
(1969) 03 MAD CK 0013
In the Madras High Court

A.P.M.S. Mohammed Ali Maraikayar and Others	APPELLANT
Vs	
The Special Officer for Wakfs and Another	RESPONDENT

Date of Decision : 18-03-1969

Acts Referred:

Waqf Act, 1954 — Section 15(1)

Citation : (1969) 82 LW 461 : (1969) 2 MLJ 556

Hon'ble Judges : R. Sadasivam, J

Bench : Division Bench

Judgement

R. Sadasivam, J.—Petitioners and the second respondent were elected on 21st September, 1966 as members of the committee to manage

the Masjide Mahmood Mosque, Pudupet, Madras, in accordance with a scheme framed in C.S. No. 309 of 1935, on the file of this Court, and

the selection of the committee was approved by the State Wakf Board on 29th September, 1966. On 6th February, 1968, the Committee passed

a resolution removing the second respondent herein from the membership of the Mutavalli Committee, in a meeting in which the petitioners

participated and voted for the resolution. The second respondent approached the Wakf Board, and the Special Officer, who is exercising the

powers of the Board, passed an order in W.A. No. 5 of 1968 directing the second respondent to be restored to the membership of the

Committee on the ground that the removal of the second respondent was not made on proper grounds, that the alleged ground of removal did not

fall within one or other of the disqualifications mentioned in clause 5 or Clause 7 of the scheme framed by this Court and that the charges could not

have been made against the second respondent without the approval of the Wakf Board. The petitioners have come forward with this writ petition

for a writ of certiorari to quash the order of the Special Officer dated 12th September, 1968, in W.A. No. 5 of 1968.

2. The main question for consideration in this writ petition is whether the Wakf Board has jurisdiction under the Wakfs Act to pass the order in

question. Section 15 (1) of the Wakfs Act defines the functions of the Wakf Board in general terms. u/s 15 (1) of the Act, the Wakf Board has

general powers of superintendence and control over all the wakfs in the State. The proviso to Section 15 (1) of the Act, however, enacts that in

exercising its powers, the Board should act in conformity with the directions of the Wakf, the purposes of the wakf and any usage or custom of the

wakf sanctioned by the Muslim law. Clause (2) of Section 15, provided that, without prejudice to the generality of the power conferred under

Clause (1), the Board shall have the powers mentioned in that sub-section. Clauses (g) and (o) of that sub-section are the relevant clauses to be

considered in disposing of this writ petition, and they are as follows:

(g) to appoint and remove Mutavallis in accordance with the provision of this Act.

(o) generally do all such acts as may be necessary for the due control, maintenance and administration of wakfs.

3. There is one other section, viz., Section 42 of the Wakfs Act which is also relevant for the present discussion, and it is as follows:

When there is a vacancy in the office of the Mutavalli of a wakf and there is no one to be appointed under the terms of the deed, or where the right

of any person to act as Mutavalli is disputed, the Board may appoint any person to act as Mutavalli for such period and on such conditions as it

may think fit.

4. u/s 42 of the Act, where the right of any person to act as Mutavalli Is disputed, the Board has been given the power to appoint any person to

act as Mutavalli for such period and on such conditions as it may think fit. Admittedly, there is a dispute in this case about the right of the second

respondent to act as a member of the Committee to manage the Masjide Mahmood Mosque. I am unable to accept the contention of learned

Advocate for the petitioners that the power conferred u/s 42 of the Act is not intended to apply to a case like the present one but only for

temporary purposes. Reliance is sought to be placed on the words. "" for such period "" to show that the appointment contemplated in Section 42 of

the Act is only for some restricted period. The use of the words "" for such period "" can be easily understood, if we take even the present case by

way of illustration. The election of the Committee members was made by the Jamayat on 21st September, 1966, and the period of the Committee

is only three years under the scheme. The appointment of another member to the Committee in any vacancy can only be for the remaining

unexpired term of three years.

5. Learned Counsel for the petitioners referred to the decision of Venkatadri, J., in M. L. Azeez v. The Secretary, Wakf Board W. P. No. 1204

of 1965, that the Wakf Board has no jurisdiction to go into the question as to who is the rightful Mutavalli. The learned Judge has merely referred

to the contention of the petitioner in that case and expressed his agreement with it, without referring to the relevant provisions of the Wakfs Act,

and that decision cannot be taken as an authority for the position that the Wakf Board has no jurisdiction to appoint a Mutavalli. In fact, the

observations in that decision run counter to several of the provisions in the Wakfs Act referred to by me. It is, no doubt, possible to support the

actual decision in that case that, when two persons make rival claims to the Mutavalliship it is desirable that the matter is left to be adjudicated in a

regular suit. But it is totally different from saying that the Wakf Board has no jurisdiction in the matter.

6. Learned Advocate for the petitioners stated that Clauses 5 and 7 of the scheme are not exhaustive and that independent of the provisions of the

scheme, a member of the Committee can be removed from the management of the Committee. I am unable to agree with this contention. Further,

there is nothing in the scheme giving such power of removal to any other members of the Committee. There is nothing in the scheme authorising the

Committee decide the question whether one of the members of the Committee has either ceased to be a member or is disqualified to be a member

of the Committee. It is true that under Clause 5 01 Clause 7 of the scheme, a person may cease to be a member of the Committee for reasons

which the other members of the Committee can take note of, such as death, resignation, etc. But what the petitioners claim to have done in this

case is they claim to have removed the second respondent and the reason given by them is not the one contemplated in the scheme.

7. Learned Advocate for the petitioners urged that the second respondent is occupying a building of the Masjid Mahmood Mosque and is

refusing to vacate or pay higher rent. It is contended that the act of the second respondent is opposed to the welfare and interest of the Mosque. It

should be noted that the second respondent became a tenant of the property of the Mosque even before he was elected by the Jamayat. Further,

as pointed out by the Special Officer of the Wakf Board, the Committee can independently take action for recovery of possession of the property

of the Mosque from the second respondent on grounds open to it and the relationship between the Mosque and the second respondent as landlord

and tenant cannot affect the rights of the second respondent to continue as a member of the Committee under the scheme. In *Mayadhar Subudhi*

Tana and Another Vs. Orissa Board of Wakfs and Another, it has been held that, prior to the passing of the Wakfs Act, a Mutavalli had no

power to grant lease of wakf property, if it be agricultural, for a term exceeding three years, and (a) if non-agricultural, for a term exceeding one

year, unless he is authorised by the deed of wakf to do so; (b) or, where he has no such authority, unless he had obtained leave of the Court to do

so. But after the passing of the Wakfs. Act, the Board is competent to accord necessary sanction. But the lease in this case is from month to month

and not for a period of three years or more. The said decision would however show the general power of superintendence of the Wakf Board.

8. For the foregoing reasons, the writ petition is dismissed. But in the circumstances. I make no order as costs.