the point pleaded by Mr.S.Karthikai Balan that as



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the Supreme Court had disposed of the three SLPs on 31.10.2023, the order of the Division Bench stands merged with the order of the Supreme Court and hence, has become inoperable.

61.A careful reading of the judgment of the Supreme Court points out that two issues have been identified. The first issue being the jurisdictional forum to decide the dispute that had arisen due to the death of the eighth trustee and the second issue being the jurisdiction of the Waqf Board over the Waqf governed by a Scheme decree.

62.The Supreme Court recorded the fact that the matter had been resolved between the trustees. This is an obvious reference to the mediation award passed by the three retired Hon'ble Judges of this Court referred to above. The Supreme Court did not hold that the Waqf Board had lost its jurisdiction, but it had recorded that as per the Scheme, the Waqf Board had handed over charge to the Board of Trustees. This resolved the pending issues before the Supreme Court. Nowhere in the order of the Supreme Court, it has been held that for Waqfs governed by a Scheme of a Civil Court,



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Scheme Court will continue to have jurisdiction and the Waqf Board cannot exercise jurisdiction.

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63.As pointed out above, a reading of Section 32(1) and its Explanation together makes it clear, the Parliament had declared that even for Waqfs which are governed by Schemes, they come within the superintendence of the Waqf Board. The superintendence of the Waqf Board with respect to Nagore Dargah implies that the Waqf Board supervises the activities of the managing trustees / Mutawallis, advisory committee and the Manager. The Board is duty bound to verify if the administration of the Waqf is being carried on as per the School of Islam, to which the Waqf belongs and as per the Scheme decree.

64.In fact, a perusal of the order of the Division Bench in W.A.No.327 of 2022 makes it clear that Adhoc Board of Administrators had been appointed only till the issues that had been raised were resolved and the issues later had been resolved. The Adhoc Board of Administrators had lost their right to continue in office when the issue relating to the successor of the



eighth trustee was resolved. They had to hand over charge to the Waqf Board.

Since the Board of Trustees had been constituted, the Waqf Board revoked its direct management and handed over charge to the Board of Trustees.

65.This is clear from the very proceedings, which is relied upon by Mr.A.K.Sriram and other counsel representing the private respondents. The relevant portion is extracted hereunder:

“மாண்புமிகு உயர்நீதிமன்ற வழக்கு எண் W.A.No.327/2022 நாள்.06.04.2022 உத்தரவுப்படி இது நாள் வரை தமிழக வக்ஃப் வாரிய நேரடி கட்டுப்பாட்டின் கீழ் இயங்கி வரும் நாகூர் தர்கா நிர்வாகம் மாண்புமிகு நீதிமன்ற உத்தரவின்படி இன்றைய தேதியில் இருந்து விலக்கிக்கொள்ளப்பட்டு நாகூர் தர்கா நிர்வாக ஸ்கீம் O.S.No.30/1946ன்படி போர்டு ஆப் டிரஸ்டிகள் வசம் ஒப்படைக்கப்படுகிறது.”

66.This shows the Waqf Board had not surrendered the duty imposed on it by the Waqf Act to Scheme Court. On the contrary, it had only revoked the direct management of the Waqf and handed over the Waqf to the persons, who are legally entitled, to administer the same as per the scheme decree.



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Handing over of administration to the rightful parties does not mean surrendering the power vested with the Waqf Board under the Waqf Act to the Scheme Court. In fact, the Waqf Board cannot abdicate its duties. The Waqf Act nowhere enables the Waqf Board to surrender its powers to a third party, let alone, the Scheme Court.

67.I should recollect here that Mr.A.K.Sriram appearing for the Managing Trustee had submitted that the first respondent/Managing Trustee is not questioning the primacy of the Waqf Board over the Waqfs in the State of Tamil Nadu. Hence, this Court comes to the conclusion that handing over of the management by the Waqf Board to the Board of trustees does not mean the Waqf Board had surrendered its jurisdiction to administer the Waqf to the Scheme Court.

Inapplicability of doctrine of merger

68.Insofar as the plea of merger argued by Mr.S.Karthikai Balan is



concerned, I only have to refer to the judgment of the Supreme Court in

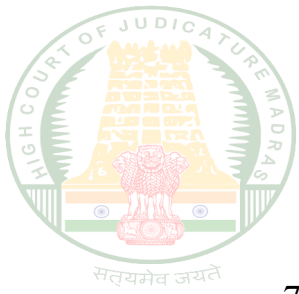
Kunhayameed & ors. Vs. State of Kerala and another, [AIR 2000 SC 2587].

The Court held dismissal or disposal of an SLP would not amount to merger. It was held in that case if the proceeding is disposed of at the stage when the SLP is pending, the principle of merger will not apply. The Court pointed out the doctrine of merger is applied only when leave is granted and the SLP is converted into a civil appeal and thereafter, orders are passed by the Supreme Court.

69.The order of the Supreme Court dated 31.10.2023 makes it clear that leave was not granted, but the SLPs were disposed of recording the agreement that had been arrived at between the parties for constitution of the Board of Trustees of the Nagore Dargah.

70.Hence, the argument of merger is rejected.

Scheme Court lacks jurisdiction to supervise the administration of Waqfs post 01.01.1996 and effect of an impleading application filed by the Waqf Board



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71. In order for the Scheme to be implemented by a Scheme Court, there should be a divesting of jurisdiction from the Waqf Board and vesting the same with the Scheme Court. I have referred to the judgment of the Division Bench in the batch of cases dated 08.06.2018. The Division Bench had held that by virtue of the Waqf Act of 1995, it is the Waqf Board which has the statutory duty to administer, supervise and control Waqfs in the State of Tamil Nadu. Unless and until, the Parliament divests the Waqf Board of the jurisdiction to administer such Waqfs, the Scheme Court cannot seize jurisdiction automatically. This is more so, when its jurisdiction had been removed from it, by virtue of Section 32(1) read with its Explanation.

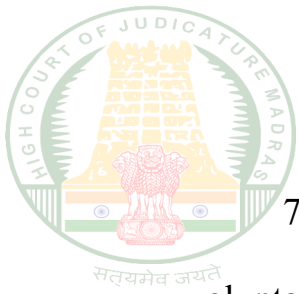
72. At this juncture, I will consider the effect of the order passed in the impleading application (I.A.No.11 of 2024). I have to point out that the very filing of the application to implead the Waqf Board before the Scheme Court, after it had succeeded before the High Court in C.R.P.(PD).No.938 of 2010, is ill-advised. The Waqf Board in the revision had claimed that the entire management of the Nagore Dargah stood transferred to it on enactment of the



Waqf Act of 1995. The Division Bench was convinced with this plea and had directed that the Waqf Board will replace the District Court / Scheme Court in overseeing the administration of the Nagore Dargah. When that being the situation, filing of impleading application was injudicious. Be that as it may, for the fact that an application was filed, bringing it to the notice of the Court that it has no jurisdiction, the dismissal thereof would not confer jurisdiction on the District Court.

73.I will usefully refer to a verdict of the Hon'ble Mr.JUSTICE SANJIB BANERJEE (As his Lordship then was), in ***Sudha Khemka and another Vs. Central Bank of India and others, [(2014) 3 Cal LJ 119]***. He defined jurisdiction in the following terms:

“jurisdiction is neither privilege nor a power, it is an obligation and an institution may forego its privileges, but its constitutional obligation may not be within its discretion to part with.”

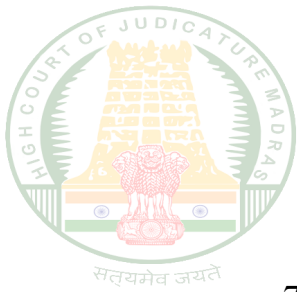


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74. When the jurisdiction is vested with the Waqf Board, it cannot voluntarily or involuntarily, part with the same. This is especially so, when the Parliament had specifically enacted Section 32(1) Explanation to confer the Waqf Board with the jurisdiction to administer, supervise and control the Waqfs which are governed by Scheme decrees.

75. When the Waqf Act of 1995 has vested the power with the Waqf Board, neither the Waqf Board can surrender it nor the Scheme Court can grab it. Jurisdiction is not a matter of acquisition, but one conferred by a Statute. Unless and until, a Statute confers it again on the Scheme Court, I cannot come to a conclusion that the Waqf Board has lost its jurisdiction by filing an application before a Scheme Court.

76. An interlocutory application filed in a proceeding initiated under a Scheme decree cannot be treated on par with an amendment to a statute. Hence, I agree with the submission of Mr.R.Abdul Mubeen that the Waqf Board did not submit to the jurisdiction of the Scheme Court.



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77.A reading of the order shows that the Waqf Board had resisted the attempt by the Scheme Court to fill the vacancies of the Advisory Committee. It can be treated as a limited appearance before the Scheme Court for the purpose informing it that it does not possess jurisdiction.

78.When the Scheme Court does not possess the jurisdiction to operate a scheme decree governing a Waqf post 01.01.1996, due to a Parliamentary legislation, any order passed by it on the basis of the Scheme decree is a nullity. When the Scheme is operated by the Waqf Board, the attempt made by the Scheme Court to implement the Scheme after the Parliamentary Statute intervened, is an exercise without the jurisdiction. It is *ultra vires*. Hence, I am constrained to interfere.

Section 66 of the Waqf Act, 1995 has no application

79.Turning to the next point under Section 66 of the Waqf Act, I am not in a position to agree with Mr.R.Abdul Mubeen. Mr.R.Abdul Mubeen



pleaded that if this Court came to the conclusion that the Waqf Board does not have the jurisdiction, then the Scheme Court also does not have the jurisdiction. He urged, by virtue of Section 66, it will only be the State Government which will have the jurisdiction over the Waqf. I have to remember that Mr.R.Abdul Mubeen has placed this argument, in addition to the plea, that the Waqf Board has jurisdiction. As the point has been raised, I necessarily have to answer.

80.Section 66 reads as follows:

“66. Powers of appointment and removal of mutawalli when to be exercised by the State Government.—

Whenever a deed of [waqf] or any decree or order of a court of any scheme of management of any [waqf] provides that a court or any authority other than a Board may appoint or remove a mutawalli or settle or modify such scheme of management or otherwise exercise superintendence over the [waqf], then, notwithstanding anything contained in such deed of [waqf], decree, order or scheme, such powers aforesaid shall be exercisable by the State Government: Provided that where a Board has been established, the State Government shall consult the Board before exercising such powers.”



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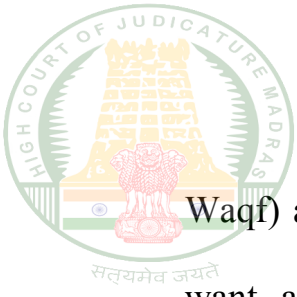
(emphasis supplied)

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81.I am unable to understand how this provision applies to the present case. When the Scheme was settled by this Court in 1955, the Waqf Board had not been constituted. The Tamil Nadu Waqf Board was constituted under the Waqf Act of 1954 only on 18.01.1958. Therefore, when the Scheme was settled by the District Court at East Tanjore at Nagapattinam and when it was affirmed by the Division Bench of this Court on 16.03.1955, the Waqf Board was not even in existence.

82.In order for Section 66 to apply, a conscious decision must be made by the Waqif or by a Court framing a scheme of management that despite existence of the Waqf Board, the Court or any other authority will exercise the power of appointment.

83.The intent behind the introduction of Section 66 is not very hard to see. Under Islamic Law, the desire and wishes of the Waqif (founder of the



Waqf) are given very high importance. The Waqif, on his own accord, may want a person other than the Waqf Board, to appoint the Mutawalli.

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Nevertheless, considering the nature of Waqf and its spiritual significance among the faithful in India, the Parliament was of the opinion that in those cases where the Waqif wanted the Mutawalli to be appointed or removed by a person other than the Waqf Board, such an appointment must be made by the State Government. This way, the Parliament has balanced the dictate of Islamic Law to honour the wishes of the Waqif and the interest of the Muslims to have such a Waqf managed by a person appointed by an authority, other than the Waqf Board.

84.Further, for a Waqif or a Court to come to the conclusion that any other party must exercise that power, it should come to a conclusion that the Waqf Board should not exercise the functions contemplated under Section 66. Unless and until, the Waqf Board is in existence, such conclusion cannot be arrived at. Therefore, the condition precedent for Section 66 to apply is the existence of the Board and a conscious decision that the Board should not appoint or remove Mutawalli(s) etc.



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85.As pointed out above, the Waqf Board was not at all in existence when the Scheme was framed by the District Court at East Tanjore, Nagapattinam, nor was it in existence when the appeal was disposed of by this Court on 16.03.1955. Hence, I am constrained to reject the argument of Mr.R.Abdul Mubeen in the event that I come to the conclusion that the Waqf Board has no jurisdiction, then it is the State Government which has the jurisdiction.

Power of this Court to oversee the functioning of the Subordinate Courts

86.Turning to the plea of Mr.A.K.Sriram that the petitioner had applied to the Scheme Court as well as to the Waqf Board and therefore, the revision should not be entertained, I have to point out that this revision invokes the powers of this Court under Article 227 of the Constitution of India. Under Article 227, it is the constitutional duty of this Court to ensure that the Tribunals and Courts, which are subject to its jurisdiction, are functioning within their width and limits. It is the Constitutional duty of this Court to make sure that the Courts subordinate to it function within the limits of their



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authority. In case, a Court or Tribunal has exercised a jurisdiction not vested in it, then this Court would necessarily have to interfere.

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87. In this case, Mr.B.T.Noordeen has approached this Court on several occasions seeking exercise of the power of appointment by the Waqf Board. The Waqf Board, though gave an assurance to this Court that it will exercise the power, it had not proceeded further. The reason Mr.R.Abdul Mubeen gives for the delay in proceeding further is that the Waqf Board did not meet during the period covered by the general elections notification. General elections were over in May, 2024. Still the Board did not exercise its powers. In the mean time, the Scheme Court decided to proceed with the appointment. Not wanting to lose out on an opportunity to be appointed as a member of the Advisory Committee, the civil revision petitioner who had approached the Waqf Board in February, 2024, also applied before the District Court in March, 2024. Soon thereafter, he has invoked the jurisdiction of this Court.

88. While the attempt of the petitioner to ride two horses at the same time should be condemned, if I were to dismiss the revision, tacitly, I will be



approving the illegal seizure of the jurisdiction by the Scheme Court. As discussed previously, the Scheme Court has no jurisdiction to oversee the management of the Waqf atleast after 01.01.1996 or atleast, after the declaration of this Court in the batch of cases on 08.06.2018. Therefore, for all practical purposes, the Scheme Court has become *coram non judice*. Hence, for the fact that the petitioner applied before both forums, I cannot dismiss the revision.

89. In any event, by consent, jurisdiction cannot be conferred on a Court or Tribunal. This view is in line with that of the Supreme Court in ***Sushil Kumar Mehta Vs. Gobind Ram Bohra, [(1990) 1 SCC 193]*** and ***Jagmittar Sain Bhagat and others Vs. Director, Health Services, Haryana and others, [(2013) 10 SCC 136]***. Therefore, the attempt of Mr.A.K.Sriram to get the civil revision petition dismissed on the grounds of acquiescence by the Board or suppression by the civil revision petitioner necessarily has to fail.

90. Taking note of the order passed by this Court in W.P.No.7508 of 2024, I directed the Waqf Board to comply with the undertaking given to this



Court. The Waqf Board also called for applications and selected five individuals. The Chief Executive Officer of the Waqf Board disagreed with the resolution passed by the Waqf Board and reserved it for its re-consideration. The Waqf Board reiterated the five names proposed by it. Consequently, the Chief Executive Officer referred the matter to the Government. The Government, after perusing the records including those summoned from the Waqf Board, came to a conclusion that out of the five names nominated by the Waqf Board, only three deserved to be appointed and rejected the other two. The appointment could not be proceeded further on account of the fact that a person aggrieved by the order of the Government preferred W.P.No.2102 of 2025. He has also obtained interim stay of further proceedings with respect to the nominations from the general constituency to the Advisory Board.

91. Insofar as the election held for the Kasupangudar Sahibmars, that too is a subject matter of a Writ Petition in W.P.No.28394 of 2024. Hence, out of the three constituencies, the electors and nominees, who constituted the Advisory Board, today, the persons belonging to Nattamaigars constituency



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alone are yet to complete their tenure. The other persons are continuing on account of the undertaking given by the Waqf Board in W.P.No.7508 of 2024. A reading of the undertaking shows that it was only till the conduct of the general elections. Despite several months having lapsed, persons, whose tenure has expired, are continuing to hold office. This requires to be addressed.

92.Once the stay in W.P.No.28394 of 2024 and W.P.No.2102 of 2025 are vacated, the Waqf Board shall appoint the members of the Advisory Committee. It is unfortunate that the Waqf Board despite its solemn undertaking given to this Court, in W.P.No.7508 of 2024 that it will conduct the elections after the Parliamentary Elections are over, had failed to do so.

93.At present, the Advisory Committee only has three-members, whose tenure has not expired. Only the elected Nattamaigars are present and serving. In such a situation, this Court is left with no other option than to permit the serving Nattamaigars to continue with the functions of the Advisory Committee, till the expiry of their term, in the interest of protecting the Waqf.



A person whose tenure has expired cannot continue to occupy the office without any authority of law. Such a continuation is anathemic to the democratic process envisaged by the Scheme decree. Further, when this Court settled the Scheme for Nagore Dargah vide order dated 16.03.1955, it did not restrict the decision making power of the Advisory Committee, by stipulating a minimum quorum, requisite for making a decision. On account of the inaction by the Waqf Board and the imbroglio created by the Scheme Court, this Court is constrained to give certain directions.

94. In line with the Scheme framed by the Court, all the meetings of the Advisory Committee shall be presided by the eldest incumbent Nattamaigar and all the decisions of the Advisory Committee shall be taken by the majority of the three incumbent Nattamaigars. In the event of tie, the Presiding Nattamaigar shall have a second or casting vote. This arrangement shall continue till the stay in the writ proceedings are vacated and an election is held to constitute a fresh committee. This provisional arrangement is made because those who have demitted office cannot be permitted to continue with



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the functions of the Advisory Committee.

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95.The Board will ensure that the office bearers, whose tenure has expired, do not continue in the office of the Advisory Committee. To continue in office after expiry of one's term would defeat the very purpose for which the scheme has been framed.

96.Further, if the interim order of stay granted by this Court in W.P.No.28394 of 2024 and W.P.No.2102 of 2025 are not vacated before the expiry of the tenure of the existing members of the Advisory Committee, then the Board should appoint a suitable officer not below the rank of a Superintendent of Waqf to carry out the duties and functions of the Advisory Committee. The officer so appointed should not be the one supervising the Waqf.

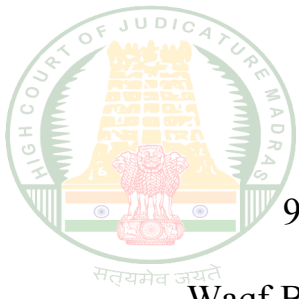
97.At this juncture, this Court makes it clear that though this revision petition was filed particularly challenging the proceedings of the District Court, Nagapattinam, dated 13.03.2024, the aforementioned directions, vis-a-



vis the performance of the duties of the Advisory committee till a new committee is constituted by the Waqf Board, are essential because the very management of the Dargah would be inhibited without the proper functioning of the Advisory Committee. It must be remembered that when this Court settled the scheme of management for the Dargah, it envisaged three bodies to manage the Dargah,

- (i) Board of Trustees,
- (ii) Advisory Committee, and
- (iii) a Manager.

While the Board of Trustees and Manager are available, the Advisory Committee is not functioning due to the dispute afore-discussed. This should not be the reason why the Dargah is denuded of proper management. Each of the spearheads, being entrusted with a crucial role in the management and upkeep of the Dargah, it becomes obligatory on the part of this Court to ensure that the non-constitution of the new Advisory Committee does not negatively affect the management and administration of the Dargah. Such directions would alone preserve the letter and spirit of the scheme settled by this Court.



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98. Secondly, it must be recollected that the decisions and actions of the Waqf Board are amenable to the power of superintendence of the High Court under Article 227 of the Constitution of India. That being the case, as explained by the Supreme Court in the case of *Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil, [(2010) 8 SCC 329]*, this Court is vested with the power under Article 227 of the Constitution of India, not only to intervene in matters seeking relief in individual cases, but also in such matters involving larger public interest for the purpose of promoting public confidence in the administration of Justice. In this case, the Waqf Board has been unduly delaying the appointment of the Advisory Committee despite repeated assurance and undertakings. Therefore, this Court, as a last resort, has given the aforementioned directions to protect the interest of the Dargah and its devotees and to ensure that the Dargah is not deprived of proper management for the want of positive action on the part of the Waqf Board.

99. To reiterate, it must be remembered that jurisdiction to administer when conferred by a statute can be exercised only by an authority on which the power has been conferred upon. Any attempt, by any other party including a Court to exercise that power would be *ultra vires*. The



jurisdiction in the present case is vested by the Waqf Act, 1995, with the Waqf Board. Therefore, the attempt to exercise that power by the Scheme Court, post the 1995 Act, and by way of erroneous interpretation of the judgment of the Division Bench of this Court, is *ex facie* illegal and has to be curbed *proprio vigore*.

100.I have to conclude that the order of the Division Bench in the batch of writ appeals that the Waqf Board has the jurisdiction to deal with the Waqfs governed by a Scheme still holds good. This order was not interfered with by the Supreme Court. The order of the Division Bench in W.A.No.327 of 2022 only dealt with the situation as to whether Adhoc Board of Administrators can exercise the administrative powers over the Waqf, once the Board of Trustees had been duly constituted.

Decision

101.In the light of the above discussion, I conclude as follows:

- (i)The District Court at Nagapattinam post 08.06.2018 has no jurisdiction to deal with the Nagore Dargah;
- (ii)It is the Waqf Board which has the jurisdiction to supervise,



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administer and control the Waqf; and

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(iii) The Waqf Board shall implement the Scheme as it stands and shall administer the Nagore Dargah, in accordance with the Scheme decree, unless and until, modified in terms of Section 69 of the Waqf Act.

(iv) Till the stay granted by this Court in W.P.No.28394 of 2024 and W.P.No.2102 of 2025 is vacated, the three serving Nattamaigars shall perform the duties of the Advisory Committee in the manner set out in this judgment until expiry of their tenure.

(v) If the interim orders granted by this Court are not vacated before the expiry of the tenure of the existing members of the Advisory Committee, the Waqf Board shall appoint a suitable officer not below the rank of a Superintendent of Waqf to carry out the duties and functions of the Advisory Committee. The Board must ensure that the officer so appointed shall not be the same one supervising the Waqf.

102. In the result, this Civil Revision Petition is allowed with the above directions. Consequently, the connected Miscellaneous Petition is closed. No



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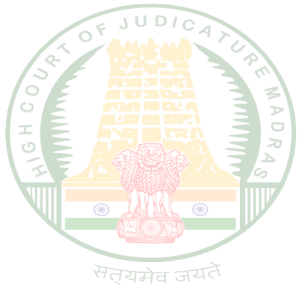
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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

The District Court,
Nagapattinam.



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V.LAKSHMINARAYANAN, J.

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28.03.2025