

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST  
REPUBLIC OF SRI LANKA.**

CA/WAKFS/01/2011

Wakfs Board No.WB/SP-197/2010/D

In the matter of an Appeal under Section 755(3) of the Civil Procedure Code read with Section 55(A) of the Muslim Mosque and Charitable Trust or Wakfs Act No.51 of 1956 as amended by Act No:21 of 1962 and Act No:33 of 1982.

1. Al-Hadji Seeni Mohamed Shahul Hameed.
2. Al-Hadji Ahamed Lebbe Abdul Samad.
3. Moulavi Meera Mohideen Uthumalebbe.
4. Ahamed Lebbe Sulaiman Lebbe.

All persons-in-charge of Al-Masjidul Sabooriya, New Road, Kalmunai Kudy-14.

**Petitioners.**

Vs.

1. A.H. Aliyar, No. 139B, Town Hall Road, Kalmunai-14.
2. A.L. Fowzer, No. 316B, Zahira College Road, Kalmunai-14.
3. A.L. Ibralebbe, No. 219/A, New Road, Kalmunai Kudy-13.
4. A.L. Naffeer, No. 232/A, New Road, Kalmunai Kudy-14.
5. M.M.M. Gaffoor, No. 289/B, Balika Lane, Kalmunai Kudy-14.
6. M.H. Jaufer, No. 155/A, Town Hall Road, Kalmunai Kudy-13.
7. M.H.M. Ibrahim, No.94/A, Town Hall Road, Kalmunai Kudy-13.
8. M.H. Issath, No. 252, New Road, Kalmunai Kudy-14.
9. M.M.M. Ramzeen, No. 315, Zahira College Road, Kalmunai Kudy-14.
10. S.H.A. Naleemm No. 242/A, New Road, Kalmunai Kudy-14.
11. U.L. Sainu Labdeen, No. 152/1, New Road, Kalmunai Kudy-13.

**Respondent-Respondents.**

1. Al-Hadji Seeni Mohamed Shahul Hameed.

2. Al-Hadji Ahamed Lebbe Abdul Samad.
3. Moulavi Meera Mohideen Uthumalebbe.
4. Ahamed Lebbe Sulaiman Lebbe.  
All persons-in-charge of Al-Masjidul Sabooriya, New Road, Kalmunai Kudy-14.

**Petitioner-Appellants-  
Appellants.**

Vs.

- 1 .A.H. Aliyar, No. 139B, Town Hall Road, Kalmunai-14.
- 2 A.L. Fowzer, No. 316B, Zahira College Road, Kalmunai-14.
- 3 A.L. Ibralebbe, No. 219/A, New Road, Kalmunai Kudy-13.
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- 8 M.H. Issath, No. 252, New Road,  
Kalmunai Kudy-14.
- 9 M.M.M. Ramzeen, No. 315, Zahira  
College Road, Kalmunai Kudy-14.
- 10 S.H.A. Naleemm No. 242/A, New  
Road, Kalmunai Kudy-14.
- 11 U.L. Sainu Labdeen, No. 152/1,  
New Road, Kalmunai Kudy-13.

**Respondent-Respondents.**

**And now Between.**

1. Al-Hadji Seeni Mohamed Shahul  
Hameed.
2. Al-Hadji Ahamed Lebbe Abdul  
Samad.
3. Moulavi Meera Mohideen  
Uthumalebbe.
4. Ahamed Lebbe Sulaiman Lebbe.  
All persons-in-charge of Al-  
Masjidul Sabooriya, New Road,  
Kalmunai Kudy-14.

**Petitioner-Appellants-  
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**Respondent-Respondents-  
Respondents.**

BEFORE : Sisira de Abrew, J.,  
Anil Gooneratne, J. &  
A.W.A. Salam, J.

COUNSEL : Farook Thahir with A.L.N. Mohamed,  
N.M. Reyaz and N.L. Yusuf for the Petitioners-  
Appellants-Appellants.

M. Yusuf Nasar for the Respondents-Respondents-  
Respondents.

ARGUED ON: 06.05.2013 and 22.01.2014.

DECIDED ON: 26.06.2013<sup>1</sup> and 25.02.2014.

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A W A Salam, J

The Petitioner-Appellants-Appellants (hereinafter referred to as the “appellants”) together with 7 others were appointed as the Trustees of Masjidul Saburiya<sup>2</sup> by the Wakfs Board and upon the expiry of their term of office, they continued to function as persons in-charge of the Masjid and carried on with the management of its affairs. While acting as persons in charge of the Masjid as empowered under Section 14 (3) of the Act, the appellants were re-elected in their previous capacity by the congregation on 24.12.2009, amidst an objection raised by the congregation against the election of one M H M Ibrahim. At that point of time the representative

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<sup>1</sup> Decision on the preliminary objection as regards forum jurisdiction  
<sup>2</sup> Saburiya Mosque

of Wakfs Division who was present at the meeting of the congregation undertook to bring it to the notice of the Wakfs Board. Thereafter, by letter dated 23.2.2010, the Director of the Wakfs Board, requested the Trustees of the Kalmunaikudy Jumma Masjid to administer and manage the Masjid in question for a period of 2 months as the selection made on 24.12.2009, of the Trustees for the particular Masjid could not be completed due to unavoidable circumstances.

Notwithstanding the request made by the Director, the Trustees of the Kalmunaikkudy Jumma mosque had requested the appellants to continue with the administration and management of the said mosque. While the *status quo* remained as such, the appellants received a letter dated 11.5.2010, requesting them to hand over the administration and documents to the Jumma Mosque Kalmunaikkudy, but the appellants had not complied with the said direction as they felt that the direction is contrary to Law. Subsequently, the appellants had visited the Wakfs Division and were informed that the Wakfs Board had appointed 11 Trustees who are the respondents-respondents, referred to hereinafter as "respondents".

Aggrieved by the said decision of the Wakfs Board the appellants preferred an appeal to the Wakfs Tribunal which culminated in its dismissal by the Wakfs Tribunal. Being dissatisfied with the said order of the Tribunal delivered in

the exercise of its appellate jurisdiction on 28.5.2011, the appellants have preferred the present appeal to this court, *inter alia* on the following grounds.

1. That the judgement of the Wakfs Tribunal is contrary to law.
2. At the time the said order dated 5.5.2010 was made appointing the respondents as Trustees, the Wakfs Board was not in existence, and the Director had made the said order allegedly acting for and on behalf of the Wakfs Board, on the basis that he is empowered to do so, under section 9 (8) (b) of the Act.
3. That under section 9 (8) (b) of the Wakfs Act, the Director has no authority or power to appoint Trustees, in as much as only under Section 7 of the Wakfs Act, the Director has some powers.
4. That the Tribunal erred in interpreting section 9 (8) (b) and section 7 of the Wakfs Act when it came to the conclusion that the Director has power to perform the function of the Wakfs Board, in the absence of the Board.
5. In any event the Tribunal has failed to appreciate that the said order dated 5.5.2010 has been made without regard being had to the past practices relating to the appointment of Trustees.

6. The Wakfs Tribunal failed to address its mind to the fact that the said order has been made in violation of the rules of natural justice in that the appellants were not given a hearing by the Wakfs Board.
7. The Wakfs Tribunal has failed to address its mind to the authorities cited by the appellants resulting in a misdirection of law and facts.

There is no dispute that as at the time the Director of the Wakfs Board made order dated 5.5.2010 appointing the respondents as Trustees, the Wakfs Board was not in existence, and he had made the said order purportedly acting for and on behalf of the Wakfs Board, on the basis that he is empowered to do so, under section 9 (8) (b) of the Act.

Section 7 of the Muslim Mosques and Charitable Trusts or Wakfs Act enacts that the term of office of a member appointed to the Wakfs Board shall be three years, unless a particular member vacates his office earlier than 3 years. A member appointed to fill a vacancy occurring otherwise than by effluxion of time shall hold office for the unexpired portion of the term of office of the member in whose place he is appointed. Significantly, as at 5.5.2010 the existence of the Wakfs Board had come to an end by effluxion of time in terms of Section 7 of the Act.

Admittedly, the Act does not empower the Commissioner to appoint Trustees when the Board ceases to function under Section 7 of the Act.

In terms of Section 9 (7) of the Act the Minister in charge of the subject is empowered to dissolve the Wakfs Board if at three consecutive meetings of the Board there is not a sufficient

number of members present to form a quorum for the transaction of business. In the event of a dissolution of the Board under that Section a new board shall be constituted in accordance with the Provisions of Section 5 and 6. When the Board is dissolved by the Minister, until such time a new board is constituted the Director shall exercise the powers and discharge the duties under this Act.

Section 9(7) contemplates a situation where the Wakfs Board is dissolved by the Minister before the expiry of its term. In the instant case it is common ground that the Minister had not dissolved the Wakfs Board under Section 9(7). However, the Director had purported to act under section 9 (8) (b) of the Wakfs Act on the assumption that he is entitled to do so.

It has to be borne in mind that section 7 and section 9 (7) are two separate Sections dealing with two different situations. The former deals with the dissolution of the Board by effluxion of time while the latter contemplates the dissolution by the Minister. As far as the present cases concerned the appointments had been made by the Director consequent upon the tenure of office of the members had come to an end by effluxion of time and not when the Minister had dissolved the Board. As such, the Director concerned was not entitled in Law to exercise powers and discharge the duties of the Wakfs Board and therefore undoubtedly the purported appointments of Trustees made by the Director acting on behalf of the Board is misconceived in Law.

Hence, we are of the opinion that the Wakfs Tribunal had come to an erroneous finding as regards the powers of the Director

when the Board has been dissolved by the Minister. In the circumstances, the order of the Wakfs Board dated 05.05.2010 and the judgment of the Wakfs Tribunal dated 28.05.2011 stand set aside. The Wakfs Board is now directed to take steps to have the Board of Trustees appointed according to Law.

There shall be no costs.

Judge of the Court of Appeal

I agree

Sisira de Abrew, J

Judge of the Court of Appeal

I agree

Anil Gunaratna, J

Judge of the Court of Appeal

NR/-