
(2010) 11 MAD CK 0350

In the Madras High Court

Case No : C.R.P. (NPD) No. 569 of 2008 and M.P. No. 1 of 2008

Syed Thajuddin

APPELLANT

Vs

Syed Mohideen and Others

RESPONDENT

Date of Decision : 11-11-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 226
Waqf Act, 1954 — Section 15
Waqf Act, 1995 — Section 2

Citation : (2011) 2 MLJ 105 : (2011) 6 RCR(Civil) 2583

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : T. Velumani, for the Appellant; V.T. Gopalan for Radha Gopalan and S.F. Mohammed Yousuf, for the Respondent

Judgement

M. Venugopal, J.—The revision Petitioner/1st Respondent has filed this Civil Revision Petition as against the order dated 17.9.2007 in E.A. No. 199 of 2006 passed by the learned Principal Sub Judge, Cuddalore (Wakf Tribunal).

2. The Wakf Tribunal viz., the learned Principal Sub Judge, Cuddalore. while passing orders on 17.9.2007 in E.A. No. 199 of 2006 filed by the 1st Respondent/Petitioner under Order 21 Rule 11 read with Section 151 of CPC praying that he may be appointed as Mutawalli of Nawab Pettai Durgah (Khadirabad) etc., has among other things observed that"...the power of the 1st Respondent as Mutawalli has come to an end. The post is lying as vacant. The applicant belongs to one of branches of admitted genology and is also well educated and is a resident of Kollidam. Further, the properties concerned are private wakf and not a public wakf. Therefore, it is felt that the Petitioner can very be appointed as Mutawalli of the Nawab Pettai Durgah and allowed the application as prayed for directing the parties to bear their own costs."

3. According to the learned Counsel for the revision Petitioner/1st Respondent,

the order of the trial Court viz., Wakf Tribunal in allowing E.A. No. 199 of 2006 dated 17.9.2007 is against law, weight of evidence and probabilities of the case and indeed the Tribunal has committed an error in rendering a finding that the wakf in question viz.. Idullah Shutari Dargah at Nawabpettai (also known as Nawabpettai Dargah), is a Private Wakf A1-Aulad.

4. It is the further contention of the learned Counsel for the revision Petitioner/1st Respondent that once a Wakf is registered with the 2nd Respondent/Tamil Nadu Wakf Board as per Section 36 of the Wakf Act 1995, the Wakf Board has a jurisdiction to entertain an application for appointment and dismiss of Mutawalli and the Tribunal has given a wrong finding that the Wakf Board has no power to appoint the 1st Respondent/Petitioner as the Mutawalli of the Nawabpettai Dargah.

5. Advancing his arguments, it is the contention of the learned Counsel for the revision Petitioner/1st Respondent that the trial Court has not appreciated the fact that even in E.A. No. 142 of 1994 proceedings, the Wakf Board has specifically pleaded that they have a power of supervise and managed the Nawabpettai Dargah and as well as they confirmed that the 1st Respondent/Petitioner has been appointed as the Mutawalli of the Nawabpettai Dargah.

6. Added further, the learned Counsel for the revision Petitioner/1st Respondent submits that the Tribunal has misdirected itself in differentiating the character of Wakf Alal Aulad and the Public Wakf and it is to be noted that Wakf Alal Aulad is the Wakf created solely for the benefit of the Descendants of the Wakf and the same has been permitted to be created as per Musalman Wakf Validating Act 1913.

7. The learned Counsel for the revision Petitioner/1st Respondent urges before this Court that the Petition Wakf is made under the Will executed by Mr. Syed Ghulam Mohideen in the year 1826 for the maintenance and upkeep of Nawabpettai Dargah and therefore, it can be construed only as a Public Wakf under the Act 1995.

8. Proceeding further, it is the contention of the learned Counsel for the revision Petitioner/1st Respondent that the Tribunal has taken a wrong view that the Scheme Court has a power for appointment or removal of Mutawalli and it failed to note that the Petition Wakf has already registered before the 2nd Respondent/Tamil Nadu Wakf Board and the same has not been questioned by the 1st Respondent/Petitioner and even after the Registration of Wakf, the Wakf Board has ample power to supervise and manage the affairs of Wakf, but these aspects of the matter have not been properly appreciated by the Wakf Tribunal in a real perspective, which has resulted an erroneous order being passed against the revision Petitioner.

9. The learned Counsel for the revision Petitioner/ 1st Respondent takes a plea that the Tribunal should have consider the scope of appointment of Mutawalli, on the date of filing of the petition and not at the date of passing the orders and

moreover, the Tribunal should have referred the E.A. No. 199 of 2006 to the 2nd Respondent for disposal on merits.

10. Expatiating his arguments, it is the submission of the learned Counsel for the revision Petitioner/1st Respondent that Wakf Tribunal has wrongly placed reliance on Exhibit A-15-Order in C.R.P. Nos. 2470 and 2471 of 1992 dated 22.12.1992 but the said order relies to Killai Dargah, Chidambaram and the said Wakf is not registered with the Tamil Nadu Wakf Board. According to the learned Counsel for the Revision Petitioner/1st Respondent, the place of residence of the revision Petitioner/1st Respondent being fair away from the of place of Wakf is not a prohibition under the Wakf Act to be appointed as Mutawalli and further the 1st Respondent/Applicant never made any claim to the office of Mutawalli at any given point of time from the year 1986.

11. In short, the contention of the learned Counsel for the revision Petitioner/1st Respondent is that the order of the Tribunal in appointing the 1st Respondent as Mutawalli of Nawabpettai Dargah has no legal basis and is an unjustified one and in short, the Tribunal has not assigned cogent and proper reasons for rejecting the claim of the 1st Respondent/Petitioner to continue in office of Mutawalliship and therefore, prays for allowing the Civil Revision Petition in furtherance of substantial cause of justice.

12. Per contra, it is the contention of the learned senior counsel for the 1st Respondent/Petitioner that if the subject matter of a Wakf is a private one, then, the Wakf Board will have jurisdiction and further the Wakf in question is covered by the Scheme and later modified by the Division Bench of this Court and that the trial Court has appreciated the facts and selected the 1st Respondent/Petitioner has Mutawalli in preference to the revision Petitioner and since the Wakf Tribunal/trial Court has taken note of all the relevant and attendant circumstances of the case in a conspectus fashion, the reasoned order of the trial Court in the main E.A. No. 199 of 2006 dated 17.9.2007 need not be disturbed by this Court.

13. Before the Wakf Tribunal/trial Court, the 2nd Respondent/Tamil Nadu Wakf Board, Chennai by its Chairman has been given up by the 1st Respondent/Petitioner in E.A. No. 199 of 2006. The 3rd Respondent/Tamil Nadu Wakf Board, Chennai by its Secretary has been called absent and set ex parte before the Tribunal/trial Court in E.A. No. 199 of 2006.

14. It is the contention of the learned Counsel for the Respondents 2 and 3 that the jurisdiction of the Wakf Board is usurped by the trial Court in appointing the 1st Respondent/Petitioner as Mutawalli of Nawabpettai Dargah (Khadirabad) etc. and that the trial Court assume the role of the Wakf Board and the Wakf Board alone is competent to appoint Trustees and that the Wakf Tribunal controls over the Wakf and admittedly, the subject matter of the Wakf is governed by the Scheme Decree u/s 92 of the CPC and further as per Section 32 of the Wakf Act, 1995 the powers and functions of the Wakf Board are specified and the public

charity Scheme Decree stands transferred to the Wakf Board and that the 1st Respondent/Petitioner cannot say that the subject matter of Wakf is a Private one.

15. Further, it is the submission of the learned Counsel for the Respondents 2 and 3 that the affidavit in E.A. No. 199 of 2006 does not say that the subject matter of a Wakf is a Private one and in the appointment of a Trustee, the trial Court cannot say that subject matter of a Wakf is a Private Wakf and in short, the trial Court cannot usurp the jurisdiction of the Wakf Board nor interfere with its powers and functions and therefore, the impugned order of the Wakf Tribunal/trial Court dated 17.9.2007 in E.A. No. 199 of 2006 is to be set aside in the interest of justice.

16. The case of the revision Petitioner is that earlier vast extent of properties has been granted as Inam to the Saintly person Janab Syed Shah Rahamathullah Wali and his son Janab Syed Sha Edullah Sahib Shutari and the said Syed Shah Rahamathullah Wali has been interned at Killai and the said place is called as Killai Durgah and further his son Mr. Syed Shah Edullah Sahib Shutari has been interned at Nawab Pettai and the said place is called as Nawab Pettai Durgah and many people are offering to the departed souls.

17. The stand of the revision Petitioner is that Syed Shah Edullah Sahib Shutari's two sons are: (i) Syed Ghulam Mohideen and (ii) Shah Phool Sha and one daughter Ms. Azmath Bee and one son Syed Ghulam Mohideen has been in management of both the Durgahs and its properties and moreover, the said Syed Ghulam Mohideen has executed a Will on 14.12.1826 in respect of the management and administration of the properties in and by which he has appointed his eldest son Fareeduddin Attar as the Mutawalli of Killai Durgah and endowed certain properties and Another son Ghulam Mohammed Ghouse has been appointed as Mutawalli of Nawabp Pettai Durgah and endowed some properties and his another son Ghulam Jeelani has been appointed as Mutawalli of Samayapuram Mosque and Aasare Shareef at Trichy and endowed certain properties for the maintenance and upkeep of the respective Durgahs and Mosques and in the said Will, succession to the Office of Mutawalli has been made Hereditary.

18. According to the learned Counsel for the Revision Petitioner, the present Civil Revision Petition pertains to Durgah Hazrath Syed Sha Edullah Sahib Shutari which is known as Nawab Pettai Durgah which is situated in Chidambaram Taluk and as per the Will executed, the following properties have been dedicated for its maintenance and upkeep and they are as follows:

- (i) 10.5 Cawnies of lands at Khadirabad (Nawabpettai), Chidambaram Taluk.
- (ii) 14.25 Cawnies of Wet and Dry lands situated in the village of Kulli Mulla, Chidambaram Taluk;
- (iii) 14 Cawnies of Wet land and 3 Cawnies of Dry land at Kille, Chidambaram

Taluk.

(iv) Entire village of Rajampalayam, Manchanallur Taluk, Trichy District;

(v) 125 Guntas of Padugai Land situated at Samayapuram Village, Machanallur Taluk, Triuchy District;

(vi) Entire village of Maruvarkadu, Chidambaram Taluk.

19. Added further, after execution of the aforesaid Will, late Ghulam Mohammed Ghouse has been in management of the said Nawab Pettai Durgah and since the said Ghulam Mohammed Ghouse has no issues, he brought up Mr. Asmathullah as his foster son, who is born to Ghulam Mohammed Ghouse, who is younger brother of Ghulam Mohammed. The said Asmathullah's daughter is Ms. Sakeena Bee. After the death of Asmathullah, the vacancy to the office of Mutawalli of the Durgah Hazrath Syed Shah Edullah Sahib Shutari also known as Nawab Pettai Durgah has arisen and at that time, Ms. Jani Begum wife of Mr. Asmathullah has executed a Hiba Nama wherein she has appointed as son-in-law of (sic) Mohideen Sha as the Mutawalli to manage and administer the Nawab Pettai Durgah. After the demise of Mohideen Shah, Ms. Sakeena Begum, daughter of Asmathullah has started managing the properties. At that point of time, certain family members has raised some disputes over the Ms. Sakeena Begum and filed a suit O.S. No. 15 of 1908 and O.S. No. 10 of 1909 on the file of Sub Court, Mayavaram.

20. In the enquiry of the suit, the parties who have been agitating the issues have accepted for framing of a Scheme in regard to the administration of Killai Durgah and Durgah Hazrath Syed Sha Edullah Sahib Shutari also known as Nawab Pettai Durgah. In the said Scheme Decree as Ms. Sakeena Begum, being a woman is not entitled to carry on the obligation of Mutawalliship, the Petitioner's grandfather Mr. Ghulam Khader has been appointed as the Mutawalli of Nawab Pettai Durgah and the same has been confirmed in Appeal Suit A.S. No. 186 of 1923 by the Honorable High Court.

21. Continuing further, it is the case of the revision Petitioner that his grandfather Ghulam Khader has been functioning as Mutawalli of the Durgah till the year 1935 and in the year 1935 he has executed a General Power of Attorney in favor of the Revision Petitioner's father Mohideen Parsa and by means of the said General Power of Attorney executed by the Petitioner's grandfather, the Revision Petitioner's father has been functioning as Mutawalli of the Durgah from the year 1935 to 1982 and in the meanwhile, the Wakf Act has come into force from the year 1954 and the properties have been dedicated to Nawab Pettai Durgah have been surveyed by the Tamil Nadu Wakf Board and a Proforma has been prepared and in the said Proforma, the rule of succession for the post of Mutawalli has been mentioned as Hereditary.

22. The plea of the revision Petitioner is that after the demise of his father in 1985, he has been appointed as Hereditary Mutawalli of the Nawab Pettai Durgah

by the 2nd Respondent/Tamil Nadu Wakf Board and his appointment has been recognized once in three years by the 2nd Respondent/Wakf Board and as such, the Petitioner has been functioning as Mutawalli of Nawab Pettai Durgah from the year 1985 and has been managing and administering the aforesaid properties belonging to the Nawab Pettai Durgah and further submitting the accounts regularly and paying contributions to the 2nd Respondent/ Wakf Board without fail and in fact, all the accounts relating to Durgah Hazarth Syed Sha Edullah Sahib Shutari also known as Nawab Pettai Durgah have been duly audited and certified by the 2nd Respondent/ Wakf Board.

23. Expatiating his arguments, the learned Counsel for the revision Petitioner contends that the 1st Respondent/Petitioner has projected E.A. No. 199 of 2006 before the Tribunal/trial Court on the presumption that the post of Mutawalliship of Nawab Pettai Durgah Wakf has fallen vacant and that he has claimed that he is a fit person to be appointed as the Mutawalli of the Wakf and further averred in the Execution Application that the revision Petitioner is residing permanently at Hyderabad and that he is not well acquainted with the regional language Tamil and as such, the revision Petitioner is not a fit person to be appointed as Mutawalli. Apart from the above, the 1st Respondent/Petitioner in the said Execution Application has also averred that the said Durgah and its properties are private Wakf and therefore, the Wakf Board has no power to interfere with the administration of the Durgah.

24. The learned Counsel for the revision Petitioner strenuously contends that the Wakf Tribunal/ trial Court on an erroneous view that Nawab Pettai Durgah is only a Private Wakf viz., Wakf-Alal-Aulad and the 2nd Respondent/Wakf Board has no control over the administration of the Wakf and on that basis, the Tribunal/ trial Court has passed the orders by appointing the 1st Respondent/Petitioner as Mutawalli of Nawab Pettai Durgah etc.

25. Proceeding further, it is the submission of the learned Counsel for the revision Petitioner that the Tribunal has incorrectly held that the subject Wakf is Wakf-Alal-Aulad and it is not a Public Wakf. In this connection, the learned Counsel for the revision Petitioner contends that under the Wakf Act, "Wakf-Alal-Aulad" means a Wakf created by the Wakif solely for the benefits of the descendants of the Wakif and only in such cases, the Wakf can be treated as Wakf-Alal-Aulad and as per Section 3(r)(iii) of the Wakf Act, 1995, Wakf includesthe Wakf-Alal-Aulad to the extent to which property is dedicated for any purpose recognised by Muslim Law as pious, religious or charitable.

26. The learned Counsel for the revision Petitioner projects an argument that as per the Will dated 14.12.1826 the Mutawalli has a mandatory obligation to maintain and administer the Durgah and performing the Sandal Urs festivals and after meeting all the expenses for performing the aforesaid obligations, the Mutawalli is entitled to take 2 shares out of 6 shares of the income derived from the properties dedicated to the Wakf and such being the position, the public character of the Wakf has been embedded with the Wakf and as such, it cannot

be termed as a Wakf-Alal-Aulad.

27. The learned Counsel for the revision Petitioner submits that the Wakf Board has ample powers for appointing the Mutawalli of any Wakf which is registered under the Wakf Board and only in the event of any order of the Wakf Board appointing a person as Mutawalli is not valid, the same can be challenged before the Wakf Tribunal.

28. Also, a plea is taken on behalf of the revision Petitioner that the 1st Respondent/Petitioner has not established any of the grounds that is necessary for removal of a Mutawalli which is statutorily provided under the Wakf Act, 1995.

29. Besides the above, it is the contention of the learned Counsel for the revision Petitioner that the Wakf Tribunal/trial Court has wrongly placed reliance on the order passed in C.R.P. Nos. 2470 and 2471 of 1992 that the said Wakfs are not registered under the Wakf Board and as such, the said order cannot be applied to the facts of the present case and furthermore, the said order pertains to other Wakf.

30. The sum and substance of the contention of the revision Petitioner is that though there is a scheme framed for the management of the Wakf, the 2nd Respondent/Tamil Nadu Wakf Board has got all powers to appoint Mutawalli, supervise and control the affairs of the subject Wakf and also that the present Wakf has been registered with the 2nd Respondent/Wakf Board as per Section 36 of the Act and consequently, the 2nd Respondent/Wakf Board has enough powers in the matter of appointment of Mutawallis for the subject Wakf.

31. Added further, it is the contention of the learned Counsel for the revision Petitioner that even if the 1st Respondent/Petitioner is a fit person and eligible to be appointed as Mutawalli of the subject Wakf, he should approach the 2nd Respondent/Wakf Board only seeking for the removal of the Petitioner from the post of Mutawalli if there is any misdeeds or acts of misfeasance committed and proved against him and appointing himself as Mutawalli.

32. To put it precisely, it is the contention of the learned Counsel for the revision Petitioner that once the powers are vested with the 2nd Respondent/Wakf Board it is for the 2nd Respondent/Wakf Board to call for applications or consider any one for appointment as Mutawalli of the Wakf and in the present case, the Revision Petitioner's application for extension of his appointment is pending before the Wakf Board/2nd Respondent and at no point of time, any dispute has arisen over the appointment of the revision Petitioner or the appointment of the Petitioner has been challenged by any party before the 2nd Respondent/Wakf Board alleging any misfeasance or misdeeds on the part of the revision Petitioner while functioning as Mutawalli.

33. In short, the contention of the learned Counsel for the revision Petitioner is that none of the reasons envisaged u/s 64 of the Wakf Act, 1995 has been pressed against the revision Petitioner for his removal from the post of

Mutawalliship and in fact, the Wakf Tribunal/trial Court has exceeded its jurisdiction and passed the impugned order appointing the 1st Respondent/Petitioner as Mutawalli of the subject Wakf.

34. Another contention of the learned Counsel for the revision Petitioner is that when the Wakf is registered with the Wakf Board, the 2nd Respondent/Wakf Board has got ample power to appoint a Mutawalli for the Wakf and when a registration takes place, the 2nd Respondent/Wakf Board assumes the power of supervision and control of the Wakf including the appointment and removal of Mutawallis.

35. The learned Counsel for the revision Petitioner submits that the Wakf Tribunal/trial Court has come to a wrong conclusion that a person appointed as Mutawalli and to be a local resident a conversant with local language and such a condition has not been prescribed under the Wakf Act, 1995, but this aspect of the matter has not been taken note of by the Wakf Tribunal in a real perspective.

36. The learned Counsel for the revision Petitioner brings it to the notice of this Court that as per the decretal order in E.A. No. 267 of 1938 wherein the Subordinate Judge, Mayavaram happens to be the Scheme Court in O.S. No. 10 of 1909 has observed that as per the Scheme Decree, Syed Ghularn Khader has appointed as Mutawalli for 3 years and the appointment of Nomination is valid and also that the Scheme Court in the said order has further observed that "Scheme Court does not have any power for appointment of Mutawalli and that the Scheme Decree and therefore prays for allowing the Civil revision Petitioner to prevent an aberration of justice.

37. Countering the submissions of the learned Counsel for the 1st Respondent submits that for the Management of Killai and Nawab Pettai Durgah's, a Scheme has been framed in the suit in O.S. No. 10 of 1909 on 22.12.1909 and in A.S. No. 186 of 1923, the said Scheme has been modified by the Division Bench of this Court by its judgment dated 7.5.1934 whereby and where under two more clauses have been added to the Decree framed by the trial Court and one of them is Clause No. 13, which runs as follows:

13. That the Court, (the sub Court, Mayavaram) be at liberty to give further instructions as occasions arise on all the above matters on the application of any parties to the suit, or their representations, for the effect and proper management of the durgas and the division of the surplus amongst the members of the family, and that such orders will be considered as orders passed in execution of the decree in this suit;

38. It is the contention of the learned Counsel for the 1st Respondent that the 1st Respondent filed E.A. No. 199 of 2006 before the learned Principal Subordinate Judge, Cuddalore (Wakf Tribunal) in O.S. No. 10 of 1909 and A.S. No. 186 of 1923 and in Exhibit A-15-Order dated 22.1.1992 in C.R.P. Nos. 2470 and 2471 of 1992 which relates to Killai Durgah (covered by the scheme), this Court has passed the following orders:

7. Taking all these factors into consideration, the proper order that could be passed in these Revision Petitions is as follows:

The Court below is directed to take note of the fact that there is no duly appointed Muthavalli, and steps must be taken by it to appoint a new Muthavalli in the light of the terms of the Scheme Decree in accordance with law, without undue delay. There will be a direction to that effect to the Court below.

39. Also, the learned Counsel for the 1st Respondent brings it to the notice of this Court that in Exhibit A-7-Order in C.R.P. Nos. 1312 and 1313 of 1994 dated 24.10.1998 pertaining to Killai Durgah has been directed against the Execution Applications filed in O.S. No. 10 of 1909 relating to the appointment of Mutawalli of Killai Durgah and this Court has affirmed the appointment of Mutawalli appointed by the trial Court holding that "it is the Court which passed the Scheme Decree which will have the jurisdiction to appoint the Mutawalli of the Durga covered by the Scheme.

40. According to the learned Counsel for the 1st Respondent, in regard to the Wakf in question, it is evident from the Will executed by the Testator as well as the Scheme framed by the Court that a portion of the income has been set apart for the benefit of the members of the family of the author of the Will and that certain portion has also been reserved for pious and charitable obligations and moreover, it is also provided that the right for Mutawalliship is Hereditary and it must be in the line of Heirs/Descendants of the author of the Wakf and a portion of the Wakf income being spent for the members of the family of the author of the Wakf, the Wakf has to be classified as only a Private Wakf and not a public Wakf.

41. It is the contention of the learned Counsel for the 1st Respondent that Section 64(k) of the Wakf Act, 1995 relates to misappropriation and fraud and the said Section is not attracted when the appointment of Mutawalli is to be made in accordance with the Scheme Decree and therefore, the earlier order by the Wakf Board in the face of the Scheme suit is a null and void order and there cannot be any Estoppel against Law.

42. Furthermore, the learned Counsel for the 1st Respondent submits that the term of office as per the null and void order of the Wakf Board expired on 26.7.2007 and that the order of the trial Court in E.A. No. 199 of 2006 is on 17.9.2007.

43. The learned Counsel for the 1st Respondent strenuously contends that the trial Court in E.A. No. 199 of 2006 has specifically held that "the revision Petitioner is the resident of Hydrabad and that he has given a false address for the purpose of being appointed as Mutawalli and insofar as the 1st Respondent is concerned, it is found that he is living and carrying on business in a location very near to Durgah and that he is a graduate and he is Descendant and is in the line of Testator's Family and has all the qualification to be appointed as Mutawalli of the said Durgah and the order of the trial Court in E.A. No. 199 of 2006 dated

17.9.2007 is an unexceptionable one.

44. The learned Counsel for the revision Petitioner cites the decision of this Court in A.K. Khalifulla and Ors. v. S.A. Gulam Rasool and Anr. (2007) 6 MLJ 432 wherein it is observed as follows (Ratio decidendi):

1. Subsequent to the enactment of the Wakf Act, 1995, the Wakf Board has jurisdiction to decide all the matters arising out of the schemes evolved by the Civil Court

2. The main object of Wakf Act, 1995 is to provide for a better management of Wakf and also appointment of a Wakf Tribunal to consider all questions and disputes pertaining to the Wakf or Wakf property and when the Parliament makes a new law and intends to remove any mischief under the old laws, the attempt of the Court must be to try to interpret the same in tune with the object of the new enactment.

45. He also relies on the decision of this Court in S.M. Pitchaiyammal Vs. Tamil Nadu Wakf Board, wherein it is held as follows at p. 629 of MLJ:

11. There is no partial dedication. Ibramsa Rowther constituted himself as the manager of the properties covered by the original of Exhibit A-5. There is a solemn statement in the deed that all the properties settled under the deed are his self-acquired properties and they are in his possession. There is a provisions in the document against alienation, which is consistent with a Waif.

12. One of the conditions of the Wakf is that from the income of the Wakf property, a portion is to be used for supply of gruel to poor Muslims in the mosque on Tanjore Road during Ramzan time. Distribution of sweets on the 27th day of Ramzan and distribution of clothes to the persons employed in the mosque at the time of Ramzan and Bakrid. Out of 8-12 shares of the income from the Wakf, the Wakf has reserved half a share towards reserved funds, one share for doing charity at the time of Ramzan and 7 other shares are settled in favour of the children of the said Ibramsa Rowther. The Wakf Deed also directed the manager to take some amount as remuneration for managing the property. It would be a Wakf within the meaning of Section 3(r)(iii) of the Wakfs Act for the purpose of control of the Wakf Board. In Mohammadan Law, essentially and substantially there is no distinction between public Wakf and private Wakf....

46. He also seeks in aid of the decision of Honourable Supreme Court in Karnataka Board of Wakf v. Anjuman-E-Jsmaail Madris-Un-Niswan (2000) 1 MLJ 21 wherein the Honourable Supreme Court has laid down as follows at p. 23 of MLJ:

The necessary ingredients for the purpose of deciding an issue whether a property is a wakf property or not is to examine with reference to any particular property whether there is a permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Muslim Law as pious, religious or charitable or not.

47. However, the learned Counsel for the 1st Respondent cites the decision of Honourable Supreme Court in Fuaad Musvee and Anr. v. M. Shuaib Musvee and 3 others (2008) 3 LW 644: (2008) 4 MLJ 278 wherein it is held as follows:

In case of a private wakf or Wakf-alal-aulad, only the corpus of the property vests in God immediately and the enjoyment of the usufruct is postponed till after the extinction of the Wakif, his family and descendants-A Public Wakf is one for religious, pious and charitable purposes and a Private Wakf is one for the benefit of the settlor's family and descendants-Such a private wakf as per the Muslim Law to be valid should have reserved the ultimate benefit for the purposes recognised by Muslim Law as religious, pious and charitable.

A private wakf could Wakf-alal-aulad to be valid shall reserve the ultimate benefit for a purpose recognised by Muslim Law as religious, pious or charitable - A Wakf-aial-aulad shall not be deemed to be invalid merely because the ultimate benefit reserved therein for the poor or other religious, pious or charitable purpose of a permanent nature is postponed until after the extinction of the family, children and descendants of the person creating the wakf.

There cannot be any doubt over the fact that the suit wakf, a Wakf-alal-aulad is not invalid as the ultimate benefit after the extinction of the family, descendants and posterity of the wakif, the entire income from the wakf board has been directed to be utilised for poor and other purposes recognised by Muslim Law as religious, pious and charitable.

First Appellant having been appointed as Muthavalli by an order of this Court in an earlier suit, will not be entitled to contend that this Court does not have the jurisdiction to entertain the present suit for his removal.

48. He also draws the attention of this Court to the decision of Honourable Supreme Court in Tamil Nadu Wakf Board v. Larabsha Darga Panruti (2008) 2 LW 524 wherein it is observed as follows:

As rightly observed by the High Court, inasmuch as a portion of the income is to be spent for the family apart from pious, religious and charitable purposes, it satisfies the character of a private Wakf i.e. Wakf-alal-aulad and that the High Court has also rightly concluded from Exhibit A1 that there is no indication that the Wakf is a public Wakf and Hibba only indicates that certain things have got to be carried out in respect of pious, religious and charitable purpose and proforma Exhibit A22 supports the claim of the Plaintiffs.

49. He also brings it to the notice of this Court to the decision in The Palni Muslim Dharmaparipalana Sangam and Others Vs. The Tamil Nadu Wakf Board and Others, wherein it is held thus (Held):

If the Wakf Board is not satisfied with the functioning of the Sangam with regard to the wakf properties, it is certainly open to the State Wakf Board to apply to the Court for modification of the scheme or to institute a suit for settling a new scheme but, certainly, the Act does not confer any power on the Wakf Board to

ignore the scheme or to do anything contrary to the terms of the scheme decree. There is no provision whatever in the Wakf Act, 1954 enabling the State Wakf Board to ignore a decree of the Civil Court settling a scheme for the administration of the wakf and to take action contrary to the terms of the scheme decree in the purported exercise of its power of general superintendence. The Wakf Board cannot arrogate to itself the power or authority to set aside or supersede an existing decree of Court settling a scheme.

50. Apart from the above, the learned Counsel for the 1st Respondent relies on the following decisions:

(a) In G.M.A. Bhaimia, Muthavalli "Wakf Estate A.M. Bhaimia" and Others Vs. The Madras State Wakf Board and Another, it is held as follows: (Held)

Under Section 46 of the Wakf Act, 1954, the State Wakf Board has no jurisdiction either to claim, demand or collect contribution from the income of the properties in respect of a private wakf. The Board has only a limited jurisdiction to collect contribution only in respect of the income set apart for religious charitable and pious purposes. Thus when wakfs are created not only for the benefit of the settlor, his family and descendants but also for religious, charitable and pious purposes, the Board has jurisdiction to claim contribution only from the income of the properties set apart exclusively for pious, charitable and religious purposes. The State Wakf Board is not entitled to call upon the mutawallis to pay contribution from and out of the total income of the properties comprised in the wakf deed irrespective of the fact that only a fraction of the estate or a share of the income is set apart for religious pious or charitable purposes.

(b) A.M. Mohideen Packeer and Ors. v. Tamil Nadu Wakf Board and Ors. (1983) TNLJ 418 this Court has inter alia observe as follows:

When once the Scheme Court has recognized and seized of the matter, namely, the election of the Appellants, the Board, even though it has got general superintendence of all wakfs, has no power to interfere or to file the suit to set aside the election of the present trustees or to seek the relief from the civil Court independently on the ground that the election is void and illegal. This relief asked for by the Wakf Board has to be viewed. Keeping in view the prior proceedings, which it initiated in interfering with the election of the trustees which has led to the filing of W.P. No. 2602 of 1977 by the Appellants. Having failed in its attempt in August, 1977, the Board passed an order taking the management of the Wakf under its direct control. This order of the Board was resisted which has led to the filing of W.P. No. 1313 of 1980. Thereafter, the present suit against which this second appeal arises has been filed. What the Board could have done is to file a petition before the Scheme Court for imp leading itself as a party to the Scheme suit and after imp leading in the proceedings as a party, the Board could have obtained orders for the transfer of the entire scheme decree to its file and thereafter could have passed appropriate orders. The Board has not adopted that course in this case. Considering the facts of this case, I am of the view, that the

Board has no jurisdiction to file a civil suit for declaration that the election of the trustees functioning under the scheme decree is void and invalid. There is no provision under the Act for the Wakf Board to interfere with the administration of wakfs which are controlled and administered under the scheme by a civil Court.

(c) Regional Transport Authority, Namakkal Region v. State Transport Appellate Tribunal, Madras and 3 Others (1994) 1 LW 509 this Court has held as follows:

(c) the question of maintainability of the writ petitions being filed at the instance of the Petitioner/Regional Transport Authority: The Regional Transport Authority is exercising the power as a quasi-judicial authority. In other words, he is an authority under the Act to decide whether an applicant is eligible to get permit. If there are more number of applications for permit, he has to decide which of the applicants is more suitable for grant of permit. In doing so, he is deciding the lis between the rival contenders as an authority under the Act. If this order is modified or set aside by the appellate authority on an appeal filed by the affected party, the appellate order can be agitated further by only a person whose interests and rights have been affected by the order of the appellate authority but not by the original authority.

This apart, to invoke the extraordinary jurisdiction under Article 226 of the Constitution, the person invoking (Regional Transport Authority in this case) such jurisdiction should show to the Court that his personal right has been infringed or affected. In the present case, it would not be said that the personal right of the Petitioner/Regional Transport Authority has been infringed by the order of the appellate authority and, therefore, a writ petition can be maintained at his instance.

Under any stretch of imagination, the original authority cannot be deemed to be a Respondent in the appeal under the scheme of the Act.

51. The learned Counsel for the Respondents 2 and 3 cites the decision of Honourable Supreme Court in M.P. Wakf Board Vs. Subhan Shah (D) By LRs. and Others, wherein it is held as follows:

The Wakf Act is a self-contained code. Section 32 of the 1995 Act provides for powers and functions of the Board. Section 32(2) of the 1995 Act enumerates the functions of the Board without prejudice to the generality of the power contained in Section 32(1) thereof. The Tribunal was constituted for the purposes mentioned in Section 83 of the 1995 Act. It is an adjudicatory body. Its decision is final and binding but then it could not usurp the jurisdiction of the Board. There is no provision which empowers the Tribunal to frame a scheme. In absence of any such power vested in the Tribunal, the Tribunal ought to have left the said function to the Board which is statutorily empowered there for. Where a statute creates different authorities to exercise their respective functions there under, each of such authority must exercise the functions within the four corners of the statute. When a procedure has been laid down the authority must act strictly in terms thereof.

52. He also places reliance on the order of this Court dated 5.1.2008 in W.P. Nos. 7378 of 2004, 37465 of 2005 and C.R.P.(PD). No. 392 of 2006 wherein at paragraphs 6,7,8 and 9 this Court has, among other things, observed as follows:

6. We are concerned with the question whether the Civil Court viz. the Principal Sub Court, Cuddalore can continue to exercise its jurisdiction in relation to the present wakf by virtue of the scheme decree passed in O.S. No. 52 of 1953 dated 14.8.1959. u/s 32 of 1995 Act, it has been explicitly made clear that the general superintendence of wakfs in a State shall vest in the Board or the State itself. The explanation to Sub-Section 1 of Section 32 of 1995 Act makes it clear that the expression "Wakf used in Sub-Section 1 would include a wakf in relation to which any scheme has been made by any Court of law. Sub-Section 2 inter alia contains the other functions of the Board, as stipulated in Sub-Section 1 of Section 32 of the 1995 Act and the power to settle schemes of management for a wakf. The proviso to said Section 32(2) of 1995 Act however states that no such settlement should be made without giving the parties affected an opportunity of being heard. u/s 69 of the 1995 Act, it is again stated that the first Respondent Board, if satisfied, whether on its own motion, or on the application of not less than five persons interested in any wakf for framing of the scheme for the proper administration and the Wakf Board can by an order frame such scheme for the administration of the wakf after the consultation with the mutawalli or the applicant in the prescribed manner. The other Sub-sections of 69 of the (sic) 1995 Act specifies as to how such scheme framed by the Wakf Board should be validated and enforced as well as for any aggrieved person to work out his remedy by approaching the appropriate Tribunal. Sub-Section 5 of Section 69 of 1995 Act invests with the Wakf Board necessary powers for appointment of suitable person to perform all or any of the functions of the mutawalli for proper administration of the wakf.

7. A conjoint reading of the proviso along with the provisions along with the other provisions makes it abundantly clear that after the coming into force of the 1995 Act, the first Respondent who has been exclusively invested with the powers can deal with all the existing wakf as well as wakfs to be created in future. Having regard to the explanation contained in Sub-Section 1 of Section 32 of the 1995 Act, even the Wakfs governed by the provisions of any Civil Court decree shall vest with the first Respondent Board automatically. Under such circumstances, there was no scope for the Principal Sub Court, Cuddalore to have exercised its powers, merely based on the decree dated 14.8.1959 passed in O.S. No. 53 of 1952 as confirmed in A.S. No. 5 of 1956. Any person who is interested in the wakf wish to seek for any appointment of trustees for the wakf should have only approached the first Respondent Board even if it were to be under the scheme decree. Therefore, the application filed in I.A. No. 104 of 2004 in O.S. No. 53 of 1952 was not maintainable in law.

8. Be that as it may, in the light of the orders passed by this Court on 11.9.2004 in WP.M.P. No. 8723 and 38122 of 2004 in W.P. No. 7378 of 2004, the Principal

Sub Court, Cuddalore called upon the first Respondent to forward the names of persons who can be considered for being appointed as trustees of the present wakf. As directed by the Principal Sub Court, Cuddalore, the first Respondent Board also forwarded 25 names out of 81 applications preferred before it and from and out of the said 25 names forwarded by the first Respondent Board, the Principal Sub Court, Cuddalore appointed first five persons from that list viz. Respondents 3 and 9 to 12 in W.P. No. 37465 of 2005. It is stated that they have also assumed charge pursuant to the said orders of the Principal Sub Court, Cuddalore dated 8.9.2005 passed in I.A. No. 104 of 2004 in O.S. No. 53 of 1952. Inasmuch as I have held that it is the power of the first Respondent to have superintendence, control, administration and management of any wakf and its income exclusively after the coming into force of the 1995 Act, while setting aside the order dated 8.9.2005 passed in I.A. No. 104 of 2004 in O.S. No. 53 of 1952, the first Respondent Board is directed to enforce its authority in relation to the present wakf as has been directed in its proceedings dated 4.4.2001 passed in RC. No. 11375/E3/94 even in respect of the present wakf viz., Periya Mosque, Udayarmudi, Kattumannarkoil Taluk, Cuddalore District.

9. It is for the first Respondent Board to examine the scheme decree passed in O.S. No. 53 of 1952 and enforce its authority, as provided under the provisions of the 1995 Act. It is open to the first Respondent Wakf Board to examine whether or not the appointment of fresh office bearers under the scheme should be made afresh or permit the present set of office bearers viz. Respondents 3 and 9 to 12 in W.P. No. 37465 of 2005 for any particular length of time. It is also open to the Petitioners in these writ petitions as well as Civil Revision petition to approach the first Respondent to either seek for any modification of the existing scheme decree in O.S. No. 53 of 1952 or for appointment of fresh set of office bearers either under the scheme or by modification of the existing scheme decree by the first Respondent Wakf Board. Till the first Respondent Board exercise its powers and take a decision one way or other, it is hereby directed that the first Respondent Board shall permit the present set of office bearers viz. Respondents 3 and 9 to 12 in WP. No. 37465 of 2005 to continue to remain in office initially for a period of three months. The first Respondent Board is also at liberty to appoint or authorise any of its Executive Officer to function along with the above Respondents 3 and 9 to 12 for the proper administration of the wakf during the said period of three months. The continuation of holding of office by Respondents 3 and 9 to 12 after the period of three months shall depend upon any orders to be passed by the first Respondent, pursuant to the orders of this Court.

53. It is useful for this Court to refer to the evidence of P.W.1 [1st Respondent/Petitioner] and" the Civil revision Petitioner (R.W.1/1st Respondent).

54. The evidence of P.W.1 (1st Respondent/Petitioner) is to the effect that the suit Durgah is not a Public Durgah and therefore, the Wakf Board has no right and also it has no right to appoint a Mutawalli and as such, its order is not a valid one and moreover, the same is opposed to the Scheme Decree.

55. P.W.1 in his evidence goes on to add that the revision Petitioner/1st Respondent has not been appointed as Mutawalli legally and that he has obtained the order in a wrong manner and further, it is surprising that how a Wakf Board can select the revision Petitioner when he has not submitted accounts as mentioned in Counter of I.A. No. 142 of 1994 by the Wakf Board and in I.A. No. 375 of 1992, 378 of 1992, 68 of 1993 and 83 of 1993 the Sub Court, Chidambaram has clarified this aspect by its order dated 25.11.1993 and the Sub Court has held that the Court alone has got power to appoint the Mutawalli and that the post of Mutawalli is Hereditary.

56. According to the evidence of P.W.1, the revision Petitioner/1st Respondent is not residing locally as certified by the Jamathdars and further, the Scheme Decree till date has not been cancelled and the trial Court alone has got the power to appoint Mutawalli in pursuance of the Scheme Decree. Further, it transpires from the evidence of P.W.1 (1st Respondent/Petitioner) that the revision Petitioner is residing at Hyderabad at a distance of 1000 kilometres from the suit properties and he has doing business and he cannot maintain the entire properties from residing at Hyderabad and further that he cannot act as Mutawalli and he has given a wrong address as if he is in Kollidam by suppressing the fact that he is residing at Hyderabad and therefore, he has cheated the Court and his act is an illegal one for which the Wakf Board is in collusion with him and also that he is a B.A. graduate and he is residing at Kollidam permanently and he has from the family of the descendants of the Wakf.

57. R.W.1 (Power Agent of the Revision Petitioner/1st Respondent) in his evidence has deposed that he is residing at Delhi permanently for the past 35 years and he has retired from the service of Government Public Department and that the revision Petitioner is his father's brother's son and he knows Hindi and English but the revision Petitioner knows only Urudhu language and that the revision Petitioner is working as Bill Clerk Hotels at Hyderabad and he is working in Massaptech Hotel, Hyderabad and is also working in Sadik Hotel, Mylapore and he has no permanent job and that he has been given the power to adduce evidence and the power document is in English.

58. The evidence of R.W.1 is to the effect that the revision Petitioner has not accepted that the Mutawalli is to be appointed as per Scheme Decree and he is not aware of the conduct of cases pertaining to Nawab Pettai and Killai Durgas but the revision Petitioner would have known the same.

59. In Exhibit A-1-Judgment dated 27.3.1923 in O.S. No. 10 of 1909(O.S. No. 15 of 1908 on the file of District Court, South Arcot) on the file of Subordinate Judge, Mayavaram one Sayabiran Sahib and 3 others have figured as Plaintiffs and one Sakkina Bibi and 20 others have figured as Defendants. The Plaintiffs in aforesaid O.S. No. 10 of 1909 on the file of Sub Judge, Mayavaram has filed a suit for a declaration that the original Plaintiff transposed as 16th Defendant since deceased is the preferential heir to manage the durgas and their properties as a Sajjadas Nishin managing priest of the durgas at Killai and Nawab Pettai in

South Arcot District, and if necessary, for his being appointed as a Sajjada of the said durgas and to recover possession of the durgas and properties attached thereto, profits, past and future and costs of the suit from the 6th Defendant etc.

60. In the Decree dated 27.3.1923 in O.S. No. 10 of 1909 passed by the learned Sub Judge, Mayavaram, it is ordered as follows:

1. That 1st Plaintiff Sayabiyar Sahib be, and hereby is, appointed as Muttavalli for the Killai Durga and its endowments, and that he will be on probation for a period of three years from this date;
2. That after the said period of three years, orders will be passed as to his continuance in the office;
3. That the 1st Plaintiff do take possession of the Durga at Killai and all its properties, moveable and immovable;
4. That the 2nd Plaintiff be, and hereby is, appointed as Muttavalli for the Nawabpettai Durga and its endowments and that he will be on probation for a period of three years from the date;
5. That, after the said period of three years, orders will be passed as to his continuance in the office;
6. That 2nd Plaintiff do take possession of the Durga at Nawabpettai and all its properties, moveable and immovables;
7. That Plaintiffs 1 and 2 as soon as they assume the management of their respective trusts, do submit to this Court, a correct inventory of all moveables and immovables possessed by the respective Durgas;
8. That Plaintiffs 1 and 2 do submit a correct list of outstanding and cash possessed by their respective Durgas etc.

61. Also, Clause 12 of the Decree states that "the Court will be at liberty to give further instructions, as occasions arise on all the above matters, on the application of any parties to the suit of their representatives, for the effective and proper management of the Durga and division of the surplus amongst the members of the family, and that such orders will be considered as "orders passed in execution of the decree in the suit." It is not out of place for this Court, at this stage, to point out the Clause 11 of the Decree directs the Plaintiffs 1 and 2 to each of them keep regular and correct accounts of the income and expenditure of their respective Durgas and submit the same to the Court once in six months.

62. A reading of Decree dated 7.5.1934 in A.S. No. 186 of 1923 Clause 13 to 15 enjoin as follows:

(13) That the Court, (the Sub Court, Mayavaram) be at liberty to give matters on the application of any parties to the suit, or their representatives, for the effective and proper management of the durgas and the division of the surplus amongst the members of the family, and that such orders will be considered as

orders passed in execution of the decree in this suit;

(14) That the Subordinate Judge of Mayavaram be also at liberty if he thinks fit proper, to give directions of a definite fraction between the members and of a definite fraction for the expenses of the durgas with reference to the provisions in Exhibits D and M):

(15) That the Subordinate Judge of Mayavaram will see that the above provisions and directions in the decree are carried out etc.

63. Exhibit A-3 is the Proceedings dated 11.7.2005 of the Chairperson of the 2nd Respondent/Tamil Nadu Wakf Board, Chennai in appointing the revision Petitioner as Mutawalli of Khadirabad Wakf (G.S.28/S.A. And Muslim Chavadi Wakf (G.S. No. 60/SA) of Nanjayathuvazai village of Chidambaram Taluk of Cuddalore District to administer and manage the above wakfs and its properties for a period of 3 years from 28.6.2004 to 27.6.2007 subject to the terms and conditions.

64. In Exhibit A-7-Order dated 24.10.1998 in C.R.P. Nos. 1312 and 1313 of 1994, this Court in paragraph 7 has, among other things, observed as follows:

7. I am unable to accept the said submissions of the learned Counsel for the Petitioners. In Clause 13 of the said decree, the High Court has given liberty to the lower Court to give further instructions as occasions arise on all the matters on the application of any parties to the suit or their representatives for the effective and proper management of the durghas. So, in view of the said clause in the decree, it cannot be said that the Court has no power to appoint the Muthavallis. The said clause in the decree is very specific that the trial Court can pass orders to have an effective and proper management if occasions arise. Even the said peeran Sahib was appointed by the Court. In view of the above said decree in A.S. No. 186 of 1923 it cannot be said that Peeran Sahib was having power to appoint the Muthavallis. It is well settled that unless the power is given, he cannot appoint anybody as Muthavalli and the appointees also cannot claim any right on that basis etc.

65. Exhibit B-1 is the letter dated 12.7.1980 from the Deputy Collector/Secretary of Tamil Nadu Wakf Board, Chennai addressed to the Muthavalli, Hazrath Syed Edullah Sha Shuttari Durgah, Nawabpettai, Chidambaram Taluk, South Arcot District wherein it is mentioned that "The above wakf is registered with the Tamil Nadu Wakf Board under registration No. 168 and further, has been requested to quote the above number in your future correspondence."

66. Exhibit B-3 is the Proceedings of the Tamil Nadu Wakf Board, Chennai-4 dated 2.1.1986 appointing the revision Petitioner as the Muthavalli of the Hazrath Syed Edulla Sha Shuttari Durgah, Nawabpettai, Chidambaram Taluk, South Arcot District for a period of 3 years from 14.12.1985.

67. Exhibit B-5 is the Proceedings of the 2nd Respondent/Wakf Board dated 28.6.2001 approving and recognising the revision Petitioner as Muthavalli for the administration of the Khadirabad Wakf (GS. No. 28/SA) and Muslim Chavadi Wakf

(GS. No. 60/SA District) in Punjamagathu Vazgai Village, Chidambaram Taluk Cuddalore District for a period of 3 years from the date of the order subject to the conditions that he should reside in Nanjamagathuvazgai village or Chidambaram to fulfil the object of the wakf and take necessary steps to recover and safeguard the wakf properties subject to conditions stipulated therein.

68. Exhibit B-6 is the Proceedings of the 2nd Respondent/Tamil Nadu Wakf Board, Chennai dated 11.7.2005 in approving the revision Petitioner as Muthavalli of Khadirabad Wakf[G.S.28/S.A.] and Muslim Chavdi Wakf (G.S. No. 60/SA) of Nanjayathuvazai village of Chidambaram Taluk, of Cuddalore District to administer and manage the above wakfs and its properties for a period of 3 years from 28.6.2004 to 27.6.2007 subject to the terms and conditions stipulated thereto.

69. At this stage, it is apt for this Court to pertinently point out the decision in Radhakrishna Rice Mill Company and Others Vs. Jumma Maseedh by its Muthavalli, wherein it is observed as follows:

Where scheme was framed by Court in regard to appointment of Mutawalli in a suit under Sections 92, 93 of Civil P.C. as the founder of mosque had not framed any scheme, the scheme would continue to be operative in respect of the mosque even after coming into force of 1954 Act. In such a case, even if the explanation added to Sub-section (1) of Section 15 and Section 69 of 1984 is to be ignored, it is evident from the proviso to Sub-section (1) of Section 15 that exercise of the power by the Board was to be in conformity with the directions of the wakif and usage and custom of the concerned wakif. Since the wakif did not provide for any mode of administered or appointment of trustees, the devotees approached the Court and got a scheme framed. There is nothing in that Section which excluded the application of the Scheme. Further, the Scheme, which was framed in the year 1915 and which was strictly followed by the devotees can be said to have given rise to usage and established the custom. Further, the power of the Board to appoint Mutawalli is only where 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 Mutawalli is disputed. When the method is prescribed under a Scheme, the same can be equated to the terms of a deed. At any rate, as long as it is in operation, and proceedings are initiated there under, the right of any one to act as Mutawalli, till appointed by the Court, has to be treated as disputed. Moreover, even after the 1954 Act came to be enacted, Sections 92 and 93 of CPC continued to be available for the aggrieved persons to get schemes framed in relation to religious institutions including wakfs. Similarly, though separate machinery is provided for adjudication of disputes, Sections 92 and 93 of the Code of Civil Procedure, for the repeal of which an abortive attempt was made in 1954 Act, are not repealed under this Act.

70. Also, this Court worth recalls the decision of Honorable Supreme Court in Radhakanta Deb v. Commissioner, (1981) 2 SCR 826 wherein it is held as follows:

The Mahomedan law recognises the existence of a private trust which is also of a charitable nature and which is generally called Waqf-allal-aulad, where the ultimate benefit is reserved to God but the property vests in the beneficiaries and the income from the property is used for the maintenance and support of the family of the founder and his descendants. In case the family becomes extinct, then the Waqf becomes a public waqf, the property vesting in God. A public Waqf under the Mahomedan law is called Waqf-fi-sabi-lil-lah.

71. In *Fathimunnissa and Anr. v. Tamil Nadu Wakf Board represented by its Secretary, Madras and Ors.* (2000) 1 MLJ 424 at page 425 this Court has held as follows: (Held)

From the wording of Section 44 of the Wakf Act, it is clear that the term "any person interested in a wakf is not restricted in a narrow sense, but has broader connotation and any interested party in the Wakf may make an application to the Wakf Commissioner. But for initiating any action on such application being filed, it is left to the satisfaction of the Wakf Commissioner for making inquiry. Absolutely there is no restriction insofar as filing of any application before the Wakf Board or Wakf Commissioner is concerned. The contention of the Petitioners that on account of the petition filed by the father having come to be dismissed whether in the present past or long back, the son or daughter or his near relatives just for the simple reason they are related to him, will not be disentitled to file such an application and in that respect, the application filed by Respondents 2 and 3 is well maintainable. Under such circumstances, Respondents 2 and 3 have locus standi to file such an application since they come within the meaning of Section 3(a) and they are also the beneficiaries of the particular wakf which is the subject matter. They have their own independent locus standi to raise such questions on application seeking inquiry into the affairs of the Wakf.

72. In *Syed Peer Shah Mohideen Kadiri v. Tamil Nadu Wakf Board represented by its Secretary and Ors.* (1976) 86 LW 708, this Court has held as follows:

This is obviously a wrong appreciation of the law on the subject. There cannot be a substitution of the Wakf Board in the place of the Civil Court in matters where schemes have already been framed by the Civil Court, and if such schemes were enforced prior to the passing of Act 29 of 1954.

Further that the Wakf Board is to be in charge of the day to day administration and management of the trust, such as appointment of trustees, etc., in accordance with the scheme and if they deem fit and if an occasion arises, they are at liberty to approach the civil Court for amendment of the scheme as the situation requires.

When a scheme has been framed by a Civil Court prior to the passing of the Wakf Act, then it shall prevail and shall be taken as the basis by the Wakf for which that scheme has been framed. It is open to the Wakf Board to apply to the Civil Court for modifying the scheme if an occasion or necessity arises. But, it cannot on its own volition or through the intervention of Courts substitute itself in the

place of the Civil Court and take upon itself the authorship of that scheme. Once the scheme has been framed prior to the Act, it is only the Civil Court which can modify it and it can do so when it is called upon by the Wakf Board.

73. It is to be pointed out that as per Section 2 of the Wakf Act, 1995, the said Act applies to all Wakfs created before or after the commencement of this Act and to this extent, the Act is retrospective. However, the said Act has however no application to Durgah Khawaja Saheb, Ajmer Wakf which is governed by the Durgah Khawaja Saheb Act 1995 and by necessary implication, all other wakfs governed by special or local laws now came under the purview of this Act.

74. In this connection, it is useful for this Court to mention Section 3 definition (a) which refers to "beneficiary" meaning a person or object for whose benefit a wakf is created and includes religious, pious and charitable objects and any other objects of public utility sanctioned by the Muslim Law. Section 3(i) speaks of mutawalli" meaning any person appointed, either verbally or under any deed or instrument by which a wakf has been created, or by a competent authority, to be the mutawalli of a wakf and includes any person who is a mutavalli of a wakf by virtue of any custom or who is a naib-mutawalli, khadim, mujawar, sajjadanashin, amin or other person appointed by a mutawalli to perform the duties of a mutawalli and save as otherwise provided in this Act, any person, committee or corporation for the time-being managing or administering any wakf or wakf property:

Provided that no member of a committee or corporation shall be deemed to be a mutawalli unless such member is an office-bearer of such committee or corporation.

75. Further, Section 3(r) refers to "Wakf meaning the permanent dedication by a person professing Islam, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes-

(i) a wakf by user but such wakf shall not cease to be a wakf by reason only of the user having ceased irrespective of the period of such cesser;

(ii) "grants", including mashrut-ul-khidmat for any purpose recognised by the Muslim law as pious, religious or charitable; and

(iii) a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable, and also "wakif" means any person making such dedication.

76. Apart from the above, Section 32 of the Wakf Act, 1995 deals with the Powers and Functions of the Wakf Board and the same is as follows:

(1) Subject to any rules that may be made under this Act, the general superintendence of all wakfs in a State shall vest in the Board established in the State; and it shall be the duty of the Board so to exercise its powers under this 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 for the purposes for which such wakfs were created or intended:

Provided that in exercising its powers under this Act in respect of any wakf, the Board shall act in conformity with the directions of the wakif, the purposes of the wakf and any usage or custom of the wakf sanctioned by the school of Muslim law to which the wakf belongs.

Explanation.- For the removal of doubts, it is hereby declared that in this Sub-section, "wakf includes a wakf in relation to which any scheme has been made by any Court of law, whether before or after the commencement of this Act.

77. Also, Section 32(1)(g) refers to the power of the Wakf Board to appoint and remove Mutawallis in accordance with the provisions of the Wakf Act.

78. It is not in dispute that the general superintendence of all Wakfs in the State vests in the Wakf Board. It is the essential duty of the Wakf Board to ensure that Wakf under its superintendence or properly administered, controlled, maintained and the income thereof is necessarily applied to him for which such wakf are established or created. Significantly, the proviso mentions that the Board shall exercise its power in accordance with the directions of the Wakif, the objects/ purposes of the Wakf and any usage or custom of the Wakf sanctioned by the particular School of Muslim Law.

79. As a matter of fact, Section 32(1) explanation viz., "Wakf includes a wakf in respect of which any scheme has been framed by any Court of Law whether before or after the commencement of this Act (Wakf Act 1995) has been inserted in the Repealed Act, 1954 by the Amendment Act 69 of 1984, but the same has not been given effect to. However, it has come into force from 1.1.1996. The Wakf Act, 1995 which has come into force from 1.1.1996 has provided life to the explanation to Section 32(1) of the Act.

80. Section 36(1) of the Wakf Act, 1995 speaks of the Registration in respect of every Wakf by the creator before or after the commencement of the Act at the office of the Board etc. Section 36(8) of the Act enjoins that in the case of wakfs created before the commencement of this Act (Wakf Act 1995), every application for registration must be made, within three months from the commencement of this Act and in the case of Wakfs created after the commencement of this Act, within three months from the date of creation of the Wakf. If there is no Board at the time of the creation of the Wakf, the application may be made within three months from the date of establishment of the Board.

81. Section 50 refers to the Duties of Mutawalli. The Mutawalli is in a fiduciary relationship with the Wakf under his management. The duties of the Mutawalli are: (a) to carry out the directions of the Board, (b) to furnish returns and supply information and particulars called for by the Board, (c) to allow inspection of properties, accounts and records relating to the Wakf, (d) to discharge all public

dues, and (e) to do any other act which is Mutawalli required to do under this Act. A Mutawalli is a Manager of the Wakf and he is directly under the control and superintendence of the Board and may even be removed from his position as per the provisions of the Wakf Act, 1995. The Mutawalli has full administrative control over the Wakf and his properties. However, the Board has no power to interfere in the daily administration of the Wakf by the Mutawalli.

82. Section 64 of the Wakf Act, 1995 deals with the removal of Mutawalli by the Wakf Board under certain contingencies mentioned therein.

83. Section 7 of the Wakf Act, 1995 deals with the Power of the Tribunal to determine disputes pertaining wakfs, like whether a particular property specified as wakf property in a list of wakfs is wakf property or not, or whether a wakf specified in such list is a Shia wakf or a Sunni wakf, the Board or the mutawalli of the wakf, or any person interested therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question of the Tribunal thereon shall be final etc.

84. Section 65(1) of the Wakf Act speaks of Assumption of direct management of certain Wakfs by the Wakf Board. Sub-section (2) of Section 65 enables the State Government, on its own motion or on the application of any person interested to consider the correctness, legality or propriety of the notification issued by the Board and pass necessary orders on the decision of the Government shall be final.

85. However, Section 83 of the Act speaks of Constitution of Tribunals etc. Section 83(2) of the Act enables any mutawalli, person interested in a wakf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the wakf.

86. Section 83(9) of the Act speaks of no appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal, subject to revision by the High Court.

87. Obviously, there is a lack of compatibility between the ingredients of Section 65(2) of the Act and Section 83(2) of the Act and this anomaly requires an amendment to be effected, in the considered opinion of this Court.

88. The term "aggrieved person" for the purposes of ascertaining rights of an appeal, means any person who is in any sense a party to a legal proceeding is "aggrieved" by a wrong decision in regard to the proceeding as per decision in *Re Reed and Company* (1887) 19 QBD 174. Under the statutes granting the right of appeal to the person aggrieved by an Order or Judgment, the person aggrieved is one whose pecuniary interest is directly affected by the adjudication. As a matter of fact, the grievance must be substantial and a fanciful suggestion of the grievance is not sufficient. When a person is giving a raise to contest in

certain matter and his contention is negated, he is a person aggrieved as per decision of Honourable Supreme Court in Ebrahim Aboobakar and Another Vs. Custodian General of Evacuee Property, . Further, the term "aggrieved person" refers to a person having substantial grievance who has been denied some personal or property rights as per decision in Vinod K Patel v. Industrial Finance Corporation of India Limited (2001) 103 CC 557 at page 560 Delhi.

89. That apart, the term "aggrieved" refers to a substantial grievance, a denial of some personal, pecuniary or property right or the imposition upon a party of a burden or the obligation. Moreover, the term "aggrieved person" means an individual who has got a legal grievance viz., a person wrongfully deprived of anything to which he is legally entitled and not merely a person who suffered some sort of disappointment.

90. In the present case on hand, the preamble portion of the order dated 17.9.2007 in E.A. No. 199 of 2006 mentions that the 2nd Respondent/Wakf Board, Chennai by its Chairman has been given up and that the 3rd Respondent/Tamil Nadu Wakf Board, Chennai by its Secretary has been called absent and set ex parte. Only before this Court in C.R.P. No. 569 of 2008 the Respondents 2 and 3 are represented by a counsel.

91. As seen from Exhibit B-5-Proceedings of the 2nd Respondent dated 28.6.2001, the revision Petitioner has been approved and recognised as Mutawalli for the administration of the Khadirabad Wakf (GS. No. 28/SA) and Muslim Chavadi Wakf (GS. No. 60/SA District) in Punjamagathu Vazgai Village, Chidambaram Taluk, Cuddalore District for a period of 3 years from the date of the order subject to the conditions stipulated therein.

92. Likewise, Exhibit B-6 is the Proceedings of the 2nd Respondent/ Tamil Nadu Wakf Board, Chennai dated 11.7.2005 approving the revision Petitioner as Muthavalli of Khadirabad Wakf (G.S.28/S.A.) and Muslim Chavdi Wakf (G.S. No. 60/SA) of Nanjayathuvazai village of Chidambaram Taluk of Cuddalore District to administer and manage the above wakfs and its properties for a period of 3 years from 28.6.2004 to 27.6.2007 subject to the terms and conditions specified therein.

93. The 1st Respondent (Petitioner in E.A. No. 199 of 2006), in his affidavit at paragraph 14, has averred that the 2nd Respondent has appointed the revision Petitioner as Mutawalli for 3 years from 28.6.2004 to 27.6.2007 which is an illegal and highly deplorable order. However, it is the contention of the Respondents 2 and 3 that the jurisdiction of the Wakf Board usurped by the trial Court and the Wakf Board alone is competent to appoint Mutawalli and not the Wakf Tribunal. Even though, the 2nd Respondent has been given up before the Tribunal in E.A. No. 199 of 2006 and the 3rd Respondent being called absent and set ex parte, inasmuch as the 1st Respondent/Petitioner in E.A. No. 199 of 2006 questions the authority of the 2nd Respondent in appointing the Petitioner as Mutawalli and the Respondents 2 and 3 take a plea before this Court that the

Wakf Board alone has got jurisdiction to appoint a Mutawalli, in a limited sense it is an "aggrieved person" (though in a wider sense it may not be an aggrieved person who has suffered a legal grievance by virtue of the order passed in E.A. No. 199 of 2006 by the Subordinate Judge, Mayavaram) and therefore, it cannot be said that it has no locus standi to contest the matter before this Court in the Civil Revision Petition.

94. However, in the present case on hand, the position of revision Petitioner as Mutawalli has expired on 26.7.2007 and the said post is lying vacant and further, the 1st Respondent (Petitioner in E.A. No. 199 of 2006) has projected the Execution Application No. 199 of 2006 before the Tribunal praying that he may be appointed as Mutawalli of Nawab Pettai Durgah (Khadirabad) etc. The revision Petitioner, according to Respondents 2 and 3, has submitted an application for extension of Mutawalliship and the same is pending before the Wakf Board. However, the 1st Respondent/Petitioner in E.A. No. 199 of 2006 claims that he is a descendant of the family and himself and the revision Petitioner belongs to the same branch and that the revision Petitioner is a permanent resident of Hyderabad and doing business and therefore, he cannot take care of either the Durgah or its properties.

95. The Wakf Tribunal has considered the relative merits of the revision Petitioner and the 1st Respondent and has appointed the 1st Respondent as Mutawalli of Nawab Pettai Durgah and allowed the Execution Application. It cannot be disputed that the 1st Respondent is a graduate and he is a resident of Kollidam. Also, the decree in O.S. No. 10 of 1909 refers to the 2nd Plaintiff therein being appointed as Mutawalli for the Nawab Pettai Durgah. In A.S. No. 186 of 1923 this Court, by its judgment dated 7.5.1934, by Clause 13, has granted liberty to the Sub Court, Mayavaram to give further instructions as occasions arise on all the above matters on the application of any parties to the suit, or their representatives, for the effective and proper management of the durgas etc. Also, the Clause 14 and 15 of the said judgment in the Appeal A.S. No. 186 of 1923 also refer to the liberty given to the Subordinate Judge, Mayavaram if he thinks fit proper to give directions of a definite fraction between the members and of a definite fraction for the expenses of the durgas with reference to the provisions in Exhibits D. and M and that the Subordinate Judge, Mayavaram is to see that the above provisions and directions in the decree are carried out etc.

96. Therefore, it is quite clear that even though as per Section 32 Explanation of the Wakf Act, 1995 the Wakf Board has got the power to appoint a Mutawalli, yet, it is appropriate for the Wakf Board to appoint a Mutawalli in accordance with the Scheme Decree framed by this Court in O.S. No. 10 of 1909 dated 27.3.1923 and the judgment in A.S. No. 186 of 1923 dated 7.5.1934 and the 2nd Respondent/Wakf Board has to act according to the tenor and spirit of the Decree passed in O.S. No. 10 of 1909 dated 27.3.1923 and the judgment passed in A.S. No. 186 of 1923 dated 7.5.1934 and nowhere the Wakf Act 1995 nullifies the earlier Scheme Decree passed by the Competent Court in O.S. No. 10 of

1909 and the judgment in A.S. No. 186 of 1923. Suffice it for this Court to point out that the Scheme Decree passed in O.S. No. 10 of 1909 dated 27.3.1923 and the judgment in A.S. No. 186 of 1923 dated 7.5.1934 have not been abrogated or annulled so far in the manner known to law and in the instant case on hand, the subject Wakf is covered by the Decree in O.S. No. 10 of 1909 dated 27.3.1923 and the judgment in A.S. No. 186 of 1923 dated 7.5.1934 and the Wakf Board is to implement the Scheme Decree passed in O.S. No. 10 of 1909 dated 27.3.1923 and the judgment in A.S. No. 186 of 1923 dated 7.5.1934 in true letter and spirit and in the instant case, either the 2nd Respondent or the 3rd Respondent has not approached the Competent Court/Tribunal either for seeking clarification or modification of the Scheme Decree passed in O.S. No. 10 of 1909 dated 27.3.1923 and the judgment in A.S. No. 186 of 1923 dated 7.5.1934.

97. Furthermore, the Wakf Tribunal/trial Court has considered the relative merits of the revision Petitioner and the 1st Respondent dispassionately and has allowed the application E.A. No. 199 of 2006 filed by the 1st Respondent and appointed him as Mutawalli which cannot be found fault with in any manner because of the fact that when Court is seized of the matter and framed the Scheme, it has got power to appoint the person as Mutawalli, in the considered opinion of this Court and added further, this Court also goes to an extent to pertinently point out that the general power of superintendence of the Wakfs by the Wakf Board or its power to appoint Mutawalli as per Section 32(g) of the Act is not to be construed as to nullify or supersede the Scheme Decree passed in O.S. No. 10 of 1909 dated 27.3.1923 by the Subordinate Judge, Mayavaram as well as the judgment in A.S. No. 186 of 1923 dated 7.5.1934 passed by this Court and viewed in that perspective, the Civil Revision Petition fails.

In the result, the Civil Revision Petition is dismissed, leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petition is closed.