



W.A.(MD)No.947 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.03.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

W.A(MD)No.947 of 2022

and

C.M.P(MD)Nos.7778 & 10642 of 2022

R Doulat Hussain Khan

...Petitioner /
Appellant

Vs.

1.The Tamil Nadu Waqf Board,
Represented by its
Chief Executive Officer,
Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 001.

2.The Waqf Superintendent /
Election Officer,
Office of the Waqf Superintendent,
Tiruchirapalli Division,
Tiruchirapalli.

... Respondents /
Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order made by this Court in W.P(MD)No.12984 of 2021 dated 08.04.2022.



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For Appellant : Mr.M.Mahaboob Athiff

For Respondents : Mr.D.S.Haroon Rasheed
for R.1

Mr.A.V.Arun
for Impleading Petitioner

JUDGMENT

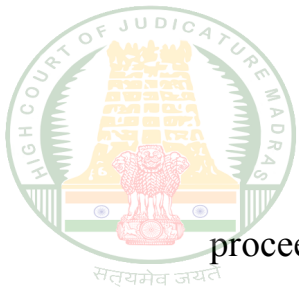
(Judgment of the Court was made by G.R.Swaminathan J.)

Heard both sides.

2.The case on hand pertains to the affairs of Hussain Masthan Dargah Waqf, Manapparai. The said Waqf comprises 3 entities:

- a) A Jumma mosque
- b) A Kabarasthan
- c) A Dargah

The Tamil Nadu Waqf Board acknowledged that the appellant herein R.Doulath Hussain Khan is the hereditary Muthavalli of the Dargah. They, however, declined to accept his claim over the mosque and the Kabarasthan. According to Waqf Board, Mosque as well as Kabarasthan would come within the purview of Sevalur mosque. To that effect,



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proceedings dated 17.04.2001 were issued. The appellant herein challenged the same by filing Waqf.O.P.No.4 of 2006 before the Sub Court, Trichy. The Waqf.O.P was dismissed. Challenging the dismissal order dated 13.09.2010, the appellant herein filed CRP(PD)(MD)No.443 of 2011. The said CRP was allowed in favour of the appellant on 12.11.2019 in the following terms:

“15. From a perusal of Ex.A.1, it is clear that Wakf Board has recognized the fact that Wakf consists not only Dargah but also Kabrasthan and Mosque. However, the Board has recognized the succession to Muthavalliship as hereditary only with reference to the Dargah. The Board having recognized the petitioner as the Muthavalli in respect of one portion of the suit property has committed a grave error in rejecting the claim in respect of the other two structures namely Mosque and Kabrasthan. The Wakf Board has further committed a grave mistake in totally ousting the petitioner from the management of Kabrasthan and Mosque totally ignoring the fact that he is descendant of the original ancestor and therefore, the person, having an interest in the suit property as well as structures upkeep thereupon. By entrusting the management to a committee consisting of persons belonging to a different Wakf, the Board has in effect set at naught the original Wakf by restricting it only to Dargah when they have themselves recognized



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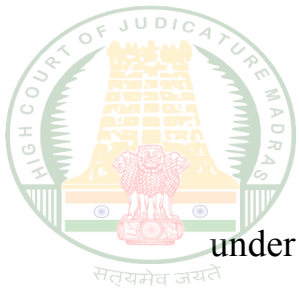


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the rights of the Wakf to the Kabrasthan and the Mosque.

If the Board had felt that the petitioner is not acting on the interest of the Wakf, they could have removed him from Muthavalliship instead of him bringing in person of the different Wakf to manage the petitioner's Wakf. Therefore, the order passed by the Tribunal below requires to be interfered with and accordingly the same is set aside.”

While so, the Waqf Board issued one more notification dated 19.07.2021 proposing to hold election to elect Muthavalli for the subject mosque and Sevalur mosque. Challenging the said proceedings dated 19.07.2021, the appellant herein filed W.P(MD)No.12984 of 2021. A learned Judge of this Court vide order dated 29.07.2021 granted interim stay. Subsequently, the Waqf Board realised that their proceeding would run counter to the order dated 12.11.2019 made in CRP(PD)(MD)No.443 of 2011. They took back the notification and held election for Sevalur mosque alone. However, in the same breath, they announced that election to elect a 7 member committee to assist the appellant would be held. The learned single Judge vide order dated 08.04.2022 recorded the subsequent development and also permitted the election for the 7 member committee to go on. Liberty was given to the appellant to challenge the election if necessary by filing OP before the Waqf Tribunal



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under Section 83 of the Waqf Act, 1995. Challenging the said order dated 08.04.2022, this intra-Court appeal has been filed.

3.The learned counsel appearing for the Sevalur mosque / impleading petitioner wanted to advance certain arguments. We made it clear so long as the order dated 12.11.2019 made in C.R.P(PD)(MD)No. 443 of 2011 is holding the field, the impleading petitioner may not have any standing. To which the learned counsel submitted that they had filed a recall petition. It is for the impleading petitioner to pursue the said remedy.

4.The learned Standing Counsel appearing for the Waqf Board submitted that vide resolution dated 23.08.2023, the Tamil Nadu Waqf Board had decided to terminate the move to hold election to elect the 7 member committee to assist the appellant herein. This resolution submitted by the learned Standing Counsel is placed on record.

5.When the subject Waqf is to be managed by a hereditary trustee, we fail to understand as to how the Waqf Board can propose to hold election for electing a committee to assist the appellant Muthavalli. To



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the extent that the learned Judge has permitted the election to go on, it

has to be set aside. It is accordingly set aside.

6.This Writ Appeal is allowed accordingly. No costs.

Consequently, connected miscellaneous petitions are closed.

[G.R.S., J.] [M.J.R., J.]
20.03.2025

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

To

1.The Chief Executive Officer,
Tamil Nadu Waqf Board,
Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 001.

2.The Waqf Superintendent /
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