

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

In the matter of an appeal from the
Order of the Wakf Tribunal.

**Court of Appeal Case No.
CA/WKF/04/19**

Wakf Tribunal Case No:
WT/250/2017

Wakf Board Case No:
WB/4825/2007

01. M.IM. Amanullah
02. M.J.M. Hakil
03. A.H.M. Ashar
04. M.S.M. Nasar – Deceased
05. A.P.M.M. Samsudeen
06. A.M. Sahabdeen
07. M.S.M. Mubarak

The Trustees of “Hisbul Kadiraiya Jumma
Mosque, Bammana, Narangoda”.

PETITIONERS

-VS-

01. A.H.M. Misrulafi
02. A.L.M. Mansoor
03. M.S.M. Nisam
04. M.S.M. Ramees
05. A.H.M. Rafaideen
06. M.A.M. Nasoordeen
07. M.H.M. Rikas
08. A.R.M. Amzam
09. A.R.M. Zarook
10. M.I.M. Anwar
11. M.R.M. Ishaque

The Trustees of "Jamaiuth Thawheedh
Jummah Mosque, Bammana, Narangoda".

RESPONDENTS

AND

01. A.H.M. Misrulafi
02. A.L.M. Mansoor
03. M.S.M. Nisam
04. M.S.M. Ramees
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The Trustees of "Jamaiuth Thawheedh
Jummah Mosque, Bammana, Narangoda".

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The Trustees of "Hisbul Kadiraiya Jumma
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PETITIONER-RESPONDENT- RESPONDENTS

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

Counsel: M. Shihar Hassan for the Respondent-Appellant-Appellants.

Irfana Imran for the 1st, 2nd, 3rd, 6th and 7th Petitioner-
Respondent-Respondents

Argued on: 06.10.2022

Written Submissions on: 20.08.2021
by Respondent-Appellant-Appellants

24.12.2021
by Petitioner-Respondent-Respondents

Decided on: 18.01.2023

MOHAMMED LAFFAR, J.

The Respondent-Appellant-Appellants (hereinafter referred to as 'Appellants') preferred this appeal against the Order of the Wakf Tribunal of Sri Lanka dated 16.02.2019 in case bearing No. WT/250/2017 (being an appeal from the Wakf Board Case No: WB/4825/2007), whereby the appeal of the Appellants was dismissed. The Appellants sought to set aside the said Order of the Wakf Tribunal and also the Order of the Wakf Board of Sri Lanka dated 05.01.2017 in WB/4825/2007.

Following written submissions of the Appellants being filed on 20.08.2021 and written submissions of the Petitioner-Respondent-Respondents (hereinafter referred to as 'Respondents') being filed on 24.12.2021; the argument concluded on 06.10.2022.

The primary basis of this case involves the cancellation of the registration of the 'Jamiuth Thowheed Jumma Mosque' situated in Bammanna, Narangoda and thereby declaring it null and void. Further, the appointment of 11 trustees of the said mosque was also cancelled removing them from the post of trustees of the said mosque.

The Appellants had submitted documentation to the Department of Muslim Religious and Cultural Affairs for the registration of 'Jamiuth Thowheed Jumma Mosque' and the Wakf Board caused registration (at page 99) of the said mosque on or about 08.07.2007 as a Jumma Mosque. Accordingly, eleven members were appointed as Trustees of the said Mosque.

However, the Respondents by Petition to the Wakf Board in 2007 in case No: WB/4795/2017 (at page 113) claimed that the registration of the said mosque was caused by a mistake of law or fact.

After extensive proceedings and hearings for a decade, including site visits being made by Officers, the Wakf Board in its Order dated 05.01.2017 (at page

189) determined that the Board has caused the said mosque to be registered by reason of applying the wrong provision and therefore in terms of section 13(c) of the Wakf Act, the Board revoked the registration of the said mosque and appointment of the trustees. It is observed that the Wakf Board had arrived at its conclusion on the basis that the said premises is not a mosque but an Islamic Centre and that the primary purpose of its declaration of trust is Charitable and not solely for the purpose of a Jummah Mosque. It is also stated that the Board should have considered the Application under Part V of the Wakf Act i.e. as a Muslim Charitable Trust or "Wakf" instead of registration as a Mosque in terms of section 10.

Being aggrieved by the said Order of the Wakf Board , the Apellants appealed therefrom to the Wakf Tribunal through a Petition dated 23.03.2017 (at page 128). However, the Wakf Tribunal affirmed the Order of the Wakf Board cancelling the registration of the said mosque under the No. R/1928/KU/160, as a jummah mosque since the registration has been effected on misrepresentation of facts and was an erroneous act on the part of the Wakf Board by its Order on or about 16.02. 2019 (at. Page 218). It is my view that the learned Chairman of the Wakf Tribunal has analysed all pertinent facts material to this case in detail to arrive at this conclusion. The attention of Court is drawn towards the finding that the Application form for registration of the the mosque contained unsatisfactory information, especially as the answers to clauses 2, 6, 7, 8, 8(a), 9(b) &9 (c).

At this juncture, I also wish to reiterate the fact that when an Application is made to register a mosque in an area, whilst another mosque is in existence, the Wakf Board has a duty to carefully examine Applications for registration of another mosque and ensure that all criteria to such registration are properly fulfilled in terms of the law prior to any registration.

This Court is also mindful of the fact that the Appellants were asked to find some suitable place for their worship and to shift the present mosque to that

place. Despite proceedings of the Tribunal being postponed on this basis, have failed to arrive at a solution.

The governing instruments with regard to this dispute are the Deed of Declaration of Trust No. 148, dated 02.08.2002 and No. 1455 dated 29.09.2004 attested by S.A.C. Ali Sabry and A.S.M. Minvar, Notary Public respectively. Upon perusing the provisions of the said indentures submitted for registration of the mosque, it is apparent that the extensive objectives of the said property is deemed to be a 'Muslim Charitable Trust' or 'Wakf' and has to be registered as such in terms of Part V of the Wakf Act and does not merit registration as a mosque in terms of section 10 of the Act.

Further it is also noted that the said property was not opened for public worship at the time the application for registration was submitted.

The Court observes the following provisions of the Wakf Act in this regard:

Section 10 - Application for registration of mosques.

*(1) The trustee for the time being of a mosque, or if there is no such trustee, the person for the time being in charge of a mosque, **opened for public worship** before the appointed date shall, within six months after that date, make a written application to the Board for registration of that mosque.*

*(2) The trustee for the time being of a mosque, or if there is no such trustee, the person for the time being in charge of a mosque, **opened for public worship** on or after the appointed date shall, within six months after the date on which that mosque is so opened, make a written application to the Board for registration of that mosque.*

Section 13C. - Power of Board to cancel the registration of a mosque which had been registered by reason of a mistake of law or of fact

*If at any time the Board is satisfied that **it has caused a mosque to be registered by reason of a mistake of law or of fact**, it shall be lawful for the Board to cause the entry relating to that mosque to be deleted from the register of mosques, and such mosque shall be deemed to be not registered with effect from the date of such deletion.*

In the above pretext, having considered all facts, documentation and circumstances of the case, it is my considered view that the cancellation of the registration of the said mosque by the Wakf Board in terms of section 13(c) is rightful, as the registration in the first instance was caused by reason of a mistake of law and fact. Therefore, I affirm the Order of the Wakf Tribunal of Sri Lanka dated 16.02.2019 in case bearing No. WT/250/2017.

For the above reasons, I dismiss the appeal of the Appellants.

I make no Order as to costs.

The Registrar is directed to communicate this judgement to the Wakf Board and Wakf Tribunal, and to dispatch the original case record to the Wakf Tribunal.

JUDGE OF THE COURT OF APPEAL

S. U. B. Karalliyadde, J.

I agree.

JUDGE OF THE COURT OF APPEAL