

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

In the matter of an appeal under and in terms of Section 55A of the Muslim Mosque and Charitable Trusts or Wakfs Act No. 51 of 1956.

CA / WAKFS / 01 / 2017

Wakfs Tribunal No. WT/242/2017

Wakfs Board Case No. WB/7271/2016

1. Abdul Cader Mohamed Nawas
2. Mohamed Rauf Ahamed Rifai
3. Abdul Hassan Mohamed Jabir
4. Mohamed Barry Mohamed Saneet
5. Mohamed Pakeer Mohamed Fasly
6. Abdul Jabbar Mohamed Fahry
7. Mohamed Fassy Mohamed Fairros

The Trustees of AL-RAHMAN
Jumma Mosque,
38, Zavia Lane, Mhagoda,
Beruwala.

**PETITIONER-APPELLANT-
APPELLANTS**

VS.

Ash-sheik Nagoor Pitchai
Muhammad Abu Bakr Siddeeqe
(Madani), We-Uda,
Paragahadeniya.

The Spiritual leader of the
THAREEKA called and known as
JAEATHU ANSARIS SUNNATHIL
MUHAMMADIYYA AND JAMATH
ANSARIS SUNNATHIL
MUHAMMADIYA (JASM)

**RESPONDENT-RESPONDENT-
RESPONDENT**

BEFORE : **M. M. A. GAFFOOR, J.**

COUNSEL : M. Yoosuf Nazar for the Petitioner- Appellant-
Appellants
U Abdul Najeem for the Respondent-Respondent-
Respondent

ARGUED ON : 14.05.2018

WRITTEN SUBMISSIONS
TENDERED ON : 10.07.2018 (by the Respondent)
30.10.2018 (by the Appellants)

DECIDED ON : **09.11.2018**

M. M. A. GAFFOOR, J.

The Petitioner-Appellant-Appellants (hereinafter referred to as the "Appellants") in this case filed this appeal against the judgment delivered on 15.07.2017 by the Wakfs Tribunal, affirming the order made by the Wakfs Board of Sri Lanka dated 08.12.2016 and dismissing the said Appeal.

In this case, the following facts are noteworthy:-

The Respondent-Respondent-Respondent (hereinafter referred to as the "Respondent") and the Appellants had entered in to a Deed of Trust bearing No. 288 dated 03.03.2005, for the purpose of and, inter alia to establish,

- a) A masjid called "Al-Rahman Jummah Mosque";
- b) An Arabic College named Al-Rahman Arabic College;
- c) Uduman Medical Centre and
- d) Al-Rahman burial ground.

The other purposes for which the trust is created are described in Paragraph 2 of the said Deed of Trust (marked as "X4"). Upon the execution of this Deed of Trust No. 288, the Respondent (the Settlor) had been accepted by the Appellants as their religious Leader and in turn the Respondent nominated the Appellants as trustees of Al-Rahman Jummah Mosque. On the recommendation of the Settlor-Respondent, the Wakfs Board had appointed the Appellants as trustees on two consecutive terms; the last term expired on 27.08.2011. Thereafter, the Appellants functioned as person-in-charge, as no trustees were appointed for the said Mosque.

The Respondent stated that he was compelled to delay his new nomination of Trustees to the Wakfs Board until he was able to resolve some new issues (*vide, written Submission of the Respondent, para 19 (a) to (f)*) created by the above said existing persons-in-charge of the said mosque. He further submitted that due to the circumstances enumerated above, the Respondent was forced to take disciplinary action against the trustees of the Al-Rahman Trust by using his power vested him under the said Trust Deed No. 288. Therefore, the Respondent had amended the Deed of Trust No. 288 by executing another Deed of trust No. 3069 dated 11th April 2016 attested by U. A. Mawjooth, Notary Public (marked as "X11").

By this amended Deed of Trust No. 3069 the Respondent removed all 13 persons previously appointed as trustees of Al-Rahman Trust under the Deed of Trust No. 288 and appointed 13 new persons in place of the removed trustees as new trustees of the Trust. Subsequent to executing the new Deed of Trust the Respondent had informed the Wakfs Board of Sri Lanka and the Director, Department of Muslim Religious and Cultural Affairs regarding the changes and he also nominated and recommended to the Wakf Board all 13 newly appointed trustees of Al-Rahman Trust to appoint as new trustees of the said mosque in terms of the provisions contained in the trust instruments referred to above.

While the Settlor's above said nomination of 13 new trustees of the Mosque was under consideration of the Wakf Board, the Appellants filed an application to object the new 13 persons being appointed as trustees of the said mosque (*vide, 54 of the appeal brief*). In the Wakfs Board, the Respondent's Counsel in his oral submissions inter alia objected to the Appellants' application being considered by the Wakfs Board due to patent lack of jurisdiction to grant the substantial reliefs the Appellants were seeking from the Wakfs Board. Counsel for the Appellants also made his oral submission in reply to preliminary objection raised by the Counsel for the Respondent. After hearing of both parties the Wakf Board made an order on 08.12.2016 and dismissed the Appellant's application.

The Appellants thereafter filed an appeal dated 06.01.2017 under and in terms of Section 9H of the Muslim Mosques and Charitable Trusts or Wakfs Act, No 51 of 1965 (Sometimes referred to as the "Wakfs Act") in the Wakf Tribunal, against the order made by the Wakfs Board seeking inter alia some substantive reliefs as contained in their application. (*Vide, page 80 of the Appeal brief*). After hearing the oral and written submissions made by both parties, the Wakfs Tribunal also dismissed the Appellants' appeal.

In the Wakf Tribunal the Appellants sought the following reliefs:

- a) To stay the order issued by the Wakfs Board on 08.12.2016;
- b) To nullify the new deed (Deed of Trust) No. 3069 dated 11.04.2016
- c) To direct the Director of Muslim Religious and Cultural Affairs not to appoint any persons as trustees until the final determination of the case;
- d) To hold an inquiry in this matter and issue a decree to amend the trust deed in order to curb the powers vested to the Respondent in Section (6) in the Trust Deed No. 288
- e) To make order to take necessary steps to appoint Appellants as the Trustees to the Al-Rahman Jummah Mosque.

However, after my careful perusal of the documents contained in the brief, it is crystal clear that the Wakfs Board of Sri Lanka had correctly dismissed the application (including above mentioned reliefs) filed by the Appellants for the reason that it would be *ultra vires* for the Board to entertain the said application, since the Petitioners sought relief under Section 9E (1) of the Wakf Act which is specify the general powers of the Wakfs Tribunal. The learned Chairman of the Tribunal also held that the Appellants were on a misconception of law, had gone before the Wakfs Board with their petition seek the reliefs prayed for in their petition. Because, the Wakfs Board has no jurisdiction to entertain their petition as the matter stated in Section 9E are clearly falling under the **General Powers** of the Tribunal.

“Muslim Charitable Trust is a matter which comes under the jurisdiction of the Wakfs Tribunal and not within the Wakfs Board. Any dispute arising over this matter must be referred to the Tribunal. In this case, the relief asked for to amend clause (6) in the Deed of Trust No. 288 and revoke the new Deed of trust No. 3069 are matters relating to trust which fall within the jurisdiction of the Tribunal...” (Page 6 – Judgment of the Wakfs Tribunal).

Therefore, I am of the view that the Wakfs Tribunal has correctly evaluated the issue.

In this case, the Appellant’s another submission was (in the Wakfs Board and the Tribunal) that the said Deed of Trust No. 3069 should be nullified. The same submission is further demarcated in their written submission (in this Court) as follows:-

“...the Respondent only activating after 6 years to nominate the trustees with malicious intention to insert persons in to trust whom believed in Respondent religious ideology and believes. These matters were placed in the Wakfs Board petitions but Wakf Board failed to take into consideration.” (para 6 (i))

Before dealing this submission/issue made by the Appellants, the following factual substances are important:-

1. The Settlor-Respondent and the Appellants had agreed that the provisions of the Wakfs Act as amended thereafter shall and will apply to the above said trust.
2. It is also admitted by the parties that though this Trust has been created by Deed No. 288, it is not recognized up to now. Only the Al-Rahman Jummah Mosque is registered and the trustees are appointed **only for the mosque and not for the trust**. Therefore, the trust is not a matter for consideration in this case.

Under clause (6) in the Deed of Trust No. 288, the Settlor (its means that *a person who creates a trust-legal arrangement to manage the assets of someone else-and puts money, property, etc. into it*, even so, the Deed No. 288 indicates as "Settler") as stated above, has the powers to:-

- a) Select or nominate the trustee or trustees to be appointed by the Wakfs Board of Sri Lanka in terms of Section 14(1)(A) of the Muslim Mosques and Charitable Trusts or Wakfs Act;
- b) Take disciplinary action against a Trustee or Trustees;
- c) Fill the vacancy and no decision of the Settlor shall be invalidated by reason only of such decision being made pending the filling of any vacancy in the office of Trustees;
- d) The decision of Fatwa of the Settlor shall be final and conclusive on all disputes or ideological controversies and shall not be called in question by the Trustee or Trustees.

Therefore, it is not disputed that in terms of the powers vested in the Settlor-Respondent, he has the sole right and authority to select or nominate the trustees and his decision is final and conclusive and shall not called in question

by the trustees, and therefore, the trustees have no right to question the appointment of the new trustees.

Further, it is important that the Deed of Trust No. 288 does not have any clause or condition for the trustees to amend or vary the terms and conditions of the trust deed, including clause (6). If they want to do any acts as stated in Clauses (3), (4) and (5) they must do so with the written consent of the Settlor-Respondent. Thus the powers of the Trustees are clearly restricted and they cannot do any act without the written consent of the Respondent.

Furthermore, the Settlor has been granted further power that,

“He shall and will from time to time hereafter do and execute or cause to be done and executed all such acts, deeds, matters and thing whatsoever for the further and more perfectly assuring the said trust premises in the Trustees in the manner aforesaid as shall or may be reasonably required” (See: para 3 in page 4 of Deed No.288)

Therefore, as pointed out above, both the Wakfs Board and Wakf Tribunal had followed their correct procedure in making appointment of 13 new Trustees and dismissing the Appellants' appeal. Thus, there is no merit in this appeal and the appellants are not entitled in law to seek any reliefs as prayed for their petition.

Therefore, I affirm the Wakf Tribunal's judgment dated 15.07.2017 and dismiss this appeal without Costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL