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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.03.2025

Delivered : 30.05.2025

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.88 of 2023
and
C.M.P.Nos.656 and 659 of 2023

T.Mammu Sahib
President/Muthavalli,
Masjid-E-Farkundha Door No.1/3,
Mosque Street,
Royapuram,
Chennai 600 013.

Petitioner

vs.

1. The Chairman,
Tamil Nadu Wakf Board,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai 600 001.
2. The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai 600 001.
3. Hussain Sherif
4. K.M.Dawood

Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India read with Section 83(9) of the Wakf Act, 1995 (as amended)



2013) against the Fair and Decreetal order dated 10.11.2022 passed in O.A.No.46 of 2022 by the Tamil Nadu Wakf Tribunal at Chennai.

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For Petitioner : Mr.L.Gavaskar

For R1 and R2 : Mr.S.Haja Mohideen Gisthi

For R3 and R4 : Mr.A.Raja Mohammed

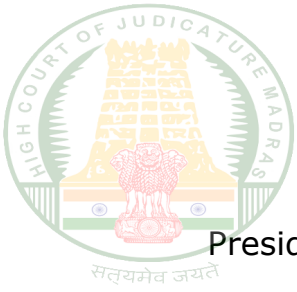
ORDER

An order passed by the Tamil Nadu Wakf Tribunal at Chennai dismissing the petition filed by the petitioner challenging the Resolution passed by the first respondent bringing the Masjid-E-Farkundha under the direct management of the Waqf Board is put to challenge in the present civil revision petition.

2. Brief facts of the case:-

i) The applicant Waqf namely Masjid-E-Farkundha is surveyed and notified by the Government of Tamil Nadu and registered with the Tamil Nadu Waqf Board in G.S.No.200/Chennai. As per the proforma report of the above referred waqf, the office bearers have to be elected among the jamathars by way of secret ballot.

ii) The Tamil Nadu Waqf Board had conducted an election by way of secret ballot on 10.11.2019 and the applicant was elected as



President/Mutawalli. Since November 2019, the applicant had been functioning as its President/Mutawalli. After the said election, the office bearers decided to construct the Minara for the mosque and the applicant had collected funds from various Muslim people and had been constructing the Minara.

iii) Whiles, the Waqf Inspector, Chennai South/North issued a letter dated 18.02.2021 to the applicant to appear before the Superintendent of Waqf, Chennai Zone on 24.02.2021 for enquiry on the ground of non-submission of accounts for about 10 years, non-payment of contribution of a sum of Rs. 1,71,210/- and construction of Minara in the above referred waqf without getting NOC from the Tamil Nadu Waqf Board.

iv) The applicant appeared before the said Inspector of Waqf, Chennai North/South Zone and gave his reply stating that the President Committee is, in no way concerned about for the past ten years accounts, and that they are ready to pay the contribution amount a sum of Rs.1,71,210/- for their tenure and it is not necessary to get the permission or approval from the Tamil Nady Waqf Board for construction of Minara since at the time construction of mosque, permission was already given by the Tamil Nadu Waqf Board for



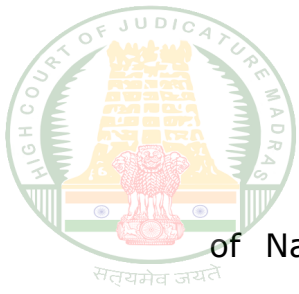
construction of the Minara.

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v) After completion of the said enquiry, the 2nd respondent herein issued a notice dated 19.03.2021 to the applicant stating that the Waqf Board officials had inspected the above referred Waqf on 18.03.2021, during which, the accounts book, register, receipts, day book, particulars of tenants, and other documents were not available in the applicant Waqf and as such the applicant had to prepare/formulate the above referred documents and inform the same to the Tamil Nadu Waqf Board.

vi) Immediately the secretary of the applicant Waqf sent a notice dated 23.03.2021 to the said erstwhile president of the applicant Waqf requesting him to furnish the above referred documents. Even after receipt of the said notice, he did not choose to furnish the above referred documents to the applicant and thereby the applicant sent suitable reply notice/explanation on 10.04.2021 to the 2nd respondent.

vii) After receipt of the said reply, the 2nd respondent had issued a show cause notice dated 29.07.2021 and the applicant gave a suitable reply/explanation to the said show cause notice. Thereafter, the 2nd respondent passed an order dated 14.02.2022, in proceeding



of Na.Ka.No.200/21(A1)/Accounts Section stating that in order to formulate the Waqf accounts, the applicant has to get advice from the Senior Accounts Officer of Waqf Board and to maintain monthly accounts and the same has to be shown to the jamathars, the accounts have to be submitted to the Waqf Board officials, the applicant has to complete the Minara construction work and effectively manage the Waqf and its properties.

viii) Under these circumstances, the Superintendent, Waqf has served the notice dated 06.05.2022 on 10.05.2022 and requested the applicant to appear before the Tamil Nadu Waqf Board on 11.05.2022 at 4.00 P.M. for enquiry.

ix) Accordingly, the applicant had appeared for the enquiry and after two weeks from the said enquiry, the Senior Accounts Officer of Waqf Board has returned the accounts book, minutes book register, receipts, day book, particulars of tenants, and other documents to the applicant and subsequently, on 08.06.2022 at about 3.00 pm, the said Superintendent of Waqf, had affixed a notice in the mosque notice board to the effect that the Tamil Nadu Waqf Board has passed the resolution in Item No.89/22, Na.Ka.200/201/A 1/Chennai/Account, dated 11.05.2022 taking direct management of the applicant Waqf,



against which, the applicant had filed O.A. No.46 of 2022 before the Tamil Nadu Waqf Tribunal, Chennai.

x) The second respondent filed a counter affidavit, which had been adopted by the first respondent, contending as under:-

a) The applicant was appointed as mutawalli by way of election conducted by secret ballot for the period of 3 years from 10.11.2019 to 09.11.2022 only. The 2nd respondent has passed an order dated 14.02.2022, in proceeding of Na.Ka.No.200/2021(A1)/Accounts Department stating that in order to formulate the Waqf accounts, the accounts submitted by the applicant was not maintained properly. The Senior Accounts Officer found out that the applicant did not maintain proper accounts. The renovation of the ablution place was done by the committee without valid permission from the Board for the construction and it has also used the funds from the Minara construction accounts.

b) The decision to pay the advance amount of Rs.2,50,000/- to the Engineer having been taken on 10.07.2020, as per accounts, the advance payment has been made on the month of March 2020 itself. No estimate was obtained from the Engineer for the advance payment and the same malpractice rooted on issuing salary, receiving rent



advance, subscription without receipt book. Therefore the above said

Waqf lost its profit and benefits.

c) After receiving the reply from the applicant, the 2nd respondent was not satisfied about the records and thereby issued a notice under section 64(1)(g) of the Waqf Act on the grounds of non-maintenance of accounts, register receipts, day book, particulars of tenants, and other documents and the applicant sent a reply to that notice. Again, an enquiry was made by the Senior Accounts Officer regarding the misappropriation of funds and since prima facie case was made out on the issue, the Senior Accounts Officer warned and advised to maintain proper accounts.

d) Later complaints were received from the same Jamath Committee Treasurer, who resigned his post. On 11.05.2022, both the complainant and the applicant were present and after due enquiry made by the Board, the impugned resolution was passed following the principles of natural justice regarding various mis-appropriation of accounts in construction of minara building,

e) While the complainant party had furnished various material evidence for the misappropriation of funds, the applicant had failed to answer the same properly and thereby after proper verification of



records and accounts, the Waqf Board had decided to take the applicant mosque under direct management and appointed the Chennai Superintendent as Executive Officer for the applicant Waqf.

f) The applicant did not co-operate and did not come forward to receive the notice of direct management, and he did not hand over the possession to the Executive Officer till now. So the Executive Officer assumed direct management and is running the administration of the mosque having only a meager amount now.

g) The applicant has not sought for the prayer of permanent injunction. The prayer sought for has become infructuous. The applicant has to make representation before the State Government and the order passed by respondents 1 and 2 after perusing the documents is final and the Waqf Tribunal has no jurisdiction to entertain the Original Application and thereby it is liable to be dismissed.

xi) The third respondent filed a counter affidavit, which had been adopted by the fourth respondent, contending as under:-

a) In furtherance of the resolution dated 11.05.2022, the Tamil Nadu Waqf Board took direct management of the applicant Waqf. The 3rd respondent held the post of Treasurer during 2007 to 2011,



Secretary during 2011 to 2014 and President/Mutawalli during 2014 to 2019. There was not even a single complaint that has been pointed out against him during his tenure and he was selected continuously for 12 years, due to his honesty, transparency and credibility, During his tenure, he performed his duty in a profound manner. Whereas there were many complaints and allegations raised against the applicant for his improper management and misappropriation of Waqf's funds and properties.

b) The respondent Board had several times called the applicant for enquiry and warned the applicant to desist from indulging in such unlawful acts. But the applicant, by colluding with the secretary Mr.T.Sahabudeen, had continued his unlawful and illegal acts. The applicant had filed this application with vexatious motive and to prolong the implementation of the order passed by the respondent Board for direct management. All the required documents were submitted to the people concerned on time after the tenure of the 3rd respondent.

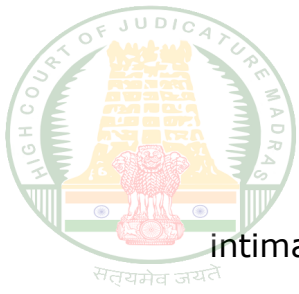
c) The 4th respondent herein was elected as Treasurer in the election held on 10.11.2019. Later, it came to the knowledge of the 4th respondent that the applicant and secretary Mr.T.Sahabudeen



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have done many malpractices and they also appropriated the Waqf's money without providing proper accounts. They also withdrew amount from the bank without the knowledge of the 4th respondent. During the nationwide lockdown due to Covid-19 pandemic, when the entire people were fearing for their life, the applicant and the Secretary of the applicant Waqf, by taking advantage of the lock-down, have usurped the Waqf's money illegally. When the 4th respondent came to know about their illegal acts, he asked them to provide the accounts, but they behaved very arrogantly and refused to furnish the accounts. Left with no other option, the 4th respondent had resigned the post of Treasurer on 21.01.2021 and remained as Executive Committee Member of the applicant Waqf. The subscription paid by the 3rd respondent, his son, the 4th respondent, 3 sons of 4th respondent and Vice President of the applicant Waqf has been maliciously converted as donation by the Treasurer of the applicant Waqf with the instigation of the applicant.

d) The Tamil Nadu Waqf Board had conducted enquiry by following due process of law and natural justice by issuing proper notice of enquiry to all parties concerned and after being satisfied with the evidences, the Board took over the direct management. The



intimation for direct management was affixed in the notice board of the applicant Waqf and the same has been notified in the official gazette on 22.06.2022. The applicant has not filed any evidences to substantiate his averments against the 3rd and 4th respondents. Many instances of unlawful collection of donation previously occurred and complaints were given to the Tamil Nadu Waqf Board.

e) The applicant has defaulted in making payment to the Electricity Board and has proclaimed that as the Tamil Nadu Waqf Board has taken direct management, he is free from responsibilities and hence he would not make the payment. Hence, it is clear that the applicant has accepted the decision of the Tamil Nadu Waqf Board for direct management and has relieved himself from the Committee. Subsequent to the above declaration by the applicant, the respondent Board has made payment to the Electricity Board.

f) The applicant had collected the Subscriptions, rental incomes, jumma collections and donations till 22nd August 2022 and retained the entire amount and failed to pay the salaries, utility bills, etc. The application filed by the applicant is a vexatious one and it is liable to be dismissed.

xii) Having considered the contentions of the parties and the

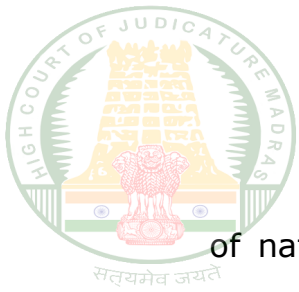


materials placed before it, the Waqf Tribunal had dismissed the Original Application finding that the evidence placed before it is sufficient to prove that the Tamil Nadu Waqf Board is justified in assuming direct management of the waqf in question. Challenging the said order, the present civil revision petition has been filed.

3. The submission of Mr.L.Gavaskar, learned counsel for the revision petitioner in crux is as under:-

i) The Waqf Tribunal has erred in dismissing the Original Application filed by the revision petitioner, without considering that the impugned resolution assuming direct management of the petitioner's Waqf had been passed without termination/removal of the petitioner's Committee, which is against the provisions of Sections 64 and 65 of Waqf Act.

ii) The second respondent herein had already conducted a detailed enquiry and passed an order dated 14.2.2022 directing the petitioner to complete the construction of Minara in the said Waqf. Whiles, the impugned resolution came to be passed by the first respondent on conducting a name sake enquiry on 11.5.2022 without serving copies of the auditor report and thereby violating the principles



of natural justice, however, the Waqf Tribunal failed to consider the same and erred in dismissing the Original Application filed by the petitioner and that too without considering the documents submitted by the petitioner.

iii) The special resolution No.024B dated 27.7.2022 passed by the Tamil Nadu Waqf Board is a redundant one since the same was passed during the pendency of the Original Application without giving notice to the petitioner and as such the petitioner need not challenge the same.

iv) The Waqf Tribunal has failed to consider that the first respondent has not proved any charges alleged in the impugned resolution against the petitioner with documentary evidence.

v) The admission of the third respondent/previous mutavalli of the petitioner's Waqf in his complaint, Ex.P25 that there was a shortage of funds to the tune of Rs.1,31,970/- during his tenure from April 2019 to October 2019 shows that the petitioner is in no way connected with the shortage of funds nor any misappropriation of accounts.

vi) The impugned Resolution having been passed on the basis of the audit report submitted by the Senior Accounts Officer without

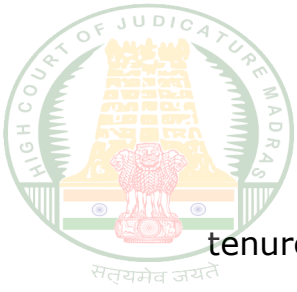


giving a copy of the audit report to the petitioner, he is deprived of his opportunity to put forth his case and thereby the impugned resolution is in violation of the provision contemplated under Section 48 of the Waqf Act and the same is liable to be set aside, however, the Waqf Tribunal has failed to consider the same and proceeded to dismiss the Original Application filed by the petitioner and thus, the order passed by the Waqf Tribunal is liable to be set aside.

4. The counter submission of Mr.S.Haja Mohideen Gisthi, learned counsel for respondents 1 and 2 is as under:-

i) The submission to the effect that assumption of direct management of the petitioner's Waqf without removal of the petitioner's Committee is against the legal provisions is mere technicality as it could be seen that as a parallel proceedings, the petitioner was issued show cause notice dated 29.7.2021 and by Special Resolution No.024B dated 27.7.2022, the Waqf Board had removed the petitioner's Committee.

ii) The revision petitioner cannot shirk his liability to render accounts with regard to the Waqf to the Waqf Board taking a shelter that the misappropriation of funds had taken place only prior to his



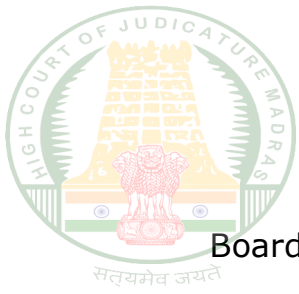
tenure. On assuming charge, it becomes the bounden duty of the petitioner to discharge his duties on that aspect.

iii) The non payment of contribution to the Waqf Board has been admitted and paid at a later stage, which shows the improper maintenance of accounts, when especially, the audit report points out various irregularities during the tenure of the petitioner.

iv) Though the petitioner and other office bearers were called for enquiry on the audit report submitted by the Senior Accounts Officer and they had also appeared during the enquiry on 11.5.2022, the petitioner had taken a peculiar stand as if he had not been provided with any opportunity by serving the audit report, which happens to be a new ground taken only in the civil revision petitioner and he had taken such a plea neither during the enquiry nor before the Waqf Tribunal.

5. Heard the learned counsel appearing for the parties and perused the materials available on record.

6. The allegations levelled against the revision petitioner are three fold, one being that improper rendition of accounts to Waqf



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Board, the second one being mismanagement of accounts and non payment contribution to the Waqf Board and the other one being the action on the part of the petitioner in proceeding with minara construction without obtaining an NOC from the Tamil Nadu Waqf Board.

7. The indisputable fact is that the petitioner's mutavalliship is only for a period of three years from 10.11.2019 to 9.11.2022. The first respondent had passed the Resolution on 11.5.2022 thereby assuming direct management of the petitioner's Waqf on the ground of mismanagement and thereby it is seen that the petitioner had been holding the mutawalliship for a period of about 2-1/2 years without any interruption.

8. Even a perusal of the documents produced by the revision petitioner and the other materials available on record show that the Waqf Board has not taken a drastic decision at once on coming through a single event of misappropriation of fund, but, it is seen that improper maintenance of accounts and misappropriation of funds seem to be a recurring practice in the petitioner's Waqf.



9. The revision petitioner himself has produced Ex.P25, a complaint written by the erstwhile muthavalli on 15.3.2021 to the second respondent, which proves that though such misappropriation and improper maintenance of accounts had been persisting even during his tenure, it became worse during the tenure of the petitioner as he had not initiated to resolve the same.

10. It is seen that on 29.7.2021 itself, the second respondent had issued a show cause notice to the revision petitioner pointing out among other irregularities that he had not rendered proposed income and expenditure for the year 2021-22 and in furtherance of the same, the Waqf Board had removed the petitioner's Committee by its Special Resolution No.024B dated 27.7.2022, of course, subsequent to the assumption of direct management of the petitioner's Waqf by the impugned Resolution dated 11.5.2022. However, the fact remains that the petitioner had not challenged the said Special Resolution.

11. Further, as rightly found by the Waqf Tribunal, even after the assumption of direct management of the petitioner's Waqf, he had been continuing the activities in making payment for construction of



minara as evidenced by Ex.P31, which shows the very attitude of the revision petitioner.

12. The petitioner predominantly takes a stand as if he had not been provided with the audit reports to enable him to putforth his defence depriving his case and thereby, the impugned Resolution passed on the basis of the audit report submitted by the Senior Accounts Officer is liable to be set aside.

13. In this regard, a perusal of the said Resolution would disclose that the petitioner and other office bearers had appeared before the Waqf Board and in fact, it is the admission of the revision petitioner himself that he had appeared for the enquiry before the Waqf Board, however, it is his specific stand that he was not aware of anything as he was not furnished any materials which form the basis for such enquiry. The petitioner, having assumed the office of muttawalli from 10.11.2019, cannot simply shirk his liability to render accounts as contemplated under Section 46 of the Waqf Act, 1995 by contending that such misappropriation had been persisting even prior to his tenure.



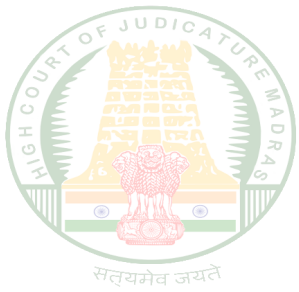
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14. The accounts submitted by the petitioner having been audited by the Senior Accounts Officer as contemplated under Section 47 of the Waqf Act, 1995, it appears that many irregularities in respect of the petitioner's tenure had surfaced and on considering the same and after conducting enquiry with the petitioner and other office bearers, considering the fact that the interest of the Waqf is predominant one, the impugned Resolution came to be passed by the first respondent assuming direct management of the petitioner's Waqf as contemplated under Section 65(5) of the Waqf Act.

15. In this regard, it is also relevant to note that the Waqf Board is widely empowered under Section 48 of the Waqf Act, 1995 to pass such orders as it thinks fit including orders for the recovery of the amount certified by the auditor on examining the auditor's report. Section 48 of the Waqf Act, 1995 is reproduced hereunder for ready reference:-

"48. Board to pass orders on auditor's report.—

(1) *The Board shall examine the auditor's report, and **may** call for the explanation of any person in regard to any matter mentioned therein, and shall pass such orders as it*



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thinks fit including orders for the recovery of the amount certified by the auditor under sub-section (2) of section 47."

16. The language employed in the above legal provision does not make it as a mandatory on the part of the authority to call for any explanation, however, it is seen that the petitioner and other office bearers had been called for the enquiry and they had also participated in the enquiry and only after considering the irregularities the order was passed by the Waqf Board to assume direct management of the petitioner's Waqf in the interest of the Waqf and thereby it cannot be found fault merely on the plea of the petitioner that he was not furnished with any copy of the auditor's report, especially, when the revision petitioner had not at all raised such a plea either during the enquiry before the Waqf Board or in the Original Application filed before the Waqf Tribunal.

17. The Waqf Tribunal, after considering the merits of the case and the documents furnished by the parties, had rightly found that the Waqf Board has passed the impugned resolution assuming direct



management of the petitioner's Waqf, which does not warrant any interference.

18. In view of the above, the civil revision petition is liable to be dismissed and accordingly, it is dismissed. No costs. The connected Miscellaneous Petitions are also dismissed.

30.05.2025.

Index: Yes/No.
Internet: Yes/No.
ssk.

To

1. Tamil Nadu Wakf Tribunal,
Chennai.
2. The Chairman,
Tamil Nadu Wakf Board,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai 600 001.
3. The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai 600 001.



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A.D.JAGADISH CHANDIRA, J.

Ssk.

P.D. ORDER IN
C.R.P.No.88 of 2023

Delivered on
30.05.2025.