

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

In the matter of an application for Restitution,
in the nature of *Restitutio-In-Integrum* under
and in terms of Article 138 of the Constitution
of the Democratic Socialist Republic of Sri
Lanka.

Court of Appeal

Case No: RII 0006/2023

Wakfs Tribunal

Case No. WT/291/2023

Wakfs Board

Case No. WB/5594/2021

M.H. Mohideen Abdul Cader
Masjidul Abrar, Maradana, Beruwela

Appellant

Vs.

1. Dr. A.H.M. Marjan,
No. 28, Buhari Thakkiya Road, Beruwela.
2. A.H.M. Huzaif,
Yoosuf Avenue, China Fort, Beruwela.
3. M. Jabir Mohamed,
No. 25, Perera Road, China Fort, Beruwela.
4. A.H.M. Athaulla,
No. 41, Perera Road, China Fort, Beruwela.
5. Mohamed Riza
No. 34, Bakir Marikkar Avenue, Beruwela.
6. Dr. A.A.A.Azwar,
7. Dr. M.R. Fasloon Lizan,
8. M.N.M. Yakooth,
9. Z.A.M. Kaleel,
10. A.W.M. Ajward,

All of:

Masjidul Abrar, Maradana, Beruwela

11. M.A.M. Hanafy,
‘Farwin Manzil’, Marikkar Place,
Maradana, Beruwela.

Respondents

And Now Between

1. Dr. A.H.M. Marjan,
No. 28, Buhari Thakkiya Road, Beruwela.

Correct address:

No. 23, Buhari Thakkiya Road, Maradana,
Beruwela.

2. A.H.M. Huzaif,
Yoosuf Avenue, China Fort, Beruwela.
3. M. Jabir Mohamed,
No. 25, Perera Road, China Fort, Beruwela.
4. A.H.M. Athaulla,
No. 41, Perera Road, China Fort, Beruwela.
5. Mohamed Riza,
No. 34, Bakir Marikkar Avenue, Beruwela.
6. M.A.M. Hanafy,
‘Farwin Manzil’, Marikkar Place,
Maradana, Beruwela.

**1st, 2nd, 3rd, 4th, 5th and 11th Respondent-
Petitioners**

Vs.

M.H. Mohideen Abdul Cader
Masjidul Abrar, Maradana, Beruwela.

Appellant-Respondent

1. Dr. A.A.A. Azwar,
2. Dr. M.R. Fasloon Lizan,
3. M.N.M. Yakooth,
4. Z.A.M. Kaleel,
5. A.W.M. Ajward,

**6th, 7th, 8th, 9th and 10th Respondent-
Respondents**

Before : R. Gurusinghe J
&
M.C.B.S. Morais J

Counsel : Razik Zarook P.C. with Chanakya Liyanage
Instructed by M.R.M. Dhailamy
for the Petitioner

M.Y. Nasar with M.N.M. Israth
Instructed by Eksith Madawala
**for the Appellant-Respondent and
6th, 9th and 10th Respondent-Respondents**

Argued on : 10-10-2024
Decided on: 19-12-2024

R. Gurusinghe

This application relates to administration of Masjidul Abraar, a mosque (Hereinafter referred to as the 'Mosque') situated at Maradana, Beruwela. The 1st to 5th petitioners are the Trustees of the above-mentioned Mosque, appointed by the Wakfs Board of Sri Lanka on 14-03-2023. The 6th petitioner is the Chairman of the *Jamaat* Council of the Mosque.

The appellant-respondent and the 6th to 10th respondents were Special Trustees appointed by the Wakfs Board for one year from 22-10-2020.

The Wakfs Board appointed the 1st to 5th petitioners as Trustees of the said Mosque on 14-03-2023. The petitioners assert that on 22-03-2023, the respondents, who were special Trustees, handed over the management of the

said mosque to the petitioners. The petitioners' position is that the handing over of the administration took place in a very cordial manner, and the 1st respondent addressed the *Jamaat* (congregation) by public announcement apparatus and wished the petitioners well.

However, on the very next date, 23-03-2023, the appellant-respondent, one of the special Trustees whose term had expired long ago, filed an appeal to the Wakfs Tribunal against the order of Wakfs Board dated 14-03-2023. The Wakfs Tribunal granted an *ex-parte* stay order restraining the petitioner from managing the Mosque. Further, the Tribunal ordered the issuance of notice on the petitioners' returnable on 13-05-2023, which is seven weeks later than the date of the stay order. The petitioners' position is that having obtained an *ex-parte* stay order the respondents attempted to take control and manage the Mosque. However, the *Jamaat* had revolted, a tense situation arose, and the breach of peace ensued.

The petitioners further state that they appeared before the Tribunal on 01.04.2023. However, proceedings were terminated without giving them a fair hearing on a purported settlement.

After that, the petitioners filed this application before this court on 04-04-2023. Considering the petition, affidavit documents and the submissions made on behalf of the petitioners, this court issued an interim order as prayed for in paragraph (c) of the prayer to the petition. The respondents have filed their objections to the petitioners' application and took up several preliminary objections. After inquiry, this court overruled the respondents' preliminary objections and extended the interim order until the final determination of this application.

The petitioners have submitted that since the appellant-respondent was not a party before the Wakfs Board and therefore, has no *locus standi* to file an appeal before the Wakfs Tribunal. The petitioners specifically pleaded in their petition that the appellant before the Tribunal was not a party before the Board. However, the respondents have omitted to answer that.

The petitioners have also submitted that the order made on 23-03-2023 by the Wakfs Tribunal is contrary to the provisions of the Muslim Mosque and Charitable Trust or Wakfs Act No. 51 of 1956.

Petitioners have also submitted that the order made by the Wakfs Tribunal on 01-04-2023 is wrong, procedurally flawed and contrary to the law. They also submitted that the parties had no authority to enter into the said

purported settlement as the appellant was not a party before the Board. Further, they submitted the documents produced before the Tribunal, which were altered and did not truthfully reflect the proceedings of the Wakfs Board. Furthermore, they have submitted that the petitioners were denied a fair hearing at the proceedings in the Tribunal.

Counsel appeared for the petitioners before the Wakfs Tribunal on 01-04-2023 and submitted to the Tribunal that the appellant was not a party to the case before the Wakfs Board and, therefore, had no right of appeal to come before the Tribunal. Without taking a decision on this objection, the Tribunal terminated the proceedings on the basis that the matter was settled.

A similar situation arose before the Wakfs Tribunal in the Katharagama Jumma Mosque Shrine and Muslim Pilgrim Rest, Case No. WT/228/2015 decided on 09-01-2016, the same Chairman of Wakfs Tribunal decided that only a party to the proceedings before the Wakfs Board can appeal against an order of the Wakfs Board to the Wakfs Tribunal. In that case, the appellant was a trustee appointed for a certain period, which elapsed at the time of inquiry before the Wakfs Board. The Wakfs Tribunal decided that since the appointed period of time had already expired, the appellant was not a necessary party and not an aggrieved person. In this matter, the appellant-respondent's status is precisely the same.

The appellant-respondent was a Special Trustee appointed for a period of one year from 22-10-2020. His term expired on 22-10-2021. Inquiry before the Wakfs Board was on 14-03-2023, which is more than one and a half years after the expiry of the term of previous Trustees. In the present matter, the Wakfs Tribunal, ignoring the objections taken up by the petitioner, hurriedly gave relief to the appellant-respondent, contradicting the position taken up by the Wakfs Tribunal in the above-mentioned Katharagama Jumma Mosque case. The decision of that case is reported on pages 318 to 322 in Mr U.L.M. Majid's book titled "WAQF LAW AND MANAGEMENT OF AWQAF AND MOSQUES".

Though five other Trustees were appointed along with the appellant-respondent, only the appellant-respondent appealed against the decision of the Wakfs Board to the Tribunal. The respondent-appellant did not state that he should have been appointed a Trustee of the Mosque or that the Trustees appointed by the Wakfs Board were not suitable or qualified to be Trustees.

The Petitioner-Trustees were appointed by the Wakfs Board on the recommendation of the Chairman of the *Jamaat* Council of the Mosque. There was no allegation that the Wakfs Board had appointed new Trustees contrary to the past practice of appointing Trustees to the Mosque.

Section 9G of the Wakfs Act is as follows:

9G. *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.*

Wakfs Tribunal is required to follow the provisions in the Civil Procedure Code by the provisions of section 9G of the Wakfs Act. According to the provisions of the Civil Procedure Code, an injunction order cannot be granted *ex-parte*. Only an enjoining order could be granted *ex-parte* for a period not exceeding 14 days in the first instance.

Section 664 (2) of the Civil Procedure Code is as follows:

(2) Where it appears to Court that the object of granting an injunction would be defeated by delay, it may until the hearing and decision of the application for an injunction, enjoin the defendant for a period not exceeding fourteen days in the first instance, and the Court may for good and sufficient reasons, which shall be recorded, extend for periods not exceeding fourteen days at a time, the operation of such order. An enjoining order made under these provisions shall lapse upon the hearing and decision of the application for the grant of an injunction.

Even in the Supreme Court or in the Court of Appeal, stay orders are not granted without notice to the respondent. In an urgent matter, interim orders are granted *ex-parte* and are only valid for fourteen days. In this matter, the Wakfs Tribunal has granted an interim order suspending the order of the Wakfs Board without notice to the petitioners for a period exceeding seven weeks. This is contrary to the express provisions of section 9G of the Wakfs Act.

The petitioners have submitted letters from Moulavi Ilyas (Qadir), who served as the Imam of Masjidul Abraar Jumma Masjid, Mohamed Nisar Mohamed Nishath, who also had been serving as the Imam of the Mosque and Abul Hasan Mohamed Nayeem who served as the Muazzin (the one who calls the

public for prayer) for a very long time certifying that as per the Wakfs Board decision subsequent to the Isha prayer on 23-03-2023. The previous Special Trustees have handed over the Masjid to the new Board of Trustees and made a public announcement that they would extend their support to the new Trustees. It is also evident that petitioner are administering the mosque from the submissions made on behalf of the appellant-respondent on 01st April 2023 before the Wakfs Tribunal.

As the administration of the Mosque was handed over to the new Trustees (the petitioners) in public on 22-03-2023 without any dispute the administration of the Mosque was in the hands of the petitioners. Wakfs Tribunal wanted the status quo to remain. The status quo on 22.03.2023 is that the petitioner trustees are in charge of the mosque.

For the reasons stated above, the impugned decisions made by the Wakfs Tribunal on 23-03-2023 and 01-04-2023 in WT/291/2023, are not valid in law. Therefore, we set aside those two orders of the Wakfs Tribunal.

Judge of the Court of Appeal.

M.C.B.S. Morais J.
I agree.

Judge of the Court of Appeal.