

(1988) 04 MAD CK 0036
In the Madras High Court

Malick Dinar Baithul Mal and Others

APPELLANT

Vs

The Tamil Nadu Wakf Board and Others

RESPONDENT

Date of Decision : 21-04-1988

Acts Referred:

Citation : (1989) 1 LW 47 : (1989) 1 MLJ 50

Hon'ble Judges : Swamikkannu, J

Bench : Single Bench

Judgement

Swamikkannu, J.—This is a writ petition filed by Malick Dinar Baithul Mal, Arippu Street, Kottar, Nager-coil and three others who are

petitioners 2 to 4 in their personal capacity and as President, Secretary and Treasurer respectively of the first petitioner for calling for the records

of the proceedings resulting in the order dated 28.2.1981 and made in RC No. 15585/kk/c6/80, on the file of the Tamil Nadu Wakf Board, the

1st respondent herein, and quash the same.

2. It is inter alia stated in the affidavit sworn to by K.S. Ibrahim, accompanying this petition, thus:

He was the duly elected President of Malick Dinar Baithul Mal Arippu Street, Kottar, Nagercoil, the first petitioner herein. He has filed this

affidavit for himself individually and in his capacity as President of the 1st petitioner institution. He has also filed this affidavit on behalf of the other

petitioners herein in such dual capacity.

3. The petitioner institution is comprised of a mosque, a library and Madras a and properties endowed in support thereof. It is a wakf duly

registered under the Wakf Act its origin is ancient and sacred and the institution is presently governed by the bye-laws framed and adopted on

30th December, 1972. The said bye-laws were also approved by the Wakf Board. In terms of the bye-laws all persons of the age of 18 are

entitled to become members paying the requisite contributions. The institution is administered by duly elected and constituted bodies as provided

for in the bye-laws. The administration and management is entrusted to a governing body or Managing Committee composed of 15 members

including a President, a Vice President, a Secretary, an Assistant Secretary and a Treasurer. This executing body acts in consonance with the

decision of the General Body of members. It can also act through Sub-Committees. The members of the Governing Body of Managing Committee

are elected and are in charge of the day to day administration and management of the institution and of its properties. The said body holds office

for the prescribed period.

4. One U. Peer Mohamed Sahib was the President for a period commencing from 1.5.1969 to 31.12.1973. One K. Mohamed Abdul Kader

became the President on 1.9.1979. But he resigned his office on 17.6.1980. The general body accepted the resignation on 10th July, 1980 and

constituted a Committee of three members for ensuring proper elections of the New President within three months there from. The said committee

was composed of 1. M.M. Pathusha, 2. K.P. Shamsuddin and 3. S. Haja Mohideen, who had been holding office respectively as Vice President,

Secretary and Treasurer of the Institution. An Election Committee was also formed and it was re-constituted on 5.8.1980. The election committee

published the election schedule by notice dated 28.8.1980. According to the Schedule, nomination of candidates for President ship should be

made between 11.9.1980 and 13.9.1980. Scrutiny of the nominations to be made on 14.9.1980, withdrawal of nominations to be done on or

before 18.9.1980 and election if any to be held on 18.10.1980.

5. He was duly nominated for being elected as President. The nomination of two others were withdrawn while that of one M.M. Pathusha was

rejected as he was disqualified to contest for Presidentship, since he was already a member of the Executive Committee and was holding office as

Vice-President. Since his nomination was the only valid one, he was declared duly elected to the office of the President. He took charge as

President on 18-10-1980 and with the concurrence of the General body which

met on 18-10-1980. Since then he has been in management administering the affairs of the institution and its properties with the assistance of the other members of the duly elected governing body. The suit O.S. No. 689 of 1980 on the file of the District Munsif of Nagercoil filed by M.M. Pathusha against the election committee questioning its rejection of his nomination was pending on the date of filing this writ petition and the ad-interim injunction prayed for therein in I A. No. 719 of 1980 was declined. C.M A. No. 18 of 1978 was pending at the time of filing of this writ petition, with a direction to maintain the status quo. The suit O.S. No. 755 of 1980 on the file of the District Munsif of Nagercoil questioning his election as President filed by the said M.M. Pathusha was also pending at the time of filing of this writ petition.

6. Superintendent of Wakfs, Kanyakumari, notified that the Secretary and Assistant Secretary of the Wakf Board will make an inspection on the basis of an alleged complaint from the Jamaath. The Secretary, Assistant Secretary and the Superintendent of Wakfs visited the institution on 15.12.1980. On the next day an auction was held of the coconut yield and a sum of Rs. 6,665/- was the highest cash bid. The Secretary illegally and wrongfully took away the cash without any authority.

7. The deponent of the affidavit further stated that the respondents 2 to 4 had no authority or power to seize and retain the money belonging to the petitioner institution. They also exceeded and abused their powers in retaining the money belonging to the institution. They did not have any valid ground to justify such retention. Thereupon the governing body as well as the deponent of this affidavit pointed out to the respondents, the illegality so committed and its further continuance was a continuing wrong. The respondents 2 to 4 were in a quandary. They collusively devised a scheme to cover up their faults and penalise him and in further once thereof acted in collusion and issued to him and the petitioners 3 and 4 a show cause notice dated 31.12.1980. He was asked to show cause within 7 days as to why action should not be taken against him u/s 43 of the Wakf Act.

Curiously the first charge related to certain expenditure incurred in the maintenance of the properties of the institution and imputed misappropriation from 1971 when he was not the president nor a member of the governing body. There was no factual or legal basis for such charge much less any

factual or legal basis was disclosed in support of the charge. The 2nd and 3rd charges were equally vague and has no factual basis. Charges 4 to 6

did not relate to the administration and management of the 1st petitioner institution at all, but falsely implicates him on some speculative basis.

Respondents 2 to 4 herein were provoked into further action because of their petition to the Minister and a lawyer's notice thereafter demanding the return of the cash illegally seized.

8. The first respondent/Board did not furnish to the deponent of this affidavit annexure 1 and 2 alluded to in the show cause notice along with the show cause notice memo. Probably these annexures were subsequently prepared by the 2nd and 3rd respondents themselves.

9. It is further stated in the affidavit of the deponent that he showed cause by his explanation dated 21.1.1981. Similarly the 3rd and 4th petitioners also showed cause by their explanations. They denied the allegations and pleaded that no case had been made out and could be made "out for the proposed action u/s 43 of the Act.

10. The second respondent intimated by a communication dated 14.2.1981 that an enquiry would be held on 28.2.1981 at the 1st respondent's office. Immediately on its receipt, by his letter dated 20th February, 1981 and telegram dated 24.2.1981 the deponent requested for an adjournment on the ground that the Urs Ceremony of Hazarat Malik Dinar falls to be celebrated on 28.2.1981 and elaborate arrangements had been made for such celebrations. In view of that important annual religious festival which attracted a huge number of devotees in the district and the adjoining State, the deponent prayed for an adjournment. The respondents 2 and 3 in collusion with the 4th respondent had wantonly fixed the particular date as the date of enquiry for inquiring into the matters connected with the 1st petitioner-institution with a view to deny them an opportunity to plead and prove their case and expose the falsity of charges and the illegality of the wrongful seizure and detention of the cash belonging to the institution.

11. To the best of his knowledge and information which the deponent believed to be true that the item of the agenda relating to the matter in question was not taken up for hearing at all and as per the originally recorded minutes of the Wakf Board, the enquiry was adjourned after

ascertaining that the urs function was being held on that date. To his astonishment and surprise, he received on 21.3.1981 a communication dated 18.3.1981 signed by the 2nd respondent on 18.3.1981 stating that eight out of the eleven members of the Wakf Board in the proceedings of the Tamil Nadu Wakf Board dated 28.2.1981 took up the matter for enquiry, the parties were called absent despite notice, they examined the merits and decided that the Wakf Board should assume direct management of the 1st petitioner institution by appointing the superintendent of Wakf, Kanyakumari, the 4th respondent herein as the Executive Officer u/s 43-A of the Wakf Act. ex facie the order proceeds on the basis that no suitable person was available for being appointed Muthawalli u/s 42 of the Wakf Act nor a committee could be constituted u/s 43(2) of the Wakf Act. The Wakf Board directed janab M.M. Pathusha, K.S. Ibrahim i.e. himself to hand over charge of the Wakf and its properties to the 4th respondent forthwith.

12. The deponent further stated that the impugned order of the respondent Wakf Board is vitiated by many errors apparent on the face of the record.

13. Mr. A. Ramanathan, learned Counsel for the petitioner submits that the impugned order is bad when it fundamentally erred in holding that there is a dispute over Muthavalli of the petitioner institution and that Section 45 empowers the Board to assume direct management of the petitioner institution, its administration and management. According to the learned Counsel neither Section 45 of the Wakf Act nor the decision referred to i.e. the decision in W.P. No. 6522 of 1980, govern the case. It is further submitted that the Wakf Board erroneously invoked S. 43-A to sustain its decision to appoint the 4th respondent as the Executive Officer for the petitioner institution for a period of two years. It merely recites the charges and the materials it purports to rely and which has not been disclosed to them so far and says that separate action is being taken. However the Wakf Board appointed the fourth respondent as Executive Officer on a false premise that there was dispute over muthavalliship overlooking that the Muthuvalliship is vested with a Managing Committee of 15 elected members as per bye-laws and that M.M. Pathusha as the Vice-President and a Member of the Managing Committee offered himself a candidate

for election as President and his nomination was validly rejected and the deponent was declared elected unopposed.

14. In addition to the above submission, the learned Counsel for the petitioner further submits that the validity of rejection of nomination is subject

matter of adjudication in O.S.689 of 1980 and O.S.755 of 1980 on the file of the District Munsifs Court, Nagercoil. The Wakf Board proceeds

on wrong basis in assuming that M.M. Pathusha was in charge and control of the Wakf while his own suit O.S. No. 755 of 1980 falsifies the basis

of such assumption. It also purports to rely upon an alleged statement dated 12.11.1980 made by M.M. Pathusha to the 4th respondent herein

alleging that there were more than one account for the Wakf and that he was willing to surrender the administration to the Wakf Board. The Wakf

Board also stated that the election of the deponent was contrary to the orders of Court. It also purports to rely upon a petition dated 12.10.1980,

a telegram dated 13.10.1980 and other materials which were never disclosed to the deponent to say that there had been mismanagement and

misappropriation prior to his assumption of office on 18.10.1980. Admittedly according to the deponent, he was declared to have been elected

unopposed on 27.9.1980 and assumed office on 18.10.1980. Even the alleged letter dated 16.10.1980 by the former Secretary Mohamed Seihu

was not disclosed and allegation of disturbance within the Wakf premises has no factual basis. The alleged visit of the 2nd to 4th respondents and

justification for seizure and retention of the cash being the proceeds of the auction of the coconut yield had no legal basis and was purely an after-

thought. It is further submitted that the Wakf Board falsely upholds the charges and states that action was being taken separately against the

irregularities noticed, that it has power to intervene and take over the Wakf management and was doing so since there was dispute over the right to

hold the office of President and this was subject matter of two suits viz., O.S. No. 689 of 1980 and O.S. No. 755 of 1980 both on the file of the

District Munsif of Nagercoil. It is further contended on behalf of the petitioner by the learned Counsel that the provisions of Sections 42, 43(2) and

43-A of the Wakf Act, 1954 were not followed in this case by the Wakf Board while delivering the order impugned under the writ petition. It is

also submitted that the Wakf Act does not provide for appointment of fit person

as Executive Officer. In law the office of Muthavalli is peculiar and is invested with certain rights not available to a trustee of ordinary religious institution. Conviction for an offence u/s 41 or for Criminal Breach of Trust does not entail automatic removal of Muthavalli. In this regard the decision in W.P. No. 972 of 1961 dated 18.1.1963 is relied on by the learned Counsel for the petitioner.

15. According to the learned Counsel for the petitioner, Section 15 of the Wakf Act does not invest the Wakf Board with powers to pass the impugned order. In terms of the definition of the term "Muthavalli" of the Act, governing body constituted by all the duly elected 15 members is the Muthavalli of the 1st petitioner institution. The Wakf Board cannot assume direct management of the 1st petitioner-institution without displacing the validity elected members constituting the committee of management of the 1st petitioner institution. Admittedly no notice had been given for the proposed action to each and every one of the Members of the Committee of Management. The Wakf Board can under law assume direct management of the institution, but it can do so only on certain conditions being found to exist to entail immediate assumption of direct management.

16. The next argument of the learned Counsel for the petitioner is that the deponent of the affidavit accompanying this writ petition was duly elected and installed as a president and he was functioning as such President in managing and administering the 1st petitioner institution with the other members of the committee, and his election is unimpeachable. In any event, according to the learned Counsel for the petitioners, the validity of his election was a subject matter of lis inter parte, and the Wakf Board cannot anticipate and forestall a decision by the Civil Court.

17. It is further argued on behalf of the petitioners that unless the Wakf Board holds a full-fledged enquiry in the prescribed manner after giving due opportunities to the affected parties to plead and prove their case and prima facie concludes thereafter as to the truth and existence of valid grounds for the exercise of powers under the Act particularly power to assume direct management, the assumption of direct management is void, illegal and without jurisdiction.

18. The point for consideration is whether the relief prayed for can be granted or not.

19. In the counter affidavit filed on behalf of the first respondent, sworn to by the Secretary of the Tamil Nadu Wakf Board, it is inter alia contended that it is not correct to state that the petitioner was elected as President and that the very question of the election was disputed and the deponent of the affidavit K.S. Ibrahim was not declared as President as alleged by him. The Committee in charge of the management should consist of 15 members. One Janab Mohamed Abdul Khader Sahib was the President and Janab Abdul Rahim Sahib was the Secretary. There was a quarrel between the President and the Secretary. They could not carry on the smooth administration of this institution. Ultimately both had resigned from their respective posts. The general body of this Wakf institution accepted their resignation and they requested the vice President Janab M.M. Basha to look after the administration of the said wakf till the fresh election is conducted. Thereupon the nomination for the Presidentship of the Wakf was announced on 12.9.1980. The Vice President who is also incharge as President also filed nomination to take part in the presidential election, but the Election Committee rejected his nomination. Therefore the Vice President who is in charge of President ship filed O.S. No. 689 of 1980 for permanent injunction and also filed I A. No. 719 of 1980 for interim injunction, on the file of the District Munsifs Court, Nagercoil. His IA. No. 719 of 1980 was dismissed without granting interim injunction. The said M.M. Basha filed appeal in C.M A. No. 18 of 1980 on the file of the District Court against the order made in I.A. No. 719 of 1980. The District Court ordered to maintain status quo. As per the order the Vice President M.M. Basha was the President in charge.

20. It is further averred in the counter affidavit filed on behalf of the first respondent that on 14.10.1980 the Secretary of the Wakf institution informed the first respondent stating that one K.S. Ibrahim Sahib was elected as President unanimously. It shows that the alleged election of the President namely the second petitioner herein is in violation of the order of the District Judge made in C.MA. No. 18 of 1980. Further, petitions, several telegrams and mahazars were submitted by the people of the locality alleging mismanagement and misappropriation of the funds of the wakf concerned. A petition dated 16.10.1980 was received from Janab U. Mohamed Sahib, Ex-Secretary of the committee stating there were

disturbances in the premises of the wakf institution and there was continuous fight to the Presidentship of the committee and informed that the

Board should take direct management of the institution.

21. It is further alleged in the counter affidavit that due to several disputes to the office of the Muthavalli and violation of the order of the Court to

maintain status-quo, the first respondent inspected the institution on 15.12.1980 through its Secretary and Assistant Secretary. Ultimately the first

respondent had fixed date for enquiry of the matter on 28.2.1981. Notices had been issued to the parties concerned. Notices were served on the

parties. On the date of the enquiry on 28.2.1981 the parties were absent. Therefore the first respondent passed orders on merits after considering

the relevant factors involved in the above matter, One Janab Ibrahim namely the second petitioner herein had given telegram for an adjournment

owing to urs ceremony on 28.2.1981. Since the very office alleged to have held by him was in dispute, the first respondent passed order on

28.2.1981 by rejecting the adjournment required by him. His very bona fide to hold office as President and conduct the urs was in question.

22. The further averment is that the affairs of the institution concerned was deplorable and needed intervention at once. The first respondent after

receiving number of telegrams, petitions and mahazars from the members of the Jamath and also the report from the Ex-Secretary and the Vice-

President, who was allowed to continue as President-in-charge as per order made in C.M A. No. 18 of 1980 on the file of the District Court,

Kanyakumari at Nagercoil and after enquiry, the first respondent passed the impugned order. Therefore by its order dated 28.2.81 the first

respondent appointed the Superintendent of Wakfs, Kanyakumari as Executive Officer u/s 42 of the Wakf Act by taking direct management for a

period of two years and directed Janab M.M. Basha erstwhile Vice President and K.S. Ibrahim, the second petitioner herein to hand over charge

of the Wakf together with keys, cash, account books etc. Thus the order was passed in accordance with law and in the interest of the institution.

23. According to the respondents, the first respondent had taken appropriate steps to save the wakf properties and the institution from loss and the

funds of it being misappropriated. In view of the claim and counter claim to the office of Muthavalliship and dispute, the first respondent had

resorted to take action under Sections 42, and 43 -A of the Wakf Act as per power vested with it u/s 15(1)(g) and (c) and other provisions of the wakf Act 29 of 1954.

24. Section 42 of the Wakf Act 29 of 1954 reads as follows:

42. Power to appoint muthavallis in certain cases: When there is a vacancy in the office of the Muthavalli of a wakf and there is no one to be

appointed under the terms of the deed of the wakf, or where the right of any person to act as Muthavalli is disputed, the Board may appoint any

person to act as muthawalli for such period and on such conditions as it may think fit.

Section 43-A of the said Act reads as follows:

43-A Assumption of direct management of certain wakfs by the Board:

1) Where no suitable person is available for appointment as a muthawalli of a wakf, or where the Board is satisfied, for reasons to be recorded by

it in writing, that the filling up of the vacancy in the office of a muthawalli is prejudicial to the interests of the wakf, the board may, by notification in

the Official Gazette, assume direct management of the wakf for such period or periods, not exceeding five years in the aggregate, as may be

specified in the notification.

Section 15(g) and (o) of the said Act reads thus:

Section 15. Functions of the Board:

XX XX XX X X X

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(g) to appoint and remove mutawalli in accordance with the provisions of this Act.

XX XX XX XX

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

25. A careful reading of Sections 42, 43A and 15 of the Wakf Act clearly shows that where the right of any person to act as a Muthawalli is in

dispute, the Board is given the power to appoint any person to act as Muthawalli for such period and on such conditions as it may think fit.

Therefore the Board has prima facie jurisdiction to go into the question. In this regard the decision in AIR 1959 Mad. 377 may also be usefully

looked into.

26. In the instant case before us, it is the common ground that there is a dispute regarding the appointment of Muthawalli and what is stated in the

impugned order passed by the Tamil Nadu Wakf Board, Madras-4, on 28-3-1981 with respect to the petitioner Mosque is as under:

The Mohalla people of Arippu Street, Kotar, Nagercoil in their petition dated 12.10.1980 alleged mismanagement and misappropriation of wakf

funds by the Committee in the management of Malick Dinar Baithul Mal Wakf, Kottar, Nagercoil. As many as 14 persons namely Janab Peer

Mohammed, Abdul Kader, Khaja etc., in their telegram dated 13-10-1980 stated that the said wakf was being mismanaged and requested the

Board to take immediate action, on the telegram and Mahazar signed by 30 persons of the Mohalla people of Arippu Street alleging several

irregularities committed by the Committee such as that the salary of the clerk has been increased by Rs. 1,000, that an exorbitant amount has been

spent towards lawyer's fees, taxi expenses etc., and towards the maintenance of Thope and erection of pump set, that they had been selling the

coconut year after year and that proper accounts were not maintained.

27. It is further stated in the order of the Wakf Board that in his letter dated 16.10.1980, Janab U. Mohamed Seihu, Ex-Secretary of Malick Dinar

Baithul Mall Committee stated that there has been disturbances in the premises of the Wakf since there is continuous fight to the Presidentship of

the Committee. He has therefore requested that this wakf may be taken over by the Tamil Nadu Wakf Board under its direct management and

smooth administration or wakf.

28. The Wakf was inspected by the Secretary and Assistant Secretary II of the Tamil Nadu Wakf Board on 15.12.1980. During the inspection,

they found that the coconuts belonging to the wakf were already cut and stored. As there was dispute over the Presidentship of the Committee

between Janab M.M. Basha and K.S. Ibrahim, those coconuts were not sold. As there was dispute in depositing the amount of Rs. 6,665 that

was obtained by the sale of the coconuts which were 4480 in number and as there was no bank account operated by Janab K.S. Ibrahim, this

amount was sent to wakf Board for depositing it in No. II account of Tamil Nadu Wakf Board. In the course of the inspection, the Secretary and

Assistant Secretary II of the Wakf Board found that the above wakf and the properties thereto had been mismanaged and consequently

considerable loss had been caused to the wakf. Accordingly the charges were framed against the President, Secretary and Treasurer of the Wakf.

29. There is dispute over the Presidentship of the Committee by the two rivals namely Janab M.M. Basha and K.S. Ibrahim, which is dealt with in

O.S. Nos. 689 and 755 of 1980 of District Munsifs Court, Nagercoil.

30. From the above narration of facts, it is clear that there was dispute over Muthawalliship. In such circumstances what is to be done is clearly

stated in Section 42 of the Act. Therefore it cannot be said that the resolution of the Tamil Nadu Wakf Board in item No. 421, is in any way

against the provisions of the Act. Resolution 421 reads as follows:

There is a dispute over the Presidentship of the Jamath between two rival parties and the matter is pending in the Civil Court in O.S. No. 689 of

1980 and O.S. No. 755 of 1980 before the District Munsif Court, Nagercoil. As there is dispute as to who should run the administration of the

Wakf pending disposal of the suit, resolved to take over the management of the wakf under the direct control of the Tamil Nadu Wakf Board by

appointing the Superintendent of Wakfs, Kanyakumarias the Executive Officer of the Wakf u/s 43-A of Wakf Act, 1954.

31. This is correct and in accordance with law. Therefore, I do not find warrant to interfere with the impugned order of the Wakf Board dated

28.2.1981. None of the contentions raised on behalf of the petitioner can be accepted. There is no merit in this writ petition. Hence it is dismissed.

Under the circumstances, there is no order as to costs.