

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

In the matter of an appeal in terms of
section 755(3) of the Civil Procedure
Code.

CA/WAKF/01/2015, CA/WAKF/01/2015 A, CA/WAKF/01/2015 B
Wakf Tribunal Case No: 202/2012

[CA/WAKF/01/2015]

1. S.R.M. Muzammil
2. Aysha Rahuma Kamil Azad
3. M.H.M. Fazlur Rahuman
4. M.T.M. Rafeek

All of:
Cassimia Arabic College,
Mannar Road,
Puttalam

Party Noticed (Lessor)

M.A. Abdullah,
Cassimia Arabic College,
Mannar Road,
Puttalam.

Intervenient Petitioner

Vs.

1. M.N.M. Faleel,
2. Sithy Jehan Ara Nawas,

Both of No. 7, Wasala Lane,
Dehiwela

3. A.H.M. Saleem
4. Sithy Nuwaisa Saleem

Both of No. 11/2A, Thissa
Mawatha,
Melder Place,

Nugegoda.

Party Noticed (Lessee)

Seastar Aquatic Products (Private)
Limited,
No, 7, Wasala Lane,
Dehiwela

Lessee

AND NOW BETWEEN

Seastar Aquatic Products (Private)
Limited,
No. 7, Wasala Lane,
Dehiwela

Lessee-Appellant

Vs.

1. S.R.M. Muzammil
2. Aysha Rahuma Kamil Azad
3. M.H.M. Fazlur Rahuman
4. M.T.M. Rafeek

All of:
Cassimia Arabic College,
Mannar Road,
Puttalam

Party Noticed (Lessor)-Respondents

M.A. Abdullah,
Cassimia Arabic College,
Mannar Road,
Puttalam.

Intervenient Petitioner-Respondent

1. M.N.M. Faleel
2. Sithy Jehan Ara Nawas

Both of No. 7, Wasala Lane,

Dehiwela

3. A.H.M. Saleem
4. Sithy Nuwaisa Saleem

Both of No. 11/2A, Thissa
Mawatha,
Melder Place,
Nugegoda.

**1st, 2nd, 3rd, and 4th Party Noticed
(Lessee)-Respondents**

[CA/WAKF/01/2015 A]

1. S.R.M. Muzammil
2. Aysha Rahuma Kamil Azad
3. M.H.M. Fazlur Rahuman
4. M.T.M. Rafeek

All of:
Cassimia Arabic College,
Mannar Road,
Puttalam

Party Noticed (Lessor)

M.A. Abdullah,
Cassimia Arabic College,
Mannar Road,
Puttalam.

Intervenant Petitioner

Vs.

1. M.N.M. Faleel
2. Sithy Jehan Ara Nawas

Both of No. 7, Wasala Lane,
Dehiwela

3. A.H.M. Saleem
4. Sithy Nuwaisa Saleem

Both of No. 1 1/2A, Thissa
Mawatha,
Melder Place,
Nugegoda

Party Noticed (Lessee)

Seastar Aquatic Products (Private)
Limited,
No, 7, Wasala Lane,
Dehiwela

Lessee

AND NOW BETWEEN

Sithy Nuwaisa Saleem,
No. 1 1/2A,
Thissa Mawatha,
Melder Place,
Nugegoda.

Party Noticed (Lessee)-Appellant

Vs.

1. S.R.M. Muzammil
2. Aysha Rahuma Kamil Azad
3. M.H.M. Fazlur Rahuman
4. M.T.M. Rafeek

All of:
Cassimia Arabic College,
Mannar Road,
Puttalam

Party Noticed (Lessor)-Respondents

M.A. Abdullah,
Cassimia Arabic College,
Mannar Road,
Puttalam.

Intervenient Petitioner-Respondent

Vs.

1. M.N.M. Faleel
2. Sithy Jehan Ara Nawas

Both of No. 7, Wasala Lane,
Dehiwela

3. A.H.M. Saleem

No. 11/2A, Thissa Mawatha,
Melder Place,
Nugegoda.

**1st, 2nd and 3rd Party Noticed
(Lessee)-Respondents**

Seastar Aquatic Products (Private)
Limited,
No, 7, Wasala Lane,
Dehiwela.

Lessee-Respondent

[CA/WAKF/01/2015 B]

1. S.R.M. Muzammil
2. Aysha Rahuma Kamil Azad
3. M.H.M. Fazlur Rahuman
4. M.T.M. Rafeek

All of:
Cassimia Arabic College,
Mannar Road,
Puttalam

Party Noticed (Lessor)

M.A. Abdullah,
Cassimia Arabic College,
Mannar Road,
Puttalam.

Intervenant Petitioner

Vs.

1. M.N.M. Faleel
2. Sithy Jehan Ara Nawas

Both of No. 7, Wasala Lane,
Dehiwela

3. A.H.M. Saleem
4. Sithy Nuwaisa Saleem

Both of No. 1 1/2A,
Thissa Mawatha,
Melder Place,
Nugegoda.

Party Noticed (Lessee)

Seastar Aquatic Products (Private)
Limited,
No, 7, Wasala Lane,
Dehiwela.

Lessee

AND NOW BETWEEN

1. M.N.M. Faleel
2. Sithy Jehan Ara Nawas

Both of No. 7, Wasala Lane,
Dehiwela

3. A.H.M. Saleem

No. 1 1/2A, Thissa Mawatha,
Melder Place,
Nugegoda.

Party Noticed (Lessee)-Appellants

Vs.

1. S.R.M. Muzammil

2. Aysha Rahuma Kamil Azad
3. M.H.M. Fazlur Rahuman
4. M.T.M. Rafeek

All of:
Cassimia Arabic College,
Mannar Road,
Puttalam

Party Noticed (Lessor)-Respondents

M.A. Abdullah,
Cassimia Arabic College,
Mannar Road,
Puttalam.

Intervenient Petitioner-Respondent

4. Sithy Nuwaisa Saleem
No. 11/2A,
Thissa Mawatha,
Melder Place,
Nugegoda

**4th Party Noticed (Lessee)-
Respondent**

Seastar Aquatic Products (Private)
Limited,
No. 7, Wasala Lane,
Dehiwela

Lessee-Respondent

Before: **M. T. MOHAMMED LAFFAR, J. and
S. U. B. KARALLIYADDE, J.**

Counsel: N.M. Reyaz for the Petitioner.

M. Yoosuff Nasar for the Respondents.

Argued on: 13.01.2022.

Written Submissions on:

Decided on: 04.05.2022.

MOHAMMED LAFFAR, J.

These appeals have been preferred against the judgement of the Wakfs Tribunal dated 21.03.2015. Of consent, these appeals have been consolidated.

There are several grounds of appeal set out in the petitions of appeal filed by the Appellant. However, at the argument of these appeals, the learned Counsel for the Appellants confined the argument only to the question of law which is delineated as follows;

“Whether the impugned judgment of the Wakfs Tribunal dated 21.03.2015 is liable to be set aside in limine, on the basis that the Wakf Tribunal failed to adhere to the provisions of the Civil Procedure Code in terms of section 9G of the Muslim Mosques and Charitable Trusts or Wakfs Act, No. 51 of 1956 (as amended).”

It is the contention of the learned Counsel for the Appellants that *in terms of section 9G of the said Act, the Wakf Tribunal shall follow the procedure of a District Court with regard to the inquiries and trials.* In the instant case, the Tribunal totally failed to adhere to the said section, and therefore, all the proceedings before the Tribunal in relation to these appeals are bad in law and liable to be set aside *in limine.*

The contention of the learned Counsel for the Respondents was that, *in terms of section 9G of the said Act, the Tribunal shall follow the procedure of a District Court only pertaining to the execution of its orders and judgments and the Tribunal is not bound to adopt the procedure in a District Court as to the inquiries and trials.* The learned Counsel for the Respondents further contended that the foregoing preliminary legal objection cannot be perpetuated on the footing that the Appellants either have not taken up such an objection before the Tribunal or set out such a ground of appeal in the petitions of appeal.

Section 9G of the Muslim Mosques and Charitable Trusts or Wakfs Act, No. 51 of 1956 (as amended) reads thus;

“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.”

Having scrutinized the said section 9G of the said Act, the following matters have been clarified without any ambiguity.

- (1) The Tribunal **shall** follow the procedure of a District Court in respect of all the proceedings.
- (2) The Tribunal **shall** have all the powers of a District Court in respect of the execution of its orders and judgments in accordance with the provisions of the Civil Procedure Code.

According to Section 9G of the Act, it is apparent that 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.

In *Shahul Hameed and Others v. Aliyar and Others*, CA/Wakfs/01/2011, CA Minutes of 26.06.2013, Salam, J. (agreeing with Ani Gooneratne and Sisire de Abrew JJ.), at page 7 echoed the same sentiments as follows:

“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. 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 Tribunal....”

Moreover, 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 sections 55A and 55B of the Act).

As such, to my mind, the argument advanced by the learned Counsel for the Respondent stating that the Tribunal is bound to follow the Civil Procedure Code only with regard to the execution of its orders and judgments is devoid of merits.

Admittedly, in the instant case, the Tribunal has not adhered to the provisions of the Civil Procedure Code in conducting the inquiry/trial in dispute. The pleadings were not filed in accordance with the Civil Procedure Code and the inquiry/trial was not held as per the provisions of the said Code. In these respects, it is manifestly clear that the impugned judgment of the Wakf Tribunal is illegal and bad in law. As such, it is the considered view of this Court that the impugned judgment is liable to be set aside on that ground alone.

The aforesaid ground of appeal advanced by the learned Counsel for the appellants is a pure question of law, and therefore, the same can be taken up in appeal at any time though this issue was not raised before the Tribunal and not set out in the petitions of appeal.

For the above reasons, I allow the appeal with costs fixed at Rs. 15,000/ and set aside the judgment of the Wakf Tribunal dated 21.03.2015.

I direct the Wakf Tribunal to hold an Inquiry/Trial *de novo* in accordance with the provisions of the Civil Procedure Code read with section 9G of the Muslim Mosques and Charitable Trust or Wakfs Act No. 51 of 1956 (as amended).

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

S. U. B. KARALLIYADDE, J.

I agree.

JUDGE OF THE COURT OF APPEAL