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

Notice of Appeal under Section 755(1) of the Civil Procedure Code read and construed with Section 55A of the Muslim Mosque and Charitable Trusts or Wakfs Act No. 51 of 1956 as amended by Act No. 21 of 1962 and Act No. 33 of 1982

Court of Appeal Case No:
CA/WKF/05/2019
Wakf Tribmunal Appeal No:
WT/257/2018
Wakf Board Case No:
WB/7317/2017

1. M.M.M. Arshad,
2. A.R.M. Jismy,
3. M.H.M. Miflal,
4. M.N.M. Naveer,
5. A.R.M. Hanoos,

All are persons in charge of Mohideen Jumma Mosque,
Katugoda,
Galle.

Respondent-Respondent-Appellants

-Vs-

1. R.G.M. Raaji,
   No. 65/2,
   Mosque Road,
   Katugoda, Galle.

2. M.M. Irshad,
   No. 22/B,
   3rd Lane, Katugoda,
   Galle.

3. M.A.M. Fairoos,
   No. 28, Akurassa Road,
   Katugoda,
   Galle.

Petitioner-Appellant-
Respondents

4. M.Z.M. Shamil,
   No. 70, Runchiwatte,
   Katugoda,
   Galle.

5. A.M.M. Rafik,
   No. 323/4,
   Matara Road,
   Katugoda, Galle.

Respondents-Respondents-
Respondents

Before :   **A.L. Shiran Gooneratne J.**

&

Dr. Ruwan Fernando J.

Counsel :	Mohamed Nazar with Ameen Salman and Pramuditha Hennadige for the Respondent-Respondent-Appellants.
	Petitioner-Appellant-Respondents absent and unrepresented.
Written Submissions:	By the Respondent-Respondent-Appellants on 14/10/2019
Argued on :	24/02/2020
Judgment on :	**10/07/2020**

A.L. Shiran Gooneratne J.

The Respondent-Respondent-Appellants (hereinafter referred to as the Appellants) have invoked the jurisdiction of this Court, *inter- alia*, to set aside the order made by the Wakfs Tribunal dated 16/03/2019. When this case was taken up for argument, the learned Counsel for the Appellants moved that the case be decided on written submissions filed of record.

By this application, the Appellants seek to affirm the order of the Wakfs Board dated 04/01/2018, appointing the Appellants as Trustees of Muhiyadeen Jumma Mosque, Katugoda, Galle for a period of 3 years effective from 01/05/2016. The Petitioner-Appellant-Respondents appealed against this order to the Wakfs Tribunal and the appeal was allowed. The Appellants are before this Court to have the said order made by the Wakfs Tribunal set aside.

By instrument of appointment of Trustees marked "P1" issued under Section 14(1) of the Wakfs Act No. 51 of 1956 (as amended) the Wakfs Board appointed the Appellants as trustees of the Muhiyadeen Jumma Mosque for a period of 3 years from 01/05/2016 - 30/04/2019. The order made by the Wakfs Board dated 04/01/2018, which the Appellants seek to uphold clearly states that *"the Board decides to accept the said election and appoint the members elected as trustees for the period of 3 years commencing the date of election"*.

Therefore, in terms of the said instrument of appointment, all 5 Appellants ceased to hold office on 30/04/2019, as trustees of the said Muhiyadeen Jummah Mosque.

In *Halwan and Others Vs. Rahaman and Others (1993) 1 SLR 201*, Ananda Grero, J. held that,

"No doubt the Respondents-Respondents were not able to function as Trustees due to certain actions taken by the Petitioners. Whatever may be the reason the fact remains, that the term of office of the Respondents-Respondents expired on 25.06.91. According to Section 14(2)(a) of the Act, only a person appointed as a Trustee shall officiate as Trustee for such period as provided for by the practices, rules, regulations, or other arrangements in force for the administration of the mosque........ Therefore the provisions of the aforesaid section permit the trustees to function for a period of three years. Once such period expires then again the

Trustees have to be selected or nominated according to the practices, rules, etc., as contemplated in Section 14(1)(a) of the Act."

In the circumstances, all 5 Appellants have ceased to hold office on 30/04/2019 as trustees of the said Jummah Mosque.

Accordingly, the Appeal is dismissed without costs.

Parties in CA-RV-01/2019, have agreed to abide by the judgment delivered in this case.

JUDGE OF THE COURT OF APPEAL

Dr. Ruwan Fernando, J.
I agree.

JUDGE OF THE COURT OF APPEAL