

(1970) 01 MAD CK 0052

In the Madras High Court

Case No : Writ Petition No. 2204 of 1968

T.E. Mohammed Shareef

APPELLANT

Vs

The Superintendent (Wakfs), Central Zone and Others

RESPONDENT

Date of Decision : 03-01-1970

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 53,
53(4), 64, 64(4)
Waqf Act, 1954 — Section 27, 41

Citation : AIR 1971 Mad 243

Hon'ble Judges : Ismail, J

Bench : Single Bench

Judgement

Ismail, J.

1. According to the averments contained in the affidavit, the petitioner herein, is the Mutavalli of the institution known as Kuppatheruvu Pallivasal in Thanjavur. According to him, the property covered by T. S. No. 33-C is the only property belonging to the Wakf and the properties covered by T. S. Nos. 33/2 to 33/15 are his private properties. The further case of the petitioner is that some persons inimically disposed towards him moved the Wakf Board in W. A. 41 of 1962 for the framing of a scheme and removal of the petitioner from the office of Mutavalli on the ground of mismanagement and on the ground that the petitioner was claiming adverse to the interests of the wakf. The affidavit further states that the Board was not satisfied with the general allegations of mismanagement against the petitioner, but found one instance of alienation of the trust property as improper and on that basis removed the petitioner from the office of mutavalli. At the same time, the Board, in regard to the properties covered by T. S. 33/2 to 33/15, did not decide the question as to whether they are the wakf properties or the private properties belonging to the petitioner, in view of the amendment introduced to Section 27 of the Wakf Act, 1954, providing for the settlement of the dispute by a civil Court. The petitioner states that he filed W. P. 1603 of 1965 challenging the decision of the Wakf Board removing him from mutavalliship on

various grounds and this court allowed the said writ petition on a short ground that there was not enough quorum for the Board to pass the order and thus set aside the order of removal.

After the order was quashed, the matter was heard again by the Wakf Board and the Board by its order dated 9th April 1967, which was communicated to the petitioner by the secretary, informed the petitioner that the Board was not going into the merits of the case and it dismissed the petition filed before it, directing the petitioners therein to file a fresh petition, if advised. After this, a second petition, based on the same allegations, is said to have been filed by the Action Committee and the petitioner has filed his counter. The affidavit proceeds to state that the said petition has not yet come up for hearing and the matter is still pending before the Wakf Board in Petition No. 25 of 1967 and at the time the present writ petition was filed on the file of this court, the said petition was posted to 28th July 1968. Though interim orders had been prayed for on the petition before the Board, the Board has not passed any interim orders in the matter and the petitioner has not yet been heard at all. It is under these circumstances, the Superintendent of Wakfs. camping at Thanjavur, on 28th May 1968, sent the following notice to the tenants of the properties in question:

"The lands and buildings located in T. S. 33/2 to 33/15 in Gandhiji Road, Thanjavur, and T. S. 1598/1 and 1598/2 in Cutchery road, Thanjavur and the house bearing door No. 15 in Sivaraji Nagar stand registered in the name of the Jumma Masjid (Kuppatharupallivasal) and Thiru T. E. Mohammed Sharif Saheb of Thanjavur who was entrusted to collect rents etc. of the shops in the capacity of the mutavalli of Jumma Masjid has failed to submit proper accounts and pay the contribution amount due to the Board for the past ten years and thus contravened several provisions of the Wakf Act of 1954. Action is being taken to remove him from the Mutavalliship.

In the meantime you one of the tenants of the wakf properties are hereby requested not to pay the rent to the said T. E. Mohammed Sharif from the date of this notice and to deposit rent in the name of the secretary to the Special Officer for Wakfs. Madras through one of the banks or through the Wakf Inspector Thanjavur failing which, please note that appropriate legal proceedings will be taken against you to vacate you from the said premises through due process of law. You will also be held liable for costs and mesne profits from the date of your possession."

2. It is after the issue of this notice, the petitioner has come to this court with a prayer for the issue of a writ of Mandamus forbearing the first respondent herein, namely, the Superintendent (Wakfs) Central Zone, Khalif Mahal, Tiruchirapalli, from interfering with the petitioner's possession of the property in S. Nos. T. S. 33/2 to 33/15 and other properties belonging to Kuppatharu Pallivasal in pursuance of the said notice.

3. No counter-affidavit has been filed in this case and hence for the limited

purpose of the prayer in this writ petition, I must proceed on the basis that the averments contained in the affidavit filed in support of the writ petition are correct. Consequently the question for determination is whether the first respondent had nay jurisdiction to issue the notice on 28th May 1968. Needless for me to point out that the said notice definitely interferes with the petitioner's management of the properties in question. Therefore, the point for consideration is whether such an interference is authorised by the statutory provisions concerned. The Superintendent of Wakfs Act, 1954 (Central Act 29 of 1954). There is nothing to show whether the Wakf Board or the Special Officer of Wakfs had authorised the Superintendent to issue such a notice. It is admitted that the Superintendent is functioning only as an officer of the Wakf Board. If so, the immediate question that arises is, whether, as an officer of the Wakf Board, the Superintendent has got any power or jurisdiction to issue this notice.

I am of the opinion that the Superintendent of Wakfs has no power whatever to issue any such notice. Further, even the Wakf Board will have no jurisdiction whatever to issue any such notice. The Wakf Board being a creature of the statute, its powers and jurisdiction have to be traced within the four corners of the statute and there is no provision whatever in the Wakfs Act conferring power on the Wakf Board to issue a notice of the type with which we are concerned. As I have already pointed out, the effect of this notice is to interfere with the management of the properties in question by the petitioner herein. The notice referred to already mentions that action is being taken to remove the petitioner from the Mutavalliship and the petitioner had not paid contribution to the Wakf Board and had failed to submit proper accounts to the Wakf Board. In my view, the Board has no jurisdiction to interfere with the administration of the properties by the petitioner on the ground that he has failed to submit proper accounts and also failed to pay the contributions; nor is the Board justified in interfering with the said administration on the ground that action is being taken to remove him from mutavalliship.

The Wakfs Act was passed to provide for the better administration and supervision of wakfs and only with that object in view the Wakf Board was constituted. However, it is unfortunate that necessary provisions have not been made in the statute to make this power of supervision effective, as far as the Wakfs are concerned, It is only because of this Srinivasan J. in his judgment D/- 19-11-1968 in W. P. No. 972 of 1961 (Mad)--M. Mohammed Latif Sahib v. Madras State Wakf Board by its Secretary--after elaborately surveying the provisions of the Wakfs Act came to the conclusion that the Board had no jurisdiction to give a direction of this nature. In that particular case, a person was appointed to collect the rents and deposit the same into the office of the Wakf Board. The order passed by the Board was--

In the circumstances mentioned in the petition, the petitioner is authorised to collect the rents from the tenants and pay into the Wakf Board office once a month after deducting collection charges of Rs. 30 a month and a further sum of

Rs. 15 for a part time clerk to maintain the accounts."

The petitioner referred to in the extract was the person who moved the Board against the Mutavalli. When the mutavalli filed the writ petition challenging this order of the Wakf Board, Srinivasan, J. came to the conclusion that the Board had no jurisdiction whatever to pass that order. The learned Judge pointed out that the order definitely interfered with the possession and management of the wakf properties by the Mutavalli and there was no provision whatever in the statute to authorise the Wakf Board to issue such a direction.

4. It may also be seen that with reference to the case in hand, there are corresponding provisions in the Madras Hindu Religious and Charitable Endowments Act 1959 (Madras Act 22 of 1959). Section 53 of that Act confers a power on the appropriate authority to suspend, remove or dismiss a trustee. Sub-section (4) of Section 53 of that Act confers a power on the appropriate authority to pass interim orders. That sub-section is--

"Pending the disposal of the charges, framed against the trustee, the appropriate authority may place the trustee under suspension and appoint a fit person to discharge the duties and perform the functions of the trustee."

Similarly, Section 64 of that Act confers a power on the Deputy Commissioner to settle schemes. Sub-section (4) of that section provides--

"Pending the settlement of a scheme for an institution. the Deputy Commissioner may appoint a fit person to perform all or any of the functions of the trustee thereof and define his powers and duties."

Such provisions are not to be found in the Wakfs Act, 1954. It is eminently a matter fit for the legislative attention and action so that in order to give full effect to the object with which the Wakfs Act 1954. was enacted, necessary provisions can be introduced. In view of the absence of such provisions in the Act alone, Srinivasan, J. came to the conclusion--

"It is the peculiar position of a wakf that gives the mutavalli rights which are not available to the trustee of any other charitable or religious institution. It would be noticed that even in cases where a mutavalli had been convicted by a criminal court, for the offences mentioned in S. 41, or even for criminal breach of trust, such conviction does not automatically entail his removal from office. His removal has yet to be supported by a majority of not less than three-fourths of the members of the Board. Even his failure to perform the duties enjoined upon him by the Wakf Board does not entail his removal. as is seen from Section 61 of the Act. It is the cumulative effect of all of these provisions that has to be considered in deciding whether the Board has in the instant case acted within its jurisdiction."

5. Mutavalli is in no better position than a trustee, particularly with reference to a public wakf. He is really a manager or a superintendent of the institution and independent of any personal right he may have under the terms of the wakf, as a

Mutavalli, he has no better right or secure position than any other trustee of any public charitable or religious institution. It is because of the absence of the necessary provisions and the existence of certain other provisions in the Act, Srinivasan J. had to come to the conclusions to which he came, in the writ petition mentioned above, even though the position and status of a mutavalli of a public wakf do not materially and basically differ from those of the trustee of any public charitable or religious institution.

6. However desirable it may be for the Legislature to make necessary provisions in this behalf, as far as the present case is concerned. I do not have the slightest doubt that neither the Wakf Board nor the Superintendent of Wakfs has any jurisdiction under the provisions of the Act, as it now stands, to issue the notice in question, either on the ground that action to remove the petitioner from the office of mutavalli is being taken or on the ground that the petitioner has failed to submit his accounts to the Wakf Board or failed to pay the contribution to the Wakf Board.

7. Under these circumstances, the writ petition has necessarily to be allowed and it is accordingly allowed. There will be no order as to costs.

8. Petition allowed.