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**(1979) 12 MAD CK 0004**  
**In the Madras High Court**

Dr. O.C. Mohamed Hashim

APPELLANT

Vs

Tamil Nadu State Wakf Board and Others

RESPONDENT

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**Date of Decision :** 05-12-1979

**Acts Referred:**

Waqf Act, 1954 — Section 15

**Citation :** (1980) 93 LW 546 : (1980) 1 MLJ 235

**Hon'ble Judges :** V. Ramaswami, J

**Bench :** Division Bench

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**Judgement**

V. Ramaswami, J.—The petitioner is the trustee and Muthavalli of Osmania Mosque, Chintadripet which, according to the petitioner, was

built hundred years ago by his grand-father late Tanjore Mohammed Usman Sahib. It appears there are four shops in the front portion of the

mosque and it is stated in the affidavit that the income from which was intended for and utilised by the petitioner solely for the maintenance of the

mosque. The founder also seems to have purchased two other properties, namely, Nos. 21 and 22, Agraharam Street, Chintadripet and at present

there are about nine shops in those two properties. The affidavit of the petitioner further states that the founder utilised a portion of the income from

these two properties whenever necessary for the expenses of the mosque but the bulk of the income therefrom was being utilised for his family and

for distribution among the members of the founder's family called the beneficiaries. On these allegations, the contention of the petitioner was that

these two properties constitute what is called "wakf alal-aulad" under the Muslim Law. The Wakf Board by a notice dated 2nd August, 1977

required the petitioner to show cause as to why he should not be removed from muthavalliship and why another muthavalli or ad hoe committee of

management should not be appointed and action taken against him for various acts of omission and commissions mentioned in the notice. He was also asked to show cause why the management of the mosque should not be taken over and directly managed by the Board till the enquiry into the several allegations against him is finally disposed of or till such time as the necessity for such direct management continues whichever is later. The petitioner had submitted his explanation which is in the process of enquiry. When this enquiry was pending one Aziz, fourth respondent herein, filed two applications before the Board, one for the removal of the petitioner from muthavalliship and the other for framing a scheme. A notice was issued in these petitions of Aziz on 4th August 1977 to the petitioner requiring him to appear for an enquiry on 8th August, 1977. The enquiry was to be held in the office of the Board at No. 2, Pulla Road Avenue, which is far away from the Mosque. It appears that on 8th August, 1977 when the enquiry was going on a huge crowd entered the court-hall and created some trouble and disturbance. Taking that there is too much tension and this incident was sure information that the mosque and its administration is not conducted properly, the Board made an order on 8th August 1977 that in the interest of the "Jamat" and mosque administration the Board feels that a short time-taking over the mosque by itself for direct management and administration as a temporary measure is desirable and such action was accordingly taken under the provisions of Section 45 read with Section 15 of the Wakf Act. The petitioner was intimated that the Wakf Board is thus taking over the management for a period of two months. It is against this order of the Board the present writ petition has been filed. The learned Counsel for the petitioner states that this is without jurisdiction and is liable to be set aside. The learned Counsel for the respondents contended that under the provisions of the Wakf Act pending an enquiry into an application for removal of a trustee or for framing of a scheme, it is open to the Wakf Board to take over possession and management of the mosque and its properties if it considers that in the interests of proper maintenance, control and administration of the wakf it is necessary to do so. In this connection he referred to the provisions of Section 15 and in particular Sections 15(2)(c), 42, 43 43-A and 45 of the Wakf Act, 1954. Section 15(1) dealing with the functions of the Boards states that the general superintendence of all Wakfs in a State shall vest in

the Board and it shall be the duty of the Board so to exercise its powers under the Act as to ensure that the Wakfs under its superintendence are

properly maintained, controlled and administered and the income thereof is duly applied to the objects and the purposes for which such Wakfs

were created or intended. Section 15(2)(o) provides that without prejudice to the above general power the functions of the Board shall be

generally to do all such acts as may be necessary for the due control, maintenance and administration of wakfs. Section 45 of the Act only vests a

jurisdiction in the Board to enquire into any matter relating to the wakf and take such action as it thinks fit. I have no doubt that neither Section 15

nor Section 45 enables the Wakf Board to dispossess a muthavalli or take over the administration of a mosque from the muthavalli pending an

enquiry into an application for removal of the muthavalli or for framing of a scheme. The Wakf Board has no inherent power and if it seeks to

exercise any power it must be in a position to lay its hands to some specific provision in the Wakf Act as being a creation of the Wakf Act the

powers and jurisdiction are restricted to those that are found in the enactment itself. The muthavalli is entitled to be in possession and management

pending disposal of an application for his removal. If during the enquiry into an application for removal he is to be dispossessed or the management

of the mosque is to be taken away, specific provision conferring a power on the enquiring authority is absolutely essential. In fact, the matter is not

res Integra in view of the decision reported in T.E. Mohammed Shareef Vs. The Superintendent (Wakfs), Central Zone and Others, Justice Ismail

as he then was, had occasion to consider the scope of the powers of the Board u/s 15. After referring to the similar provisions contained in the

Hindu Religious and Charitable Endowments Act and after considering the provisions of the Wakf Act the learned Judge held that the Wakf Board

cannot issue notice to the tenants of the Wakf properties not to pay rent to the muthavalli but to pay it to the Board on the ground that action to

remove the muthavalli was taken or on the ground that he had failed to file the accounts to the Board or failed to pay the contribution to the Board.

In fact, the learned Judge pointed out that there is a lacuna in the Act and a need for a legislative provision vesting jurisdiction in the Board to make

such interim appointments or interim suspension of the muthavalli, but the provisions as it stands do not enable the Wakf Board to dispossess a

muthavalli pending enquiry into an application for removal of that person. The ratio is, so long as a final order removing a muthavalli is not made, he

is entitled to exercise his powers as such muthavalli and, therefore, no interim disposition can be ordered pending enquiry into the application. The

same learned Judge has considered the question again in the decision reported in *The Palni Muslim Dharmaparipalana Sangam and Others Vs. The*

*Tamil Nadu Wakf Board and Others*, and similar view has also been expressed in this judgment.

2. Section 42 deals with a case of vacancy in the office of muthavalli or where the right of any person to act as muthavalli is disputed and the right

of the Board in those cases to appoint any person to act as muthavalli for such period and on such condition as it may think fit. Certainly, this

provision does not enable the Board to appoint any person to act as a muthavalli pending an application for removal because in such a case there is

no question of vacancy or a dispute as to the right of the muthavalli. The dispute referred to in the section can only be a dispute between two

persons claiming to be muthavalli and in a case where there is no dispute about the right of a person to be the muthavalli, but he is sought to be

removed on the ground of certain commissions and omissions, Section 42 could not be invoked.

3. Section 43-A enables the Board to assume management of the Wakf for such period or periods not exceeding the aggregate five layea in cases

where no suitable person is available for appointment as a muthavalli of a Wakf u/s 42 or under Sub-section (2) of Section 43. We have already

seen that the power to appoint a muthavalli u/s 42 arises in a case where there is a vacancy in the office of the muthavalli or where there is a

dispute relating to muthavalliship. In such cases, the Board has power to appoint a muthavalli u/s 42, but if the Board could not find a suitable

person for appointment to act as muthavalli u/s 42, Section 43A enables the Board to assume management directly to itself. Similarly, Section

43(2) provides that where a committee appointed by the Board to act as a muthavalli for managing or administering wakf property is unable to

perform or has made default in performance of the duty imposed on it, the Board may supersede the committee and appoint any other person or

committee to act as muthavalli of the wakf property. If in such a case the Board is not able to find any other suitable person to act as a muthavalli

then Section 43-A enables the Board to assume direct management of the wakf or its properties. Therefore, the condition precedent for the applicability of Section 43-A is the vacancy in the office of a muthavalli or a dispute relating to the muthavalliship or the committee or person appointed by the Wakf Board u/s 42 not being able to function and the Board is not able to find any other suitable person to act as a muthavalli It is not applicable to a case where there is no dispute as to the right of the person to be a muthavalli, but only he is sought to be removed on the ground of mismanagement or other acts of commissions and omissions. Thus none of the provisions relied on by the learned Counsel for the petitioner enables the Board to assume direct management of the wakf pending an application for removal or for framing of a scheme in relation to the wakf. The impugned order of the Board is, therefore, devoid of jurisdiction and it is liable to be set aside and it is accordingly set aside. The writ petition is allowed. The Rule nisi is made absolute. The petitioner will be entitled to his costs. Counsel's fee Rs 250 payable by the first respondent Board.