



C.R.P.No.1884 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.04.2026

Pronounced on : 31.07.2026

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

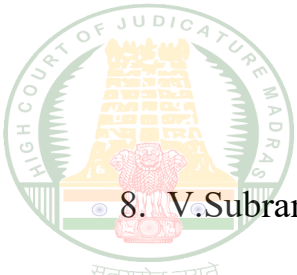
CRP No. 1884 of 2022

M.S.Mohamed Nymudeen

..Petitioner

Vs

1. M/s.SEBCO Property Pvt Ltd
Rep. by its Managing Director
J.S. Leyronne Morais, No.24-D,
Mahalakshmi Nagar, K.K. Nagar,
Tiruchirapalli 620 021.
2. M/s. SEBCO Property Pvt. Ltd.,
Rep by its Director Jebamal Morais,
No.24-D, Mahalakshmi Nagar,
K.K. Nagar,Tiruchirapalli 620 021.
3. M.Anand
4. Farook Ali,
5. M. Vijaya Parthiban,
6. M/s. Newo max properties Pvt. Ltd.,
Rep. by its Director, No.85, Richy Tower, II
Floor, Subramania Pillai Street, S.S. Colony,
Bye Pass Road, Madurai - 625 016.
7. V.Kanniayan



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8. V.Subramanian

9. S.Khansam

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10.M/s. Pelican Reality Ventures Pvt Ltd
S.Nageswaran, No.27, 48th Street, 9th Avenue,
Ashok nagar, Chennai - 600083.

11.V. Shanmuam

12.Raja
S/o. Sankaranthi, No.20, Jeeva Street,
Ponmalaipatty, Tiruchirapalli - 620 004.

13.Gayathri

14.Thilagavathi

15.Geetha

16.The Chief Executive Officer,
Tamil Nadu Waqf board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai - 600 001.

17.N.M. Kajamian Waqf (Sunni) Waqf,
No.5, Kaja Mohideen Sahib Street, Palakkarai,
Tiruchirapalli 600 008.

..Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India read with Section 83 of the Wakf Act, 1995, praying to set aside the Fair and Decreetal order in IA.No. 260/21 in OA.No. 36/21 on the file of the Tamil Nadu Waqf Tribunal, Chennai.



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For Petitioner(s): Mr.N.A.Nissar Ahmed

For Respondent(s): Mr.S.R.Raghunathan
For Mr.T.Ganesh Kumar
(For RR1, R2, R6, R9 and R11)

Mr.A.Mohamed Ismail (For R17)
Ms.Rajeswari Karthikeyan (For R16)

ORDER

The present Civil Revision Petition has been filed challenging the Fair and Decretal Order dated 29.04.2022 passed in I.A. No.260 of 2021 in O.A. No.36 of 2021 on the file of the Tamil Nadu Waqf Tribunal, Chennai.

2. The revision petitioner has approached this Court under Article 227 of the Constitution of India read with Section 83 of the Waqf Act, contending that the Tribunal erroneously held that the subject properties had ceased to be Waqf properties pursuant to the proceedings of the Waqf Board dated 21.06.1986 and consequently failed to appreciate that the Original Application disclosed a valid cause of action warranting adjudication on merits.

3. Mr. N.A. Nissar Ahmed, learned counsel appearing for the revision petitioner, would submit that the petitioner is a beneficiary of N.M. Khajamian Waqf and that the



dispute pertains to properties which were admittedly dedicated as wakf properties.

According to the learned counsel, the beneficiaries had earlier approached the Wakf Board seeking retention of three properties exclusively for charitable purposes and release of the remaining properties from the wakf. Though the Board had initially rejected such request in the year 1982 on the ground that it lacked jurisdiction, a subsequent application came to be entertained and by proceedings dated 21.06.1986, the Board treated the wakf as a composite wakf and purportedly released fifty-four properties from the wakf while retaining only three properties for charitable purposes.

4. The learned counsel would contend that the order dated 21.06.1986 is wholly without jurisdiction and non-est in the eye of law. According to him, neither Section 15(j) nor Section 36A of the Wakf Act, 1954 confers any authority upon the Wakf Board to divest a property of its wakf character. While Section 15(j) merely enables the Board to sanction transactions such as sale, gift, mortgage, exchange or lease, Section 36A only requires prior sanction of the Board for such transactions and does not empower the Board to release or de-notify wakf properties. It is his submission that the Wakf Act contains no provision enabling de-registration or de-notification of wakf properties and therefore the Board acted wholly beyond its statutory powers.



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5. The learned counsel would further submit that having once rejected the request in the year 1982 for want of jurisdiction, the Wakf Board could not have entertained an identical request subsequently and passed the impugned order in 1986. It is contended that the Board possesses no inherent power of review and in the absence of a statutory provision enabling reconsideration of its earlier decision, the subsequent order is void ab initio and incapable of conferring any legal rights upon any person claiming thereunder.

6. The learned counsel would submit that the fundamental principle governing wakf jurisprudence is that once a wakf, always a wakf. According to him, a valid dedication permanently extinguishes private ownership and neither the founder, nor the mutawalli, nor even the Wakf Board can subsequently revoke or alter the essential character of the wakf. Therefore, notwithstanding the order passed by the Board in 1986, the subject properties continued to retain their character as wakf properties and all subsequent transfers, alienations or encumbrances created in respect thereof are equally void and non-est.

7. The learned counsel would further submit that the petitioner had initially approached the Civil Court by filing O.S. No.905 of 2017 seeking injunction against alienation of the properties and thereafter O.S.No.85 of 2019 before the District Court.



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Since the Civil Courts found that the dispute essentially related to wakf properties and that the appropriate remedy was before the Wakf Tribunal, the petitioner was constrained to institute O.A. No.36 of 2021 before the Tamil Nadu Wakf Tribunal. Therefore, the Tribunal was not justified in treating the earlier proceedings as constituting abuse of process of law.

8. The learned counsel would further contend that the respondents filed I.A. No.260 of 2021 under Order VII Rule 11 CPC seeking rejection of the Original Application solely on the ground that the properties had ceased to be wakf properties pursuant to the order of the Wakf Board dated 21.06.1986 and that the said order had not been challenged. According to the learned counsel, the Tribunal travelled beyond the scope of Order VII Rule 11 CPC and erroneously adjudicated disputed questions of fact and law which could be decided only after a full-fledged trial.

9. The learned counsel would submit that while considering an application under Order VII Rule 11 CPC, the Tribunal is required to examine only the averments contained in the Original Application and not the defence projected by the respondents. The question whether the Board had jurisdiction to release the properties, whether the properties retained their wakf character and whether the petitioner possessed a valid



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cause of action are all mixed questions of law and fact requiring adjudication on evidence and could not have been decided at the threshold. It is his submission that limitation is also a mixed question of law and fact, particularly in view of the Wakf Amendment Act, 1984 and Section 107 of the Wakf Act, 1995, which excludes the application of limitation in matters concerning recovery of wakf property.

10. The learned counsel would further contend that an order passed without jurisdiction is a nullity and need not necessarily be challenged separately before relief can be sought. According to him, the Tribunal failed to appreciate that the petitioner's challenge is founded on the absence of jurisdiction in the Wakf Board itself and therefore the validity of the Board's proceedings could not have been presumed while considering an application for rejection of the Original Application. Placing reliance upon various decisions of the Hon'ble Supreme Court and High Courts, the learned counsel would submit that the order of the Tribunal rejecting the Original Application is liable to be interfered with and the matter restored for adjudication on merits.

11. Per contra, Mr. S. R. Raghunathan, learned counsel appearing for the respondents 1, 2, 6, 9 and 11, would submit that the Civil Revision Petition is wholly devoid of merits and that the Tribunal was fully justified in allowing the application



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under Order VII Rule 11 CPC. According to the learned counsel, the petitioner had filed O.A. No.36 of 2021 under Section 83 of the Wakf Act seeking delivery of possession of the suit properties to the Wakf Board and for consequential injunction, despite the admitted fact that the properties had already ceased to be wakf properties pursuant to the proceedings of the Wakf Board dated 21.06.1986.

12. The learned counsel would submit that the Khajamian Wakf is admittedly a Wakf-alal-aulad and that the beneficiaries themselves had approached the Wakf Board seeking release of the properties. Pursuant to such request, the Board, exercising powers under Sections 15(j) and 36A of the Wakf Act, 1954, passed orders on 21.06.1986 retaining three properties for charitable purposes and releasing the remaining properties for the enjoyment of the beneficiaries. Thereafter, a registered Deed of Declaration dated 25.07.1986 was executed by the mutawallis dedicating the three retained properties for charitable purposes in accordance with the Board's directions.

13. The learned counsel would further submit that the petitioner himself claims through the very mutawallis who sought and obtained the order dated 21.06.1986 and therefore cannot now be permitted to question the consequences flowing from the said order. According to the respondents, the pleadings in the Original Application

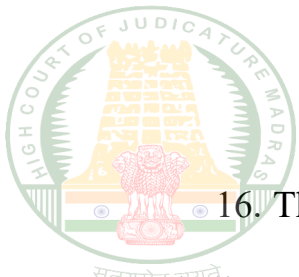


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themselves disclose that the release order was acted upon and that the properties stood released from the wakf. Therefore, the petitioner is estopped from contending that the properties continue to retain their wakf character.

14. The learned counsel would contend that the powers conferred upon the Wakf Board under Sections 15(j) and 36A of the Wakf Act, 1954 were wide enough to permit the Board to sanction transactions relating to wakf properties and the order passed in the year 1986 was a valid exercise of statutory power. It is further submitted that the restrictions introduced under the Wakf Act, 1995, including Section 51(1A), cannot be retrospectively applied to transactions which had attained finality long before the enactment of the 1995 Act.

15. The learned counsel would further submit that once the properties stood released pursuant to the proceedings of the Board and the Deed of Declaration executed thereafter, they ceased to be wakf properties and consequently fell outside the jurisdiction of the Wakf Tribunal. Since the Tribunal derives jurisdiction only in relation to disputes concerning wakf or wakf properties, the Original Application itself was not maintainable and disclosed no enforceable cause of action.

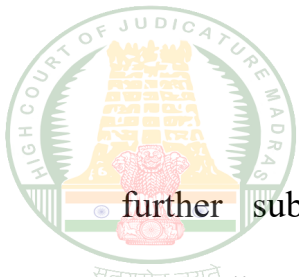


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16. The learned counsel would submit that the petitioner had consciously omitted to challenge the proceedings dated 21.06.1986 in the Original Application and had never pleaded therein that the said order was void or non-est. Having accepted and acted upon the consequences of the said order for several decades, the petitioner cannot now seek to reopen the issue indirectly by invoking Section 83 of the Wakf Act. According to the respondents, the proceedings are clearly barred by delay, laches, acquiescence and estoppel.

17. The learned counsel would further contend that the petitioner has repeatedly initiated proceedings concerning the very same properties by filing O.S. No.905 of 2017, O.S. No.85 of 2019 and other proceedings, thereby subjecting the respondents to continuous and vexatious litigation. The Tribunal was therefore justified in concluding that the present proceedings constituted an abuse of process of law and deserved to be rejected at the threshold.

18. The learned counsel would also place reliance upon subsequent communications and proceedings, including the stand consistently taken by the Tamil Nadu Wakf Board that only three properties continue to retain their wakf character and that the remaining properties stood released pursuant to the proceedings of 1986. It is



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further submitted that the petitioner has subsequently challenged the Board's proceedings in separate writ proceedings and the same would itself demonstrate that on the date of filing of the Original Application, the order of the Board remained valid and operative.

19. Placing reliance upon the principles governing Order VII Rule 11 CPC, particularly the decisions of the Hon'ble Supreme Court in ***Dahiben v. Arvindbhai Kalyanji Bhanusali and Union of India v. N. Murugesan***, the learned counsel would submit that the Tribunal rightly concluded that the petitioner had no subsisting right, no valid cause of action and no legally enforceable claim in respect of the subject properties and therefore the rejection of the Original Application warrants no interference.

20. The present revision had been filed challenging the order of rejecting the plaint holding that the plaintiff, who is the petitioner before this Court, had only an illusory cause of action, as not having challenged the order of the Waqf Board which came into being in the year 1986, and as also being barred by limitation.

21. The primordial contention of the learned counsel appearing for the petitioner is that the order of the Waqf Board of the year 1986 is non-est and the same cannot be



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held against the petitioner. He had also vehemently contended that the plaint ought to have been read as a whole and ought not to have been rejected on the grounds raised by the Respondents, as the plaint clearly discloses a cause of action in favour of the petitioner. It is his further contention that when the order is a non-est order, having been passed without jurisdiction, the question of limitation does not arise.

22. It is not in dispute that when a plaint does not disclose a cause of action, the same could be rejected by application of the provision of Order 7 Rule 11(a) of CPC. It had been admitted to in the plaint that in the year 1986 an order had been passed by the Wakf Board releasing various properties from the purview of the Wakf. It is the claim of the petitioner that the said order is a non est order passed without jurisdiction and hence cannot be put against the petitioner.

23. In that context, it would be useful to refer to the decision of the Hon'ble Apex Court in the judgment in the case of *Union of India v. N. Murugesan* reported in (2022) 2 SCC 25, which in clear terms held that it is a well-settled legal proposition that even if an order is void, it requires to be declared so by a competent forum and it is not permissible for a petitioner to ignore the same merely because, in his opinion, the order passed by the Wakf Board in the year 1986 is an non-est order. The order made in 1986



deals with divesting of properties in the Wakf of which the petitioner claims to be a beneficiary. Under Section 6 of the said Act, the period of limitation to challenge such orders had been shown to be a period of one year from the date of such notification.

24. The present suit had been laid almost after 26 years of the Wakf Board passing an order carving out the properties to maintain the Wakf, on the application of the beneficiaries. On such order being passed, the Wakf-alal-aulad, had been bifurcated into two Wakfs. One Wakf, which became dedicated to God / public charities, which comes under the purview of the Wakf Act, and the other, a private Wakf, leaving properties for the benefit of the family members of the Wakif. Under the Wakf Act, if there has been a notification of the Wakf, listing out the properties belonging to the Wakf, a period of one year had been envisaged to challenge such notification.

25. Admittedly, in the present case, the Wakf Board had exercised its powers as vested with it and had notified three properties to the Wakf. It is further to be noted that the predecessor-in-interest of the petitioner had also participated in such proceedings and had given consent, and thereafter, the predecessor-in-interest and even the petitioner had enjoyed the benefits arising out of such bifurcation by the Wakf Board of the properties that had been earmarked for the private purpose. In such an event, the



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applicant is estopped from challenging the same. That apart, it is an admitted case that, after 1986, the various properties which have been earmarked towards the benefit of the family had been dealt with for the benefit of the family of the Wakif, and the petitioner had not explained as to why he had only moved the original application only with regard to the scheduled property and had left out the other properties dealt with by his predecessors. It is to be noted that the petitioner had not also reserved any rights whatsoever in that regard.

26. As rightly held by the Wakf Tribunal, when the suit property is not within the purview of the Wakf Act, 1994, it cannot exercise its jurisdiction over the same. Further, the primordial issue raised by the petitioner also revolves around the portion of the Wakf, which had been dedicated for the benefit of the family. In that regard, this Court do not find any merits in the revision petition.

27. Accordingly, the revision petition stands dismissed. No costs.

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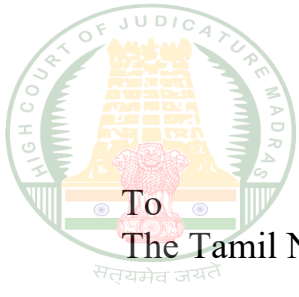
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Index:Yes/No

Speaking order/Non-Speaking order

Neutral Citation:Yes/No

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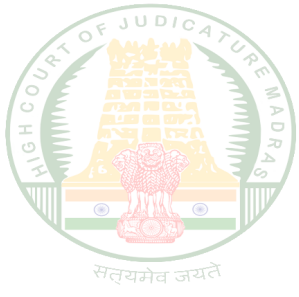


To
The Tamil Nadu Waqf Tribunal, Chennai.

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K.KUMARESH BABU, J.

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