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C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **31-01-2025**

CORAM

THE HONOURABLE MR JUSTICE N. SATHISH KUMAR

C.R.P.No.1654, 1655, 1577 of 2020 & 1095 of 2022

and

C.M.P.Nos.10178, 10180, 10183 of 2022, 5675 & 5678 of 2022

C.R.P.No.1654 of 2020:

Syed Maskoor Mohideen
S/o.Syed Mohideen, Joint Mutawalli,
Mylapore Jumma Mosque,
Managing Committee,
Jumma Mosque, Old No. 178,
New No. 52, Kutchery Road,
Mylapore, Chennai-4

..... Petitioner

-Versus-

1. Tamil Nadu Wakf Board
Rep By Its Chairman,
No.1, Jffer Syrang Street,
Vallal Seethakathi Nagar, Chennai-1.

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

3. The Superintendent Of Wakfs Chennai Zone
Office Of The Superintendent Of Wakfs,
No.139, Dr.Besant Raod,
Ice House, Triplicane, Chennai-5



C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

4. K.M.Mohideen Kunhi
S/o.Kunjumal Haji,
Muthavalli,
Jumma Masjid Kutchery Road,
Mylapore, Chennai-600 004.
Now Residing At Rani Meyyammai Towers,
H 3rd Block, 2nd Floor,
Raja Annamalaipuram,
Chennai-28.

.... Respondents

Petition filed under Article 227 of the Constitution of India r/w 83 (9) of the Waqf Act, 1995, praying to set aside the fair and decretal order dated 19.03.2020 made in A.A.No.6 of 2018 on the file of the Tamil Nadu Waqf Tribunal, Chennai, insofar as only allowing the Auqaf Appeal in part.

C.R.P.No.1655 of 2020

Syed Maskoor Mohideen
S/o.Syed Mohideen, 203,
Kutchery Raod, Mylapore,
Chennai-4

..... Petitioner

-Versus-

1. K.M.Mohideen Kunhi
S/o.Syed Mohideen, 203,
Kutchery Raod,
Mylapore, Chennai-4

2. The Government of Tamilnadu
Rep By Secretary, Backward and Most Backward,
Fort St. George, Chennai-9.

3. Tamilnadu Wakf Board
Rep By Its Chairman,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar, Chennai-1



C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

4. Taminadu Wakf Board
Rep. by its Chief Executive Officer,
No.1 Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai-1

5. The Superintendent Of Wakfs (south Chennai)
Tamilnadu Wakf Board,
Dr. Besant Road,
Triplicane, Chennai-5.

6. The Mylapore Jumma Mosque
Managing Committee,
Rep. by its Executive Committee Member,
F.Javeed Basha, 27/1, Bazaar Road,
Mylapore, Chennai-4

.... Respondent(s)

Petition filed under Article 227 of the Constitution of India r/w 83 (9) of the Waqf Act, 1995, praying to set aside the fair and decretal order dated 19.03.2020 made in A.A.No.17 of 2019 on the file of the Tamil Nadu Waqf Tribunal, Chennai, insofar as allowing the Auqaf Appeal in part.

C.R.P.No.1577 of 2020

1. Tamilnadu Wakf Board
Rep. By Its Chairman,
No.1, Jaffer Syrang Stret,
Vallal Seethakathi Nagar,
Chennai-600001.

2. Tamil Nadu Wakf Board,
Rep. by its Chief Executive Officer,
No.1, Jaffer Syrang Stret,
Vallal Seethakathi Nagar,
Chennai-600001.



C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

3. The Superintendent of Wakfs (South Chennai),
Tamil Nadu Wakf Board,
Dr. Besant Road,
Triplicane, Chennai 600 005.

..... Petitioners

-Versus-

1. K.M.Moideen Kunhi
Rep. By Its Chairman, No.1, Jaffer Syrang Stret, Vallal Seethakathi Nagar,
Chennai-600001
2. The Government Of Tamil Nadu
Rep. By Its Secretary, Back Ward And Most Back Ward Class Minority
Welfare Department, Fort St. George, Chennai-600009
3. The Mylapore Jumma Mosque
Managing Committee, Rep. By Its Executive Committee Member, F.Javeed
Basha, No.27/1, Bazaar Road, Mylapore, Chennai-600004
4. Syed Maskoor Mohideen
S/o.K.Syed Mohideen, No.203, Kutchery Road, Mylapore, Chennai-600004

..... Respondent(s)

Petition filed under Article 227 of the Constitution of India r/w 83 (9) of the Waqf Act, 1995 against the order dated 19.03.2020 passed by the Tamil Nadu Waqf Tribunal, Chennai, allowing the Auqaf Appeal in A.A.No.17 of 2019 as the same is manifestly erroneous illegal, unlawful, unjust, ultra-vires and against the settled principles of law.



C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

C.R.P.No.1095 of 2022

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The Mylapore Jumma Mosque
Managing Committee,
Rep. by its Executive Committee Member,
F.Javeed Basha, No.27/1,
Bazaar Road, Mylapore,
Chennai - 600 004.

..... Petitioner

-Versus-

1. K.M. Mohideen Kunhi
Managing Committee,
Rep. by its Executive Committee Member,
F.Javeed Basha,
No.27/1, Bazaar Road,
Mylapore, Chennai - 600 004.

2. The Government of Tamil Nadu
Represented by its Secretary,
Back Ward and Most Back Ward Minority, Welfare Department,
Fort St. George,
Chennai - 600009.

3. Tamil Nadu Wakf Board
Represented by its Chairman,
No.1, Jaffersyrang Street,
Vallalseethakathi Nagar,
Chennai - 600001.

4. Tamil Nadu Wakf Board
Represented by its Chief Executive Officer,
No.1, JafferSyrang Street,
Vallal Seethakathi Nagar,
Chennai - 600001.



C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

5. The Superintendent of Wakfs (South Chennai)

Tamil Nadu Wakf Board,

Dr. Besant Road, Triplicanee, Chennai - 600005.

6. Syed Maskoor Mohideen

S/o. K. Syed Mohideen,

No.203, Kutchery Road,

Mylapore, Chennai - 600 004.

..... Respondents

Petition filed under Article 227 of the Constitution of India r/w 83 (9) of the Waqf Act, 1995, praying to set aside the fair and decretal order dated 19.03.2020 made in A.A.No.17 of 2019 on the file of the Tamil Nadu Waqf Tribunal, Chennai, insofar as only allowing the Auqaf Appeal in part.

C.R.P.No.1654 of 2020

For Petitioner : Mr.N A. Nissar Ahmed,
Senior Counsel for
Mrs I.Kowser Nissar

For Respondent : Mr.Avinash Wathwani
for Mrs V.Srimathi for RR R1,2
& 3
Mr.T.Velumami For R4

C.R.P.No.1655 of 2020

For Petitioner : Mr.N A. Nissar Ahmed,
Senior Counsel for
Mrs I.Kowser Nissar

For Respondents : Mr.T.Velumani for R1
Mr.D.Gopal,
Government Advocate for R2
Mr.Avinash Wathwani for
Mrs.V.Srimathi for RR3, 4 and 5
Mr.M.J.Jaseem Mohammed for
R6



C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

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C.R.P.No.1577 of 2020

For Petitioner : Mr.Avinash Wathwani for
Mrs.V.Srimathi

For Respondents : Mr.T.Velumani for R1

Mr.D.Gopal,
Government Advocate for R2

Mr.M.J.Jaseem Mohammed for
R3

Mr.N.A.Nissar Ahmed,
Senior Counsel for
Mrs.I.Kowser Nissar for R4

C.R.P.No.1095 of 2022

Mr.M.J.Jaseem Mohamed

Mr.T.Velumani for R1

Mr.D.Gopal,
Government Advocate for R2

Mr.Avinash Wathwani for
Mrs.V.Srimathi for RR3, 4 and 5

Mr.N.A.Nissar Ahmed,
Senior Counsel for
Mrs.I.Kowser Nissar for R6



C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

COMMON ORDER

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These Civil Revision Petitions arise out of a dispute over the management of the affairs of Mylapore Jumma Mosque. Admittedly, the said mosque was originally governed by a scheme framed by this court by its judgement and decree dated 22.04.1913 made in C.S.No.89 of 1910.

2.1 Syed Maskoor Mohideen, Joint Mutawalli of Mylapore Jumma Mosque Management Committee approached the Wakf Board by way of an application dated 16.11.2017 complaining about Janab K.M.Mohideen Kunhi, one of the then Mutawalli of the Management Committee of Mylapore Jumma Mosque (removed by the committee) who had refused to handover the charge to the newly appointed Janab T.S.T.Kaznavi Sahib, which was taken as item No.74/2018 - Rc.No.12933/11/B6/Che dated 21.07.2018 by the Tamil Nadu Waqf Board.

2.2 The Tamil Nadu Waqf Board, Chennai, by order dated 27.09.2018 disposed of the above mentioned application of Syed Maskoor Mohideen, which was taken on 21.07.202018 (item No.74/2018 - Rc.No.12933/11/B6/Che dated 21.07.2018) in the following terms:

“The century old court scheme requires a lot of changes, such charges shall be in the interest of Waqf



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C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

and its properties. The properties already acquired by the Government and compensation paid are not properly accounted for and it is also noticed that a huge extent of waqf property is allowed to encroach by the third parties by the present committee. Therefore, the court scheme framed in C.S.No.89 of 1910 is hereby cancelled under Section 69(2) of the said Act with an object to frame new scheme for the administration of the said waqf *suo motu* by the Board or an application of interested persons within the frame work of the Waqf Act, 1995.

The Superintendent of Waqf, Chennai, is hereby appointed as Executive Officer of the above waqf under Section 65(5) of the Waqf Act, 1995. Further, the Board is of the view that new scheme in accordance with Waqf Act will have to be framed *suo motu* by the Board or on application of not less than five persons interested within one year and administration shall be handed over to the new committee in accordance with the provisions of the new scheme. Accordingly, the Executive Officer is directed to frame a draft scheme for the administration of the waqf, affixing the same on the notice board of the waqf inviting objections and suggestions and submit to the Board for approval.

The removed mutawalli is directed to hand over all the records and keys of the Waqf to the Executive Officer appointed under Section 65(5) of the Waqf Act,



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C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

1995.

The petition filed by Janab K.M.Mohideen Kunhi is rejected on merit. The committee is also directed to hand over charge of the Waqf to the Executive Officer appointed by the Board, failing which action will be pursued under the provisions of the Waqf Act.”

2.3 Challenging the above-mentioned order of the Waqf Board dated 27.09.2018 made in item No.74/2018 - Rc.No.12933/11/B6/Che dated 21.07.2018, Syed Maskoor Mohideen, Joint Mutawalli of Mylapore Jumma Mosque/Managing Committee of Jumma Mosque insofar as dissolving the Managing Committee of Jumma Mosque and assuming direction management and also cancelling the scheme framed by decree dated 22.04.1913 in C.C.No.89 of 2010 moved an Auqaf Appeal in A.A.No.6 of 2018 before the Tamil Nadu Waqf Tribunal, Chennai, while the then mutawalli Janab K.M.Mohideen Kunhi (removed mutawalli) moved an Auqaf Appeal challenging the order of the Tamil Nadu Waqf Board, Chennai, dated 29.07.2018 made in Item No.74 of 2018 in Rc.No.129933/11/B6/Chennai.

2.4 The Tamil Nadu Waqf Tribunal, Chennai, held that the power to modify or cancel or settle the scheme is vested only with the State Government and not with the Board and that the board has exceeded its jurisdiction in cancelling the entire scheme with a view to settle a new scheme for the waqf;



C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

and thus, by its separate order dated 19.03.2020 disposed of the Auqaf Appeals

in the following terms:

“A.A.No.6 of 2018: In the result, this appeal is allowed in part regarding the cancellation of the scheme decree. In other respect this appeal is dismissed. No costs.

A.A.No.17 of 2019: In the result, this appeal is allowed in part regarding the cancellation of the scheme decree and the removal of the appellant from managing committee. In other respect this appeal is dismissed. No costs.”

3 (i) **C.R.P.No.1654 of 2020** has been filed by Syed Maskoor Mohideen, the appellant in A.A.No.6 of 2018, challenging the order of the Tamil Nadu Waqf Tribunal, Chennai, regarding dissolution of committee and assumption of direct management;

(ii) **C.R.P.No.1655 of 2020** has been filed by Syed Maskoor Mohideen, the Joint Mutawalli, who is the 6th respondent in A.A.No.17 of 2019, challenging the order / finding of the Tamil Waqf Tribunal, Chennai that the removal of K.M.Mohideen Kunhi (Appellant in A.A.No.17 of 2019) from the office of the mutawalliship shall be done only by way of a suit;

(iii) **C.R.P.No.1577 of 2020** has been filed by the Waqf Board



C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

challenging the order of the Tamil Nadu Waqf Tribunal, Chennai, dated 19.03.2020 in allowing the Auqaf Appeal in A.A.No.17 of 2019 and setting aside the cancellation of the scheme decree.

(iv) **C.R.P.No.1095 of 2022** has been filed by Mylapore Jumma Mosque Managing Committee, which is the 5th respondent in A.A.No.17 of 2017, challenging the order of the order passed by the Waqf Tribunal insofar as setting as the order of the waqf board cancelling the scheme decree and challenging the order / finding of the Tamil Waqf Tribunal, Chennai that the removal of K.M.Mohideen Kunhi (Appellant in A.A.No.17 of 2019) from the office of the mutawalliship shall be done only by way of a suit.

4. Since the parties are one and the same and the issues involved in these revision petitions revolve around the scheme decree passed by the court and the appointment of the managing committee, all these revision petitions were taken up together for hearing, heard, and they are being disposed of by this common order.

5. The parties in the revision petitions will be referred to by their names or functional names from now on because the array of parties is different for ease and to prevent confusion.

6.0 The facts leading to the filing of these revision petitions are as



C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

follows:

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(a) On 01.08.2013, K.M.Mohideen Kunhi was appointed as the Mutawalli by the Managing Committee. On 27.10.2017, the then Managing Committee removed K.M.Mohideen Kunhi by a majority of 7/9 members voting for his removal in the presence of other Mutawalli. The Managing Committee had authorized the Joint Mutawalli to institute or defend any action. He is the revision petitioner in C.R.P.No.1654 of 2020 and C.R.P.No.1655 of 2020). So far as K.M.Mohideen Kunhi is concerned, he has been arrayed as the 1st respondent in C.R.P.No.1577 of 2020 and C.R.P.No.1655 of 2020 and the 4th respondent in C.R.P.No.1654 of 2020 and 1st respondent in C.R.P.No.1095 of 2022.

(b) Subsequently, on 09.11.2017, the Managing Committee appointed one Kaznavi as the new mutawalli in the vacancy created by the removal of K.M.Mohideen Kunhi. Kaznavi is not a party to the present proceedings. Despite his removal by the Managing Committee, K.M.Mohideen Kunhi did not hand over the charges to his successor-Kaznavi. This has resulted in a few certain litigations and they are sequenced as below:

→ The joint mutawalli, who is the revision petitioner in C.R.P.Nos.1654 and 1655 of 2020, has approached the waqf board



C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

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complaining about K.M.Mohideen Kunhi's refusal to hand over the charge to Kaznavi. Challenging the same, K.M.Mohideen Kunhi moved this court by way of W.P.No.789 of 2018.

- K.M.Mohideen Kunhi would then remove the entire Managing Committee and appointed his own Managing Committee of nine members and require that this be recognised by the Waqf Board to enable which he had taken out at least three applications dated 19.03.2016, 27.10.2017, and 27.11.2017 to the Waqf Board. Those applications were filed during the pendency of W.P.No.789 of 2018.
- On 11.07.2018, this court passed an order in W.P.No.789 of 2018 requiring both the revision petitioner – Syed Maskoor Mohideen, Joint Mutawalli and also K.M.Mohideen Kunhi to participate in the enquiry directed to be conducted by the Waqf Board. The Waqf Board heard both sides, and passed a common order dated 21.07.2018 whereby waqf board held as follows:

- (a) That the removal of K.M.Mohideen Kunhi is valid;
- (b) That K.M.Mohideen Kunhi has no authority to remove or to reconstitute a new Managing Committee.

- The Waqf Board also proceeded to hold that the scheme framed by the



C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

Court is outdated and cancelled it. Consequently, the Waqf Board proceeded to dissolve the Managing Committee and assumed direct management of the affairs of the Waqf and justified it under Section 65(5) of the Wakf Act, 1995.

- ➔ This order of the Waqf Board was put to challenge by the Joint Mutawalli - Syed Maskoor Mohideen, the revision petitioner in C.R.P.Nos.1654 and 1655 of 2020 in A.A.No.6 of 2018 before the Waqf Tribunal. The challenge was limited to the authority of the Waqf Board and the legitimacy of its order cancelling the scheme decree passed in C.S.No.89 of 1910, dissolving the Managing Committee and assumption of management of the Waqf to itself.
- ➔ K.M.Mohideen Kunhi on his part preferred A.A.No.17 of 2019 challenging the order of the waqf board dated 21.07.2018.
- ➔ The Waqf Tribunal vide its separate orders dated 19.03.2020 disposed of both the Auqaf Appeals. The salient aspects of the orders of the Waqf Tribunal may be stated:

(a) The Wakf Board has statutory power under Section 65(5) of the Waqf Act, 1995 to assume direct management of the affairs of the Waqf and upheld the decision of the Waqf Board in cancelling the



C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

scheme framed by the Court. However, the waqf board added a rider to that and held that this can be done only at the instance of the Government under Section 66 of the Waqf Act, 1995 and not by the Waqf Board arrogating to itself the powers of the Government.

(b) In effect, it dismissed the Auqaf Appeal preferred both by Syed Maskoor Mohideen, in A.A.No.6 of 2018 and K.M.Mohideen Kunhi and that K.M.Mohideen Kunhi filed in A.A.No.17 of 2019 (page 11 of NSSJ order*). That has now given rise to three revision petitions, of which two are by the joint mutawalli and one by the Waqf Board. The details are as below:

(1) C.R.P.Nos.1654 & 1655 of 2020 are filed by the joint Mutawalli; and

(2) C.R.P.No.1577 of 2020 is filed by the waqf board, challenging that part of the order by which the waqf tribunal has held that only the Government can initiate proceedings for assumption of management of the affairs of the waqf by the waqf board.

7. This court has heard both sides.

8.1 Mr.N.A.Nissar Ahmed, learned senior counsel would mainly submit that the finding of the Waqf Tribunal that the Waqf Board has power to assume direct management is illegal and perverse and that the Waqf Board cannot



C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

assume direct management as long as the scheme decree continues and the same has not been altered and committee constituted as per the scheme continues in management and there is no vacancy, the management of the waqf concerned is governed only by the scheme.

8.2 Mr.N.A.Nissar Ahmed would further submit that if at all any change has to be made in the scheme settled by the court or any appointment has to be made, such power vests only in the State Government as per Section 66 of the Waqf Act, 1995. Thus, according to him, as the assumption of direction management period had already been over, the rest of the findings insofar as in favour of the revision petitioner in C.R.P.Nos.1654 and 1655 of 2020 is concerned, the tribunal order has to be sustained and that the order of the Waqf Tribunal with respect to dissolution of committee has to be set aside.

8.3 Further, according to Mr.N.A.Nissar Ahmed, the finding of the tribunal that the removal of K.M.Mohideen has to be done only by way of a suit has to be set aside since the very scheme itself provides for such removal and the aspect of removal of mutawalli by way of a suit would only apply to the 3rd defendant in scheme suit and not to the office.

8.4 Mr.N.A.Nissar Ahmed would, in support of his above submissions, place much reliance upon the judgements of **B.Abdul Kather v. Tamil Nadu**



C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

Wakf Board represented by its Chief Executive Officer and others

(W.P.No.5622 of 2023 dated 11.04.2023) and C.I.Majeed and others v. The

Kerala State Wakf Board, represented by Chief Executive Officer and

others [Law Finder Doc ID # 771483 : O.P. (Wakf) Nos.3106 and 3158 of 2023 dated 26.11.2015].

9.1 Per contra, Mr.Avinash Wadhwani would contend that the Waqf Tribunal was right in holding that the Waqf Board has power to have the direct management. According to him, the Waqf Board steps into the shoes of the scheme court and therefore, the waqf board has power to modify, the scheme, at any time, as per Section 66 of the Waqf Act, 1995. He would also bring to the notice of this court that Section 32 (2) (d) of the Waqf Act, 1995 gives a wide power to the waqf board to settle schemes of management for a waqf.

9.2 Mr.Avinash Wadhwani would contend that Section 66 of the Waqf Act, 1995 squarely applies when there is equivalent authority created for that superintendence power is always with the Waqf Board.

9.3 Mr. Avinash Wadhwani would submit that by virtue of section 32 of the Wakf Act, 1995, Wakf Board has replaced and has taken the position of a scheme court.

9.4 In support of his submission, Mr.Avinash Wadhwani would rely



C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

upon the judgements of the Division Benches of this Court in **Managing**

Trustee, Rep. by the Board of Trustees, Nagoor Dargha, Nagore. Vs. Haja Noordeen Sahib [W.A.No.1640 of 2016, dated 08.06.2018]; Dr.K.M.Kalifa Masthan Sahib Kadiri v. Tamil Nadu Waqf Board (2023 MHC 1202) and I.S.Ibrahim and another v. Principal Secretary to the Government and others [2023 SCC OnLine Mad 2220 : (2023) 2 LW 547.

10. I have considered the rival submissions carefully.

11. In the light of the above submissions, the common points that arises for consideration in these revision petitions are :

(1) Whether the Waqf Board has power to modify the scheme framed by the court? and

(2) Whether the Waqf Board has power to assume direct management, particularly, when the scheme is in operation?

Point Nos.1 and 2:

12. It is relevant to extract hereunder the scheme framed by this court in C.S.No.89 of 1910 by decree and judgement dated 24.02.1913:

“That a committee consisting of nine members to be designated “The Mylapore Jumma Mosque Managing Committee” shall be constituted by this court for the proper management and administration of the said Mylapore Juma



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C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

Mosque and its properties.

2. That the said committee shall at present consist of the following members:-

(a) Mohammad Hashim Khan Bahadur, A.R.Faqir Muhammad Sait Sahib of the south Indian Industries, George Town.

(b) Muhammad Yunus Khan Bahadur Haji Ismail Sait Sahib of the English Warehouse, Mount Road, and the South Indian Industries, George Town.

(c) Maulavi Sultan Muhammad Sahib, carnatic pensioner and honorary secretary:-

(1) To the Government Muhammadan Boys School, Mylapore.

(2) To the Government Muhammadan Girls School, Mylapore.

(3) To the association for helping the disabled poor, Mylapore.

(4) To the Committee Bacchewali Mosque, Mylapore.

(5) To the Wenlock scholarship fund, Madras.



C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

(d) Maulana Abdus Subhan Sahib, Merchant, Godown

Street.

(e) Hakim Haji Muhamad Abdul Aziz Sahib Patel,

Merchant, Godown Street;

(f) Muhammad Ismail Sait Sahib “Magnum” Merchant,

Bazaar.

(g) Maulavi Saiyid Shah Hussain Sahib, High Priest,

Shikou-ul-mulk,

Mylapore

(h) Shah Mir Mohammad Raza Sahib Quadri, Priest;

Shikah-ul-Mulk Street, Mylapore

(i) Muhammad Ansar Sahib Merchant and Headman of

Butchers, Madhawa Perumal Kovil Street, Mylapore.

3. (a) That those members, who, without any reason approved of by the committee, absent themselves from three consecutive meetings, shall be considered as having vacated their seats in the committee.

(b) That any vacancy occurring among the members of the committee shall be filled up by the remaining members.



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C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

4. That the first Muthavallees shall be:-

(1) Muhammad Fakrudin Sahib, the 3rd defendant

here;

(2) Muhammad Hassan Sahib Patel, Rice

Merchant, Mylapore.

5. That any vacancies in the office of the Muthavallee shall be filled up by the committee.

6. That the committee shall manage the mosque affairs generally and with this object in view, shall meet at least once a month or more often, if necessary, to discuss and decide the questions concerning the mosque and to consider and pass the amounts placed before the meeting.

7. That questions coming up for consideration before the committee shall be decided by the majority of votes of the members present.

8. That the chairman of its meetings shall have a casting vote.

9. That, at all meetings, three members of the committee shall form the Quorum.



C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

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10. That the undertaking of all constructions and repairs to the mosque and to properties and the extent of the amount to be spent on such constructions and repairs shall be in the discretion of the committee alone.

11. That the Mutavallis shall inspect the execution of all such works as are mentioned in paragraph 10 above and arrange for the collection of rents and arrears of rents of the trust properties, subscriptions, donations, etc., on receipts given therefor, signed by the joint mutavallis.

12. That the mutavallis under the sanction of the committee shall have an agent or a bill collector or both, if necessary, for the purposes mentioned in paragraph 11 above.

13. That the mutavallis shall receive the trust monies deposited in the court in respect of the land and pyal acquired by the Tramway Car Company, also monies in the Collectors office, Yeomiah collections and monies in respect of the lands acquired for railway purposes, provided that the 3rd defendant herein shall be entitled to collect the Yeomiah allowances which have accrued up to date.



C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

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14. That all monies received and collected by Mutavallis in respect of the trust shall, when they exceed Rs.50/- be deposited in the Post Office Savings Bank in the names of Mutavallis.

15. That when such receipts accumulate to Rs.500/- they shall be deposited similarly in the Bank of Madras.

16. That all the charges sanctioned by the committee shall be disbursed by the Mutavallis.

17. That the mutavallis shall keep a regular account of all receipts and disbursements and furnish a true copy of the same every month to the committee for submission at monthly meetings – question of 3rd defendants accounting for his collections of rent up to date be reserved.

18. That the mosque accounts shall be open for inspection by the worshippers in the Mosque or other persons interested in the trust on a written notice given by them to the joint mutavallis.

19. That the mutavallis shall look after all the affairs of



C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

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the mosque and see that the mosque servants do their respective duties properly.

20. That the committee shall have full power to appoint, suspend or remove for sufficient reasons the Mutavallis, Pesh Imam, Muazzin, etc., but that, as for the Khatib, who gets a Yemiah allowance from the Government, the committee shall, on the ground of disobedience, misconduct, failure in the performance of his duties, submit their reports to Government, suspending him in the meanwhile and appointing a substitute to look after his work, pending the receipts of the final orders of the Government, provided that this shall not apply to the 3rd defendant who shall be removable only by a suit; and

21. That no immovable property or properties belonging to the mosque shall be sold or otherwise alienated without the previous sanction of this court.

13. Section 32 of the Act defines the powers and functions of the Waqf Board. The general superintendence of all the Waqfs in the State is vested in the Waqf Board. Section 32(d) of the Act gives a power to the Waqf Board to settle schemes of management for a wakf, provided that no such settlement



C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

shall be made without giving the parties affected an opportunity of being heard.

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14. Section 69 of the Wakf Act of 1995 gives the Wakf Board the power to create a scheme for administering a waqf, which reads as under:

69. Power of Board to frame scheme for administration of waqf.—

(1) Where the Board is satisfied after an enquiry, whether on its own motion or on the application of not less than five persons interested in any waqf, to frame a scheme for the proper administration of the waqf, it may, by an order, frame such scheme for the administration of the waqf, after giving reasonable opportunity and after consultation with the mutawalli or others in the prescribed manner.

(2) A scheme framed under sub-section (1) may provide for the removal of the mutawalli of the 2 [waqf] holding office as such immediately before the date on which the scheme comes into force: Provided that where any such scheme provides for the removal of any hereditary mutawalli, the scheme shall also provide for the appointment of the person next in hereditary succession to the mutawalli so removed, as one of the members of the committee appointed for the proper administration of the waqf.

(3) Every order made under sub-section (2) shall be published in the prescribed manner, and, on such publication shall be final and binding on the mutawalli, and all persons interested in the waqf:

Provided that any person aggrieved by an order made under this section may, within sixty days from the date of the order, prefer an appeal to the Tribunal and after hearing such appeal, the Tribunal may confirm, reverse or modify the order: Provided further that the Tribunal shall have no power



C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

to stay the operation of the order made under this section.

(4) The Board may, at any time by an order, whether made before or after the scheme has come into force, cancel or modify the scheme.

(5) Pending the framing of the scheme for the proper administration of the 1 [waqf], the Board may appoint a suitable person to perform all or any of the functions of the mutawalli thereof and to exercise the powers, and perform the duties, of such mutawalli.

15. The provision of section 32 (2) (d) of the Act shows that Waqf Board can settle schemes of management for waqf after giving opportunity of being heard to affected parties. The provision of section 69 of Waqf Act shows that when no scheme is in existence and new scheme is to be prepared, the procedure given in section 69 needs to be followed. Such new scheme can provide for removal of mutawalli including the hereditary mutawalli.

16.1 Section 66 of the Waqf Act, 1995 reads as under:-

“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.”

16.2 A careful perusal of Section 66 of the Waqf Act, 1995, would make it clear that when mutawalli is already appointed by the scheme, or by the deed or any scheme is settled, other than the board, then notwithstanding anything contained in such scheme in existence, the State Government has power to modify or alter the scheme. Therefore, when the above provision make it clear that when there is a scheme already put in place, only the State Government has power take a decision contrary to the scheme.

17. A Division Bench of Kerala High Court in the case of C.I.Majeed and others v. The Kerala State Wakf Board, represented by Chief Executive Officer and others [Law Finder Doc ID # 771483 : O.P. (Wakf) Nos.3106 and 3158 of 2023 dated 26.11.2015] has held as follows:-

“8. As regards Clause (7) of the impugned order requiring the Chief Executive Officer of the Board to frame scheme and place it before the Court, the learned senior counsel appearing for the petitioners, including the erstwhile manager, argued that Section 66 of the 1995 Act is a provision which stands by itself and is one intended to apply to cases where schemes have



already been framed for management of any particular Wakf. The provisions relating to repeal of the 1954 Act for enactment of the 1995 Act carries with it a saving clause. The 1954 Act was also born only after the scheme in the case in hand was framed way back in 1101 M.E. which corresponds to 1926 A.D. We may also recall that Section 69 of the 1954 Act which included further exclusion of Section 92 of the Code of Civil Procedure, among other provisions from applicability to Wakfs, also carried with it a saving clause through the proviso to sub-section (2) of Section 69 of that Act.

9. Bearing in mind the differential zones of executive, legislative and judicial functions in terms of the Scheme of the Constitution of India and having regard to the terms of Section 66 of the 1995 Act, it is certain that the legislative wisdom contained in Section 66 by providing the exercise of modifying the scheme to be within the exclusive domain of the Government is to ensure that it does not go into the hands of the Board which is statutorily inferior to the Wakf Tribunal in terms of the 1995 Act as well. That position notwithstanding, the scheme that was framed in relation to the Wakf in question was made under Section 92 of CPC and therefore, it is predominantly judicial in content. That could have been disturbed only



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C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

by a legislative sanction and the primary legislation contained in Section 66 of the 1995 Act has authorised the Government to carry out such exercise. Therefore, the power to modify the Scheme in relation to Kanjiramattom mosque which is a Wakf involved in these original petitions No.(7) in the impugned order and direct the Government of Kerala to consider the question whether the Scheme of the Wakf involved in these original petitions calls for modification or for any further provision. This shall be decided upon by the Government after taking into consideration the requisite materials and extending an opportunity of hearing to the Board and the existing members of the committee in terms of the Scheme (Scheme members) and also the present manager of the Kanjiramattom mosque. To enable this process to be carried out smoothly and effectively, without delay, the Board is directed to place a detailed note before the appropriate authority in Government.”

18. As far as the power of the Waqf Board in a case where already a scheme is settled by an order of the competent court is concerned, a learned single Judge in the case of **B.Abdul Kather v. Tamil Nadu Wakf Board represented by its Chief Executive Officer and others (W.P.No.5622 of 2023 dated 11.04.2023)** at para 6 has held as follows:-



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C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

“6. Section 32 of the Act provides for the powers and functions of the Board. Section 32(2)(d) of the Act gives powers to the Board to settle schemes of management of a wakf. This power is directly linked to Section 69 of the Act. The Board on its own motion or on application made by interested persons in any wakf, after conducting an enquiry, can frame a scheme for proper administration of the wakf by passing appropriate orders. Section 69(4) of the Act provides that the Board from time to time can pass orders and thereby can cancel or modify the scheme framed by the Board. A combined reading of Section 32 and 69 of the Act makes it clear that the Wakf Board has wide powers insofar as cancelling or modifying the scheme that are framed by the Wakf Board. Section 69(4) of the Act is the power that has been traced by the first respondent while issuing the impugned proceedings dated 08.08.2022.

6. The question is as to whether the Board can exercise such powers where the scheme is settled by an order of the competent civil Court. The Wakf Board can trace its powers only from the Act and not beyond it. Therefore, the Act itself should provide the power to the Board to modify or cancel the terms of the scheme settled by a competent civil Court. No such power has been given under the Act and Section 69(4) of the Act



will not come to the aid of the Board to modify or cancel the terms of the scheme settled by a civil Court.

19. A learned single Judge of this Court in the case of **B.Abdul Kather v. Tamil Nadu Wakf Board represented by its Chief Executive Officer and others** (W.P.No.5622 of 2023 dated 11.04.2023) upon a careful perusal of the provisions of the Waqf Act, 1995 held that there is only one provision which enables the State Government to modify the scheme even where such scheme was settled by a decree or an order passed by a Court is Section 66. Upon holding so, the learned judge at para 9 of the judgement has held as follows:-

“9. Even though the nomenclature of the above provision sounds as if it deals only with the appointment and removal of a mutawalli, on carefully going through the provision, it can be seen that it covers a wider spectrum of even the management and superintendence of a wakf governed by a scheme. Such a power has been given only to the State Government. The proviso to the said provision also suggests that the State Government will consult the Wakf Board while exercising such powers.

10. In the light of the above provision, if at all any modification or cancellation of the terms of the scheme is desired, such power should be exercised



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C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

only by the State Government with the consultation of the Wakf Board. Even while undertaking this exercise, if any person will be aggrieved by the modification or cancellation of the terms of the scheme, he must be put on notice and he must be heard before the modification or cancellation of the terms of the scheme. Thus, the principles of natural justice will have to be necessarily read into the above provision.”

20. As rightly contended by Mr. Avinash Wadhwani by virtue of section 32 of the Wakf Act, 1995, Wakf Board has replaced and has taken the position of a scheme court. This legal position was settled by a Division Bench of this Court in the case of **Managing Trustee, Rep. by the Board of Trustees, Nagoor Dargha, Nagore. Vs. Haja Noordeen Sahib [W.A.No.1640 of 2016, dated 08.06.2018]** followed by **Dr.K.M.Kalifa Masthan Sahib Kadiri v. Tamil Nadu Waqf Board (2023 MHC 1202)**. The same view was affirmed in **I.S.Ibrahim and another v. Principal Secretary to the Government and others [2023 SCC OnLine Mad 2220 : (2023) 2 LW 547]**. The relevant paragraph of the said judgement read as follows:

“9. At the outset, there can be no two opinions as to the proposition that by the Waqf Act 1995 coming into force, the Tamil Nadu Waqf Board had replaced the Scheme Court, and has all the power of General Superintendence as per Section 32 of the said Act. The said position has clearly been laid down by the Division Bench of this Court in Managing Trustee, Rep. by the Board of Trustees,



C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

Nagoor Dargha cited Supra. The said view has also been followed and re-affirmed by us, in our judgement in Dr.K.M. Kalifa Masthan Sahib Kadiri -Vs- Tamilnadu Waqf Board & Others [2023 MHC 1202], the relevant portion of the judgement reads as follows:

.....

“3.2 Thus, by virtue of Section 32 of the Waqf Act, 1995 and the above decision of this Court, the proposition that the Waqf Board had replaced and had taken the position of the Scheme Court is well settled.””

21. Although the Division Benches of this court have consistently held that the Waqf Board had replaced and had taken the position of the scheme court under Section 32 of the Waqf Act, 1995, it is important to note that none of the Division Bench rulings ever took into account the Government's authority when a scheme decree is in effect, as envisaged under Section 66 of the Waqf Act, 1995. In other words, the Division Benches of this Court in the above judgements had no occasion to consider the provision in Section 66 of the Waqf Act, 1995.

22. In light of the legal position settled by a learned single judge of this court in the case **B. Abdul Khadar v. Tamil Nadu Wakf Board** and a judgement of a Division Bench of the Kerala High Court in the case of **C.I. Majeed and others v. The Kerala State Wakf Board** (cited supra), this court is of the view that the power given to the State Government under Section 66



wisdom vested such power in the state government to appoint a mutawalli or remove a mutawalli or settle or modify such a scheme of management or otherwise, particularly when the scheme settled by the civil court is in operation. Such powers have been consciously given by the legislature to the state government, taking note of the fact that the waqf board cannot alter the scheme settled by a civil court, as the waqf board is inferior to the courts. Therefore, when the statute has given such powers to the State Government, it is up to the State Government to settle or modify such a scheme or management or otherwise settled by a civil court in exercise of its powers of management and superintendence over a wakqf. The only condition in a case where there is a board established is that the state government must consult the board before exercising such powers and such a condition is imposed on the state only to balance the rights of the parties and the board is also taken in confidence while exercising such powers by the State Government.

23. Therefore, when specific powers have been conferred under section 66 to the Government to appoint or remove a mutawalli or settle or modify such a scheme of management or otherwise, particularly when the scheme settled by the civil court is in operation, merely because that waqf board has



C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

been given a power to settle schemes of management for a wakf under Section

32(2)(d) of the Waqf Act, 1995, it cannot be said that such power can be exercised by the waqf board even in the case where there has already been a scheme framed by the civil court. In cases where there is already a scheme framed by a civil court, any modification to the scheme shall, in the considered opinion of this court, be made only by the State Government in cases covered under Section 66 of the Waqf Act.

24. In view of the above position as long as the scheme framed by the court remains in force, the waqf board cannot have power to assume direct control over a waqf, unless and until the scheme is modified by the State Government under Section 66 of the Waqf Act, 1995.

In the result, (i) C.R.P.No.1655 of 2020: This civil revision petition is allowed. Taking note of the fact that removal of mutawalli is only by way of committee as per the Scheme, as long as the scheme is in force and not set aside or modified by the Government under Section 66 of the Waqf Act, 1995, the Committee is entitled to remove the mutawalli as per the Scheme.

Thus, the order of the Tamil Waqf Tribunal, Chennai that the removal of K.M.Mohideen Kunhi (Appellant in A.A.No.17 of 2019) from the office of the mutawalliship shall be done only by way of a suit is set aside.



C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

C.R.P.No.1654 of 2020: This civil revision petition is allowed. The order of the Tamil Nadu Waqf Tribunal at Chennai, dated 19.03.2020 in A.A.No.6 of 2018 is set aside.

C.R.P.No.1577 of 2020: This civil revision petition is dismissed. No costs.

C.R.P.No.1095 of 2022: This civil revision petition is allowed. The order of the Tamil Nadu Waqf Tribunal at Chennai, dated 19.03.2020 made in A.A.No.17 of 2019 is set aside. The order passed in C.R.P.No.1655 of 2020 will govern this matter.

The parties in these civil revision petitions shall bear their respective costs. Consequently connected CMP(s) in the civil revision petitions are closed.

Index : yes / no
Neutral Citation : yes / no

31-01-2025

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C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

To

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- 1.The Chairman/District Judge, Tamil Nadu Waqf Tribunal, Chennai.
- 2.The District Revenue Officer/Addl. District Magistrate/Member-I (FAC),
Tamil Nadu Waqf Tribunal, Chennai.



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C.R.P.Nos.1654, 1655, 1577 of 2020 and 1095 of 2022

N.SATHISH KUMAR.J.,
kmk

Civil Revision Petition

Nos.1654, 1655, 1577 of 2020 & 1095 of 2022

31..01..2025