

W.A.(MD)No.1291 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 06.08.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

**W.A.(MD)No.1291 of 2023
and
C.M.P.(MD)No.9825 of 2023**

1.S.Thajudeen (Trustee)
2.J.Haneefa (Trustee)
3.K.Syed Ibrahim (Trustee) ... Appellants

Vs.

1.Haji M.Abdul Barook
2.The Chief Executive Officer,
Tamilnadu Wakf Board,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai - 600 001.
2.The Wakf Superintendent,
Wakf Superintendent Office,
M.G.Complex, Palakarai,
Tennur, Trichy. ... Respondents



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Prayer : Writ Appeal filed under Clause XV of Letters Patent, to allow the writ appeal by setting aside the order passed in W.P.(MD)No.29102 of 2022 dated 19.04.2023 on the file of this Court.

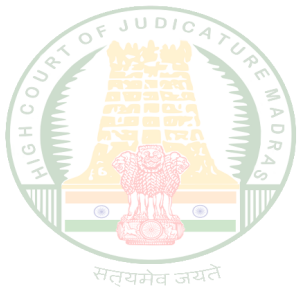
For Appellants : Mr.M.Mahaboob Athiff

For Respondents : Ms.Yasmin Begum for R1
Mr.S.A.Ajmalkhan,
Standing Counsel for R2 & R3.

JUDGMENT
(By G.R.SWAMINATHAN, J.)

Heard both sides.

2.Haji M.Abdul Barook / first respondent herein filed W.P.(MD)No.29102 of 2022 for directing the Tamil Nadu Wakf Board to conduct enquiry into his representation dated 29.07.2022 and pass an order. His request was that the petition mentioned properties have to be declared as wakf property and a scheme of administration should be framed for their management and administration. The learned Single Judge vide order dated 19.04.2023 disposed of the writ petition in the following terms:-



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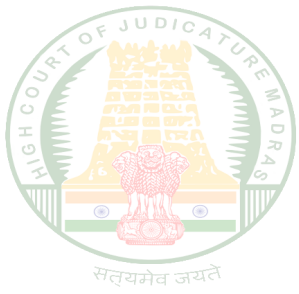
“4. It is an admitted fact that the petitioner issued a representation to the first and second respondents on 29.07.2022 and an enquiry has been held in August, 2022. Despite this, to date no orders have been passed by the first respondent. Therefore, considering the limited relief sought for and taking into account the fact that the allegation of mismanagement and fraud have been alleged against the persons now in control, respondents 1 and 2 are directed to pass orders on the representation given by the petitioner within a period of one month from the date of receipt of a copy of this order. No costs.”

Aggrieved by the same, this writ appeal has been filed.

3. When the matter was entertained, an interim order was passed on 11.08.2023 to the effect that while the enquiry by the Wakf Board may go on, there shall not be any final decision until further orders.

4. Our attention is drawn to the decision reported in **(2012) 6 SCC 328 (Maharashtra State Board of Wakfs Vs. Shaikh Yusuf Bhai Chawala)**. Paragraph No.38 of the said decision reads as follows:-

“38. There is a vast difference between Muslim Wakfs and Trusts created by Muslims. The basic difference is that Wakf



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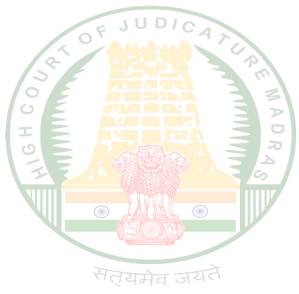


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properties are dedicated to God and the “Wakif” or dedicator, does not retain any title over the Wakf properties. As far as Trusts are concerned, the properties are not vested in God. Some of the objects of such Trusts are for running charitable organisations such as hospitals, shelter homes, orphanages and charitable dispensaries, which acts, though recognized as pious, do not divest the author of the Trust from the title of the properties in the Trust, unless he relinquishes such title in favour of the Trust or the Trustees. At times, the dividing line between Public Trusts and Wakfs may be thin, but the main factor always is that while Wakf properties vest in God Almighty, the Trust properties do not vest in God and the trustees in terms of Deed of Trust are entitled to deal with the same for the benefit of the Trust and its beneficiaries.”

5.While according to the writ petitioner, the petition mentioned properties are wakf properties, the stand of the appellants is that they are not wakf properties but trust properties created by muslims. The Hon'ble Supreme Court has recognized the difference between muslim wakf and trust created by muslims.

6.Section 40 of the Waqf Act, 1995 read as follows:-



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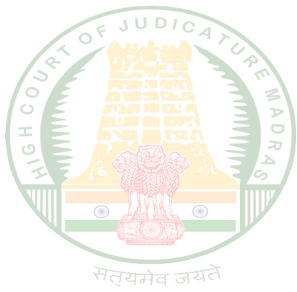
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“40. Decision if a property is [waqf] property.—(1) *The Board may itself collect information regarding any property which it has reason to believe to be [waqf] property and if any question arises whether a particular property is [waqf] property or not or whether a [waqf] is a Sunni [waqf] or a Shia [waqf], it may, after making such inquiry as it may deem fit, decide the question.*

(2) *The decision of the Board on a question under sub-section (1) shall, unless revoked or modified by the Tribunal, be final.*

(3) *Where the Board has any reason to believe that any property of any trust or society registered in pursuance of the Indian Trusts Act, 1882 (2 of 1882) or under the Societies Registration Act, 1860 (21 of 1860) or under any other Act, is [waqf] property, the Board may notwithstanding anything contained in such Act, hold an inquiry in regard to such property and if after such inquiry the Board is satisfied that such property is [waqf] property, call upon the trust or society, as the case may be, either to register such property under this Act as [waqf] property or show cause why such property should not be so registered:*

Provided that in all such cases, notice of the action proposed to be taken under this sub-section shall be given to the authority by whom the trust or society had been registered.



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(4) The Board shall, after duly considering such cause as may be shown in pursuance of notice issued under sub-section (3), pass such orders as it may think fit and the order so made by the Board, shall be final, unless it is revoked or modified by a Tribunal.”

7.Vide amendment made by Act No.14 of 2025, Section 40 of the Wakf Act has been deleted from the statute book. The validity of the amendments made to the Wakf Act are pending consideration before the Hon'ble Supreme Court. Be that as it may, so long as Section 40 of the Wakf Act as it originally stood has been deleted from the statute book, the Wakf Board will not have jurisdiction to decide the issues raised by the writ petitioner. As rightly pointed out by the learned counsel for the writ petitioner / first respondent, enquiry appears to have already been conducted. But then, final order has not been passed. Even before passing final order, the jurisdiction of the Wakf Board to decide the properties as wakf properties has been taken away.

8.A direction to consider representation can be given only if the authority concerned has the statutory power to consider the issue. When



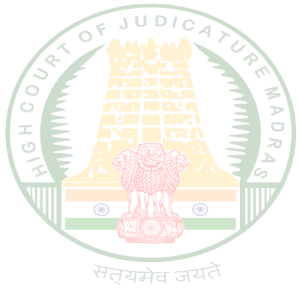
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the authority concerned now lacks the jurisdiction to consider, the question of sustaining the direction given by the learned Single Judge does not arise at all. The order impugned in this writ appeal is set aside. We grant liberty to the writ petitioner / first respondent herein to approach the appropriate forum / Civil Court. We make it clear that we have not given any declaration regarding the character of the properties in question.

9.The writ appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S. J.) & (K.R.S. J.)
06.08.2025

NCC : Yes/No
Index : Yes / No
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