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CRP.Nos.2073, 2074, 2080 & 2293 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 08.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP. Nos.2073, 2074, 2080 & 2293 of 2024
and CMP.Nos.11108, 11109, 11132 of 2024

CRP.No.2073 of 2024

Syed Mazhar Hussain

... Petitioner

Vs

1. The Tamil Nadu Waqf Board

Rep by its Chief Executive Officer, No.1 Jaffer Syrang Street,
Vallal Seethakathi Nagar, Chennai.1

2.The Chairman

Tamil Nadu Waqf Board,
No.1 Jaffer Syrang Street, Vallal Seethakathi Nagar, Chennai.1

3.The Election Officer / Superintendent of Waqfs,

Chennai Zone, No. 139, Dr.Besant Road, Ice House, Triplicane, Chennai 5

4. H.Mohammed Sajath

5. Syed Kasim Sakaaf,

6. Syed Ajaz ahmed

7.H.W.Shanaaz

8.H.Gayaz Ali

9.Mubeen Aamina

10.Haseena Bi

11.Syeda Ghousia Begum,

12. Showkath Jahan



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- 13.Syed Latheef
- 14.G.M.Syed Fasi Mohammed
- 15.Shabana Ayisha
- 16.Fathima Begum
- 17.Syed Thula Basha
- 18.S.A. Rahman,
- 19.Syed Faizullah,
- 20.Syed Akthar Hussain
- 21.The Secretary,
- 22.Miss.Habeebunnissa Begum

... Respondents

CRP. No.2074 of 2024

- 1.Syed Ajaz Ahmed
- 2.Haseena Bi
- 3.Syed Akbar Sakkaiff

... Petitioners

Vs

- 1.Syed Latheef
- 2.G.M. Syed Fasi Mohammed
- 3.Shabana Ayisha
- 4.Fathima Begum
- 5.Syed Thula Basha
- 6.S.A. Rahman,
- 7.Syed Faizullah,
- 8.Syed Akthar Hussain
- 9.Miss.Habeebunnissa Begum

10.The Tamil Nadu Waqf Board
Rep by its Chief Executive Officer, No.1 Jaffer Syrang Street,
Vallal Seethakathi Nagar, Chennai.1

11.The Election Officer / Superintendent Of Waqfs
Chennai Zone, No. 139, Dr.Besant Road, Ice House, Triplicane, Chennai 5

- 12.Syed Mazhar Hussain
- 13.H.Mohammed Sajath



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14.Syed Kasim Sakaaf,
15.H.W.Shanaaz
16.H.Gayaz Ali
17.Mubeen Aamina
18.Syeda Ghousia Begum
19.Showkath Jahan

20.Dadashamakkan Wakf
Rep. by the present committee,
Rep. by the present secretary,
No.5, Dargah St, Dadashamakkan, Chennai -12.

... Respondents

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1.Syed Mazhar Hussain
2.Syed Kasim Sakaaf

3.Dadashamakkan Wakf
Rep. by the present committee,
Rep. by the present secretary,
No.5, Dargah St, Dadashamakkan, Chennai -12.

.. Petitioners

Vs

1.Syed Latheef
2.G.M.Syed Fasi Mohammed
3.Shabana Ayisha
4.Fathima Begum
5.Syed Thula Basha
6.S.A.Rahman
7.Syed Faizullah
8.Syed Akthar Hussain
9.Miss.Habeebunnnissa Begum

10.The Tamil Nadu Wakf Board
Rep by its Chief Executive Officer,



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No.1 Jaffer Syrang Street, Vallal Seethakathi Nagar,
Chennai.1

11. The Election Officer/Superintendent of Waqf
Chennai Zone, No. 139, Dr.Besant Road,
Ice House, Triplicane, Chennai 5
12. H.Mohammed Sajath
- 13.Sted Ajaz Ahmed
- 14.H.W.Shanaaz
- 15.H.Gayaz Ali
- 16.Mubeen Aamina
- 17.Haseena Bi
- 18.Syeda Gousia Begum
- 19.Showkath Jahan
- 20.H.Siraj Ali
- 21.Syed Akbar Sakcaff

.. Respondents

CRP. 2293 of 2024

- 1.H.W.Shanaaz
- 2.H.Gayaz Ali
- 3.Showkath Ali

... Petitioners

Vs

- 1.Syed Latheef
- 2.G M Syed Fasi Mohammed
- 3.Shabana Ayisha
- 4.Fathima Begum
- 5.Syed Thula Basha
- 6.S A Rahman
- 7.Syed Faizullah
- 8.Syed Akthar Hussain
- 9.Miss Habeebunnisa Begum

10.The Tamil Nadu Waqf Board,
Rep. by its Chief Executive Officer,
No.1, Jaffar syrang Street,



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Vallal Seethakathi Nagar, Chennai-1

11. The Election Officer/Superintendent of Waqf
Chennai Zone, No.139, Dr.Besant Road,
Ice House, Triplicane, Chennai-5

12.Syed Mazhar Hussain

13.H Mohammed Sajith

14.Syed Kasim Sakaaf

15.Syed Ajaz Ahmed

16.Mubeen Aamina

17.Haseena Bi

18.Syeda Ghousia begum

19.Dadashamakkan Wakf

Rep. by the present committee,

Rep. by the present secretary,

No.5, Dargah St, Dadashamakkan, Chennai -12.

20.H Siraj Ali

21.Syed Akbar Sakkaaf

... Respondents

Prayer in CRP.No.2073 of 2024: Petition filed under Article 227 of the Constitution of India read with Section 83(9) of the Wakf Act, 1995, set aside the fair and decretal order dated 25.04.2024 made in O.A.No.31 of 2022 on the file of Tamil Nadu Waqf Tribunal, Chennai.

Common Prayer in CRP.No.2074, 2080 and 2293 of 2024: Petitions filed under Article 227 of the Constitution of India read with Section 83(9) of the Wakf Act, 1995, set aside the fair and decretal order dated 25.04.2024 made in O.A.No.79 of 2022 on the file of Tamil Nadu Waqf Tribunal, Chennai.



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CRP. 2073 of 2024

For Petitioner(s):

M/s.N.A.Nissar Ahmed, Senior Counsel
M/s.KOWSER SULTHANA I.

For Respondent(s):

Mr.P.Sanjay Prasad for R13
S.JERALD LENIN FOR CAVEATOR R20
P.VINCY RANI FOR CAVEATOR R15
T. SAIKRISHNAN FOR R1
Mrs.Hema Sampath, Senior Counsel for
Mr.A.Masood Ahmed for R6 & R10
Mr.A.Muthukumar for R7, 8 and 12
Mr.V.Raghavachari, Senior Counsel
for Mr.Y.Kaja Navas for R14 & 17

CRP. 2074 of 2024

For Petitioner(s)(s):

Mrs.Hema Sampath, Senior Counsel
for Mr.A.Masood Ahmed for R6 & R10

For Respondent(s):

Mr.P.Sanjay Prasad for R1
S.JERALD LENIN FOR CAVEATOR R8
P.VINCY RANI FOR CAVEATOR R3
T. SAIKRISHNAN FOR R10
Mr.N.A.Nissar Ahmed, Senior Counsel
for M/s.I.Kowser Sulthana for R14 and R20
Mr.A.Muthukumar for R15, 16 and 19
Mr.V.Raghavachari, Senior Counsel
for Mr.Y.Kaja Navas for R2 & 5

CRP. 2080 of 2024

For Petitioner(s)(s):

Mr.N.A.Nissar Ahmed, Senior Counsel
for M/s.I.Kowser Sulthana for R14 and R20



CRP.Nos.2073, 2074, 2080 & 2293 of 2024

For Respondent(s):

Mr.P.Sanjay Prasad for R1
S.JERALD LENIN FOR CAVEATOR R8
P.VINCY RANI FOR CAVEATOR R3
T. SAIKRISHNAN FOR R10
Mrs.Hema Sampath, Senior Counsel
for Mr.A.Masood Ahmed for R13, 17, 20 & 21
Mr.A.Muthukumar for R15, 14 and 19
Mr.V.Raghavachari, Senior Counsel
for Mr.Y.Kaja Navas for R2 & 5

CRP. 2293 of 2024

For Petitioner(s):

Mr.A.Muthukumar

For Respondent(s):

Mr.P.Sanjay Prasad for R1
S.JERALD LENIN FOR CAVEATOR R8
P.VINCY RANI FOR CAVEATOR R3
Mr.C.Shankar, Standing Counsel for R10
Mrs.Hema Sampath, Senior Counsel
for Mr.A.Masood Ahmed for R15, 17, 20 & 21
Mr.V.Raghavachari, Senior Counsel
for Mr.Y.Kaja Navas for R2
Mr.N.A.Nissar Ahmed, Senior Counsel
for M/s.I.Kowser Sulthana for R12, 14 and 19

COMMON ORDER

Challenging the orders passed by the Tamil Nadu Waqf Tribunal, Chennai dated 25.04.2024 made in O.A.Nos.31, 79, 79 & 79 of 2022, the present revisions have been filed.



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2. O.A.No.79 of 2022 has been filed under Section 83(1) and (2) of the Waqf Act, 1995 (as amended in 2013) seeking for a declaration, to declare that the election as conducted by the 2nd respondent dated 03.10.2021 and the subsequent proceedings of the 2nd respondent dated 08.10.2021 and 12.10.2021 in electing the applicants 1 to 4 and the respondents 3 to 12 as null and void, illegal and contrary to the by-laws of the Dadasha Makkan Waqf and set aside the same; to declare that the selection of 5th respondent dated 03.10.2021 is null and void and contrary to the by-laws of the waqf on the ground that he is not eligible to participate in the election since he is not a descendant of Dadasha as per clause 11 of the by-laws of the waqf and set aside the same; to declare that the selection of office bearers/applicants 1 to 4 and the respondents 3 to 12 dated 22.10.2021 as conducted by the 2nd respondent at the office of the Superintendent of Waqf, Ice house, Chennai is null and void, illegal and contrary to the by-laws of the Dadasha Makkan Waqf and set aside the same.

3. O.A.No.31 of 2022 has been filed under Section 83(1) and (2) of the Waqf Act, 1995 (as amended in 2013) to set aside the order of the 1st respondent dated 03.12.2021 in Proc.No.619/99/B9/Chen and the resolution of the Tamil



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Nadu Waqf Board dated 28.10.2021 as null and void

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4. Background of the case in O.A.No.79 of 2022 are as follows:

4.a.The Dadasha Makkan Waqf is a registered and notified waqf governed by the scheme framed by the Tamil Nadu Waqf Board. As per the proforma of the waqf, the rule of succession of the mutawalli is hereditary from the descendants of saint Dadasha as per the waqf deed. The learned City Civil Court Madras in O.S.No.75 of 1909 dated 21.02.1910 framed the scheme decree that the office of the mutawalli is by rotation from among the descendants of six sons and two daughters of the saint Dadasha. The plaintiff and the defendants in O.S.No.75 of 1909 are the only descendants of saint Dadasha. A scheme was framed in the said suit for the administration of the waqf, according to which each branch of the descendants of Dadasha should manage the waqf for 1 year. However the scheme was not implemented because it was not possible to manage the waqf for 1 year by each branch in rotation. Therefore the Bye laws of the waqf were framed by the Tamil Nadu Waqf Board on 15.07.2010. The saint Dadasha had six sons and two daughters. The daughters of the saint got half shares. Hence there are seven branches consisting from the six sons and two daughters of the saint. As per



clauses 9, 11 and 12 of the by-laws each branch has to select two members to the execution committee. The elected 14 members have to select the office bearers in the presence of the Waqf Board officials with the prior permission from the Tamil Nadu Waqf Board.

4.b.The Waqf Board directed the Election Officer to conduct the election only on 03.10.2021 and as per the bye-laws two members were selected from their respective branch. The Election Officer assumed and took an illegal view that, he has to select 14 members from seven branches as per clause 12 of the bye-laws and thereby has violated the clause 9 of the bye-laws, since clause 12 speaks only about, "the appointment of the committee" only after selection of 14 members from 7 branches by the descendants of Dadasha under clause 9. Contrary to the bye-laws he selected 14 members and passed a proceedings dated 08.10.2021 and 12.10.2021 without any prior permission of the Waqf Board. It was contended that he has conducted the election beyond the period of one day which is absolutely illegal and further, has violated the majority decision from the branches 1, 3, 5 and 6 thereby defeated the rights of the 79 descendants from the respective branch. In the 2nd branch, he has wrongly selected the non- descendants of Dadasha. One



Syed Kasim Sakaaf is not the descendants of Dadasha. As per the decree passed in O.S.No.75 of 1909, the 5th plaintiff namely Ikramunnisa Saheba had 2115 shares. Admittedly she did not have any issues or any other legal heirs. As per the genealogical tree of Dadasha as filed in O.S.No.75 of 1909, she is the only daughter of Syed Bahadoor Hussain alias Doola Badshah and his 1 wife Zaharu Begam.

4.c. The said Ikramunnisa alias Manjuli Begam sold her share 1440 to one Syed Ahmed Sakaaf, who is the grandfather of the Syed Kasim Sakaaf vide a share purchase deed dated 29.04.1919 and 675 shares to Syed Samad Sakaaf, who is the son of Syed Ahmed Sakaaf. The Syed Ahmed Sakaaf having two sons and one daughter namely 1. Syed Samad Sakaaf (died, unmarried), 2. Syed Mohammed Sakaaf and 3. Noorjahan Begam. The share purchased was admitted by Syed Ahmed Sakaaf, Syed Mohammed Sakaaf and Noorjahan Begam before the Chief Judge, Small Causes Court, Chennai in M.P.No.508 and 570 of 1943 in L.C.No.29 of 1916 and the Chief Judge Small Causes Court after elaborate enquiry declared that the father of Syed Mohamed Sakaaf and his sister Noorjahan Begam are the legal heirs of the share purchaser. Admittedly, Syed Kasim Sakaaf's father and



grandfather were never claimed all these years that they are the descendant of Dadasha. Admittedly the ancestors of Syed Kasim Sakaaf are not a party in O.S.No.75 of 1909 and their names are also not in the genealogical tree of saint Dadasha. Hence, the 5th respondent is not a descendant of Dadasha. As per the bye-laws committee shall be appointed in the presence of the beneficiaries and admittedly the present committee was not appointed in the presence of the beneficiaries on 03.10.2021. As on date the election was not approved by the general body. On 22.10.2021, the Election Officer has called only 9 members to his office and selected the office bearers of the waqf and thereby violated clause 12 of the bye-laws. There are 139 beneficiaries, out of them 136 are descendants of Dadasha and 3 of them are legal heirs of the share purchasers. From the first selection/election in 2010 it has been mutually agreed by the beneficiaries that, who are all unable to attend may select 2 members from their respective branch by giving the selection letter to the Election Officer, the beneficiaries who are physically present may raise their hand both joined together and the members will be selected based upon the majority. The present selection dated 03.10.2021 was not conducted as per the bye-laws and the said usage and customs of the waqf and the Election Officer has refused to accept such consent letters belatedly on



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08.10.2021. Hence challenged the election as conducted by the 2nd respondent dated 03.10.2021 and the subsequent proceedings dated 08.10.2021 and 12.10.2021 before the Tamil Nadu Waqf Tribunal. The Tamil Nadu Waqf Tribunal vide the impugned order held that the election conducted on 03.10.2021 and the subsequent proceedings dated 08.10.2021 and 12.10.2021 in electing the applicants 1 to 4 and the respondents 3 to 12 therein as null and void and also held that the selection of the 5th respondent dated therein is contrary to bye-laws on the ground that he is not eligible to participate in the election since he is not a descendant of Dadasha as per clause 11 of the bye-laws of the waqf.

5. Background of the case in O.A.No.31 of 2022 are as follows:

5.a. Dadashamakkan Waqf, Perambur, Chennai is a registered and notified waqf governed by a scheme framed by the Waqf Board. As per the scheme of the waqf, the waqf shall be managed by a Executive Committee elected once in three years in the General Body meeting by the beneficiaries as per clause 10 of the Bye law. As per clause 9 of the bye law selection/election of office bearers will be selected within 7 branches, each branch to select/elect 2 members only from their respective branch. Elected 14 members are entitled to select/elect the office



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bearers in the presence of Waqf Board officials with the prior permission of the Tamil Nadu Waqf Board. As per clause 12 of the Bye law the members of the committee shall be appointed in the presence of Waqf Board official at a meeting of beneficiaries of the waqf by the resolution of the majority of the members present and entitled to vote. Casting vote or abstaining from voting is at the discretion of the eligible member. On 03.10.2021 election was conducted as per the bye law by, the Election Officer. Certain contestants produced alleged consent letters of beneficiaries to have proposed their name. The alleged beneficiaries were not present on the election date. The contestant produced such letters to the election officer. The election officer declined to accept such consent letters as the same was not in consonance with clause 9 and 12 of the bye law. In respect of the 1st branch there was a tie each group securing 7 votes. Therefore the election officer directed the 1st branch to come up with two selected representatives amongst themselves failing which lot system would be adopted. In respect of 2nd member of the 6th branch, the election officer directed to come up with one representative amongst themselves as three persons contested and 7 persons voted in favour of the 1st contestant.



5.b. It is reliably understood that the Waqf Board had orally instructed the Election Officer not to declare results on 03.10.2021. The successful candidates on coming to know of the same moved the Chief Executive Officer who in turn directed the Election Officer to declare results as per law and not to withhold results on any one's instructions. The Election Officer pursuant to the same declared the results on 08.10.2021 and 12.10.2021. On 12.10.2021 the Election Officer declared selected candidates from branches 1 and 6 and required the 14 selected committee members to attend the meeting on 20.12.2021 for selecting office bearers for the managing committee. Vide proceedings dated 12.10.2021, the Election Officer informed that selection of office bearers would be held on 20.10.2021. However on 13.10.2021 the Election Officer affixed notice in the waqf that due to administrative reasons it would not be scheduled on 20.10.2021 and that the date would be intimated later. Mr.H.Mohammed Sajath filed O.A.No.98/21 to declare the notice dated 13.10.2021 of the Election Officer as null and void and to convene meeting for selection of office bearers. The Election Officer immediately on 21.10.2021 affixed a notice informing meeting to be held on 22.10.2021 and on 22.10.2021 the office bearers were elected in the presence of the Election Officer. Mr.H.Mohammed Sajath received a notice on 25.10.2021



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in RC.No.619/99/B9/CH dated 22.10.2021 issued by the Waqf Board calling upon the applicant and respondents herein to attend enquiry on 28.10.2021 at 3.30 PM with regard to grant of approval to the newly elected managing committee, revoking direct management and to consider and enquire the petition objecting the election of newly elected committee.

5.c. Challenging the same, application was filed in O.A.100/21 to declare the notice dated 22.10.2021 as null and void and to direct the Waqf Board to handover charge to the elected committee and sought for stay of all further proceedings pursuant to the notice dated 22.10.2021. While such being the position the 1 respondent vide proceedings dated 03.12.2021 in Proc. No.619/99/B9/Chen pursuant to the resolution of the Waqf Board dated 28.10.2021 has ordered fresh election. The said impugned order has been passed without any notice to applicant therein and other majority of successful candidates. The respondents 4 to 13 are elected office bearers and 14 to 17 are committee members. The respondents 18 to 20 had contested and lost in the elections. The applicant was elected as treasurer. When elections have been declared the respondents 1 and 2 have no authority or jurisdiction but merely to



record the change in management as per Section 42 of the Waqf Act. Challenging the said order, this application was filed before the Tribunal. The Tribunal vide impugned order disposed of the application directing the Waqf Board to take necessary steps to conduct selection hereafter to the Dadasha Makkan Waqf in accordance with the bye-laws after making necessary modifications to the same by invoking the provisions of Section 69(4) of the Waqf Act, 1995 (as amended in 2013).

6. Since the issues involved in these revisions are with regard to the election conducted by the Waqf Board and the civil rights of the parties to be elected as office bearers, common arguments have been advanced by both sides. Hence, these revisions are disposed of by way of this common order.

7. Mrs.Hema Sampath and Mr.N.A.Nissar Ahmed, learned Senior Counsel for the revision petitioners mainly submitted that the Waqf Tribunal has no jurisdiction to decide the civil rights of the parties. The issue of descendants was never raised all these years. The fifth respondent in O.A.No.79 of 2022/ revision petitioner shown as one of the beneficiaries under the bye-laws and three elections



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have been conducted all these years as per the bye-laws. Further, the scheme approved by the Waqf Board has not been challenged all these years and no oral evidence has been let in by the applicants. This Court while deciding the writ petition in W.P.No.26402 of 2021 have never directed that the issue of descendants has to be decided. No challenge has been made to the election of two members each from all branches. The parties in earlier litigations have clearly admitted their relationship, whereas, the Tribunal has ignored the statements of the parties before the various authorities and just relied upon the so-called genealogical tree/Ex.P2 filed by the applicants in the impugned order.

8. According to both the learned Senior Counsel, the genealogical tree relied upon by the applicants was not filed in the suit of the year 1909, i.e., in O.S.No.75 of 1909. The Tribunal has proceeded as if the suit in O.S.No.75 of 1909 is a scheme suit and scheme has been framed therein. According to the learned senior counsel, the said suit is only for a declaration that the suit schedule properties is charged with trust for performance of oors and neither a scheme decree nor the issue of declaration for descendant of saint Dadashah was the subject matter of the suit. The alleged genealogy tree/Ex.P2 does not form part of



the decree in O.S.No.75 of 1909. Ex.P2 is incomplete and the same does not disclose the Saint Dada had how many sons and daughters. Therefore, the suit is not for a declaration of relationship of the parties to the suit for the saint Dada sha. The decree and judgment in O.S.No.75 of 1909 was not produced or marked before the Waqf Tribunal. The alleged genealogical tree is not the certified copy obtained from the judgment of the O.S.No.75 of 1909. The alleged genealogical tree is only a genealogy of sharers not the descendants which has been filed in a different proceedings in LC.No.29 of 1916 and the same is not way connected to the descendant issue, but the Tribunal has proceeded as if the genealogy is binding on the parties and shifted the burden on the other side. Hence, it is the main contention that the Tribunal has gone beyond the issue and without letting any oral evidence to prove the relationship has erroneously held that the fifth respondent in O.A.No.79 of 2022 is not a descendant to saint Dada Shah.

9. It is the further contention of Mr.N.A.Nissar Ahmed, learned senior counsel that though entire election conducted in October 2021 in respect of 14 committee members has been set aside, since the tenure is said to be expired during the year February 2025. Further, the order of the Tribunal declaring the 5th



respondent to be not the descendants has serious consequences and impact on the civil rights of the 5th respondent in the application. Hence, without any proof merely on the basis of some incomplete document which has not been proved in the manner known to law, the Tribunal has come to the conclusion that 5th respondent is not a descendant of Dadasha, that too, after 100 years.

10. It is the further contention of Mrs.Hema Sampath, learned senior counsel that there was no proxy voting. The members of all the branches were present and voted in person. The election of the committee members was held on 07.07.2018. Two persons from each of the branches were present and have signed the record. Therefore, the finding of the Waqf Tribunal is wrong on the face of record. In support of their submissions, they relied on the following judgments:

a.State of Bihar vs. Radha Singh and others reported in (1983) 3 SCC 118

b.Managing Trustee vs. Haja Noordeeen Sahib @ Alhaj Dr.S.Syed Kamil Sahib and others reported in 2018 (3) CTC 801

c.LalkhanPallivasal vs. Shahinsha Khaja Mainudeen made in CRP(PD).No.813 of 2023 dated 31.07.2024

d.Kiran Singh and others vs. Chaman Paswan and others reported in 1954 AIR



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(Supreme Court) 340

e.Ashwani Kumar Singh vs. U.P.Public Service Commission and others reported in 2003 (11) SCC 584

f.Kothamasu Kanakarathamma and others vs. State of A.P. and others reported in 1965 AIR (Supreme Court) 304

g.Devsing Ramchandra Chavan vs. The State of Maharashtra and others reported in 2022 (5) MhLJ 138

11. Whereas, on the other hand, Mr.V.Raghavachari, learned senior counsel appearing for the respondents 14 and 17 in CRP.No.2073 of 2024 defending the Tribunal order submitted that the trustees and sharers are different. Right to office given by way of inheritance, the same is inalienable. As per the judgment in O.S.No.75 of 1909, one Ikramunnisa alias Manjuli Begam sold her share 1440 to one Syed Ahmed Sakaaf, who is the grandfather of the Syed Kasim Sakaaf/5th respondent in the impugned order vide a share purchase deed dated 29.04.1919 and 675 shares to Syed Samad Sakaaf, who is the son of Syed Ahmed Sakaaf. Therefore, the genealogical tree was appended in the suit in O.S.No.75 of 1909 clearly held that only the parties to the suit are descendants of the saint Dadashah.



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He would further submit that when the matter has already reached finality, it is binding on all the sharers. Genealogical tree is also filed before the Waqf Tribunal.

12. With regard to the jurisdiction of the Waqf Tribunal, Mr.V.Raghavachari, learned senior counsel submitted that it is a well settled law that the Waqf Tribunal is deemed to be a Civil Court having same powers under Code of Civil Procedure, 1908, in other words, dispute can be tried like a suit by the Waqf Tribunal. In support of his submissions, he placed reliance in the judgment of the Hon'ble Apex Court in the case of *S.V.Cheriyakoya Thangal vs. S.V.P.Pookoya and others* reported in 2024 SCC OnLine SC 1586. Hence, submitted that the impugned order does not require interference.

13.Heard both sides and perused the materials placed on record.

14. Since the issue revolve around the suit in O.S.No.75 of 1909, this Court has to see whether any scheme has been framed in the said suit. It is relevant to note that the original judgment of the suit has not been placed before the Tribunal, only the genealogical tree said to have been filed in the above suit has been filed



as a certified copy before the Tribunal. The said document/Ex.P2 is incomplete, thus, in order to find out the nature of the suit, this Court has called for the Suit Register and the judgment which was available in the City Civil Court, Chennai. On perusal of the above binding register, the following points arises for consideration in these revisions:

1. Whether the Tribunal was right in holding that the genealogical tree form part of the decree in O.S.No.75 of 1909 and was acted upon for more than 100 years?

2. Whether the Tribunal was right in placing the burden on the revision petitioners?

Point 1 & 2

15. As far as the suit in O.S.No.75 of 1909 is concerned, the said suit was filed only for a declaration that the suit property is charged with trust for performance of ooroos in the dargah of Dadah Shah and for the maintenance of the said parties to the suit who are his heirs and descendants for an account to be taken of the collections made by the first defendant from the said properties and payment to the partition of their respective shares and for a provisions to be made for



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management of the property in future and for the collection of the rents and disposal thereof and for recovery of the costs of the suit from the first defendant.

16. The said suit has not been filed under Section 92 of Code of Civil Procedure for framing scheme. On perusal of the above judgment by the Court, it shows that the plaintiffs sought a relief that the income of the property specified in the plaint is after meeting the expenses of the Oorus divisible amongst the heirs of Daday Shah. Whereas, the defendants 1, 2, 3, and 9 inter alia contended that there was an absolute declaration as in property for trust purpose. Ultimately, the Court has negated the defendants case and decree was passed declaring that the plaint property is charged with the trust for the performance of the oorus in the Darga of Daday Shah and that the surplus is divisible between the plaintiff and the defendants 1 to 9, the representatives of Syed Bahadur Hussain alias Doola Basha being the 5th plaintiff, 7th plaintiff, 2nd and 9th defendant. Any sum may remain of net balance after the loss the final account will be dividable amongst the aforesaid heirs in proportionate to their respective shares. The descendant of each other son's and daughters of Daday Shah or their assigns will be entitled to collect the rents and perform the ooroos of one year beginning from 1st March and the pursue



will be filed. The 5th plaintiff, 7th plaintiff, 2nd defendant and 9th defendant will begin the management and collect rents from 1st March. Plaintiffs will be entitled to recover their cost from the estate and other bear their own costs.

17. The above decree and judgments makes it clear that the issue of the descendants of Daday Shah was not decided in the above suit. The suit has been decided only with regard to the issue as to how to divide the shares and no scheme has been framed. It is to be noted that in the case of *The Executive Committee, Dadasha Makkan Trust vs. The State of Tamil Nadu represented by its Secretary Department of Wakfs* reported in 2010 (2) C.W.C. 22, this Court has held as follows:

"7. As far as the contention that the decree passed by the Civil Court in O.S.No.75 of 1909 dated 21.2.1910 is a scheme decree is concerned, on a reference to the decree passed by the Civil Court, it is true that one cannot come to a conclusion that it is a scheme decree, as section 92 of the Code of Civil Procedure has not been followed.

...

9. By applying the dictum laid down by the Supreme Court as well as the Division Bench of this Court relating to section 92 of the Code of Civil Procedure, certainly there is a doubt about the nature of decree passed by the Civil Court in this case as to whether it is a scheme decree or not. But, that is not the main issue, in my view, since the Wakf Boards jurisdiction over the Trust has not been questioned so



far. In fact, it is the admitted case that the 5th respondent himself was appointed by the second respondent, Tamil Nadu Wakf Board as per its resolution dated 29.5.2005, based on which the 5th respondent took charge as Muthavalli. The petitioner, who, on the face of the pleadings is espousing the cause of the 5th respondent, cannot deny that the 5th respondent was appointed as Muthavalli only by the 2nd respondent, the Wakf Board. A reference to the decree passed by the Civil Court shows that certainly it does not contain any clause to the effect that any other authority or Court other than the Wakf Board should make appointment or removal of Muthavalli, so as to enable the State Government to exercise its powers.

18. Therefore, from the above judgment, it can be easily held that the issue of descendant was not the issue in the above suit. It is also relevant to note that the very applicants who filed O.A.No.79 of 2022 have pleaded in the application that though there was a scheme in O.S.No.75 of 1909, the scheme was not implemented because it was not possible to manage the waqf for one year by each branch in rotation. Therefore, the bye-laws of the waqf were framed by the Tamil Nadu Waqf Board on 15.07.2010. The saint Dadasha had six sons and two daughters. The daughters of the saint got half shares. There are seven branches consisting from the six sons and two daughters of the saint. The very pleading in the application itself clearly indicate that the parties are not following the so-called scheme decree in O.S.No.75 of 1909, whereas, the bye-laws have been framed by



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the Tamil Nadu Waqf Board on 15.07.2010 which was gazetted and elections have been conducted based on the bye-laws.

19. Dadasha Makkan Waqf is a registered and notified waqf under the supervisory control of the Tamil Nadu Waqf Board governed by the scheme framed by the Board dated 15.07.2010. Ex.P26 is the Bye-laws of the Waqf, as per the bye-laws/scheme framed by the Tamil Nadu Waqf Board under Clause 10, the Wakf shall be administered by the Executive Committee consisting of seven office bearers and seven executive committee members' tenure shall be three years. There are seven branches, each branch select/elect 2 members from their respective branch only. As per clause 12, members of the committee shall be appointed in the presence of the Wakf Board official at meeting of beneficiaries of the Wakf by the resolution of the majority of the members present and entitled to vote. The list of beneficiaries are the descendants of the saint Dadah Shah and the same form part of the bye-law. It is an admitted fact that after framing of the scheme in the year 2010 by the Tamil Nadu Wakf Board, three elections have been conducted and the fifth respondent in O.A.No.79 of 2022 had also participated in the elections. The dispute arose only when the election was scheduled to be held on 03.10.2021, in



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that election also, it appears that the petitioner in CRP.No.2073 of 2024 came out as successful candidate from the respective branch in the said election and the fifth respondent in the impugned order was elected as president. However, the Tamil Nadu Waqf Board ordered re-election on the ground that the election has not properly conducted in accordance with the bye law by its proceedings dated 03.12.2021 which is also marked as Ex.P49.

20. The said proceedings ordering re-election was challenged before this Court in W.P.No26402 of 2021. This Court, by order dated 05.04.2022 while dismissing the petition held that Wakf Board order dated 03.12.2021 is untenable and granted interim order and ultimately relegated the matter to the Waqf Tribunal. Once again, writ petitions in W.P.Nos.15977 of 2021 etc batches were filed, wherein, this Court, by order dated 10.10.2022 directed the parties to raise their dispute before the Waqf Tribunal, if desired. Thereafter, it appears that O.A.No.79 of 2022 has been filed. The Waqf Tribunal relying solely on the genealogical tree of Dadasha/Ex.P2 has held that the fifth respondent therein is not a descendant.

21. On perusal of the Ex.P2 makes it clear that the genealogical tree has



been originally filed in LC.No.29 of 1916 for a different issue. The certified copy has been obtained in LC.No.29 of 1916 only while filing the application in the Waqf Tribunal. O.S.No.75 of 1909 is added in the top of the genealogical tree. It is projected before the Waqf Tribunal as if Ex.P2 was the original genealogical tree filed in O.S.No.75 of 1909, whereas, the said genealogical tree was filed in a different case and a certified copy was obtained and filed before the Tribunal as if it was the genealogical tree filed in the original suit.

22. On perusal of Ex.P2 indicate that it only relates to the sharers and not the descendants. As in branch 1, second defendant/Junnoo Mean is repeated in branch 7. Similarly, as in branch 2, Bee Begam is repeated in branch 6. The contents in the genealogical tree is incomplete, therefore, without establishing these facts just relying upon the genealogical tree which has been filed in a different proceedings as that of genealogical tree in O.S.No.75 of 1909, the Waqf Tribunal has come to the conclusion that the fifth respondent is not a descendant. It is relevant to note that the question of proving the genealogical tree, the Hon'ble Apex Court in the case of *State of Bihar and Radha Krishna Singh and others* reported in (1983) 3 SCC 118 has laid down the following principles:

" 19.The principles governing such cases may be summarised thus:



“(1) Genealogies admitted or proved to be old and relied on in previous cases are doubtless relevant and in some cases may even be conclusive of the facts proved but there are several considerations which must be kept in mind by the courts before accepting or relying on the genealogies:

- a. Source of the genealogy and its dependability.*
- b. Admissibility of the genealogy under the Evidence Act.*
- c. A proper use of the said genealogies in decisions or judgments on which reliance is placed.*
- d. Age of genealogies.*
- e. Litigations where such genealogies have been accepted or rejected.*

(2) On the question of admissibility the following tests must be adopted:

- a. The genealogies of the families concerned must fall within the four-corners of Section 32(5) or Section 13 of the Evidence Act.*
- b. They must not be hit by the doctrine of post litem motam.*
- c. The genealogies or the claims cannot be proved by recitals, depositions or facts narrated in the judgment which have been held by a long course of decisions to be inadmissible.*
- d. Where genealogy is proved by oral evidence, the said evidence must clearly show special means of knowledge disclosing the exact source, time and the circumstances under which the knowledge is acquired, and this must be clearly and conclusively proved.”*

23. In light of the above principles in proving the genealogy, this Court is of the view that the Tribunal has not followed any of the settled position of law and merely relied upon Ex.P2 as that of genealogical tree filed in O.S.No.75 of 1909. The fact remains that the genealogical tree is filed in LC.No.29 of 1916 and the certified copy have been obtained and filed before the Tribunal appended to



O.S.No.75 of 1999.

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24. It is further to be noted that one Ikramunnisa Begum said to be a descendant of saint Dada sha, which is admitted by all the parties has executed a sale deed dated 29.04.1919, wherein, she has specifically recorded that Syed Ahmed Sakkaf who is the grandfather of the 5th respondent in the application is a predeceased sister's son and she has given 1440 shares to the said Syed Ahmed Sakaaf and 675 shares to Syed Samad Sakaaf who is the son of Syed Ahmed Sakaaf. Thereafter, in the registered will dated 05.06.1919/Ex.R35 executed by Ikramunnisa Begum, she has recorded that Syed Ahmed Sakkaf is the son of her pre-deceased sister's. That apart, Ex.R23 to Ex.R32/affidavits filed by the forefathers have admitted that grand father of the fifth respondent Mr.Syed Ahmed Sakaaf is the defendant of St.Dada Shah. In Ex.R21/affidavit of Ikramunnisa Begum, she has asserted that Syed Ahmed Sakkaf is her pre-deceased sister's son/Hydari Begum. Similarly, Syed Ahmed Sakkaf in his affidavit, which is marked as Ex.22 admitted that Ikramunnisa Begum is his maternal aunt.

25. It is relevant to note that statements or declarations made *ante litem*



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motam is admissible and relevant to be noted under Section 32(5) & (6) of the Indian Evidence Act, 1872 and Section 26 of Bharatiya Sakshya Adhiniyam, 2023.

The above referred statements were made even before the existence of actual controversy, concerning the subject matter of disputes. The statements have been made by the blood relations of the family. Therefore, these are relevant to establish the relationship of the parties. Even in the proforma report dated 09.03.1956/Ex.R1, the name of Syed Ahmed Sakkaf is found in Serial No.33. Similarly, in the bye-law and list of beneficiary, name of the fifth respondent in original application is found in Serial No.37. The said bye-law and the list of beneficiary appended to the bye-law have not been challenged all these years.

25. Therefore, the findings of the Tribunal with regard to the Exs.P4 and Ex.R35 that since Ikkramoonisha Begum had mentioned Hydari Begum only as her sister and not a blood sister, thus, she is not a blood sister is totally against the well settled position. When the statements of the blood relatives have clearly admitted the relationship, now the Tribunal's finding that Hydari Begum is not a blood sister, is without any evidence in this regard.

26. Considering the statements made by the parties even before the issue of



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controversy in various proceedings, i.e., LC.No.29 of 1916, sale deed of the year 1919, Exs.P4, R35, R21, R22, R23 to R32, this Court is of the definite opinion that the statements are admissible and relevant under Section 32(5) and (6) of the Indian Evidence Act, 1872 and 26 (f) and (g) of Bharatiya Sakshya Adhiniyam, 2023 which has not been taken note by the Tribunal. Therefore, the Tribunal's findings that the 5th respondent is not a descendant cannot be valid in the eye of law. In fact, the parties themselves have pleaded that the judgment in O.S.No.75 of 1909 has not been acted upon and therefore, the bye-laws were framed by the Tamil Nadu Wakf Board on 15.07.2010, wherein, beneficiaries have been clearly set out, which has been acted upon and three elections have been already conducted. In the proforma report, names have been shown as beneficiary, however, now, without any evidence and relying upon Ex.P2, which is not emanated from O.S.No.75 of 1909 and has been obtained from some other proceedings and giving much reliance to the said Ex.P2/Genealogical tree, in view of this Court is not valid in the eye of law.

27. Accordingly, the findings recorded by the Tribunal in O.A.No.79 of



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2022 is set aside. In respect of O.A.No.31 of 2022 with regard to the elections, as the period of election is about to expire, the parties have already adopted the scheme of bye-law which is gazetted and this Court is of the firm view that the future elections shall be in terms of the bye-laws/scheme framed already by the Tamil Nadu Wakf Board dated 15.07.2010. The question of deciding the descendants will not arise at all. The very conduct of the parties in all these years and treating them as the descendants and accepted their status as descendants, now, it is too late to re-open the same after many decades. Since the period of office bearers expires in February 2025, the election shall be conducted strictly in accordance with the bye-law/scheme framed by the Tamil Nadu Wakf Board dated 15.07.2010.

28. From the various litigations, one by one, either before this Court or the Waqf Tribunal indicate that the parties are litigating the issue only in order to vindicate their personal rights and to avail the maximum benefit from the properties. Thus, this Court is of the view that the election has to be conducted only as per the bye-law. The issue of descendants cannot be re-opened after a several decades. Accordingly, the directions of the Tribunal to amend the bye-law



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and findings with regard to the issue of descendant in respect of the fifth respondent in the original applications alone are set aside.

29. Accordingly, these revision stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

08.01.2025

Index : Yes / No
Speaking/non speaking order
Neutral Citation : Yes/No
dhk

To,

1.The Chief Executive Officer,
The Tamil Nadu Waqf Board
No.1, Jaffer Syrang Street, Vallal Seethakathi Nagar,
Chennai - 600 001

2. The Chairman
Tamil Nadu Waqf Board,
No.1 Jaffer Syrang Street, Vallal Seethakathi Nagar,
Chennai - 600 001

N. SATHISH KUMAR, J.



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dhk

3. The Election Officer / Superintendent of Waqfs,
Chennai Zone, No. 139, Dr.Besant Road,
Ice House, Triplicane, Chennai 600 005

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08.01.2025