

(2009) 11 MAD CK 0230

Madras High Court (Madurai Bench)

Case No: W.A. (MD) . No"s. 604 to 606 of 2009 and M.P. No. 1 of 2009

M. Liakath Ali and Others

APPELLANT

Vs

The Tamil Nadu Wakf Board and
OthersRESPONDENT

Date of Decision: Nov. 26, 2009**Acts Referred:**

- Constitution of India, 1950 - Article 226, 227
- Waqf Act, 1995 - Section 64, 67, 67(2), 68, 83(9)

Hon'ble Judges: Nagamuthu, J; D. Murugesan, J**Bench:** Division Bench**Advocate:** T.R. Rajagopalan and G.R. Swaminathan, for the Appellant; K.K. Senthil, for Respondents 1 and 2, R. Prabhakaran and Mohammed Riyaz for Respondents 3 to 44, for the Respondent**Final Decision:** Dismissed

Judgement

1. "Batlagundu Thozhugai Pallivasal" at Batlagundu in Dindigul District is admittedly a Wakf governed by the Wakf Act, 1995, [hereinafter referred to as "the Act"]. According to the appellants, the said Wakf is governed by a Committee of six members, who are elected in the traditional manner. One Mr. Janab Mohamed Mansoor, according to the appellants, was functioning as the President of the Wakf. The term of office of the Members of the Committee is three years. The term of the erstwhile Committee expired on 25.04.2004. Thereafter, till 2008, there was no election held. While so, it is claimed by the appellants that in the meeting held on 11.01.2008 the appellants were duly elected as Members of the Committee. It is further claimed by the appellants that one Mr. Janab Mohamed Mansoor was elected as the President, Mr. Liakath Ali was elected as Secretary and Mr. M.P. Kalandar Mohideen was elected as Treasurer. The election was reported to the first respondent for approval. But, the first respondent, by proceedings in Na. Ka. No. 616/ 2006/C4/TH, dated 23.04.2008, rejected the same. Challenging the same, a Writ

Petition was filed in the name of the Wakf, represented by K.S.M.A. Mohamed Mansoor, in W.P.(MD). No. 12398 of 2008 before this Court. By order dated 31.07.2008, this Court dismissed the said Writ Petition giving liberty to the petitioner therein to file an appeal before the Wakf Tribunal on or before 20.08.2008. Accordingly, an Original Application was filed in W.O.P. No. 4 of 2008 before the Wakf Tribunal cum Subordinate Judge, Dindigul and the said petition is pending.

2. In the above said Original Petition, I.A. No. 138 of 2009 was filed for interim stay of the Order of the Wakf Board. Since it was not disposed of, the Wakf, represented by K.S.M.A. Mohamed Mansoor approached this Court under Article 227 of the Constitution of India in C.R.P.(NPD)(MD). No. 1785 of 2008 seeking for a direction to the Wakf Tribunal to dispose of the said Interlocutory Application. Few more Interlocutory Applications were also filed for different reliefs. This Court accordingly issued a direction for early disposal of the Interlocutory Applications. Thereafter, by a common Order dated 26.11.2008, the Wakf Tribunal disposed of all the Interlocutory Applications. In the said Common Order, the Tribunal gave liberty to the Wakf Tribunal to initiate appropriate legal action against K.S.M.A. Mohamed Mansoor.

3. Subsequently, the Wakf Board by its proceedings in Na.Ka. No. 616/06Aa15/Dindugil, dated 13.01.2009, issued a show cause notice levelling certain allegations against Mr. K.S.M.A. Mohamed Mansoor. It was so issued in pursuance of the Order of this Court in W.P. No. 20090 of 2008 dated 01.12.2008. Mr. K.S.M.A. Mohamed Mansoor appears to have submitted his explanation to the said show cause notice. Thereafter, the first respondent passed a resolution on 28.07.2009 removing Mr. K.S.M.A. Mohamed Mansoor from the post of Muthavalli of the Wakf and also removing the other Members of the Committee. In the same resolution, it was further directed to take over the management of the Wakf by the Board in its direct control. The Wakf Superintendent of Madurai Region was appointed as its Administrative Officer. In pursuance of the said resolution, the management was taken over and a due notification was issued in the Tamil Nadu Gazette dated 14.10.2009.

4. Challenging the above resolution and the consequential Gazette notification, the appellants herein filed three different Writ Petitions in W.P.(MD). Nos. 9789, 10512 and 11025 of 2009. A learned Single Judge of this Court, by means of a Common Order dated 19.11.2009, dismissed all the Writ Petitions. Challenging the same, the appellants have come forward with the present Writ Appeals.

5. We have heard the learned Senior Counsel appearing for the appellants, learned Counsel appearing for the Wakf Board, learned Counsel appearing for respondents 3 to 44, and perused the record carefully.

6. The main contention of the learned Senior Counsel appearing for the appellants is that before passing the impugned order removing the appellants from the office as

Committee Members, no show cause notice was issued as required under the Proviso to Section 67(2) of the Act. He would further submit that the appellants were not even parties in the proceedings before the Wakf Tribunal, which culminated in the impugned order.

7. In this regard, the learned Counsel for the Wakf Board would submit that the impugned order was not made u/s 67 of the Act and as a matter of fact, it was passed only u/s 64 of the Act as against Mr. K.S.M.A. Mohamed Mansoor, and therefore, according to him, there was no occasion or necessity for the Wakf Board to issue any show cause notice to the appellants u/s 67(2) of the Act. He would further submit that the appellants were not at all Members of the Committee, since their term of office expired as early as on 25.04.2004 itself. He would also submit that the appellants were acting as defacto Members of the Committee at the instance of Mr. K.S.M.A. Mohamed Mansoor. Since there was no election held and since they were not functioning as Committee Members as on the date of the impugned order, there was no need to pass any order removing them from membership of the Committee in terms of Section 67 of the Act.

8. When a specific query was posed about the expression found in the impugned order, as though the appellants were removed from the post of Members of the Committee, the learned Counsel for the Wakf Board would submit that the Order has not been properly worded, and there is some clerical mistake in this regard.

9. Mr. Prabhakaran, learned Counsel appearing for some of the respondents would submit that there was no election held on 11.01.2008, as it is claimed by the appellants. He would take us through the proceedings of the Superintendent of Wakf, wherein he has stated that there was no election held on 11.01.2008, and therefore, according to him, the appellants never acted as Members of the Committee as on 11.01.2008 or subsequently, and therefore, there was no need to pass any order removing them from the post of Members of the Committee. He would also concur with the argument advanced by the learned Counsel appearing for the Wakf Board to say that the impugned order has not been properly worded.

10. The learned Senior Counsel for the appellants would, however, submit that in the event of the Tribunal holding that the election held on 11.01.2008 is valid, there may not be any impediment for them to immediately assume office to function as the Members of the Committee. He would further submit that unless the impugned orders are set aside, they would stand in their way of assuming office in future, when the Tribunal upholds the election held on 11.01.2008.

11. We have considered these submissions. A perusal of Section 67(2) of the Act would make it abundantly clear that before passing any order superseding any Committee, the Wakf Board should issue a notice setting forth therein the reasons for the proposed action and calling upon the Committee to show cause within such time, not being less than one month, as may be specified in the notice, as to why

such action shall not be taken. The notice contemplated under the said proviso needs to be issued only to the Committee and it does not spell out that the same is to be issued to all the Committee Members. We, however, do not want to go into the question as to whether such notice needs to be issued on the individual Members of the Committee or it would suffice, if such notice is issued to the Committee. In any event, we are of the considered view that the said proviso is not applicable to the facts of the present case. As rightly pointed out by the learned Counsel for the Wakf Board, no order superseding the Committee has been passed in terms of Section 67 of the Act. The order under challenge cannot be construed to have been issued u/s 67 of the Act. The impugned order, on the other hand, has been issued only u/s 64 of the Act removing Mr. K.S.M.A. Mohamed Mansoor.

12. Indisputably, the term of the office of the erstwhile committee expired on 25.04.2004, and thereafter, there was no election held and so, there was no Committee functioning. It is stated by the appellants that election was held on 11.01.2008 and they were duly elected. The said election has not been, admittedly, approved by the first respondent Wakf Board. The validity of the said Order is now under challenge before the Wakf Tribunal. Unless the Wakf Tribunal decides the said issue, the appellants cannot claim that they have been functioning as Committee Members with effect from 11.01.2008. Therefore, it should be emphasized that on or after 26.04.2004, there was no Committee, and therefore, question of superseding the Committee in terms of Section 67 of the Act does not arise at all. Therefore, the contention of the learned Senior Counsel for the appellants that the impugned order has been issued in terms of Section 67 of the Act, but without issuing any show cause notice as required under the Proviso to Section 67(2) of the Act, cannot be accepted.

13. The learned Senior Counsel, would, however, point out that the language used in the impugned order would go to show that it was only an order superseding the Committee. To this, the learned Counsel for the Wakf Board would submit the language used in the Order does not mean so. As a matter of fact, he would submit that it is only a clerical mistake.

14. Having considered the above, we are also of the opinion that the language used in the impugned order is likely to indicate as though it is also an Order, superseding the so called Committee. But, as rightly pointed out by the learned Counsel for the Wakf Board, it cannot be construed so. We also agree that the Order has not been happily worded.

15. The learned Single Judge has dismissed the above Writ Petitions also on the ground that the Writ Petitions are not maintainable, since the appellants have got alternative remedy of appeal to work out before the Wakf Tribunal under the Act. Assailing this conclusion, the learned Senior Counsel would submit that the said reasoning stated by the learned Single Judge is not sustainable, inasmuch as the availability of alternative remedy would not automatically oust the jurisdiction of this

Court under Article 226 of the Constitution of India. He would further add that in a case where there is violation of principles of natural justice while passing any order, it is the settled law that without driving a party to avail the alternative remedy of appeal, this Court can entertain the Writ Petition and to interfere with such an Order so as to remand the matter back to the authority concerned for passing fresh orders after affording sufficient opportunity.

16. Regarding this legal proposition, there can be no doubt. But, in our considered opinion, since we have already held that the impugned order of the first respondent is not an Order made u/s 67 of the Act and since no opportunity need to have been given to the appellants before passing the impugned order, there is no question of violation of principles of natural justice or the statutory provision contained in Proviso to Section 67(2) of the Act. Thus, in our considered opinion, the learned Single Judge was right in dismissing the Writ Petitions on the ground of availability of alternative remedy leaving the option to the appellants to work out their remedies in the manner known to law.

17. The learned Counsel for respondents 3 to 44 would submit that there was no election held on 11.01.2008, as it is claimed by the appellants, which, according to him, is evident from the proceedings of the Superintendent of Wakf, Madurai, wherein he has stated that there was no election held on 11.01.2008 at all.

18. In our considered opinion, the question, whether there was an election held on 11.01.2008, whether the same is valid, whether the appellants were duly elected members and whether the Order of the first respondent declining to approve the same is correct are all disputed questions of fact, which are now being examined by the Wakf Tribunal in the pending Original Petition. We cannot go into these disputed questions of fact in these Writ Appeals, as the same is not within the scope of the issues involved in these Writ Appeals. We apprehend that any opinion, which we may have to express in this regard would certainly tend to influence the mind of the Wakf Tribunal. Therefore, we do not like to go into the said disputed questions of fact.

19. The learned Senior Counsel would lastly submit that the administration of the Wakf was not really taken over as notified in the official gazette. To substantiate this argument, the learned Senior Counsel would submit that the procedure contemplated for taking over the administration u/s 68 of the Act has not been followed.

20. In our considered opinion, whether really the administration of the Wakf was taken over in pursuance of the Order of the first respondent or not also cannot be gone into in these Writ Appeals, since the said issue itself is based on disputed questions of fact.

21. At this juncture, it would be worthwhile to refer to a Judgment of a Division Bench of this Court in [I. Salam Khan Vs. The Tamil Nadu Wakf Board and Others](#),

wherein, the Division Bench, to which one of us [Justice D. Murugesan] is a party, has held as follows:- "We are further of the opinion that even if an order has been passed prior to the commencement of the Wakf Act, 1995, or a dispute, question or matter has arisen before the commencement of the said Act, the Wakf Tribunal can adjudicate such issues or questions or the correctness of such an Order, because the intention of Parliament in enacting Wakf Act, 1995 is that any dispute or matter pertaining to Wakf should go before the Wakf Tribunal. 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 this Court".

22. In view of the said settled position of law, as rightly held by the learned Single Judge, all the above disputes raised by the appellants are to be raised before the Tribunal only and the same cannot be gone into by this Court in these Writ Appeals.

23. In his concluding arguments, the learned Senior Counsel would submit that this Court may issue a clarification to the effect that the impugned order of the first respondent and the notification in the official gazette shall not be an impediment for the appellants to assume office as Members of the Committee in the event, they succeed before the Wakf Tribunal in the pending Original Petitions. However, the learned Counsel appearing for respondents 3 to 44 would submit that the appellants are not even parties before the Tribunal and the Interlocutory Applications filed by them before the Tribunal were all dismissed. In view of the said factual position, we are not inclined to give any opinion in this regard, since it is for the Wakf Tribunal to issue appropriate directions or clarifications as and when required.

24. In view of all the above, we do not find any merit in these Writ Appeals. The Writ Appeals fail and the same are accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.