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CRP.No.2976 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:27.11.2025

Pronounced on:19.12.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

**CRP. No.2976 of 2025
and
CMP. Nos.16744 & 16746 of 2025**

1.Fazal Mohammed

2.MisbahBathool

3.Rahila Bathool

Petitioner(s)

Vs

1.Tamil Nadu Wakq Board,
Rep. by its Chairman,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 001.

2.The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 001.

3.Syed Mazheruddin,

4.The Hazrath Syed Moosa-Shakhaderi Darga Wakf,
Mount Road Darga, Rep. By its Mutawalli,
situated at Anna Salai, Chennai – 600 002.

Respondent(s)

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 20.03.2025 of the

Hon'ble Wakf Tribunal confirming the appointment of the 3rd respondent



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as Chief Hereditary Muthavalli by the 1st respondent/Wakf Board.

For Petitioners : Mr.S.Parthasarathy,
Senior Counsel for
Mr.MJ.Jaseem Mohammed
and Mr.S.Arifkhan

For Respondents : Mr.C.Shankar
Standing Counsel for R1 & R2
Mr.NA.Nissar Ahmed,
Senior Counsel for
Mr.Nassir Hussain for R3 & R4

ORDER

The revision is directed against the order of the Tamil Nadu Waqf Tribunal, Chennai made in O.A. No. 41 of 2023. Along with the present revision, Miscellaneous Petition has also been taken out in C.M.P. No. 16746 of 2025, for realising the hundial collection amounting to Rs.12,30,819/- over the period of 2019 to 2022 and further accumulating hundial collections to the petitioners, pending disposal of the Civil Revision Petition.

2. I have heard Mr.S.Parthasarathy, learned Senior Counsel for Mr.M.J.Jaseem Mohamed, learned counsel for the Revision Petitioner and Mr.C.Shankar, learned counsel for the respondents 1 and 2. Mr.N.A.Nissar Ahmed, learned Senior Counsel for Mr.Nassir Hussain, learned counsel respondents 3 and 4.



3. Mr.S.Parthasarathy, learned Senior Counsel appearing for the petitioner would contend that the dispute pertains to a surveyed waqf under Section 4 of the Waqf Act of 1954, by name Hazrath Syed Moosa Shakhaderi Dargah, which is now popularly known as Mount Road Dargah. The learned Senior Counsel would submit that O.A. No. 41 of 2023 was filed by the revision petitioners under Section 83(1) and 83(2) of the Waqf Act 1995. The learned Senior Counsel would submit that the subject waqf is a surveyed and notified waqf and as early as in 1910, in C.S. No. 116 of 1909, this Court granted a scheme decree. The appeal challenging this decree of the Single Judge was confirmed by the Division Bench on 16.09.1912. The issue regarding the parties being governed by the scheme decree came up for consideration yet again in W.P. No. 5418 of 1991 and W.A. No. 522 of 1994 and the Hon'ble Division Bench of this Court held that the scheme decree passed by this Court in C.S. No. 116 of 1909 would govern the parties and any disputes between the parties shall be settled only in accordance of the scheme decree.

4. In and by proceedings of the Tamil Nadu Waqf Board dated 10.01.1991, the board removed the then Mutawalli. The Hon'ble Supreme Court, in Civil Appeal No.3160 of 1983 also found that the scheme had



been drawn for collecting and receiving the offerings and held that Syed Moosa Sahib was entitled to one half and Syed Gaffar Sahib and Syed Moideen Sahib were entitled to the other half of the hundial collections, offerings, gifts and other emoluments. It is the categorical case of the learned Senior Counsel, Mr.S.Parthasarathy that after the scheme decree, the Board never sought for modification of the scheme at any point of time and rightly so, since the Board does not have the jurisdiction to interfere with the scheme of management framed by this Court.

5. He would however state that the descendants of Syed Moosa Sahib and Syed Gaffar Sahib and Syed Moideen Sahib were turn holding trustees/mujawars, managing the affairs of the Dargah and collecting and receiving the offerings, taking turns according to their respective shares for the past 100 years and more.

6. The learned Senior Counsel would also invite my attention to the fact that the father of the first petitioner and maternal grandfather of the petitioners 2 and 3, Janab Mohamed Zainulabudeen filed a suit in O. S. No. 3696 of 1972 against Syed Mohiuddin and others claiming his share as a turn holding trustee/Mujawar. The City Civil Court decreed the suit on 12.09.1975 and the appeal preferred by Syed Ahmed Mohideen and others in A.S. No.19 of 1980 was also dismissed on 12.12.1980.



However, in S.A.Nos.650 and 894 of 1981, by judgement and decree dated 17.11.1981, this Court set aside the concurrent findings of the Courts below. The father of the petitioner preferred an appeal before the Hon'ble Supreme Court and in C.A No. 3160 of 1983 by judgement dated 15.12.1989, the appeal was allowed and the Hon'ble Supreme Court upheld the entitlement of the father of the first petitioner to 27 days of management of the Dargah. The learned Senior Counsel therefore states that neither the Authorities nor the respondents who are other turn holding trustees/mujawars, are entitled to interfere with the right of the revision petitioners which has been upheld by the Hon'ble Supreme Court.

7. The learned Senior Counsel would further state that when matters stood there, the Waqf Board attempted to interfere with the management of the subject Dargah by appointing an Executive Officer and a Committee to assist the Mutawalli of the waqf. Referring to the Hon'ble Division Bench judgement in W.A. No. 692 of 1980 dated 13.08.1986, the learned Senior Counsel would bring to my notice that the Hon'ble Division Bench has categorically held that the Waqf Board has no power to appoint an Executive Officer or Committee and proceeded to quash the order of the Waqf Board. Despite the decision of the Hon'ble Division Bench, the Board appointed Syed Moinudeen who is only one of



the turn holding Trustee as the Chief Hereditary Trustee of the Dargah, by an order dated 10.01.1991. Referring to the said proceedings, the learned

Senior Counsel would state that the said order came to be passed without even hearing the objections of the other turn holding trustees and rightly, this Court in W.P. No. 5315 of 1991 and 6401 of 1987, by order dated 20.02.1992 quashed the appointment of Syed Moinudeen as the Chief Hereditary Trustee. However, the Hon'ble Division Bench of this Court in Writ Appeal 369 and 370 of 1992 by judgement dated 01.09.1997, set aside the order of the writ Court and the order of the Hon'ble Division Bench judgement was challenged before the Hon'ble Supreme Court in Civil Appeals 3351 & 3352 of 1998. When the Civil Appeals came up for final disposal in the year 2004, the Hon'ble Supreme Court taking note of the fact that the tenure of the said Syed Moinudeen had come to an end even in 1996, by order dated 12.08.2004, the Honourable Supreme Court held as follows

“At the outset, it was pointed out to us by the learned counsel for the Waqf Board that these appeals have become infructuous / unnecessary when the period of 5 years itself has come to an end as early as in 1996. He also added that a new Waqf Act, 1995 has come into force, if at all the Waqf Board takes any action, it has to do it under the new Act.

Having regard to what is stated above, when the order dated 10.01.1991 has spent itself and the period appointing Mutawalli is over, in our view, it is unnecessary to examine the correctness or otherwise of the impugned order as of today. However, out not examining the validity of the order does not prejudice the rights and contentions of the parties. In case any action is taken by the Waqf Board under the new Act, it is open to the parties to challenge the same on all grounds available to them notwithstanding anything stated in the impugned judgment of the High Court.”



8. Mr.S.Parthasarathy, learned Senior Counsel would submit that despite the order of the Hon'ble Supreme Court, the Waqf Board did not appoint anyone as the Mutawalli of the Dargah. Taking advantage of being the then Hereditary Trustee of the Dargah, Mr.Syed Moinudeen continued to claim himself to be the Chief Hereditary Trustee/ Mutawalli of the Dargah and started interfering with the rights of the other turn holding Trustees/Mujawars, whenever their respective turns came. The learned Senior Counsel would also invite my attention to the fact that the said Syed Moinudeen died on 04.02.2019 and his son Syed Mazheruddin, the third respondent in the CRP was appointed as the Chief Hereditary Trustee. The learned Senior Counsel would submit that the first respondent Board has no authority to appoint the third respondent as the Chief Hereditary Trustee/Mutawalli, despite the fact that the majority of the turn holding Trustees had given their consent.

9. In this connection my attention is invited to the decision of this Court in *D.Gopalaswami Mudaliar vs Subramanya Pillai and another*, reported in *AIR 1942 MAD 397*, where this Court held that a majority of Trustees cannot elect a Managing Trustee and oust the minority from taking part in the management.

10. It is the further contention of Mr.S.Parthasarathy learned Senior



Counsel, that after the death of the first petitioner's father Mohammad

Zainulabuddin, the first petitioner and his sister Fazeelathunnissa were

enjoying their turn of management until the demise of Fazeelathunnissa

on 12.11.2020, leaving behind petitioners 2 and 3 to be entitled to the

benefits enjoyed by their mother. Though by custom and usage of the

Dargah, when the turn of management of the petitioners commenced in

June 2019, for a period of 18 days, a letter was addressed to the Chief

Executive Officer of the Board on 03.06.2019, to arrange for the opening

of the hundials, during their turn of the Dargah and handover the contents

of the hundials after deducting 7% contribution payable to the Board and

the expenses of staff deputed for counting, the CEO, by letter dated

13.06.2019 had directed the petitioners to obtain an endorsement from the

Chief Hereditary Trustee/ Mutawalli, failing which, it was indicated that

the petitioners would not be allowed to perform the services in the

Dargah. The petitioners gave their objections on 19.06.2019 in writing

stating that the Dargah is governed by the scheme decree passed by this

Court in C.S.No. 116 of 1909 and the right of the petitioner's father has

been upheld by the Hon'ble Supreme Court and therefore, the petitioner

cannot be compelled to get the consent of the so called Chief Hereditary

Trustee/Mutawalli for enjoying their legitimate rights and benefits. In

response to the objections, the Board has written to the petitioners on

25.06.2019 bringing it to the notice of the petitioners that Mr.Syed

Mazheruddin has been appointed as the Chief Hereditary Trustee by



resolution of the first respondent Board dated 05.03.2019 and therefore

the petitioners can render service during their turn, only in the presence of

the said Mr. Syed Mazheruddin.

11. Mr.S.Parthasarathy, learned Senior Counsel inviting my specific attention to the resolution of the Board dated 05.03.2019, contended that, in and by the said resolution, the Board had decided to fill up the vacant post of the Chief Hereditary Trustee on account of death of Syed Moinudeen and only as an interim arrangement alone, his son Syed Mazheruddin was permitted to carry out the day to day administration of the Waqf in the capacity of a Chief Hereditary Trustee. Pointing out the resolution, Mr.S.Parthasarathy, learned Senior Counsel would contend that despite resolving to appoint the Chief Hereditary Trustee to the Waqf subsequently, and passage of 6 years, elections have not been held and taking advantage of the temporary conferment of powers, the said third respondent is usurping the powers of administration and management of the waqf to the detriment of the interest of the petitioners. In the same context, the learned counsel would also state that without taking steps to appoint the Chief Hereditary Trustee to the Waqf, the CEO is now insisting on the petitioners getting an endorsement from Janab Syed Mazheruddin which goes against the dictum of the Hon'ble Supreme Court, recognising the entitlement of the rights of the father of the first



petitioner and grandfather of petitioners 2 and 3.

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12. The learned Senior Counsel would further state that despite the turn of the petitioners having gone by, the hundial collections have not been released by the petitioners and that there is also no dispute with regard to the entitlement of the petitioners to the hundial collections and the Tribunal referring to totally unconnected proceedings before this Court has refused to direct payment of the amount lawfully payable to the petitioners. In this regard the decision of the Hon'ble Division Bench of this Court in W.A. No.1197 of 2018 dated 04.06.2018 is brought to my notice as well. The learned Senior Counsel has also relied on the decision of the Andhra Pradesh High Court in *Shaik Ghouse Mohiuddin v. A.P. State Waqf Board*, reported in *AIR 2002 AP 344* and *Syed Jamil Ahmed v. Meer Ahmed Ali Khan*, reported in *2002 SCC Online AP 610*. The learned Senior Counsel would therefore state that the Board has to immediately convene a meeting and conduct elections and fill up the office of the Chief Hereditary Trustee/Mutawalli and the third respondent cannot indefinitely fall back on the interim arrangement dated 05.03.2019.

13. Per contra, Mr.Nissar Ahmed, learned Senior Counsel appearing for the third respondent would submit that in respect of the subject Darga, there are more than 100 Hereditary Trustees and turn



holding Trustees and the entitlement of the turn holding Trustees ranges from 27 days to even a single day. The learned Senior Counsel would contend that it is not as if the practice of requiring an endorsement from the Chief Hereditary Trustee or Mutawalli has been introduced for the first time and pointing out to various instances where the petitioners themselves, have in the past, taken such endorsement before enjoying the turn, Mr. Nissar Ahmed, learned Senior Counsel would contend that the petitioners are estopped by their own conduct, in challenging the requirement of the endorsement of the Chief Hereditary Trustee.

14. The learned Senior Counsel, Mr. Nissar Ahmed would further state that the necessity of requiring the endorsement of the Chief Hereditary Trustee is only to ensure that the performance of services and hundial openings are made available to the parties who are entitled to the same and there is no irregularity or malpractice. He would state that the practice of getting an endorsement of the Chief Hereditary Trustee/ Mutawalli is only to validate the entitlement of the turn holding Trustees for their relevant turn period and nothing more and therefore, there is nothing improper or illegal in the said practice adopted in the Dargah.

15. As regards the interim arrangement and continuance of the third respondent, since the resolution dated 05.03.2019, he would state



that even at that point of time, the majority of turn holding Trustees favoured the appointment of the third respondent as the Mutawalli and only a minority group comprising of 3 Trustees had objected. He would therefore state that there is no infirmity as alleged and the third respondent has always enjoyed the approval of the majority turn holding Trustees and continues to do so. However, he would fairly concede that there can be no impediment for the Board to conduct elections and that the third respondents is willing to face the same.

16. The learned senior counsel has relied on the decision of the Hon'ble Division Bench of this Court in *I.S. Ibrahim v. Principal Secretary to the Government*, in *W.A. No. 1339 of 2022 dated 13.04.2023*, where the Hon'ble Division Bench referring to an earlier decision in *Dr.K.M. Kalifa Masthan Sahib Kadiri v. Tamil Nadu Waqf Board and others*, reported in *(2023) MHC 1202*, held that when Courts have framed a scheme under Section 92 of the Code of Civil Procedure, 1908 for the administration of the Waqf, on the establishment of Waqf Board, the residual power of the superintendents of the Waqf which hitherto remained with the Court as the conscience keeper of the public trusts and founded on the principle of *parens patriae* would stand shifted from the Scheme Court to the Waqf Board and the Hon'ble Division Bench held that in terms of Section 32 of the Waqf Act 1995, Tamil Nadu



Waqf Board had replaced the Scheme Court and the management of administration was to be handed over to the Waqf Board, with liberty to the Waqf Board to pass orders under Section 64 for taking over direct management, if it so desires, making it clear that the Waqf Board was entitled to exercise powers and superintendence of management in accordance of law, in view of the powers under Section 32 of the Waqf Act, 1995.

17. I have carefully considered the submissions advanced by the learned Senior Counsel on either side.

18. Though the requirement of the endorsement from the Chief Hereditary Trustee/Mutawalli, third respondent herein, has been the cause of action/ trigger for the current proceedings, the fact remains that despite the resolution passed on 05.03.2019 being admittedly a stop gap arrangement and the Board also conscious of the fact that the regular Chief Hereditary Trustee or Mutawalli would have to be appointed, has failed to take any steps toward such appointment. In fact, even in the said resolution, the Board has taken note of the fact that out of 71 turn holding Trustees 68 of the turn holding Trustees took sides with the third respondent. However, despite the same, the first respondent only vested the third respondent with powers of Chief Hereditary Trustee and in fact,



in and by the said resolution, I do not find that the third respondent was appointed as the Chief Hereditary Trustee. However, pursuant to the said

resolution, admittedly the third respondent is now managing the affairs of the Dargah in question. Equally the petitioners themselves, in the past have recognised the right of the third respondent to make an endorsement and they have in fact got the approval from the third respondent and submitted the same to the Chief Executive Officer of the Tamil Nadu Waqf Board.

19. All these *inter se* disputes that have now been raised and argued in this revision can be given a quitus, if elections are held and the Chief Hereditary Trustee/ Mutawalli is appointed in accordance with the scheme. No doubt the scheme decree has been passed by this Court. However, in view of the Waqf Act 1995, today it is the Waqf Board that is substituted in the place of the Scheme Court and therefore, the Waqf Board has to take immediate steps to conduct the election and fill up the vacancy to the post of the Mutawalli of the subject Waqf. If the same is done in an expeditious manner, the contentious issues that arise in this revision petition being only symptoms to the problem, would automatically dissolve and disappear as the problem itself will stand addressed.



20. With regard to the requirement of the endorsement of the Mutawalli, as explained by Mr.Nissar Ahmad, learned Senior Counsel, the requirement of such endorsement is only as a safeguard to ensure that the performance of services and hundial openings is legitimately carried out and there is no misuse by any strangers/ third parties who may not be entitled to perform services or be entitled to the hundial collections during the respective turn periods of the turn holding trustees. Admittedly, the petitioners have themselves accepted the said practice of getting the endorsement from the Chief Hereditary Trustee in the past and therefore, I do not see why there should be a deviation from the customary practice which has been going on only and accepted by the turn holding Trustees. At the same time, considering the fact that there has been no objection with regard to the entitlement of the petitioners to the hundial collections for the period from 2019 to 2022 amounting to Rs.12,30,819/- or such other accumulated amounts, till at least when the revision has been argued finally, I do not see why the amount should be withheld as the petitioners are certainly entitled to the said amounts.

21. The only objection that has been taken by the tribunal is in view of the order in W.A. No. 1197 of 2018. Though the writ petition and the said writ appeal related to the said Darga, the dispute was with regard to the entitlement of amounts consequent to the demise of the first



respondent in the Writ Appeal and taking into account that there was also an appeal suit pending between the parties to the writ appeal, the Hon'ble

Division Bench held that the issue of disbursement of amount would be subject to the outcome of the appeal suit. The direction of the Hon'ble Division Bench will bind only the parties to the writ appeal and the appeal suit and cannot be put against the writ petitions. Therefore, I do not see why the petitioner's entitlement to the amounts should be withheld. In the light of the above, I am inclined to allow the C.M.P. No. 16746 of 2025 and the amount of Rs.12,30,819/- or such other amounts that may be due and payable to the petitioners shall be paid out to the petitioners, through the waqf account after defraying the applicable expenses, without any further delay and latest within a period of two weeks from the date of receipt of the copy of this order.

22. Considering the fact that the third respondent has been vested with the power of the Chief Hereditary Trustee/Mutawalli only for a temporary period, in order to fill up the vacancy, the Board should take immediate steps to conduct an election and appoint the successful candidate as the Mutawalli to the subject trust and such election shall be conducted after giving notice to all parties interested, in a fair and transparent manner and considering the permanent post has been lying vacant for more than 6 years now, the Board shall ensure that the



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elections are conducted within a period of 3 months from the date of receipt of copy of this order.

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23. In fine, this Civil Revision Petition is allowed/disposed of and CMP. No.16746 of 2025 is also allowed. Consequently, connected Miscellaneous Petition is also closed. No costs.

19.12.2025

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Index : Yes

Internet : Yes

To:

1.Tamil Nadu Wakf Board,
Rep. by its Chairman,
No.1, Jaffar Syrang Street,
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2.The Chief Executive Officer,
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P.B.BALAJI, J.,

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Pre-delivery order in
CRP. No.2976 of 2025
and CMP. Nos.16744 & 16746 of 2025

19.12.2025