

(1981) 10 MAD CK 0036
In the Madras High Court
Case No : C.R.P. No. 1629 of 1980

T.S. Yusuf and Others

APPELLANT

Vs

Tamil Nadu Wakf Board

RESPONDENT

Date of Decision : 23-10-1981

Acts Referred:

Waqf Act, 1954 — Section 15

Citation : AIR 1982 Mad 115 : (1982) 1 MLJ 245

Hon'ble Judges : Venugopal, J

Bench : Single Bench

Advocate : T.R. Rajagopalan, for the Appellant; F.A. Rasheed, for the Respondent

Judgement

Venugopal, J.—The civil revision petitioners are the trustees appointed by the Court for the administration of the suit wakf in pursuance of a

Scheme framed by the Court. The respondent in the civil revision petition is the Tamil Nadu Wakf Board, represented by its secretary. The

respondent filed an application before the trial Court for transfer of the absolute control of the wakf and its property for the day to day

management, including the power to appoint muthavallis on the ground that after the passing of the Wakf Act 1954 the general superintendence of

all wakfs vest in the Wakf Board under S. 15(1) of the Act. The application was resisted on the ground that the wakf is not a wakf as defined

under the Wakf Act, 1954 and the Wakf Board cannot administer such a wakf and the administration of wakf by the trustees appointed by the

court has been above reproach and as such there is no necessity for interfering with the provisions of the Scheme framed by the Court. The trial

Court held that-

(1) the suit wakf is a public wakf and it must be treated as a wakf by user coming within the purview of the Wakf Act, 1954.

(2) The suit wakf is a composite wakf in which the pangalis of the Saint are entitled to 2/5 share in the surplus income and the wakf comes within the purview of the Wakf Act.

(3) The Wakf Board is entitled to take control and management of the affairs of the wakf by virtue of the powers conferred under S. 15 of the Act.

(4) The power of general superintendence conferred under S. 15 of the Act includes the power to appoint and remove muthavallis, and instead of

the Court appointing the trustees as per the scheme the Wakf Board will appoint the trustees as per the scheme and it is not a case where the

Wakf Board is seeking to substitute its name in the place of a civil Court in the scheme framed by it, and the day to day administration of the trust

includes appointment of trustees in accordance with the scheme decree.

2. On these findings the petition was allowed and the respondents have now filed the civil revision petition before this Court.

3. Relying on the decision of this Court reported in *The Advocate-General of Madras Vs. Kuppaswami Gurukkal and Others*, the learned counsel

for the petitioners contended that appointment of a trustee is not an act of administration of a trust and it is merely effecting the appointment of a

person who will carry out the administration and under the guise of taking charge of the day to day administration of the wakf, the respondent

cannot be permitted to appoint trustees and the trustees have to be appointed only by the Court as per the scheme decree. The case relied on by

the learned counsel for the petitioners is a case arising under S. 75-A of the Madras Hindu Religious Endowments Act, 1927. As the word

Administration"" has not been defined in the said Act, the Court held that the appointment of a trustee is not an act of administration and it is merely

making the appointment of a person who will carry out the administration. however, in the instant case, under S. 15 of the Wakf Act, the Wakf

Board has got powers to settle schemes of management for the wakf and also for the appointment and removal of muthavallis in accordance with

the provisions of the Act So the general power of superintendence vested with the Board under S. 15 includes the power to appoint and remove

muthavallis. ""Muthavalli"" has been defined under the Act to include any person

or Committee for the time being managing or administering any wakf property as such. It, therefore, follows that under S. 15 of the Wakf Act, the power of superintendence, and control over the day to day administration of the wakf is vested with the Board and that can take within its ambit the power to appoint trustees for the wakf in accordance with the scheme framed by the Court. This Court, in the decision reported in Syed Peersah v. Tamil Nadu Wakf Board (1976) 89 Mad LW 708 held that when a scheme has been framed by a civil Court prior to the Wakf Act, then it shall prevail and it shall be taken as the basis for the wakf Board for administering the wakf for which the scheme has been framed and it is open to the wakf Board to be in charge of the day to day administration and management of the wakf such as appointment of trustees, in accordance with the scheme. In the instant case the wakf Board does not seek to substitute itself in the place of the civil Court or take upon itself the authorship of the scheme. The wakf Board merely wanted a direction that as the power of general superintendence and control has vested with them under S. 15 of the Act, they should be permitted to administer the wakf and manage the wakf properties in pursuance of the scheme instead of approaching the Court from time to time in routine matters such as management, appointment of trustees, etc. As the power of administration vested with the Board under S. 15 includes the power to appoint "muthavallis" to manage and administer the wakf property, the wakf Board has certainly the power to appoint trustees in accordance with the scheme framed by the Court. As per the scheme framed by the Court, the Board of Trustees should consist of five members, one of whom will, be the hereditary trustee, and the other to be elected by the pangalis and the remaining three trustees to be nominated by the Court from among the Muslim residents of Tiruchy Municipality. The scheme was framed before the Wakf Act came to be enacted. After the passing of Wakf Act, 1954, it is unnecessary for the Court to continue management and supervision of the wakf properties and instead of the Court being burdened with such function, it is desirable that the management, control and administration of the institution are carried on by the Wakf Board as per the scheme framed by the Court. Viewed in this light, the Wakf Board has certainly the power to appoint trustees to the wakf in question in

accordance with the scheme framed by the Court.

4. The learned counsel for the petitioners contended that unless the scheme is amended, the nomination of the three trustees from among the

Muslim residents of the Tiruchy cannot be done by the Wakf Board. As the nomination of the three trustees from among the Muslim residents of

Tiruchy as per the scheme is only an act of administration which the Wakf Board is competent to perform under S. 15 of the Wakf Act, it is

unnecessary to go in for amendment of the scheme before this power can be exercised by the Wakf Board.

5. The learned counsel for the petitioners next contended that the wakf Board can appoint trustees under the Wakf Act and not in pursuance of the

scheme framed by the Court. This argument again overlooks the fact that the power of superintendence, control and administration vested with the

Board under S. 15 , carries with it the power to appoint trustees for the management and administration of the wakf properties. The order of the

trial Court is accordingly confirmed.

6. In the result, the civil revision petition stands dismissed. Parties to bear their own costs

7. Petition dismissed.