



W.A.No.2465 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 20.08.2025

CORAM

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE P.DHANABAL**

**W.A.No.2465 of 2025
and
C.M.P.No.19022 of 2025**

S.Syed Qamardeen,
S/o.Late S.M.Sheikh Mohiadeen ... Appellant

-Vs-

1. T.Mubeen,
S/o.Thajudeen, Muthawalli
2. The Tamil Nadu Wakf Board,
Represented by its Chief Executive Officer,
No.1, Jaffer Syrang Street, Vallal Seethakathi Nagar,
Chennai – 600 001.
3. The Chief Executive Officer,
No.1, Jaffer Syrang Street. Vallal Seethakathi Nagar,
Chennai – 600 001. ... Respondents

PRAYER : Writ Appeal under Clause XV of Letters Patent against the order dated 26.06.2025 made in W.P.No.4327 of 2025.

For Appellant : Ms.R.Sripriya

For Respondents : Mr.N.A.Nassir Hussai [R1]

Mr.R.Abdul Mubeen
Senior Panel Counsel [R2 & R3]



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JUDGMENT

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(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

This intra Court appeal has been directed against the order dated 26.06.2025 made in W.P.No.4327 of 2025.

2. The appellant herein was the third respond in the writ petition and the first respondent herein was the writ petitioner in the said writ petition.

2. The Waqf viz.,Athukarul Musthafa Ila Avalathil Murthala at Nagapattinam District is one of the notified Waqf, therefore governed under the Waqf Act.

3. As per the Waqf Nama, the Waqf has to be maintained or administered by the hereditary Mutawalli. When that being so, one Thajudeen was the Mutawalli from 2017, since he become aged and there has been no hereditary Mutawalli or person to hold the post of hereditary Mutawalli, in order to elect Mutawalli, a meeting was conducted sometime in July, 2021, where the writ petitioner i.e., Son of Thajudeen was elected as Mutawalli.



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4. It is to be noted that, since the Waqf has to be maintained only by the hereditary Mutawalli and in the absence of hereditary Mutawalli to be identified in this regard, the writ petitioner i.e., T.Mubeen was elected as Mutawalli, therefore he claimed to be the Mutawalli on the basis of the said election and accordingly, the Tamil Nadu Waqf Board has appointed him as Mutawalli by an order dated 24.11.2021 for a period of three years.

5. The three years period was over by 23.11.2024, nevertheless it seems that, he continues to be the Mutawalli claiming right over the hereditary Mutawalliship stating that since the Waqf is to be maintained by hereditary Mutawalli and in whose place when he was elected and appointed as Mutawalli from 2021, even though the period of his office is restricted only for a period of three years nevertheless he can continue to be the Mutawalli, as the hereditary Mutawalli does not have any limited period to hold the office.

6. However, the third respondent in the writ petition, who is the appellant herein had made claim before the Tamil Nadu Waqf Board to recognize him as hereditary Mutawalli and in support of his contention,



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he seems to have produced certain documents before the Tamil Nadu Wakf Board claiming hereditaryship to take over the Mutawalli in the said notified Waqf.

7. Based on the said claim made by the appellant/third respondent, an enquiry was conducted, where some queries have been raised on the writ petitioner/first respondent herein, who has also answered the same. However, ultimately the Waqf Board has found that, in order to establish that the writ petitioner to be a hereditary Mutawalli no documents or evidences had been filed to the satisfaction of the Waqf Board, therefore his plea cannot be accepted to continue as hereditary Mutawalli or even Mutawalli and since his period of three years to hold the office was already over in the year 2024, the appellant/third respondent since had claimed the hereditaryship for holding the post of Mutawalli, for which some evidences has been produced by him, based on which, the Waqf Board has come to a conclusion that the appellant/third respondent can be appointed as a hereditary Mutawalli and accordingly, an order was passed on 14.10.2024, thereby the appellant/third respondent was appointed as a hereditary Mutawalli and the writ petitioner was directed to handover all the records to him.



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8. Aggrieved over the said order dated 14.10.2024, the writ petitioner had moved the Writ Court by filing the aforesaid writ petition, which in fact was allowed by the Writ Court through the impugned order.

9. Mainly, the Writ Court has come to the conclusion to set aside the order impugned before it on the ground that under Section 64 of the Waqf Act, the Waqf Board does not have the power to remove a Mutawalli *de hors* of any reasons that has been enumerated in Section 64 of the Waqf Act.

10. In that view of the matter, the Writ Court has come to the conclusion that the very Waqf Board does not have any jurisdiction under Section 64 of Waqf Act in the case in hand, therefore exercising the power under Section 64 of Waqf Act, the removal of Mutawalliship of the writ petitioner and appointing the third respondent/appellant as hereditary Mutawalli is bad and therefore, the order dated 14.10.2024 was set aside by the Writ Court. Aggrieved over the same, the present intra-court appeal has been directed.



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11. Heard Ms.R.Sripriya, learned counsel appearing for the appellant, Mr.N.A.Nassir Hussain, learned counsel for the first respondent and Mr.R.Abdul Mubeen, learned Senior Panel Counsel for second and third respondents i.e., Tamil Nadu Waqf Board.

12. We have gone through the order passed by the learned Judge, which is impugned herein and also the order dated 14.10.2024, which was impugned before the Writ Court as well as the order dated 24.11.2021 passed by the Waqf Board, under which, the writ petitioner was appointed as a Mutawalli.

13. One factor is very clear out of these records that, the notified Waqf has to be maintained by the hereditary Mutawalli alone, therefore, who is the hereditary Mutawalli has to be identified by the Tamil Nadu Waqf Board, for which even though the claim and counter claim has been made between the appellant and the first respondent i.e., writ petitioner, the ultimate decision cannot be made at this juncture by this Court, in view of the fact that, hereditaryship cannot be declared either by the Tamil Nadu Waqf Board or by this Court, as that issue has to be gone into by the Civil Court, who have competent jurisdiction to try such an issue, based on the evidences to be let in in the Court.



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14. Unless such a conclusive decision is arrived at by the competent Civil Court to declare either of these two persons or any third person other than these two persons as a hereditary Mutawalli, such a distinction cannot be automatically conferred either on the writ petitioner or on the third respondent i.e., appellant herein.

15. Moreover, the period of Mutawalliship for the writ petitioner as per order dated 24.11.2021 was over by 23.11.2024 itself. Therefore, beyond the said period, the writ petitioner cannot continue and by virtue of allowing of the writ petition by setting aside the order dated 14.10.2024, the first respondent/writ petitioner position as a Mutawalli cannot automatically be revived or restored unless his claim over the Mutawalliship is considered by the Waqf Board and decided that too on the basis of the final conclusive decision made by the Civil Court as hereditary person.

16. Though pursuant to the order dated 14.10.2024 consequential order dated 15.11.2024 was issued, whereby the appellant herein was appointed as Mutawalli since that order also has been set aside by the learned single Judge through the impugned order, setting aside of these orders, as we stated supra would not *ipso facto* confer any right on the



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writ petitioner to claim hereditaryship or hereditary Mutawalliship of the
WEB COM Waqf concerned.

17. In view of the aforestated facts and circumstances and the discussions we herein above made and by invoking the power under Section 65 of the Waqf Act, we deem it appropriate to give a direction to the Tamil Nadu Waqf Board, who is the second respondent herein to make an interim arrangement to maintain the notified Waqf. In the meanwhile, both the writ petitioner as well as the third respondent/appellant has to get such a conclusive declaration from the competent Civil Court.

18. Resultantly, the following orders are passed in this writ appeal:

(i) That the impugned order is set aside. However, setting aside of the impugned order would not *ipso facto* revive either the order dated 14.10.2024 or 05.11.2024 as those orders shall be kept in abeyance, until a decision is made by the competent Civil Court with regard to the claim made by the appellant as well as the first respondent/writ petitioner about the hereditaryship.



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(ii) In this context, it is open to the writ petitioner as well as the appellant/third respondent to approach the competent Civil Court to seek such a declaratory decree, where the Tamil Nadu Waqf Board also can be added as a party.

(iii) Once such a declaration is made by the Civil Court, the Tamil Nadu Waqf Board shall act upon as per the decree and till such time, the interim arrangement be made for direct management of the Tamil Nadu Waqf Board under Section 65 of the Waqf Act shall continue.

(iv) The appellant as well as the first respondent/writ petitioner, if at all holding any documents relates to the Waqf in question by virtue of these orders, under which they have been initially appointed as Mutawalli, shall immediately handover those documents to the interim management of the Waqf to be appointed by the Waqf Board as indicated above forthwith.



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and
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mp

Writ Appeal is ordered as indicated above. However, there shall be
no order as to costs.

(R.S.K., J.) (P.D.B., J.)
20.08.2025

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No

mp

Note: Issue order copy on 25.08.2025

To

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

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