

THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 07.01.2026

Judgment pronounced on : 27.02.2026

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THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.No.877 of 2023
& CMP.No.6565 of 2023

M.Sirajudeen Sayeed (Died)
2.Zarina Sayeed Sirajudeen Sayeed
3.Shabana Sayeed
[Sole petitioner died. Petitioners 2 and 3 are brought on record as LR's of the deceased sole petitioner viz, M.Sirajudeen Sayeed vide Court order dated 06.12.2025 made in CMP.No.29381 of 2024 in CRP.No.877 of 2023]

.. Petitioners

Vs.

1.The Tamil Nadu Waqf Board,
Represented by its Chief Executive Officer,
No.15, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 1.

2.Siruvadi Mosque Waqf,
Represented by its Mutawalli,
Siruvadi P.O,
Thindivanam Taluk.

3.Dr.Amathul Azeem Shakir
[Respondent – 3 impleaded vide Court order dated 26.08.2025 made in

.. Respondents



*CMP.No.16091 of 2025 in CRP.No.877
of 2023]*

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the judgment dated 11.10.2022 in O.S.No.23 of 2022 passed by the Tamil Nadu Waqf Tribunal at Chennai and consequently hold that the notification issued by the 1st respondent registering the Waqf properties by its order dated 03.11.2009 as null and void since the suit properties were only private family trust properties and grant permanent injunction restraining the respondents, their men, servants and agents from any way interfering with the petitioner's possession of the properties.

For Petitioners : Mr.Balan Haridas

For Respondents : Mr.Haja Mohideen Gisthi for R1

Mrs.A.Ajimath Begum for R2

Mr.Zaffarullah Khan for R3

ORDER

The revision petitioner, now by legal representatives, is the plaintiff in O.S.No.23 of 2022 before the Tamil Nadu Waqf Tribunal. The plaintiff, being unsuccessful before the Waqf Board, preferred an appeal before the Waqf Tribunal. The same was dismissed by a judgment and decree dated 11.10.2022, as against which, the present Civil Revision Petition has been filed.

2.I have heard Mr.Balan Haridas, learned counsel for the revision petitioners and Mr.Haja Mohideen Gisthi, learned counsel for the 1st respondent, Mrs.A.Ajimath



Begum, learned counsel for the 2nd respondent and Mr.Zaffarullah Khan, learned counsel for the 3rd respondent.

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3.Mr.Balan Haridas, learned counsel for the revision petitioner would state that the subject property is a private family Trust, belonging to the plaintiff's family and at no point of time, there was any dedication of the subject properties for any public waqf or public objects/charities. The Trust created a private family waqf, which is for the benefit of the family members only and without any jurisdiction, the Waqf Board notified the property as a public waqf and directing registration of the waqf under Section 36 of the Waqf Act, 1995.

4.My attention is invited to the writ petition filed by the plaintiff in W.P.No.262 of 2010 seeking to quash the notification dated 03.11.2009 and yet another writ petition filed by Siruvadi Mosque Waqf, represented by its Mutawalli, the 2nd defendant in the suit filed by the plaintiff in W.P.No.16916 of 2011. The writ petition filed by the 2nd respondent was allowed and the writ petition filed by the plaintiff was dismissed with liberty to the plaintiff to approach the 3rd respondent therein for appropriate relief. The respondent, by order dated 26.05.2008, however registered the plaintiff's property as waqf property under the Waqf Act. The same was challenged by the plaintiff, under whom the present revision petitioners claim. The said writ petition was disposed of by this Court on 22.01.2009, allowing the writ petition and setting aside the registration of



the properties as waqf properties. The Tamil Nadu Waqf Board was directed to proper enquiry, by affording sufficient opportunity to the petitioner and to pass appropriate orders, as to whether the properties are waqf properties or not, on the basis of the evidence adduced by the parties.

5.Mr.Balan Haridas, learned counsel for the petitioners, inviting my attention to the said direction issued by this Court and the impugned order passed on 03.11.2009, would state that there is absolutely no discussion made and virtually, the Resolution dated 03.11.2009 as a non-speaking order. He would also draw my attention to Section 40 of the Act, which requires a speaking order and he would therefore state that there was absolutely no merit in the conclusions arrived at, on the basis of no evidence. He would further state that unfortunately, the Tribunal, without considering any of the material aspects, has dismissed the suit filed by the plaintiff.

6.The learned counsel for the petitioners would further state that the entire issue revolved around a partition deed, which was marked as Ex.A1 dated 14.02.1910 and taking me through the relevant clause pertaining to ‘D’ schedule, which is the subject matter of the dispute and the clause as extracted by the Waqf Tribunal would contend that the Tribunal has omitted the word “நம்முடைய” which made a world of difference and had a direct bearing on the character of the waqf. He would also invite my attention



to Ex.A2, which is the another partition deed dated 10.12.1951, where also the factum of there being no dedication to any public Waqf has been reiterated.

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7.It is therefore the contention of Mr.Balan Haridas that the Tribunal, on a misreading of the document, has come to a wrong conclusion that the subject property is a public waqf. He also relies on the decision of the Three Judge Bench of the Hon'ble Supreme Court in *Sri Radhakanta Deb and another Vs. Commissioner of Hindu Religious Endowments, Orissa*, reported in (1981) 2 SCC 226 and *Mohammad Vs. Mohammed Beke*, in C.A.Nos.12378 – 79 of 1996 dated 06.09.1996.

8.Supporting the submissions of Mr.Balan Haridas, Mr.Zaffarullah Khan, learned counsel appearing for the 3rd respondent would state that the impugned notification dated 03.11.2009 was defective, for want of issuance of notice and opportunity to other interested parties. He would also refer to Section 40 of the Act, which contemplates an enquiry, which is in the nature of a quasi judicial proceeding and when the authority had passed a one page order, without discussing any of the relevant facts and circumstances, such an order cannot stand the scrutiny of law, even for a moment and was clearly bad and perverse and also liable to be set aside.

9.The learned counsel for the 3rd respondent would also invite my attention to the partition deeds of the year 1910 and 1951 and reiterate the submissions made by



Mr. Balan Haridas that there has been no dedication under these documents for the respondent to even claim that a public waqf has been created. He would further state that the case of the respondents is that the waqf was created even in 1910 and while so, the fact that for 100 long years, no steps have been taken, claiming any right in the subject properties, as being waqf properties, would only point to the irrefutable conclusion that the properties were only private waqf properties and not public waqf and that they have always been in control and management of the family.

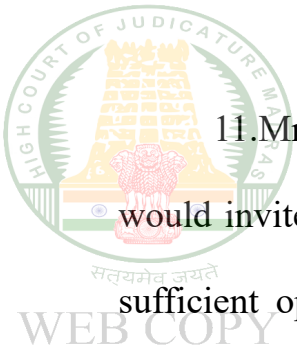
10. The reference with regard to the Mosque and waqf in the partition deeds, according to Mr. Zaffarullah Khan, can only refer to the private waqf created and by no stretch of imagination, it will clothe the right to the respondents to take control over the properties, claiming them to be a public Waqf's properties. In support of his contentions, Mr. Zaffarullah Khan would rely on the following decisions:

1. Tamil Nadu Wakf Board Vs. Larabsha Darga Panruti, reported in (2007) 13 SCC 416.

2. Salem Muslim Burial Ground Protection Committee Vs. State of Tamil Nadu and others, reported in (2023) 16 SCC 264.

3. State of Andhra Pradesh Vs. A.P. State Wakf Board and others, in Civil Appeal No. 10770 of 2016, dated 07.02.2022.

4. Tamil Nadu Wakf Board Vs. Hathija Ammal (Dead) by LRs and others, reported in (2001) 8 SCC 528.



11. Mr. Haja Mohideen Gisthi, learned counsel appearing for the 1st respondent would invite my attention to the resolution dated 03.11.2009 and state that several and sufficient opportunities were given to the petitioners, before passing final orders, in compliance with the orders passed by this Court in writ proceedings and therefore, the petitioners or the third respondent cannot complain that there has been a deprivation of a fair opportunity. As regards, the locus of the 3rd respondent, the learned counsel would state that the 3rd respondent was not a party before the Waqf Tribunal and he has no locus to interfere with the matter and that he has been instigated only by the petitioner.

12. Referring to Sections 3(r) and 3(i), Mr. Haja Mohideen Gisthi, would contend that there is satisfactory evidence that there has been a dedication and creation of public waqf, as well as appointment of Mutawalli, even in the partition deed of the year 1910. Drawing my attention to Ex.A2, 1951 partition deed, the learned counsel would state that the use of the words *“which had been dedicated by them as said deed as per schedule ‘H’ shall be preserved in common without division and the above said parties in their respective share shall be entitled to manage these properties as Muthavalis and shall perform the charities, worship, etc., as has been usually done and is customary in the Mosque”* would clinchingly establish dedication of the properties and creation of a public waqf.



13. The learned counsel for the 1st respondent would also state that the suit filed by the plaintiff, under whom the revision petitioners claim, is hopelessly barred by limitation. In this regard, Mr.Haja Mohideen Gisthi, would invite my attention to Section 6 of the Waqf Act, 1995 and state that the suit was filed before the Tribunal only in the year 2015, as against the publication made in the year 2009 and therefore, on the ground of limitation also, the revision has to be thrown out. In support of his contentions, he has relied on the following decision:

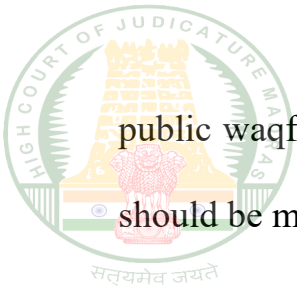
1.G.M.A.Bhaimia Muthavalli Vs. The Madras State Wakf Board, reported in 1968 (1) MLJ 410.

2.Mohammed Ghouse Vs. Karnataka Board of Waqf, reported in 1985 SCC Online Kar 114.

3.Abdul Azeez and others Vs. E.Sundaresa Chettiar and another, reported in 1992 – 2 – L.W.

4.Islamic Welfare Association Vs. the Waqf Tribunal and others, reported in 2011 SCC Online Mad 1317.

14.Mrs.A.Ajimath Begum, learned counsel for the 2nd respondent, apart from adopting the submissions of Mr.Haja Mohideen Gisthi, would contend that the petitioners are blowing hot and cold. Till 2005, they had set up a case that the property is their private family property, but before the Tribunal, they have taken a different stand that it is a private waqf. Relying on these inconsistencies, she would contend that the petitioners are not certain about their own case and in this regard, relying on Ex.A1 and Ex.A2, the learned counsel would state that there is a clear indication of creation of a



public waqf with the appointment of Mutawalli and also guidelines, as to how the waqf should be managed.

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15. With specific reference to the 1951 partition deed, Mrs. A. Ajimath Begum would state that the said partition deed reiterates the creation of the waqf under the 1910 document and even a retired Judge of this Court was a party executant to the said 1951 partition deed, who was conscious of the dedication of the property for public purposes. Inviting my attention to Section 36 of the Waqf Act, she would state that the power of the authority to register even an old waqf is available under 1996 Act and therefore, mere fact that the property have not been registered under the earlier waqf enactments cannot be a ground to challenge the impugned proceedings, that too, giving a new interpretation after lapse of several decades.

16. I have carefully considered the submissions advanced by the learned counsel for the parties. I have also gone through the records filed by way of typed set of papers and the decisions on which reliance is placed on by the learned counsel for the parties.

17. The admitted facts are that in a partition deed executed on 14.02.1910 in registered Doc.No.1085 of 2010, certain properties have been set apart for a waqf. It is the contention of the petitioners that the waqf is a private waqf and that there is no dedication of the property under the said partition deed for public purposes or for



creation of a public waqf. However, to the contrary, it is the stand of the respondents that the 1910 partition deed has, in fact, created a public waqf and there has been dedication of properties to the public waqf. This is precisely the question that needs to be addressed in the present revision petition.

18.As rightly contended by Mr.Balan Haridas, as well as Mr.Zaffarullah Khan, when this Court in the writ petition, had given specific directions in W.P.No.26252 of 2008, while setting aside the registration of the waqf as a public waqf, had specifically directed the Waqf Board to hold a proper enquiry and afford sufficient opportunity to the petitioner, Sirajudeen Sayeed, under whom, the revision petitioners presently claim and thereafter, pass appropriate orders, as to whether the properties are waqf properties or not, on the basis of the evidence.

19.On examining the impugned resolution dated 03.11.2009 passed by the Chief Executive Officer, Tamil Nadu Waqf Board, it is clear that the mandate and directions issued by this Court in the writ order had not been adhered to. The order passed in W.P.No.36258 of 2007 on 09.01.2008 has been referred to and that on several dates, enquiry was conducted and straight away the Board comes to the conclusion that 'D' schedule properties set out in partition deed of the year 1910 belong to the public waqf and partition of such properties was impermissible. None of the relevant documents have been examined or even discussed while coming to such a conclusion.

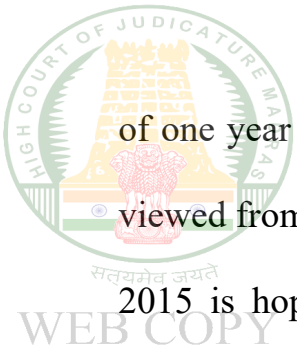


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20. In fact, Section 40 of the Act empowers the Board to collect information regarding any property, which it has reason to believe to be the waqf property and further directs that if there is any question arising, whether the particular property is a waqf property or not, then the statute contemplates an enquiry to be made, to decide the said question. As rightly pointed out by Mr. Zaffarullah Kham, the enquiry, which is contemplated under Section 40 is not an empty formality and certainly, the Waqf Board is clothed with quasi-judicial power to decide the character of the property and arrive at a decision as to whether the property is a waqf property or not. In this regard, there can be no doubt in my mind that the impugned resolution dated 03.11.2009 can only be termed as a non-speaking order. The said order of the Waqf Board has been challenged in the civil suit, unsuccessfully.

21. With regard to the contention of Mr. Haja Mohideen Gisthi that the challenge to the resolution dated 03.11.2009 is hopelessly time barred, in terms of Section 6 of the Act, though the said submission sounds very attractive at first blush, for the following discussions and reasons, I do not see that the suit has to be dismissed as time barred.

22. Under Section 6, if any question regarding the character of the property is decided by the Board, then the said decision may be challenged by institution of a suit before the Tribunal. The proviso to Section 6 entails filing of such suit, within a period



of one year from the date of publication of the list of waqfs. If the facts of the case are viewed from the angle of the statute, it may certainly appear that the suit filed in the year 2015 is hopelessly time barred. However, on facts, it is seen that the plaintiff filed W.P.No.262 of 2010, challenging the registration of the waqf under Section 36 and the 2nd respondent independently filed W.P.No.16916 of 2011, challenging the order of the District Registrar, revoking the order dated 13.06.2011 by order dated 11.07.2011 with regard to the direction to the Sub-Registrar to not register the waqf properties. Both the writ petitions were disposed of by this Court on 20.12.2011.

23.The writ petition filed by the plaintiff in W.P.No.262 of 2010 was dismissed with liberty and the writ petition filed by the 2nd respondent was allowed. The plaintiff filed W.A.Nos.292 of 2012 and 349 of 2012. The Hon'ble Division Bench, by a common judgment dated 18.02.2015, disposed of both the appeals, in and whereby, liberty was given to the writ petitioner in W.P.No.262 of 2010 to workout his remedy before the Tribunal, observing that the order passed in an earlier suit in O.S.No.119 of 2006 cannot be relied on by the petitioner/plaintiff.

24.It is pursuant to the said liberty granted by the Division Bench of this Court, the suit came to be filed before the Tribunal. At paragraph No.15(i), (ii) and (iii), the Hon'ble Division Bench has passed the following orders:

“(i) It is open to Sirajuddin Sayeed to file an appropriate proceeding before the appropriate Wakf Tribunal as against the order of



the Wakf Board dated 03.11.2009. If he initiates such a proceeding within a period of four weeks from the date of receipt of a copy of this order, the Wakf Tribunal shall invoke Section 14 of the Limitation Act, 1963;

(ii) Independent of the findings and the result in O.S.No.119 of 2006, it is open to the Wakf Tribunal to deal with all issues, for which it has jurisdiction under the Wakf Act, 1995; and

(iii) The property in question shall not be alienated till the Tribunal disposes of the matter one way or other.”

Therefore, in the light of the specific directions and liberty granted by the Division Bench in the above referred writ appeals, the question of limitation cannot be put against the revision petitioners.

25.Now, the question regarding character of the property has to be decided. In order to decide this question necessarily, I have to fall back on the relevant covenants. In Ex.A1, partition deed dated 14.02.1910, schedule 'D' to the said partition deed is the relevant subject matter of the dispute. Insofar as schedule 'D', the relevant clause is as follows:

“மேற்கண்ட சொத்துக்கள் பள்ளிவாசலுக்காகவும் சத்திரத்திற்காகவும் குளத்திற்காகவும் அடியிற் கண்ட காரிய காரியங்களுக்காகவும் முதலியவைகளுக்காகவும் எங்களால் (வக்ஃப்) என்கிற தானம் செது விட்டுவிட்டபடியால் மேற்படி சொத்துக்களின் வரும் படியைக் கொண்டு B ஷெட்யூலில் AHM காதர் உசேன் சாயபு, தன் சுயாதிரமாய் மேற்படி பள்ளிவாசலுக்கு வேண்டிய கைங்காரியங்களையும் சத்திரம் குளம் பள்ளி வாசலு இகைகளின் மராமத்துக்களையும் சீர் திருத்தங்களையும் எங்களால் குலாம் அசதுல்லா சாயபு தகப்பனார் அஹ்மீம் அலி சாயபுக்கு ஜப் மாதம் 1 யில் நடுக்கும் பாத்தியத்தை என்கிறதிக்கும் மேற்படி குலாம் அசதுல்லா சாயபுக்கு பாரிய நெ.B.C ஷெட்யூலில் கண்டவர்கள்



தாயாருமான ஆம் உறாகானாம் அம்மாளுக்கு சபர் மீ 17 நடக்குய வருஷாந்திர திதிக்கும் குலாம் அசதுல்லா சாயப்ப, குமாரரும் எங்களுக்கு சகோதரியுமான சாதகுசேன் சாயபானுடைய ஜமாதியில் மேற்படி 21 ல் நடக்கும் வருஷாந்திர திதிக்கு யாதொருவக்கமில்லாமல் சுயமாய் நடத்திக் கொண்டு வரவேண்டியது. அவருக்குப்பின் அவர் அவாரிகளும் மேற்கண்ட விபரப்படி தன் சுமாதி காரியமாய் நடத்தி வரவேண்டியது. சொத்துக்களை கிரயம் போகியம் ஈடு முதலிய பைசல், வைக்க யாருக்கும் பாத்தியதையல் சொத்துக்களின் வரும்படியில் சர்க்கார் தீர்வை மேற்கண்ட விபரம் சிலவுகளும் போக மீதியாகும் தொகையை AHM காதர் உசேன் சாய்பும் அவருக்குப்பின் அவர் வாரிகளும் அடைய வேண்டியது.”

26.In Ex.A2, which is also a partition deed, dated 10.12.1951, the schedule 'D' property to 1910 partition deed has been set out as schedule 'F'. Clause 4 of the said partition deed is relevant, the same is extracted hereunder:

4) All the parties have agreed that the properties mentioned in the Registered partition deed of 14.02.1910 executed by the grandfather of parties 1 to 4 Gulam Assadulla Sahib and his sons Khadar Hussain Sahib and Ahmed Hussain Sahib and which had been dedicated by them as said deed as per schedule 'H' shall be preserved in common without division and the above said parties in their respective share shall be entitled to manage these properties ad Muthavalis and shall perform the charities, worship, etc., as has been ususally done and is customary in the mosque. Mohammed Ali Sayeed Basheer Ahemed Sayeed N.A.Sayeed Rasheed Ahmed, Sayeed Mohammed Nizamuddin Sayeed Amthul Aleem Sayeed Amthul Azeez Sayeed Amthul Hafeez Sayeed and outside and if there is any surplus out of income after meeting all expenses and charge the same shall be taken as remuneration for services rendered (to the said) Wakf and mosque. For the time being all the parties have agreed that Party No.1 the said Mohamed Ali Sayeed Sahib shall act on behalf of the other parties as their agent in regard to Muthavalliship in so far as their share of management and enjoyment are concerned and for such



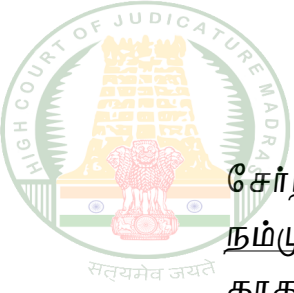
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management, the party No.1 shall be entitled to take the surplus of income from the said Wakf property and they cannot be any of the parties. All the parties shall not cut the timber on the land and the agent for the time being shall preserved all the trees, shrubs, plants, etc., and shall not out nor sell any of such trees etc., without the consent of all the parties to this deed, even such cutting or removal by consent can be effected only for Wakf purposes.

27. On a careful perusal of both the documents, it is seen that the charity that has been spelt out in the earliest partition deed dated 14.02.1910 and affirmed in 1951 partition deed is only performance of annual ceremonies for late Gulam Asathullah Sahib, the grandfather of the parties to the 1951 partition deed, from and out of the net income of the waqf properties. Therefore, I do not see any complete dedication of the properties of the family, for any public purposes or objects.

28. Further, the surplus income, after meeting all expenses and charges, is only to be enjoyed by the party of the first part. Therefore, mere reference to a Mosque or a waqf being created, cannot be taken advantage of by the respondents to contend that there has been a dedication and creation of a public waqf.

29. In fact, the Waqf Tribunal has extracted the Tamil vernacular portion in Ex.A1 partition deed at Page No. 17 of its judgment. Unfortunately, the extract is not a true extract of the clause available in Ex.A1 partition deed. In Ex.A1 partition deed, the relevant clause pertaining to 'D' schedule is as follows:



“D ஷெட்யூலில் குறிப்பிட்ட சொத்தை நாம் மூவரும் சேர்ந்து (வக்ப்) என்கிற தானமாக விட்டிருக்கிறபடியால் நம்முடைய பள்ளி வாசல் சத்திரம் குலம் தர்மங்களுக்காக AHM காதர் உசேன் சாயபும் அவருக்குப்பின் அவர் வாரிசுகளும் சொத்துக்களை குலாம் அசதுல்லா சையபு, (என்று அசலில் வர்டுவில்) 11.6.0 காதர் உநீசேன் சையது 12.6.10 உறமத் உநீசேன் சையத் அபா அனுஉறி என்று அசலில் வர்டுவில் சாட்சிகள் குப்புசாமிக்கவு அறிவேன் எத்திராசுக்கவு அறிவேன் மதுரைக்கவு அறிவேன் நெதில் வருயகவு அறிவேன் தானப்பா அறி அறிவேன் இது எழுதியது சிருவாடி அறிவேன் கர்ணம் முரகேசப்பிள்ளை அனுபவித்துக்கொண்டு D ஷெட்யூலில் கண்ட ஷரத்துப்படி மேற்படி தர்மங்களை நடத்திக்கொண்டு வரவேண்டியது.”

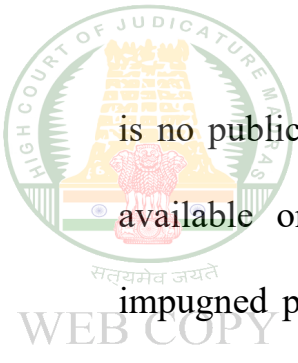
30.Unfortunately, the Tribunal, while extracting the said clause from the 1910 partition deed, has made the following extract “ டி செட்யூல் சொத்து சப்தா மேற்கண்ட சொத்துக்கள் பள்ளிவாசலுக்காகவும், சத்திரத்திற்காகவும் அடியிற்கண்ட காரிய கைங்காரியம் முதலியவைகளுக்காகவும் எங்களால் வக்பு என்கின்ற தானம் விட்டுவிட்ட படியால்” . The word 'நம்முடைய' has been conspicuously omitted. If the clause, as available in the 1910 partition deed including the word 'நம்முடைய' is read along with the remaining part of the sentence, it is clear that the parties have retained the property for themselves in private and there is no semblance of any dedication or creation of any public waqf. At the risk of repetition, mere use of the words ' Waqf ' and 'Mosque' will not imply that there has been creation of a public waqf under the deed.



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31. In *Sri Radhakanta Deb's case*, (referred herein supra), the Hon'ble Supreme Court held that in Mahomedan law, the existence of a private trust, which is also of a charitable nature is called *waqf-allal-aulad*. In such a trust or waqf, the ultimate benefit is reserved to god, but the property vests in the beneficiaries and the income from the property is used for maintenance and support of the family of the founder and his descendants and only when the family becomes extinct, then the waqf become a public waqf, the property is vesting in god. The facts of the present case, in fact, stand on a better footing than the facts before the Hon'ble Supreme Court. In Ex.A1, there is no vesting of the property in the name of god in the first place. Therefore, if at all the waqf that is referred to in the deeds, can at best be a private waqf or a private trust, which ennues to the benefit of only the family members. In such view of the matter, the Waqf Board has no jurisdiction to interfere with the management and administration of the properties belonging to the said private waqf/private trust.

32. In *Mohammad's case*, (referred herein supra), the Hon'ble Supreme Court referring to Section 2(l) and 2(r), held that the fundamental requirement for creation of a waqf is that the founder must declare an intention to dedicate property for the mosque and the founder must divest himself from ownership of the property and when the property is in the exclusive possession and enjoyment of the private individual during his lifetime and the public are not allowed to have any prayers in the property, then there



is no public waqf created. In the present case as well, there is absolutely no evidence available on record, leave alone any material or circumstances discussed in the impugned proceedings, as to whether the general public have access or right to offer worship in the mosque which belongs to the family of the revision petitioner.

33.Also, as already discussed, there is no dedication and divesting of ownership of property under the 1910 partition deed as well. In fact, the surplus income is only set apart for the private individuals even under Ex.A1 partition deed, after meeting certain expenses and services. Therefore, applying the ratio laid down by the Hon'ble Supreme Court in *Mohammad's case*, Ex.A1 or for that matter Ex.A2 do not dedicate the property and no public waqf is created under the said documents.

34.The Hon'ble Supreme Court in *State of Andhra Pradesh Vs. A.P State Waqf Board's case*, (referred herein supra), held that the Waqf Board exercises quasi judicial jurisdiction under Section 40(1) of the 1995 Act and that an enquiry, which is required to be conducted and the decision taken after the enquiry, could be challenged before the Waqf Tribunal and therefore, the legal principle is that the act of the statutory authority being quasi judicial in nature, an enquiry should be conducted only after hearing the affected parties and the decision of the Waqf Board has to be a reasoned order, which could be tested before the Waqf Tribunal. In the light of the ratio laid down by the Hon'ble Supreme Court as well, the impugned resolution dated 03.11.2009 is exfacie



falling way short of being an order passed after due enquiry, much less, after putting all parties on notice. It is only the branch of the plaintiff alone, who have been heard before the Board. The other branches who have rights under Ex.A1 and Ex.A2, partition deeds have not even been put on notice. Therefore, viewed from this angle also, the impugned proceedings are liable to be set aside.

35.In *Salem Muslim Burial Ground's case*, (referred herein supra), the Hon'ble Supreme Court held that a declaration as waqf property has to be in consonance with the provisions of the Waqf Act and the procedure prescribed has to be strictly followed.

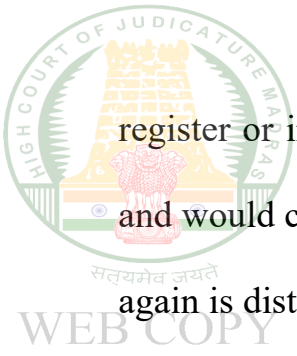
36.In *Tamil Nadu Waqf Board Vs. Larabsha Darga Panruti's case*, (referred herein supra), the Hon'ble Supreme Court held that when few rupees are spent for the Darga and the balance is utilized for the maintenance of family, then the waqf would only be wakf-alal-aulad (private waqf) and not a public waqf.

37.In *Tamil Nadu Waqf Board Vs. Hathija Ammal's case*, (referred herein supra), the Hon'ble Supreme Court reiterated the requirement of an enquiry to be conducted in terms of the provisions of the Act in the event of any property being omitted by inadvertence or otherwise.



38. Coming to the decisions relied on by Mr. Haja Mohideen Gisthi, counsel appearing for the 1st respondent, in *G.M.A. Bhaimia's case*, (referred herein supra), this Court held that a waqf is created by mere declaration of endowment by the owner of the property, and upon such declaration the property immediately vests in God Almighty and the waqf can be of two classes, public and private. In the case of the public waqf, the property, namely the corpus as well as usufruct, vests in God immediately, whereas in the case of private waqf or waqf-alal-aulad, the corpus of the property vests in God immediately, but the enjoyment of the usufruct is postponed till after the extinction of the wakif, his family and descendants. Even testing the facts of the present case in the light of the decision of this Court in *G.M.A. Bhaimia's case*, I do not find that the 1910 partition deed created a public waqf. Therefore, this decision is of no avail.

39. In *Mohammed Ghouse's case*, (referred herein supra), the Karnataka High Court held a Masjid or a Mosque is a waqf as defined in the Act whether it is registered or not and the authority was under bounden duty to register the Mosque as a waqf. However, in the facts of the said case, the High Court of Karnataka found that the petitioner himself had claimed that the Mosque had been in existence from time immemorial and that the Waqf Board had contributed considerable sums for reconstruction of the Masjid and in such circumstances, the High Court of Karnataka held that even if the Masjid in question is not registered as a waqf and not entered in the



register or in the list of waqfs or waqf properties, it is a waqf as defined under the Act and would come under the superintendence and control of the Waqf Board. This decision again is distinguishable on facts for the reasons aforementioned.

40. In *Abdul Azees 's case*, (referred herein supra), this Court held that the rule of Mahomedan law is that when anyone has resolved to devote his property for religious purposes, an endowment is immediately constituted and such act deprives him of all ownership from the property, which vests in god. However, on a reading of Ex.A1, as well as Ex.A2, there is no dedication or vesting with God and the property continues to be enjoyed by the family and the obligations are only with regard to meeting certain expenses and carrying out some services and even the net surplus is retained for enjoyment of only private individuals. Further, in contrast to the facts of the said case, there is absolutely no evidence or admission with regard to public worship in the Mosque, leave alone consecration of the Mosque. Therefore, this decision also does not apply to the facts of the present case.

41. Lastly, the decision in *Ismalic Welfare Association's case*, (referred herein supra), is pressed into service. In the said case, this Court relying on the decision of the Hon'ble Supreme Court in *Syed Mohd Salie Labbai Vs. Mohd. Hanifa*, reported in (1976) 4 SCC 780, held that for a valid declaration of a waqf of public nature, the necessary conditions to be satisfied are that, (i) the founder must declare his intention to



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dedicate a property for the purpose of a mosque. Though no particular declaration is necessary, such declaration can be presumed from the conduct of the founder either express or implied; (ii) that the founder must divest himself completely from the ownership of the property, which can be inferred from the fact that he had delivered possession to mutawalli or an imam of the mosque and even if there is no actual delivery of possession when members of Mahomedan public are permitted to offer prayers with azan and ikamath, the waqf becomes complete and irrevocable; that the founder must make some sort of a separate entrance to the mosque which may be used by the public to enter into the mosque.

42. These requirements are also not only absent, but the order also does not discuss any of these requirements. In a summary fashion, the Board has come to a conclusion that the subject property, namely the property set out in schedule 'D' of 1910, Ex.A1 partition deed was property belonging to the public waqf. Therefore, a conjoint analysis of the ratio laid down in all the above cases and applying the same to the facts of the present case as well, there is absolutely no indication that there has been a dedication for public purposes or the properties being vested in God, the executants divesting themselves of all their interest and title in the schedule 'D' property. In such circumstances, the impugned order is not only unreasoned, but also perverse and unsustainable. Unfortunately, the Waqf Tribunal, on misconstruing the terms of Ex.A1,



partition deed, has erroneously proceeded to confirm the decision of the Waqf Board.

For all the above reasons, the revision petitioners are entitled to succeed.

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43. In fine, the Civil Revision Petition is allowed and the judgment dated 11.10.2022 in O.S.No.23 of 2022 passed by the Tamil Nadu Waqf Tribunal at Chennai, is set aside. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

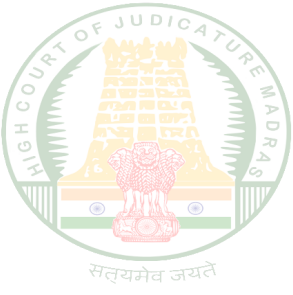
27.02.2026

Neutral Citation Case : Yes / No
Speaking / Non-speaking order
Index : Yes/No
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To

1. The Tamil Nadu Waqf Tribunal, Chennai.

2. The Tamil Nadu Waqf Board,
The Chief Executive Officer,
No.15, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 1.



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P.B.BALAJI.J.

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Pre-delivery judgment made in
CRP.No.877 of 2023
& CMP.No.6565 of 2023

27.02.2026