



W.A.(MD)No.439 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.12.2024

DELIVERED ON : .01.2025

CORAM

THE HONOURABLE MR.JUSTICE **RMT.TEEKAA RAMAN**
and
THE HONOURABLE MR.JUSTICE **N.SENTHILKUMAR**

W.A.(MD)No.439 of 2019
and
C.M.P.(MD)No.3628 of 2019

Meer Hasanullah Sha Dargha,
represented by its Manager,
S.K.Syed Jamal,
Tiruchirappalli-620 017.

... Appellant

-vs-

1.The Tamil Nadu State Wqkf Board,
represented by Chief Executive Officer,
Ex.Officio Secretary,
Tamil Nadu Wakf Board,
7/4, 9th Cross Street, Indira Nagar,
Chennai – 600 020.

2.The Inspector of Wakfs,
Office of the Inspector of Wakfs,
12, Kiledar Street, Tiruchirapalli – 620 002.

3.M.Mohaboob Sherif
4.S.Nazir Basha

...Respondents



W.A.(MD)No.439 of 2019

WEB COPY

Prayer: This Writ Appeal is filed under Clause XV of Letters Patent, to set aside the order passed in W.P.(MD)No.9984 of 2014, dated 11.01.2019 on the file of this Court.

For Appellant	:Mr.K.S.Shankar Murali
For R1 and R2	:Mr.S.A.Ajmal Khan
For R3 and R4	:Mrs.J.Anandhavalli

JUDGMENT

[Judgment of the Court was made by **N.SENTHILKUMAR, J.**]

The unsuccessful the Writ Petitioner has filed the present Writ Appeal challenging the impugned order passed by the learned Single Judge in W.P. (MD)No. 9984 of 2014, dated 11.01.2019.

2.According to the appellant, the property in question is not a wakf property and hence, he filed a Wakf Original Petition before the Sub Court, Trichirappalli on Wakf O.P.No.4 of 2007 and on formation of State Wakf Tribunal at Chennai, it was transferred to the State Wakf Tribunal and it was renumbered as O.A.No.181 of 2020. In the meanwhile, the first respondent – Tamil Nadu State Wakf Board has appointed the respondents 3 and 4 herein as administrators of the



W.A.(MD)No.439 of 2019

property in question for the years 2014 – 2017 and they were functioning as administrators.

3.The appellant had challenged the said order, dated 18.02.2024 appointing nine persons, as President, two Vice Presidents, Member Secretary, Treasurer and the Members of the wakf. The appointment of said persons to administer the properties of wakf was for a period commencing from 30.01.2014 to 29.01.2017 on certain terms and conditions. Challenging the said appointment, the Writ Petition was filed. The Writ Court while dismissing the Writ Petition filed by the appellant had taken note that the impugned order itself is for a period of three years from 30.01.2014 to 29.01.2017 and it has come to end.

4.Heard the learned Counsel appearing for the appellant, the learned Counsel for the first and second respondents and the learned Counsel for the third and fourth respondents.

5.The learned Counsel for the appellant relied upon the following the judgments:



W.A.(MD)No.439 of 2019

WEB COPY

(1)The Hon'ble Supreme Court in the case between ***Mohammed vs Mohammed Beke*** reported in ***1997 (2) LW 120 (SC)***, had held as follows:

“It would thus be clear from the authorities cited above that the founder must declare his intention to dedicate the property for the mosque. A specific declaration is necessary. The founder must divest himself completely from the ownership of the property. The diversment can be inferred from the fact that he delivered possession to the Mutawali or an Imam of the mosque. If there is no actual delivery of the possession, the mere fact that members of the Mohammedan public are permitted to offer prayers with azan and ikamat does not make the wakf complete and irrevocable. The founder must also make some sort of way which may be used by the public to enter the mosque. From the facts it is seen that the property was in exclusive possession and enjoyment of the father during his life time enjoying the usufruct thereof. There was no dedication and public was not allowed to have any prayers on the property as mosque: nor the public had access to it. During the life time of the father himself, the appellant had cancelled the deed. Under these circumstances, the necessary tests laid down by this Court have not been satisfied to conclude that a wakf has been created in respect of the above properties.”

(2)The Hon'ble Supreme Court in the case between ***Mohamed Khasim vs Mohamed Dastagir and others*** reported in ***(2006) 13 SCC 497***, had held as follows:

“29.A plain reading of the document dated 29-2-1960 indicates that Mohd. Imam Saheb had intended that his properties, both movable and immovable, should remain intact for the objects



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indicated in the deed. It is also clear from the recitals in the deed that he did not want his estate to be alienated by any of the trustees who would be in management, by reserving the power of alienation only to himself and that too for buying other properties which were to vest in the trust. The objects for which the income from the properties were to be expended are mostly of a pious and religious nature. According to Mohammedan jurists, the term “wakf” literally means dedication or as noted by Mulla in his Principles of Mohammedan Law, the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognised by Mussalman law as religious, pious or charitable. The desire of Mohd. Imam Saheb to tie-up the properties so that they would not be dissipated and the objects on which the usufructs of the properties were to be spent, most certainly appears to have influenced the thinking of the trial court in holding that Mohd. Imam Saheb had wanted to create a wakf. The said reasoning was not accepted by the High Court. However, the High Court also went wrong in holding that a valid trust had not also been created by the document of 29-2-1960. In fact, while we agree with the High Court on the first count, we are unable to agree with the High Court on the second count. In other words, we agree with the High Court's finding that no wakf had been created by the aforesaid document but at the same time we are also of the view that it was Mohd. Imam Saheb's intention to create a valid trust.”

(3)The Hon'ble Supreme Court in the case between ***Tamil Nadu Wakf Board vs Larabsha Darga, Panruti*** reported in (2007) 13 SCC 416, had held as follows:

“9.The plaintiffs claim that the suit property belongs to private wakf, wakf-alal-aulad and it is not a public wakf. On the other hand, it is the specific stand of the Wakf Board that the same is a public wakf. As said earlier, the High Court heavily relied on Ext. A-22 which is a pro forma maintained by the Wakf Board. The



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learned Judge has extracted all the details/entries made in the pro forma. Those details are available in the High Court's judgment and we perused the same. It mentions that the object of the wakf is for the support of feeding the fakirs and lighting the tomb of Larabsha and to do Fatihah. It further shows that these services are to be rendered without alienating the properties. Name of the beneficiaries are noted as "Mrs Safia Bi, wife of Syed Umar, Larabsha Darga". In Column 9 of the rule of succession, it is stated that "hereditary as per TD". It further shows that out of the income derived from the suit property, a portion of the same is meant for pious, religious and charitable purposes and remaining was used for the maintenance of the family. Column 17 of the remarks states that originally RS No. 24, 205 acres dry belong to Noor Mohammad Darga, Panruti. One Inayath Shah, a sixth successor Janishin conveyed this land containing houses and shops to one of his disciples Shabansha by means of settlement ("hiba") in 1939. This Shabansha, in his turn made a settlement in favour of Larabsha who is the paternal grandfather of the husband of Safia Bi, who is now enjoying the lands. No accounts are maintained. Only Fatihah is done on every Thursday evening and the tomb is lighted daily. At present Safia Bi is the Mutawalli. A few rupees are spent for the Darga and the balance is utilised for the maintenance of the family. The above details furnished in the pro forma clearly reveal that succession to the office of Mutawallis is hereditary and the income has got to be spent for pious, religious and charitable purposes and a portion was also used for management of the family.

10.As rightly observed by the High Court, inasmuch as a portion of the income is to be spent for the family apart from pious, religious and charitable purposes, it satisfies the character of a private wakf i.e. wakf-alal-aulad. The said document i.e. Ext. A-22 also supports the claim of the plaintiffs that they are the hereditary Mutawallis of the private wakf. These aspects have been fully considered and rightly concluded by the trial Judge as well as the High Court. On the other hand, as rightly pointed out by learned Senior Counsel for the respondent-plaintiffs, the lower appellate court on misconstruing the decision in SA No. 1104 of 1983 wrongly allowed the appeal.

11.As observed earlier, in Second Appeal No. 1104 of 1983,



W.A.(MD)No.439 of 2019

WEB COPY

the High Court had no occasion to consider whether it is a private wakf or a public wakf, but, on the other hand, in the earlier suit, the plaintiffs claimed the suit property as their private property and not as private wakf property and only in the said circumstance the High Court in Second Appeal No. 1104 of 1983 rendered the finding that the suit property is a wakf property and it is not a private trust property. Inasmuch as in appreciation of acceptable material, the trial court as well as the High Court arrived at a conclusion that the suit property is a private wakf and not a private property, we are in agreement with the conclusion of the High Court that the decision in SA No. 1104 of 1983 has no bearing to the issue in the latter proceeding. The High Court has also rightly concluded from Ext. A-1 that there is no indication that the wakf is a public wakf and hiba only indicates that certain things have got to be carried out in respect of pious, religious and charitable purpose and pro forma Ext. A-22 supports the claim of the plaintiffs. Looking at any angle, in the light of the materials placed, particularly additional documents Exts. A-22, A-23 and A-24 which were received on the basis of an application which was ordered on 20-4-2004, we are in entire agreement with the conclusion arrived by the High Court and do not find any valid ground for interference.”

(4)The Hon'ble Supreme Court in the case between **Madanur Sri Rama Chandra Murthy vs Syed Jala**, reported in (2017) 13 SCC 174, had held as follows:

“16.Thus, it is amply clear that the conducting of survey by the Survey Commissioner and preparing a report and forwarding the same to the State or the Wakf Board precedes the final act of notifying such list in the Official Gazette by the State under the 1995 Act (it was by the Board under the 1954 Act). As mentioned supra, the list would be prepared by the Survey Commissioner after making due enquiry and after valid survey as well as after due application of mind. The enquiry contemplated under sub-section



WEB COPY



W.A.(MD)No.439 of 2019

(3) of Section 4 is not merely an informal enquiry but a formal enquiry to find out at the grass root level, as to whether the property is a wakf property or not. Thereafter the Wakf Board will once again examine the list sent to it with due application of its mind and only thereafter the same will be sent to the Government for notifying the same in the Gazette. Since the list is prepared and published in the Official Gazette by following the aforementioned procedure, there is no scope for the plaintiff to get the matter reopened by generating some sort of doubt about Survey Commissioner's Report. Since the Surveyor's Report was required to be considered by the State Government as well as the Wakf Board (as the case may be), prior to finalisation of the list of properties to be published in the Official Gazette, it was not open for the High Court to conclude that the Surveyor's Report will have to be reconsidered. On the contrary, the Surveyor's Report merges with the gazette notification published under Section 5 of the Wakf Act.

.....

20. In the matter on hand, as mentioned supra, the Tribunal and the High Court, on facts have held that the property in question is not included in the list published in the Official Gazette as a wakf property. Such non-inclusion was never questioned by any person including the Wakf Board. The Board has not exercised jurisdiction under Section 27 of the 1954 Act and Section 40 of the 1995 Act, though 50 years have elapsed from the date of the gazette notification. Hence, in our considered opinion, the averments in the plaint do not disclose the cause of action for filing the suit. The suit is manifestly meritless and vexatious. So also the suit is barred by law for the reasons mentioned supra.”

(5) The Hon'ble Supreme Court in the case between ***Salem Muslim Burial Ground Protection Committee vs State of Tamil Nadu and others*** reported in **2023 4 MLJ 169**, had held as follows:

“25. Under the Muslim law, a wakf can be created in several



W.A.(MD)No.439 of 2019

WEB COPY

ways but primarily by permanent dedication of any movable and immovable property by a person professing Islam for any purpose recognized by Muslim law as pious, religious or charitable purpose and in the absence of such dedication, it can be presumed to have come into existence by long use.

26. Ordinarily, a wakf is brought into existence by any express dedication of movable or immovable property for religious or charitable purpose as recognized by Muslim Law. Once such a dedication is made, the property sought to be dedicated gets divested from the wakif, i.e., the person creating or dedicating it and vests in the Almighty Allah. The wakf so created acquires a permanent nature and cannot be revoked or rescinded subsequently. The property of the wakf is unalienable and cannot be sold or transferred for private purpose.

27. The dedication resulting in the creation of a wakf may at times in the absence of any express dedication may also be reasonably inferred from the facts and circumstances of the case such as long usage of the property as a wakf property provided it has been put to use for religious or public charitable purposes. In this regard, reference may be had to the Constitution Bench decision of this Court in *M. Siddiq (D) thr. L.Rs. Vs. Mahant Suresh Das and Ors.*⁵

28. In the case at hand, there is no iota of evidence from the very inception as to any express dedication of the suit land for any pious, religious or charitable purpose by anyone professing Islam. Therefore, on the admitted facts, the wakf by dedication of the suit land is ruled out.”

(6)This Court in the case between ***Nagoor Kaniammal @ Mahaboobal Beevi and others vs Tenkasi Vangaru Muthu Meeran Sahib Thailka through its Worshippers and Jamathars and others***, reported in ***2015 4 CTC 34***, had held as follows:



W.A.(MD)No.439 of 2019

WEB COPY

“26.In the above ruling, the Hon'ble Supreme Court has held that the Wakf Board has got no right to institute a suit for declaration that any property is a Wakf property unless the requirements under Sections 4, 5, 6 & 27 of the Act are complied with.”

(7)This Court in the case between ***Fuaad Musvee and others vs M.Shuaib***

Musvee and others, reported in **2008 3 LW 644**, had held as follows:

“In Muslim Law a wakf means permanent dedication by a Muslim of any property for any purpose recognised by Muslim Law as pious, religious and charitable. A wakf is created by mere declaration of endowment by the owner of the property, and upon such declaration, the property immediately vests in God Almighty. In case of a Public Wakf, the corpus as well as the usufruct, vests in God, since the usufruct becomes immediately applicable to the enumerated holy purposes. But in case of a private wakf or Wakf-alal-aulad, only the corpus of the property vests in God immediately and the enjoyment of the usufruct is postponed till after the extinction of the Wakif, his family and descendants. A Public Wakf is one for religious, pious and charitable purposes and a Private Wakf is one for the benefit of the settlor's family and descendants. Such a private wakf as per the the Muslim Law to be valid should have reserved the ultimate benefit for the purposes recognised by Muslim Law as religious, pious and charitable.”

6.The learned Counsel for the first and second respondents relied upon a judgment of the Hon'ble Supreme Court in the case between ***Board of Wakf, West Bengal and another vs Anis Fatma Beguma and another***, reported in **2011 (1)**



W.A.(MD)No.439 of 2019

CTC 636, wherein, the Hon'ble Supreme Court had held as follows:

“13. We may clarify that under the proviso to Section 83(9) of the Wakf Act, 1995 a party aggrieved by the decision of the Tribunal can approach the High Court which can call for the records for satisfying itself as to the correctness, legality or propriety of the decision of the Tribunal. This provision makes it clear that the intention of Parliament is that the party who wishes to raise any dispute or matter relating to a wakf or wakf property should first approach the Tribunal before approaching the High Court.

14. It is well settled that when there is a special law providing for a special forum, then recourse cannot be taken to the general law, vide Justice G.P. Singh's Principles of Statutory Interpretation (9th Edn., 2004, pp. 133-34).”

7. The learned Counsel appearing for the first and second respondents contended that there are several maladministration by the Writ Petitioner and the Writ Petitioner is making a false claim by stating the name of the Dhargha. The name of the Dhargha as claimed by the Writ Petitioner is titled as Meer Hasanulla Sah Dargha and the records furnished in the typed set of papers would reveal that the Dhargha as “Mis Hasanulla Sha Sarmasth Durga” being registered with the Wakf Board and there are several *inter se* communication between the Writ Petitioner and the rival claimants with regard to the day-to-day administration of the Dhargha and with regard to its properties.



W.A.(MD)No.439 of 2019

WEB COPY

8.It is not in dispute that the judgments relied upon by the appellant are with regard to the functioning of the wakf, wakf properties and the rival claims. In the aforesaid judgments, the Hon'ble Supreme Court has relegated the powers to the Wakf Tribunal to decide the rival claims and contentious issues, which will consider the oral and documentary evidence putforth by the rival claimants.

9.Admittedly, there are rival claims and disputes between the appellant and the rival claimants. The main grievance of the appellant herein is that the petition mentioned property is a private trust and it does not assume the character of the wakf, since it is only a Dhargha and it is said to have been given by Arcot Nawab. Those issues are not only disputed question of facts and large scale of mismanagement are being alleged as against the appellant and the rival claimants. The contesting private respondents contended that as the Wakf Original Petition is pending before the Wakf Tribunal, which will decide the name of the Dhargha as claimed by the appellant as well as the private respondents and the contentious issues, which is a disputed question of fact and the rival claim could be decided only before the Wakf Tribunal.



W.A.(MD)No.439 of 2019

WEB COPY

10.We find no reason to interfere with the order passed by the learned Single Judge and in view of the same, the **Writ Appeal is dismissed**. No costs. The parties are at liberty to raise all their issues before the Wakf Tribunal in O.P.No.181 of 2020. Consequently, connected miscellaneous petition is closed.

[T.K.R., J.] [N.S., J.]
.01.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

The Presiding Officer,
Tamil Nadu Wakf Tribunal,
Chennai.



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W.A.(MD)No.439 of 2019

RMT.TEEKAA RAMAN, J.
and
N.SENTHILKUMAR, J.

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Pre-deliver judgment made in
W.A.(MD)No.439 of 2019

.01.2025