

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

CA/WAKFS/02/2016

Wakf Tribunal : WT/227/2016

Wakf Board : WB/6743/2015

In the matter of an appeal made under and in terms of Section 55A of the Muslim Mosque and Charitable Trust or Wakfs Act, No 51 of 1956 as amended read with Section 754 (1) of the Civil Procedure Code as amended.

C. P. Naufer,
No. 754/318, Maligawatta,
Colombo 10

PLAINTIFF

VS

1. Al Haj Moulavi M. H. Nakeeb
2. Al Haj M. H. Aarif
3. Janab A. S. A. Jiffry
4. Al Haj M. Z. M. Ajward
5. Al Haj A. M. Rafeek
6. Al Haj I. S. Jabdeen
7. Janab I. S. Nisthar
8. Al Haj A. S. M. Jinnah
9. Janab T. Abdus Salam
10. Janab M. C. M. Sareefdeen

All of No. 34,
Grand Bazar Jumma
Mohideen Mosque, Jumma
Mosque Lane,
Jaffna.

DEFENDANTS

AND

1. Al Haj Moulavi M. H. Nakeeb
2. Al Haj M. H. Aarif
3. Janab A. S. A. Jiffry
4. Al Haj M. Z. M. Ajward
5. Al Haj A. M. Rafeek
6. Al Haj I. S. Jabdeen
7. Janab I. S. Nisthar
8. Al Haj A. S. M. Jinnah
9. Janab T. Abdus Salam
10. Janab M. C. M. Sareefdeen

All of No. 34,
Grand Bazar Jumma
Mohideen Mosque, Jumma
Mosque Lane, Jaffna.

DEFENDANT-APPELLANTS**VS**

C. P. Naufer,
No. 754/318, Maligawatta,
Colombo 10.

PLAINTIFF-RESPONDENT**AND NOW BETWEEN**

1. Al Haj Moulavi M. H. Nakeeb
2. Al Haj M. H. Aarif
3. Janab A. S. A. Jiffry
4. Al Haj M. Z. M. Ajward
5. Al Haj A. M. Rafeek
6. Al Haj I. S. Jabdeen
7. Janab I. S. Nisthar
8. Al Haj A. S. M. Jinnah
9. Janab T. Abdus Salam
10. Janab M. C. M. Sareefdeen

All of No. 34,
Grand Bazar Jumma
Mohideen Mosque, Jumma
Mosque Lane, Jaffna.

VS

C. P. Naufer,
No. 754/318,
Maligawatta,
Colombo 10.

**PLAINTIFF-RESPONDENT-
RESPONENT**

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

COUNSEL : Hejas Hisbullah for the Defendant-Appellant
Appellants

M. Yoosuf Nasar for the Plaintiff-Respondent-
Respondent

WRITTEN SUBMISSIONS

TENDERED ON : 20.07.2018 (by the Defendant-Appellant
Appellants)

10.08.2018 (by the Plaintiff-Respondent-
Respondent)

ARGUED ON : 06.04.2018

DECIDED ON : 12.12.2018

M. M. A. GAFFOOR, J.

The Muslim Mosque and Charitable Trusts or Wakfs Act, No. 51 of 1956 as amended (hereinafter referred to as the "Act") provides, *inter alia*, for the registration of Mosques, Muslim Shrines and Places of Religious Resort. Confirmation and appointment of Trustees of Registered Mosques are some of the primary duties of the Wakfs Board.

Certain decisions of the Wakfs Board including an order of confirmation and appointment of trustees of a Mosque are appealable to the Wakfs Tribunal. The Members of the Tribunal are appointed by the Judicial Service Commission. It is interesting to note that according to Section 9G of the Act, the Tribunal is obliged to follow the procedure of a District Court and is vested with the power to enforce its decisions as provided for in the Civil Procedure Code. **Every order made by the Tribunal shall be deemed to be an order made by a District Court** and the provisions of the Civil Procedure Code governing appeals from orders and Judgments of a District Court shall, *mutatis mutandis*, apply to and in relation to appeals from orders of the Wakfs Tribunal (*vide Salam, J. in CA/Wakfs/01/2011, Court of Appeal minutes dated 26.06.2013*). For the purposes of dealing with offences of contempt against the authority of the Tribunal, the Provisions of Section 55 of the Judicature Act, No. 2 of 1978, shall, *mutatis mutandis*, apply as though the references therein to a District Court were references to the Tribunal (*vide Section 55A and 55B of the Act*).

Having concisely referred to the duties and the conduct of the affairs of the Board and the Tribunal, now I propose to set out the background to the present appeal in detail.

The Plaintiff-Respondent-Respondent (hereinafter referred to as the "Respondent") made an application before Wakfs Board in 2015, for appointment of trustees to the Muhideen Mosque, Jaffna which application was heard by the Wakfs Board in application bearing No. WB/6743/2015, then Wakfs Board by its order dated 23.04.2015 decided to appoint four persons as special trustees, two from each side, for the period of three months, until the election of permanent trustees for the said mosque. It is also seen from the documents which are contained in the case record, this above order is mainly to constitute a *pro tem* - committee to

make preparations for the election of permanent trustees, as the period of the incumbent trustees was elapsed in December, 2014.

Being aggrieved by the said order of the Wakfs Board, the Defendant-Appellant-Appellants (hereinafter referred to as "Appellants") filed an appeal before the Wakfs Tribunal. In their petition of appeal, the Appellants stated that after the expiry of their period in December 2014, they had taken all steps to hold the meeting of the *jamath* in consultation with the Director of Muslim Religious and Cultural Affairs and they had prepared the list of the members of *jamath* and announced the day for the election of trustees in the mosque to be held on 25.04.2015. They further stated that due to the Wakfs Board order dated 23.04.2015, the Respondent above named became a member of the special committee who has to pay a sum of Rs. 69,000/- as arrears of rent to the mosque. Therefore, the Appellants submitted that if the Respondent or his nominees were appointed as trustees to the said mosque, it will have serious negative impact in the administration and management of the mosque. And they were in a position that in any event, there were no valid reasons for the appointment of special trustees when the Appellants have taken all necessary steps to hold the election for the selection of trustees. On these main grounds, the Appellants were urged the Wakfs Tribunal to set aside the order of the Wakfs Board.

It is clear from the entire proceedings both in the Wakfs Board and Tribunal, the Appellants were not objected to the formation of the committee of selectors for the election of trustees; but they were strongly objected to the nomination of the Respondent.

In the Wakfs Tribunal, after continuous deadlocks between the parties, on 19.03.2016, both parties had agreed to nominate five persons independently, excluding the Appellants and Respondent and both parties

had asked to furnish the names of any suitable persons. Since the parties had failed to give names of suitable persons as agreed, even after several dates were granted thereto, the Wakfs Tribunal has moved for an action that to send the Secretary of the Tribunal to the Mosque (Jaffna) and to find some persons to be nominated into a committee to elect the trustees by the *jamath* of the mosque. The said step finally occurred and the Secretary gave the names of six persons who volunteered to be in the committee, on 14.08.2016, the Secretary and the volunteer (committee) members conducted an election by open vote and nine members were confirmed as members of the election committee (*vide pages 106-107, 48-49 of the Tribunal's record*); and those committee members were directed to conduct an election to select the trustees and also directed not to allow the parties to this case to be candidate for the election of trustees. After this selection, the Wakfs tribunal by its judgment dated 20.08.2016 had directed the Wakfs Board and the Director of Muslim Religious and Cultural Affairs to confirm their appointment as trustees of the mosque for a period of three years from 15.08.2016.

Being aggrieved by the said judgment (dated 20.08.2016) of the learned chairman of the Wakfs Tribunal, the Appellants have preferred this instant appeal to set aside the judgment.

In this appeal, the Appellants' main averment was that,

“When the settlement between the parties failed the Tribunal adopted the unusual step of sending its Secretary to obtain names of persons who would volunteer to function as members of an interim committee.... This direction to have the Secretary to go to Jaffna was a very unfortunate step taken by the Tribunal...” (Emphasized added, para 10 & 11 of the written submission made by the Appellants).

In contrast, Counsel for the Respondent in their argument - citing several judicial authorities and stated that the said order of the Wakfs Tribunal is entered in result of a consent settlement; thereafter Appellants are not entitle to resile the said settlement by the appeal.

After careful perusal of the entire proceedings and the judgment of the learned Chairman of the Wakfs Tribunal, I am sure that the learned Chairman was endeavored to settle the trustees' issue and hold the election of new trustees in a peaceful way. Even though, **I need to evaluate a fact that whether those endeavors done according to law and proper procedures.**

Wakfs Tribunals are established in terms of Section 9D (1) of the Amendment Act No. 33 of 1982 where it is stated that the members of the Tribunal shall be appointed by the Judicial Service Commission. Section 9G provides that in all proceedings under the Act the Tribunal shall follow the procedure of a District Court. It is further provided that the Tribunal shall have all the powers of a District Court as provided for in the Civil Procedure Code in regard to the execution of orders and judgments.

Section 9G reads as follows:

*"In any proceedings under this Act, **the Tribunal shall follow the procedure of a District Court**, and in the execution of its orders and judgments, shall have all the powers of a District Court and the provisions of the Civil Procedure Code, relating to the procedures and powers of execution of a District Court, shall, mutatis mutandis, apply to and in relation to the procedures and powers of execution of the Tribunal."*

Section 55A also introduced by the Amendment Act No. 33 of 1982 states as follows:

“Every order made by the Tribunal shall be deemed to be an order made by a District Court and the provisions of the Civil Procedure Code governing appeals from orders and judgments of a District Court shall, mutatis mutandis, apply to and in relation to appeals from orders of the Tribunal”

(Vide, Halwan and others vs. Kaleelul Rahuman (2000) 3 SLR 50, Rahuman and Two others vs. Trustees of the Mohideen Jumma Mosque (2004) 2 SLR 250).

Therefore, it is crystal clear that according to Wakfs Act, the Tribunal must follow the procedure of a District Court. And Tribunal may have all the powers of a District Court as provided for in the Civil Procedure Code with regard to the execution of orders and judgments.

In this case, the Wakfs Tribunal had moved for an action to send the Secretary of the Tribunal to the Mosque (Jaffna) and to find some persons to be nominated into a committee to elect the trustees by the *jamath* of the mosque. It is quite clear that the Tribunal had acted with an unusual practice which is not laid down by law.

It must always be remembered by adjudicators or judges that the judicial system that prevails in many countries is confrontational and therefore the jurisdiction of the judge is circumscribed and limited to the dispute presented to him for adjudication by the law. Law does not in any way permit the judges to go in to a deep voyage without their parameters and make a finding as he pleases may be or what he thinks right or wrong.

The adjudicator or judge is always in a duty to determine the dispute presented to him and this jurisdiction is circumscribed by that dispute and no more.

According to Section 9H of the Act, the Tribunal have certain powers for the purpose of hearing and determining any appeal made by this section. For these purposes the Tribunal call the record of any proceedings before the Wakfs Board and any documents in the possession of the board and make such inquiries as may be necessary for the purpose of the appeal and, if it thinks fit, to admit or call for any evidence, whether oral or documentary. After hearing of an appeal, the Tribunal shall make order confirming, setting aside or varying the order or decision of the board, or make such other order thereon as it may think fit.

Further, according to Section 9E (1) of the Act, Wakfs Tribunal has been given several (general) powers. The Section states as follows:

“(1) The powers of the Tribunal under this Act shall include the power to hear and determine any application made in respect of a Muslim charitable trust or waifs for an order providing for all or any of the following purposes:

(a) removing from office any trustee of the trust or waifs;

(b) appointing where necessary, a trustee or trustees for the trust or waifs ;

(c) directing the submission of statements of accounts to the Tribunal or the board;

(d) declaring what proportion of the property of the trust or waifs or of the interest therein shall be allocated to any specified object of the trust or waifs ;

(e) settling a scheme for the management of the trust or waifs;

(f) directing the specific performance of any act by the trustee or trustees of the trust of waifs;

(g) declaring any trustee of the trust or waifs guilty of any misfeasance, breach of trust or neglect of duty;

(h) ordering the payment by any trustee of the trust or waifs of any sum to the funds of the trust or waifs by way of damages in respect of any misfeasance, breach of trust or neglect of duty; and

(i) granting such further or other relief arising from the matters specified in paragraphs (a) to (h)..."

In the light of the above mentioned provisions, it is further clear that, the Wakfs Act has not grant any powers that to allow or urge the Wakfs Tribunal to engage any officers in an internal affair of a trustee. The Tribunal may direct and compel the parties to pursue necessary procedures or mandates which are provide in the Wakfs Act.

In these circumstances, I hold that the Wakfs Tribunal has acted in *ultra vires* - without proper authority to form a committee to select a new trustee board.

I have seen from the proceedings in the Wakfs board and Tribunal that the two parties were on continuous deadlocks and they were failed to settle the issue to give their respective names as agreed to form a committee to select a new trustee board; both parties had failed to reach a peaceful settlement in terms of the directions from both Wakfs board and Tribunal. These types of conducts and practices by trustees (who are engaged with (holy) *masjidh* - works) cannot be condoned.

I do not ignore an important fact that, in the Wakfs Tribunal, both parties had agreed to nominate five persons independently, but both parties had failed to give their respective names of suitable persons as agreed to form an independent committee to select a new trustee board to the mosque. The learned Chairman also was enough lenient in granting several dates to do the nomination thereto, even the parties failed to do so, therefore, the learned Chairman decided to send the (without a proper legal authority) Secretary of the Tribunal to the mosque Jaffna and find some suitable persons to be nominated into a committee to elect the trustees.

Therefore, hereby, I set aside the judgment of the Wakfs Tribunal dated 20.08.2016, and direct the Wakfs Board to do the necessary arrangements to re-appoint a special trustees from each side until the election of permanent trustees for the mosque is held.

The both parties of this case are directed to ensure the peaceful selection of such special and permanent trustees.

At this segment, I wish to extend my pen that a *Masjidh*, being the exclusive abode of Allah on earth, deserves some high level of attention by

Muslims. The position enjoys by it requires that its managers must be people of sound faith and high moral integrity. Allah (SWT) says:

"The Masajidh (mosques) of God shall be visited and maintained by such who believe in God and the Last Day, establish regular prayers, and practice regular charity, and fear none (at all) except God. It is they who are expected to be on true guidance." (Chapter 09:18 in the Holy Quran)

Therefore, I also, direct the Wakfs Board to hold inquiries into the allegations and complaint made against the respective persons in accordance with proper procedures without delay.

The Registrar of this Court is directed to forward this case record with a copy of this judgment to the Wakfs Board forthwith.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL