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W.P.Nos.25077/2015 & 23671/2018

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

ORDERS RESERVED ON : 13.06.2023

ORDERS PRONOUNCED ON : 16.06.2023

CORAM

**THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH**

W.P.Nos.25077 of 2015 and 23671 of 2018  
and  
WMP Nos.27617 of 2018 and 569 of 2019

W.P.No.25077 of 2015

C.Amjad Ahmed

...Petitioner

.Vs.

1.The Tamil Nadu Wakf Board  
Rep by Chief Executive Officer  
No.1, Jaffer Syrang Street  
Vallal Seethakathi Nagar  
Chennai – 1.

2.Road Mosque  
Madarsa-E-Nusrathul Islam  
New Mosque, Small Mosque and  
Madrasa E Fathima Girls School  
Rep.by its Muthavalli,M.Fazulur Rahman  
1/1, Road Mosque Street  
Perambut-635 810, Vellore District.

..Respondents

(Recall vide order dt.13.06.2023  
made in WMP No.20441 of 2022 in  
WP.No.25077 of 2015).

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the respondent to conduct elections by secret ballot to the



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China Masjid and Madrasa e Yahyaul Islaam bearing G.S.No.114/NA, Madrase Fathima bearing GS No.149/NA, New Mosque and Madrase Nusrathul Islam bearing GS No.183/NA and Road Masjid bearing GS No.189/NA as sought vide representation dt 26.6.15.

For Petitioner Mr.S.N.Kirubanandam

For Respondents Mr.Avinash Wadhwani  
for R1  
Mr.N.Manoharan  
for R2

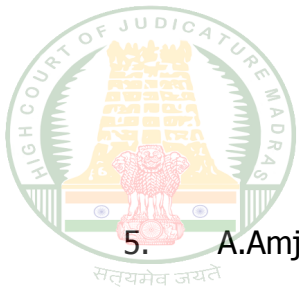
W.P.No.23671 of 2018

Road Mosque  
Madarsa-E-Nusrathul Islam  
New Mosque, Small Mosque and  
Madrasa E Fathima Girls School  
Rep.by its Muthavalli,M.Fazulur Rahman  
1/1, Road Mosque Street  
Perambut-635 810, Vellore District.

...Petitioner

.Vs.

1. The Tamil Nadu Wakf Board  
Rep by Chief Executive Officer  
No.1, Jaffer Syrang Street  
Vallal Seethakathi Nagar  
Chennai – 1.
2. The Superintendent of Wakf  
Vellore Circle  
Bahadursha Masjid Complex  
8, Arani Road, Sainathapuram  
Vellore 632 001.
3. Shabbier Ahmed Kaka
4. Fazlur Rahman nariyam



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5. A.Amjed Ahmed

6. A.Parvaze Ahmed

..Respondents

(R3 to R6 impleaded vide order dt.13.06.2023  
made in WMP.No.20386/2022 in  
WP.No.23671/2018 by NAVJ)

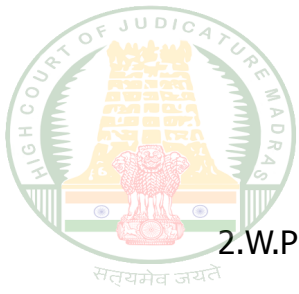
Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order made in Na.Ka. No.4367/11/ A7/VE, dated 17.07.2018 passed by the 1st respondent, quash the same and consequently direct the 1st respondent to grant approval to the Resolution dated 25.06.2018 for the election of the Muthavalli of the petitioner mosques and madarsa for the period between 18.07.2018 and 17.07.2021 by considering the representation dated 30.07.2018.

For Petitioner Mr.N.Manoharan

For Respondents Mr.Mohammed Fayaz Ali  
Standing Counsel  
for R1, R2  
Mr.V.Karthic  
Senior Counsel  
for Mr.C.Jagadish  
for R3 to R6

### COMMON ORDER

The subject matter of challenge in W.P.No.23671 of 2018 is more a consequence of a direction issued by this Court on W.P.No.25077 of 2015 and hence both these writ petitions are taken up together, heard and disposed of through this common order.



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2.W.P No.25077 of 2015 has been filed by the Secretary of the Managing Committee of four Wakfs viz., the Chinna Masjid and Madrasa e Yahyaul, Islaam bearing G.S.No.114/NA, Madrased Fathima bearing GS.No.149/NA, New Mosque and Madrased Nusrathul Islam bearing GS.No.183/NA and Road Masjid bearing GS.No.189/NA, seeking for a direction to the Tamil Nadu Wakf Board (for brevity "Board") to conduct elections by secret ballot to the four Wakfs.

3.This writ petition was disposed of by an order dated 11.09.2015 and the Board was directed to take a decision for conducting election in these Wakfs within a period of three months.

4.A petition was filed by the petitioner in W.P.No.23671 of 2018, to recall the above order passed by this Court on the ground that the order was obtained without revealing the material facts and without impleading the necessary parties. It was further alleged that the order passed by this Court was taken advantage and the Board proceeded to make arrangements for conducting election for appointment of Mutawalli. The proceedings issued by the Board dated 17.07.2018, for conducting election for the four Wakfs through secret ballot was put to challenge in W.P.No.23671 of 2018. When this writ petition came up for hearing on 01.08.2022, the order passed in W.P.No.25077 of 2015 was taken note of by this Court and the learned counsel for the petitioner in W.P.No.23671 of 2018 was informed that the order that has already been passed in W.P.No.25077 of 2015 must be recalled/modified and only thereafter, the issue raised in W.P.No.23671 of 2018 can be gone into by this Court.



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Taking cue from the same, the petition in WMP.No.20441 of 2022 has been filed to recall the order passed in W.P.No.25077 of 2015. This petition was allowed and the order was recalled.

Thereby, this writ petition was also heard along with W.P.No.23671 of 2018.

5.For the sake of convenience, the petitioner in W.P.No.23671 of 2018 will be addressed as the 'Petitioner', the petitioner in W.P 25077 of 2015 and the impleaded petitioner in WMP.No.20386 of 2022 will be addressed as 'private respondents' and the official respondents will be addressed as the 'Board'.

6.The case of the petitioner in brief is as under ;

(i) One Abdul Khadir Sahib of Mookane family created the Wakfs in the year 1901 for establishing Mosques and Madarsa. As per the Will of the founder of the Wakfs, Mutawallies will be nominated from the Mookane family as per the established custom and usage. The proforma reports of the year 1955 prepared by the Board for all the four Wakfs clearly stipulates that Mutawalli is nominated hereditarily according to custom and usage. According to the petitioner, after the founder of the Wakfs, it is only those persons belonging to the Mookane family, who have been nominated as the Mutawalli from the year 1920 onwards. It is the further case of the petitioner that Mookane Fazlur Rahman Sahib was nominated as the Mutawalli in the year 2011 and he continued to hold the position till date.

(ii) The petitioner has relied upon the reports dated 22.09.2015 and 31.08.2016 which were prepared pursuant to the direction given by the Board, to substantiate their claim



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that the appointment of Mutawalli have always taken place only as per the custom and usage selected from the two branches of Mookane family hereditarily

(iii) It is stated that one of the private respondent filed a writ petition in W.P.No.25077 of 2015 for a direction to the Board to conduct election by secret ballot and based on the order passed in this writ petition, the Board took steps to conduct the election to the management Committee including the Mutawalli for the four Wakfs. Aggrieved by the same, W.P.No.23761 of 2018, was filed before this Court.

4.The Board has filed counter affidavit.

(i) The stand taken by the Board is that the Mosques and Madrasa have been registered as Wakfs with the Board and they have been governing and administering the said Wakfs. The Board had taken steps to conduct the election even in the year 2011 for appointing the members of the elected Committee and the term of the elected Committee was for a period of three years commencing from 09.03.2011 to 08.03.2014. When the tenure of the elected Committee came to an end, the erstwhile Secretary of the managing Committee filed W.P.No.25077 of 2015, seeking for a direction to conduct election through secret ballot and the said writ petition was disposed of by issuing directions to the Board. By the time the order was passed in W.P.No.25077 of 2015 on 11.09.2015, the Board had already appointed a Committee through resolution dated 18.08.2015 and appointed a 42 member Committee for a period of three years from 18.08.2015 and they also took charge. Only thereafter, the Board came to know about the order passed in W.P.No.25077 of 2015.



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The private respondent, who had filed the said writ petition was informed that the elections will be conducted after the expiry of the term of the Committee in the year 2018.

(ii) The further stand that has been taken by the Board is that they received various representations from different quarters requesting the Board to conduct elections by secret ballot. Certain complaints were also made against the family members on the ground that they have utilized properties belonging to the Wakfs for their personal use. That part, proper accounts were not maintained. After the term of office of the erstwhile management came to an end on 17.08.2018, the Board decided to conduct elections by secret ballot. This decision was informed to everyone concerned.

(iii) The Board has specifically denied the claim made by the petitioner that the appointment/nomination of the post of Mutawalli is hereditary governed by custom and usage. They have taken a stand that in Tamil Nadu, custom and usage cannot be resorted to for appointment of Mutawallies in view of the The Muslim Personal Law (Shariat) Act, XVIII of 1949. That apart, the burden of proving that the appointment of Mutawalli hereditarily by custom and usage is a matter to be established by the petitioner and there is a heavy burden on the petitioner to prove the same. The earlier stand taken by the petitioner in W.O.P.No.3 of 2011 before the Tribunal has also been pointed out wherein the petitioner himself has accepted/admitted about the election conducted by the Board. The petitioner took a stand that he was elected as a Mutawalli unanimously in the General Body Meeting and there is no such right of hereditaryship for managing the Wakf. In the light of this stand taken by the



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petitioner, the Board has contended that the petitioner cannot be allowed to approbate and reprobate.

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(iv) The Board has also taken a stand that the Mosque and the Madrasa were built from the donations received from the general public and that it has been falsely alleged by the petitioner that it was established by the Mookane family. In order to ensure that the properties belonging to the Wakfs are properly maintained and there is more accountability, the Board has taken a stand that election must be conducted for appointing the Committee as well as the Mutawalli.

5. The private respondent, who filed W.P.No.25077 of 2015 has taken a stand that the petitioner himself has admitted by filing a counter in W.O.P.No.4 of 2011 that Mutawalliship is not hereditary and the Mutawalli is nominated by the local Jammatt according to custom and usage. The petitioner after taking such a stand has suppressed about this vital fact in the affidavit filed in the support of the writ petition and on this ground alone, the writ petition is liable to be dismissed.

5.1. The respondent has also taken a stand that it is the general public, who had donated to the Wakfs and this respondent has also provided the details of the properties donated to the four Wakfs. The respondent has stated that the Mutawalli is nominated by the Jammatt according to the custom and usage and nowhere it has been stated that it is hereditary and hence, continuous nomination of the members of the family by itself will not





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create a presumption that the office of the Mutawalli is held as a hereditary right and there is no document to support the same. Accordingly, the respondent has sought for conducting the election to appoint the Committee and the Mutawalli.

6.The impleaded respondent has also taken a stand in line with the stand taken by the respondent, who filed W.P.No. 25077 of 2015.

7.Heard Mr.S.N.Kirubanandam, learned counsel for the petitioner, Mr.Avinash Wadhvani, learned counsel for R1 and Mr.N.Manoharan, learned counsel for R2 in W.P.No.25077 of 2015 and Mr.N.Manoharan, learned counsel for the petitioner, Mr.Mohammed Fayaz Ali, learned Standing Counsel for R1, R2 and Mr.V.Karthic, learned Senior Counsel for R3 to R6 in WP.No.23671 of 2018.

8.The only issue that arises for consideration in the present case is as to whether the appointment of Mutawalli for the Wakfs is governed by custom and usage and consequently should be held as a hereditary right by only the family members belonging to Mookane family.

9.The preliminary objection that was raised by the learned Standing Counsel appearing on behalf of the Board is that the hereditary succession to the Office of Mutawalli is alien to Muslim law and more particularly by virtue of Muslim Personal law (Shariat) Application (Tamil Nadu Amendment) Act, 1949. As a consequence, it was contended that the 1949 Act,



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will prevail over the Wakf Act, 1995 since the 1949 Act is a special legislation. The learned Standing Counsel in order to substantiate this submission, relied upon the following judgments :

- a) **C.Mohammad Yunus .v. Syed Unnissa and Others** reported in **AIR (1961) SC 808 .**
- b) **Syed Ansaruddin v. The Tamil Nadu Wakf Board by its Secretary and 6 others** reported in **(1992) 2 LW 685.**
- c) **Sulaika Bivi and Six others .v. Rameeza Bivi and 10 others** reported in **(2000) 4 CTC 454.**

10.The above judgments that were relied upon by the learned Standing Counsel did not directly deal regarding the impact of the Shariat Act qua the Wakf Act. The law on this issue is no longer *res integra* and it is covered by the judgment of this Court in **P.S.K.N. Amanulla and Others .v. Tamil Nadu Wakb Board and Others** reported in **(2020) 3 MWN (civil) 290**. The relevant portions in the judgement are extracted hereunder:

*“17.The only question that has to be decided in this Civil Revision Petition is as to whether the custom and usage, which results in a hereditary succession to the office of Mutawalli would continue to apply and the prohibition enacted under the Muslim Personal Law (Shariat) Application (Tamil Nadu Amendment) Act, XVIII of 1949 would cease to have effect because of the enactment of the new Wakf Act in 1995. Before proceeding further, it would be pertinent to refer to the provisions of the **Wakf Act, 1995. Section 3(i)** of the **Wakf Act** defines the term 'Mutawalli'. From the definition of the Mutawalli under the new **Wakf Act**, it is clear that it includes a person appointed as a Mutawalli by virtue of any custom or usage. This definition of the term 'Mutawalli' as found in*

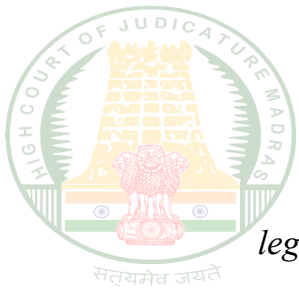


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*the Wakf Act, 1995, therefore, would have precedence over the provisions of Muslim Personal Law (Shariat) Application (Tamil Nadu Amendment) Act, XVIII of 1949. Section 3 of the amending Act substitutes Section 2 instead of Section 2 of the Central Act XXVI of 1937. Amended Section 2 of the Central Act XXVI of 1937 has already been extracted. A comparison of Section 3(i) of the Wakf Act and Section 2 of the Central Act XXVI/1937 as amended by Tamilnadu Act XVIII of 1949 are inconsistent with each other as much as Section 3(i) of the Wakf Act, 1995 recognizes Mutawalliship by custom and usage. This would automatically mean that if there is a hereditary succession to the office of Mutawalliship by custom and usage, the same can continue under the Wakf Act, 1995. A reading of the amended Section 2 of the Central Act, XXVI of 1937 would show that it prohibits applicability of custom and usage. The law applicable shall be the Muslim Personal Law (Shariat). It is common knowledge that the Muslim Personal law does not recognize the hereditary succession. There is inconsistency between the Wakf Act, 1995, which recognizes the custom and usage in appointment of Mutawallis and the amended Section 2 of the Central Act, XXVI of 1937. The amendment was introduced by Tamilnadu Act, XVIII of 1949. The amending Act had been reserved for assent of the Governor General and has received the assent. Therefore, it is valid piece of legislation enacted in conformity by Article 254(2) of the Constitution of India. However, the effect of the new Wakf Act on the amended Section 2 will have to be considered. It is here that the proviso to Article 254(2) of the Constitution of India assumes significance.*

**18. Article 254 of the Constitution of India reads as follows:**

*“254. Inconsistency between laws made by Parliament and laws made by the legislatures of State. - 1) If any provision of law made by the*



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*legislature of a State is repugnant to any provision of law made by parliament which parliament is competent to enact, or to any provision of existing law with respect to one of the matters enumerated in the concurrent list, then, subject to the provisions of clause (2), the law made by the parliament, whether passed before or after the law made by the legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the legislature of the State shall, to the extent of the repugnancy, be void.*

*2) Where a law made by the legislature of the State with respect to one of the matters enumerated in the concurrent list contains any provision repugnant to the provisions of the earlier law made by the parliament or an existing law with respect to that matter, then, the law so made by the legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:*

*Provided that nothing in this clause shall prevent parliament from enacting any time any law with respect to the same matter including a law adding to, amending, varying or repelling the law so made by the legislature of the State.*

*19. A reading of [Article 254](#) of the Constitution of India would show that [Article 254\(1\)](#) provides primacy to laws made by the parliament in respect of the matters in the concurrent list. [Article 254\(2\)](#) makes an exception and enables the State legislature to make its own law in respect of the matters provided in the concurrent list even repugnant to the Central law subject to the condition that the law so made by the State Legislature should be reserved for the assent for the President and upon assent, the same would prevail in that State. The proviso goes one step further. It empowers the Parliament to make a law with respect to the same matter*

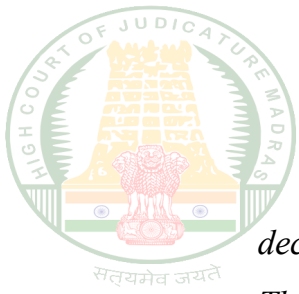


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*including a law adding to, amending, varying or repealing the law so made by the legislature of the State. By introducing [Wakf Act, 1995](#), the Parliament has provided that the custom and usage in appointing Mutawallis would continue by including in the definition of the term 'Mutawalli' 'a person who is entitled to be appointed by custom and usage'. To that extent, upon enactment to [Wakf Act, 1995](#), the State Law namely, the Muslim Personal Law (Shariat) Application (Tamil Nadu Amendment Act, XVIII of 1949, becomes repugnant to the Central Law namely, the [Wakf Act](#).*

*20. The question that arises for consideration is as to whether the State Law namely Amended Act, XVIII of 1949 would prevail in the State of Tamilnadu even after enactment of the [Wakf Act, 1995](#). It is precisely this question which was adverted to Hon'ble Supreme Court of India in the case of PT.Rishikesh and another. The Supreme Court answered the question concluding that if an existing State Law becomes repugnant to or inconsistent with a subsequently enacted Central Law, the Central Law would prevail insofar as the repugnancy is concerned unless the State Legislature re-enacts the law and reserves it for assent and obtains the assent of President.*

*21. It is nobody's case that Act XVIII of 1949 was re-enacted by the State Legislature after enactment of [Wakf Act, 1995](#) and was reserved for presidential assent. In the absence of such procedure having been followed, it is the [Wakf Act, 1995](#), which would have precedence over the State Law. Mr.Ramesh would rely upon a judgment in Syed Ansaruddin Vs. Tamil Nadu Wakf Board reported in 1992 (2) LW 685 wherein the Hon'ble Justice Mr.Abdul Hadi had taken a view that in view of the provisions of the Act XVIII of 1949, there is no question of hereditary devolution of Office of Mutawalli in the State of Tamilnadu. It should be pointed out that the said*



decision was rendered prior to the enactment of the *Wakf Act, 1995*.

Therefore, the same should be taken as the judgment rendered on the basis of then prevailing law. In fact, then Justice Mr.S.A.Kader in his book 'The law of Wakfs' had adverted to the decision in *Syed Ansaruddin Vs. Tamil Nadu Wakf Board* has observed as follows:

“Questions relating to agricultural land, charities and charitable institutions and charitable and religious endowments were excluded from the purview of the *Central Act, 1937*, as these subjects were in the provincial list under the *Government of India Act 1935*. The then Madras Legislature passed the *Muslim Personal Law (Shariat) Amendment Act 18 of 1949* introducing a new sub section (2) deleting the words "save questions relating to agricultural land" and the words "other than charities and charitable institutions and charitable and religious endowments". As a result of this Madras amendment hereditary right of succession to the office of mutawalli of Muslim charitable and religious institutions and endowments by custom stood abrogated in the then Presidency of Madras. But in view of the definition of mutawalli in the *Wakf Act 1995*, which includes any person who is a mutawalli of a wakf by virtue of any custom, customary right of hereditary succession gets revived in areas to which the *Madras Amendment Act, 1949* applied. In a very recent decision in *Syed Ansaruddin v Tamil Nadu Wakf Board*, a Single Judge of the Madras High Court has held that so far as Tamil Nadu is concerned the law of hereditary succession to the office of mutawalli based on custom cannot be applied in view of the amendment made by the *Madras Amendment Act, 1949*. This decision is no longer good law in view of the definition of mutawalli in the present Act, which includes any person who is a mutawalli of a wakf by virtue of any custom”.



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11.The above judgment was once again taken note in a subsequent judgment in **Syed**

**Mathani and Ors .v. N.M. Shahul Hameed and Ors.** reported in **(2021) 5 CTC 440**.

12.On carefully going through the two judgments referred supra, it can be safely concluded that succession to the office of Mutawalli could be hereditary as per the custom and usage and after the coming into force of Wakf Act, 1995, in the light of Article 254 of the Constitution of India, the 1949 Act becomes repugnant to the Central Enactment the Wakf Act. The Wakf Act clearly recognizes the right of hereditary succession to the position of a Mutawalli. In view of the same, the preliminary objection that was raised by the learned Standing Counsel appearing on behalf of the Board to the effect that hereditary succession to the office of Mutawalli will not apply in Tamil Nadu, is hereby rejected.

13.The next contention to be considered by this Court is as to whether the petitioner has established that they have a hereditary right as per the custom and usage. The judgments that were relied upon before this Court makes it abundantly clear that the burden lies heavily upon the person, who asserts to plead the custom relied upon and proved clearly that he is governed by the custom. That apart, in law there is no presumption in favour of custom. Hence, the person claiming a customary right to succeed to the office of Mutawalli would have to show that the Waqif intended for the office to devolve through a practice of hereditary succession. This fact is generally gathered from the Wakf-nama which will talk about the intention of the founder of Wakf with regard to the right to succeed to the office of Mutawalli. In all the judgments that have been cited before this Court, it is seen that





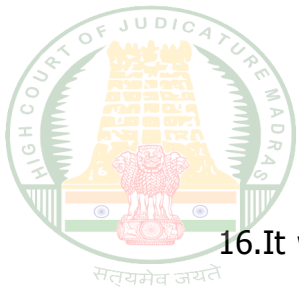
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sufficient evidence was let in either before the Court or before the Tribunal and there was scope for appreciation of evidence and only thereafter a finding has been rendered regarding the right to succeed to the office of Mutawalli through hereditary succession.

14.This Court must keep in mind that while exercising the jurisdiction under Article 226 of the Constitution of India, a Writ Court does not generally get into disputed questions of fact and it is always safely relegated to the appropriate Court/Tribunal to perform this task. Of course, there is no absolute bar for the High Court to enter into the disputed questions of fact where questions can be decided on the basis of the pleadings and documents placed before the Court. It will always depend upon the facts of each case. Useful reference can be made in this regard to the judgment of the Apex Court in ***National Thermal Power Corporation Limited .v. Mahesh Dutta and Others*** reported in **(2009) 8 SCC 339** and ***Real Estate Agencies .v. Govt.of Goa and Ors.*** reported in **(2012) 5 CTC 561**.

15.The learned counsel for the petitioner has placed heavy reliance on the proforma for each Wakf, which has been filed in the typed set of papers. It was contended that each of the proforma has made it clear that the Wakf is administered according to the established custom and usage and that the Mutawalli is nominated by the Jammatt according to custom and usage. These documents can be taken note of by this Court since it is of the year 1955 and the same has not been disputed by the Board and the private respondents.





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16.It will also be more appropriate to take note of the reports that were prepared on the directions given by the Board, during the years 2015 and 2016. These reports have been prepared after considering all the relevant materials and also the statements recorded from concerned persons. In no uncertain terms, it has been found that the Wakf is administered by an established custom and usage.

17.A lot was said about the stand taken by the petitioner while filing the counter affidavit in W.O.P. No.3 of 2011. This petition came to be filed before the Wakf Tribunal by one Nissar Ahamed, who belongs to the Mookane family. He had challenged the order passed by the Board dated 05.08.2011, appointing respondents 4 to 9 therein as the office bearers of the managing Committee for the period from 2011 to 2014. The petitioner was the 4<sup>th</sup> respondent in this petition and the private respondent, who filed W.P.No.25077 of 2015 was the 5<sup>th</sup> respondent. The said Nissar Ahmed took a stand that he is the hereditary Mutawalli of the Wakf and that the Board had no right to remove him as a Mutawalli except by the procedure contemplated under Section 64 of the Wakf Act. The relevant portions on the stand taken by the petitioner in the counter are extracted here under:

4. It is true to state in para 10 of the Petition that the Wakf called Road Mosque, situated at Pernambut, Vellore Taluk, Vellore District, is a Notified public Wakf under Gazette Notification dt:11.02.1959 and the 1<sup>st</sup> respondent/Board has supervisory control over the same. It is also admitted by this Respondent that the Petitioner was appointed as Muthavalli of said Wakf as per order of 1<sup>st</sup> Respondent/Board on 27.12.1988 vide its proceedings



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No:16549/C4/87/NA. But it is absolutely false, fraudulent and misleading to state that he is appointed as Muthavalli under hereditaryship and the Petitioner is hereby put to strict proof of the same .

5. This Respondent submits that the nomination of Muthavalli for the said Wakf is purely by local Jamath according to custom and usage. The Petitioner was also elected as Muthavalli of the said Wakf accordingly and got recognized by the Board as pleaded in the Petition. Absolutely there was no such right of hereditaryship for managing the Wakf as alleged by the Petitioner

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.....

10. This Respondent is elected as Muthavalli of Road Mosque Wakf unanimously in the said general body meeting and the Petitioner is also elected as President. The 5<sup>th</sup> Respondent is elected as Secretary, 6<sup>th</sup> and 7<sup>th</sup> Respondents are elected as Joint Secretaries, the 8<sup>th</sup> Respondent is elected as Treasurer and 10 others are elected as members. The Petitioner has attended and acknowledged the said general body meeting but now come forward with the present false – fanciful - fraudulent Petition only because he lost his money handling power of the said Wakf. It is nothing but exposing the mind of the Petitioner.

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13. This Respondent submits that;

a. Non-rendering of accounts in respect of Wakf income for the past several years;



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- b. Non-payment of necessary contribution for the past several years;
- c. Non-payment of necessary taxes in respect of Wakf properties for several years;
- d. misappropriation of Wakf funds;
- e. malpractices in management;
- f. adverse interest activities against the interest of Wakf; and especially
- g. being only cause to 'tom tom' for public auction for non-payment of necessary tax to the revenue dept., by local Panchayat...

are all the great achievements of the Petitioner during his tenure but he comes to this Hon'ble Court as an innocent. Absolutely, there is no sole right on Muthavalliship as claimed by the Petitioner but it must be within the limit of interest of the Wakf. The Petitioner is not entitled to administer, supervise and remain in managerial control of the said Wakf as averred and he lost all due to his bad- worst management.

18.The other respondents, who had also filed counter had taken a similar stand.

19.The petitioner took a clear stand that the Wakfs in question are notified Wakfs under the supervisory control of the Board and that the nomination of the Mutawalli is purely by local Jammatt according to custom and usage and the petitioner was also elected as a Mutawalli in the same manner. The petitioner has taken a stand that there is no such right of hereditaryship for managing the Wakf.



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20. The right to succeed to the office of mutawalli can only be deduced from the above documents since the original wakf-nama through which the Wakfs were created is not available and it is stated in the proforma also that the Wakf deeds are not available. On carefully going through the above documents, it is quite apparent that Mutawalli is nominated by Jammatt according to custom and usage. The petitioner also took such a stand when he filed a counter before the Tribunal. Just because the family members of Mookane family are regularly holding the posts of Mutawalli, that by itself cannot raise a presumption that the office of Mutawalli devolves through a practice of hereditary succession. The Apex Court has categorically held that proof of custom and usage in law cannot be a matter of presumption and it has to be clearly proved. Considering the available materials, this Court holds that the petitioner did not discharge the burden of proving that the office of Mutawalli devolves through hereditary succession. The very document viz., the proforma that was relied upon by the learned counsel for the petitioner while dealing with the rule of succession to the office of Mutawalli makes it clear that the Mutawalli is nominated by the Jammatt according to custom and usage. This is consistently found in all the four proformas. The petitioner himself has accepted this position while filing the counter in W.O.P.No.4 of 2011. Whether the custom and usage leads to the office of Mutawalli devolving through hereditary succession is a matter of proof and not presumption.

21. The order was passed in W.P.No.25077 of 2015 on 11.09.2015. It cannot be held that the impugned proceedings dated 17.07.2018, issued by the Board was only based on the order. In fact in the proceedings dated 17.07.2018, there is no reference to the order passed



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in the writ petition. The Board only took a decision that the election will be held through secret ballot. Insofar as the election is concerned, it involves both the Committee members/Office bearers and also the Mutawalli. Insofar as the Mutawalli is concerned, the election takes place by way of nomination by the Jammatt according to custom and usage.

22.In the light of the above discussions, this Court does not find any ground to interfere with the impugned proceedings of the Board dated 17.07.2018. It will suffice to clarify that insofar as appointment to the office of Mutawalli is concerned, the Board shall ensure that the Mutawalli is nominated by Jammatt according to custom and usage. Insofar as the election of the Committee members/Office bearers, it shall take place through secret ballot. The process of appointment of the Mutawalli and the Committee members/Office bearers shall be completed by the Board, within a period of **eight weeks** from the date of receipt of copy of this order.

23.These writ petitions are disposed of in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

**16.06.2023**

KP  
Internet : Yes  
Index : Yes  
Neutral Citation: Yes



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**N.ANAND VENKATESH, J.**

KP

To

- 1.The Tamil Nadu Wakf Board  
Rep by Chief Executive Officer  
No.1, Jaffer Syrang Street  
Vallal Seethakathi Nagar, Chennai – 1.
- 2.The Superintendent of Wakf  
Vellore Circle  
Bahadursha Masjid Complex  
8, Arani Road, Sainathapuram  
Vellore 632 001.

Pre-Delivery Common Order in  
W.P.Nos.25077/2015 and 23671/2018

16.06.2023