



W.P.(MD)No.1387 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.02.2026**

CORAM

THE HONOURABLE **Mr. JUSTICE KRISHNAN RAMASAMY**

W.P.(MD)No.1387 of 2026 &
W.M.P(MD)No.1108 of 2026

Hazreth Syed Musthafa Darood,
Masthan Dargah Mosque,
Rep by its Secretary,
12, Trunk Road, Thiruvanaikovil,
Trichy.

...Petitioner

vs.

1. Tamil Nadu Waqf Board,
Rep by its Chairman,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar, Chennai.

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

3. The Superintendent of Waqf,
O/o.Superintendent of Waqf,
No.12, Kilothar Street,
Trichy District.

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the Proforma furnished by the 2nd respondent vide his proceedings in Manu Number:92/Po.Th.A/Th.A.Uu.Sa.2005/2024, dated 27.09.2024 and quash



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the same as illegal and consequentially to direct the respondents to frame a scheme for the administration of the Waqf namely Hazreth Syed Musthafa Darood Masthan Dargah Mosque in the light of the draft scheme submitted by the Petitioner vide letter dated 22.07.2024 pursuant to the order passed by the 2nd respondent in his proceedings in Se.Mu.Order.11779/09/Aa5/Trichy dated 19.02.2024 within the period that may be stipulated by this Court.

For Petitioner : Mrs.H.Jasima Yasmin
for M/s.Ajmal Associates

For Respondents : Mr.S.A.Ajmal Khan

ORDER

This Writ Petition has been filed challenging the proforma furnished by the 2nd respondent vide proceedings in Manu Number:92/Po.Tha.A/Tha.A.Uu.Sa.2005/2024, dated 27.09.2024 and consequentially to direct the respondents to frame a scheme for the administration of the petitioner Waqf in the light of the draft scheme submitted by the petitioner vide letter dated 22.07.2024 pursuant to the order passed by the 2nd respondent in Se.Mu.Order.11779/09/Aa5/Trichy, dated 19.02.2024.

2. The learned counsel appearing for the petitioner would submit that though the petitioner has challenged the proforma of the Waqf Board, they are restricting the relief so far as directing the respondents to frame a scheme. According to the learned counsel, in the present case, the second

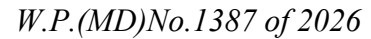


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respondent Waqf Board brought the idea of framing the scheme for conducting the election by virtue of order dated 19.02.2024 and directed the petitioner to file draft scheme. The petitioner was a mutawalli and under his leadership, a draft scheme was submitted on 22.07.2024. However, the said scheme is yet to be approved by the Waqf board. As on date, the functioning of Waqf Board is stayed by the order of this Court. Further, the learned counsel would contend that the scheme itself is only with regard to the manner of conduct of election for selection to the post of mutawalli and members. She therefore, prayed for appropriate orders.

3. The learned counsel appearing for the respondents would submit that the respondents are in the process of appointing hereditary mutawalli. Once the hereditary mutawalli is appointed, the question of election or selection of mutawalli or members would not come into picture.

4. *Per contra*, the learned counsel appearing for the petitioner would submit that in the present case, the question of selection of hereditary mutawalli would not come into picture. Originally, the rule of succession to the post of mutawalli was a hereditary one and it was a customary practice. However, column number 21 of the proforma report dated 02.06.1995 shows that the Waqf is not administered by any Scheme settled by the Court of law



5. In reply, the learned counsel appearing for the respondents would submit that the second respondent would conduct enquiry with regard to the appointment of hereditary mutawalli and based on the order passed by the second respondent, election will be conducted. Further, this Court by order dated 07.08.2025, in W.P.(MD)No.21572 of 2025 has stated that the mutawalli shall be appointed strictly in accordance with the rule of succession as set out in the proforma report. Therefore, he would submit that based on the said order, the second respondent is conducting enquiry for the appointment of mutawalli by succession.



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6. However, the learned counsel appearing for the petitioner would submit that in the aforesaid order, the Court had not dealt with clause Nos.21 and 22 of the proforma report, due to the reason that only up to clause No.20 was produced before the Court. Further, the Court had no occasion to deal with the question whether the method of selection of mutawalli through election as followed for the past 70 years was required to be followed or selection of muthawalli through rule of succession as followed prior to the preparation of the proforma report was required to be followed. In order to get clarification on the said aspect, the petitioner has filed a review before this Court. In an another writ petition in W.P.(MD)No.24199 of 2018 pertaining to the same Waqf, the claim of hereditary mutawalliship was rejected by this Court vide order dated 07.12.2018. Therefore, the learned counsel for the petitioner would submit that there are subsequent orders passed by this Court contrary to the earlier order passed on 07.12.2018. However, while passing of the order dated 07.08.2025, certain aspects were not brought to the knowledge of the Court.

7. I have given due consideration to the submissions made on either sides.



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8. Now, the petitioner is insisting on framing of the scheme for the purpose of conducting election in the Waqf . The scheme is required to be framed only by the Board. The Board is not functioning as on date. This Court vide order dated 07.12.2018 in W.P.(MD)No.24199 of 2018 had already arrived at a conclusion that the question of hereditary mutawalliship will not come into picture. Whereas, vide order dated 07.08.2025 in W.P. (MD)No.21572 of 2025, this Court passed an order stating that the mutawalli shall be appointed strictly in accordance with the rule of succession as set out in the proforma report. However, it is to be noted that full proforma report upto serial no.23 was not produced before the Court while passing the order dated 07.08.2025. Till 1955, mutawalli was appointed based on the rule of succession, which was hereditary one as per the customs prevailing in that locality. The said practice either for one or the other reason, discontinued and as on the date of preparation of the proforma report i.e., 02.06.1995, the practice followed for the management of Waqf was not based on Scheme settled by the Court of law and the Waqf was not managed by mutawalli as per custom and usage. Therefore, the practice of appointing mutawalli by virtue of rule of succession discontinued as early as on 02.06.1995.



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9. At this juncture, the learned counsel for the respondents submitted that only from the year 1986, election was conducted for selection to the post of mutawalli.

10. Even if the submissions of the learned counsel for the respondents is accepted, the customary practice of selecting mutawalli by rule of succession discontinued for the past 40 years.

11. In the present case, the point to be answered is whether a practice by customary, which was discontinued for a period of 70 years, as per the petitioner or for a period of 40 years, as per the respondents, is required to be followed by ignoring the practice followed for the past 70 years or 40 years or not. By taking into consideration of all the aforesaid aspects, I find force in the submissions of the petitioner counsel and I am of the view that once a practice is discontinued decades ago, it need not be followed and any practice which is followed for a long period, should be continued to be followed.

12. It appears that the appointment of hereditary mutawalli is under consideration before the second respondent. Therefore, it is up to the second



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respondent to take into consideration of all the above aspects, including the observations made by this Court and pass appropriate orders in accordance with law.

13. Pending pronouncement of orders by the second respondent with regard to appointment of mutawalli, it is necessary to conduct election for the subject Waqf. Therefore, it is up to the subject Waqf to conduct election for selection to the post of mutawalli and until then, earlier mutawalli and office bearers shall continue to hold the posts.

14. Accordingly, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

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Speaking / Non-speaking order
Index : Yes/No
NCC : Yes/No

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KRISHNAN RAMASAMY, J.

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