

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

In the matter of an Application for Leave to Appeal from the order of the Wakfs Tribunal made in terms of Section 55A of the Muslim Mosques and Charitable Trust or Wakfs Act read with Section 754 (2) of the Civil Procedure Code.

WB Case No :

WB/8604/2020

WT Case No :

WT/284/2022

**Court of Appeal Case No:
CA/LTA/09/2022**

- 1. N.M.M. Sabarulla**
No. 121/1, Maanaeriya
Kochchikade.
- 2. M.B.M. Huwailidu**
No.17/78, Lurdu Mawatha
Kochchikade.
- 3. B.M.M. Sultan**
No. 28/14, Church Road,
Kochchikade.
- 4. A.U.L.M. Fawser**
No.117. Henmulla,
Kochchikade.
- 5. B.M. Azmi**
No.117, Henmulla.
Kochchikade

Petitioners

Vs

- 1. Nasoordeen Faleel Rizan**
Sultana Hotel,
Kochchikade.
- 2. Nasoordeen Kishar Hayath Khan**
Sultana Hotel
Kochchikade.

3. Abdul Rahuman
No.68, Pallansena Road,
Kochchikade.

4. Mubarak Mohamed Marzook
Guruge Watta, Maanaeriya,
Kochchikade.

Respondents

AND BETWEEN

1. Nasoordeen Faleel Rizan
Sultana Hotel,
Kochchikade.

2. Nasoordeen Kishar Hayath Khan
Sultana Hotel.
Kochchikade.

3. Abdul Rahuman
No.68, Pallansena Road,
Kochchikade.

Respondents-Appellants

VS

1. N.M.M. Sabarulla
No. 121/1, Maanaeriya,
Kochchikade.

2. M.B.M. Huwailidu
No.17/78, Lurdumawatha,
Kochchikade.

3. B.M.M. Sultan
No. 28/14, Church Road,
Kochchikade.

4. A.U.L.M. Fawser
No.117, Henmulla,
Kochchikade

5. B.M. Azmi
No.117, Henmulla,
Kochchikade.

Petitioner-Respondents

6. Mubarak Mohamed Marzook
Guruge Watta, Maanaeriya,
Kochchikade.

Respondent - Respondent

AND NOW BETWEEN

1. Nasoordeen Faleel Rizan
Sultana Hotel,
Kochchikade.

2. Nasoordeen Kishar Hayath Khan
Sultana Hotel,
Kochchikade.

3. Abdul Rahuman
No.68, Pallansena Road,
Kochchikade.

Respondent-Appellant-
Petitioners

Vs

1. N.M.M. Sabarulla
No. 121/1, Maanaeriya,
Kochchikade.

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No.117, Henmulla.
Kochchikade.

5. B.M. Azmi
No.117, Henmulla
Kochchikade

Petitioner-Respondent- Respondents

6. Mubarak Mohamed Marzook
Guruge Watta, Maanaeriya,
Kochchikade.

Respondent-Respondent- Respondent

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

Counsel: Viran Fernando with Riyas Omar and Fawzi Wahab for the Respondent-Appellants.

N.M. Riyaz, instructed by Ms. G.B. Madhushani for the Petitioner -Respondent - Respondents.

Supported on: 12.06.2023

Written Submissions on: 28.07.2023 by the Petitioner
02.08.2023 by the Respondents

Decided on: 27.09.2023

MOHAMMED LAFFAR, J.

This is an Application filed by the Respondent-Appellant-Petitioners (hereinafter referred to as the Petitioners) seeking leave to appeal

from the Order of the Wakf Tribunal dated 10-12-2022. This Court granted leave to appeal on 02-02-2022.

The Petitioners are the Trustees of the JAMIUL MILFAR JUMMAH MASJID situated in Kochchikade (hereinafter referred to as the Mosque). The Petitioner-Respondent-Respondents (hereinafter referred to as the Respondents) on 05-05-2021 made a complaint to the Wakf Board against the Petitioners, seeking *inter-alia*, that;

1. For an Order to inquire into the allegations of mismanagement in the Mosque.
2. For a declaration that the Petitioners are guilty of misfeasance, neglect of duty and breach of trust.
3. Remove the Petitioners from office as trustees.
4. Appoint special trustees to the said Mosque with a mandate, *inter-alia*, to update the Jamaath list and to hold elections in accordance with the past practices of the Mosque.
5. Determine the losses caused to the said Mosque by the Petitioners.
6. Order the Petitioners to pay the said Mosque the losses they have caused because of their wrongful conduct.
7. Order the Petitioners to return the properties of the Mosque that they are in possession.

When the matter was mentioned before the Wakf Board on 06-01-2022, the learned Counsel for the Petitioners moved further date to file their answer that application was allowed by the Wakf Board and both Counsel consented to fix the matter for inquiry on 24-02-2022. On the same day, the learned Counsel for the Respondents made an application to appoint special Trustees based on the allegations against the Petitioners. The learned Counsel for the Petitioners consented to appoint special Trustees. However, objected to the Respondents being appointed as special Trustees. The learned Counsel for the Respondents informed the Wakf Board that the Respondents are not seeking to be appointed as special Trustees. Accordingly, of consent, the Wakf Board decided to

appoint Special Trustees and to proceed with the inquiry as to the allegations levelled against the Petitioners. The Wakf Board proceedings on 06-01-2022 are marked and produced as X4(a), which reads thus;

“.....The Counsel for the Petitioners (Respondents in the instant appeal) makes an application to the Board to appoint Special Trustees based on the nature of the allegations against the Respondents (Petitioners in the instant appeal) and in view of the delay in filling their pleadings participating in the inquiry. The Counsel further informs that the Respondents are deliberately delaying this inquiry.

The Counsel for the Respondents, on instructions, states that the Respondents have no objection in appointing Special Trustees as an interim measure. However, he submits that no petitioners should be appointed as Special Trustees as a preliminary objection is raised that they are not members of the Jamaath.

The Counsel for the Petitioners informs that the Petitioners are not seeking to be appointed as Special Trustees.

In the said context, on agreement of both parties, the Board decided to appoint Special Trustees, in the interim to this Mosque and in the meantime to proceed with the inquiry.”

Subsequently, the Petitioners, through a new Counsel, by way of a motion, moved the Wakf Board to quash its decision to appoint Special Trustees on the basis that they did not instruct their Counsel to consent to appoint Special Trustees. Having considered the oral and written submissions of both Counsel, on 29-03-2022 the Board dismissed the said motion on the footing that;

1. The Petitioners being present and appearing through a Counsel had agreed to the appointment of Special Trustees and cannot resile from the said agreement.

2. The Board has a right to appoint Special Trustees when a complaint of mismanagement of the administration of a Mosque is made.
3. The audit report dated 22-11-2021 is not in favour of the Petitioners.

Being aggrieved by the said Order, the Petitioners preferred an appeal to the Wakf Tribunal. The Tribunal by its Order dated 10-12-2022 dismissed the appeal and affirmed the Order of the Wakf Board.

Being aggrieved by the Order of the Wakf Tribunal, the Petitioners have invoked the appellate jurisdiction of this Court.

It is to be noted that, when this matter was taken up for argument, the learned Counsel for the Petitioners informed Court that the Petitioners are not pursuing the preliminary objection stating that the Respondents are not members of the Jamaath, and accordingly withdrew the Jamaath list marked X1.

It is manifestly clear from the case record that the Petitioners, through their Counsel consented to appoint Special Trustees to the Mosque in dispute. The Wakf Tribunal has rightly drawn its attention to the fact that the Petitioners were present before the Board when the consent Order was made.

Under section 114 (d) of the Evidence Ordinance, the Court may presume that judicial and official acts have been regularly performed. As such, it is presumed that the proceedings before the Board on 06-01-2022, wherein the Petitioners through their Counsel consented to appoint Special Trustees are precise. The onus is on the Petitioners to rebut the presumption with cogent evidence. It is pertinent to note that the Petitioners have not adduced any evidence or an affidavit before the Wakf Board or Wakf Tribunal to contradict the said proceedings or to substantiate their contention. It is the view of this Court that a bare statement of the

Petitioners is inadequate to contradict the proceedings before the Board.

In the case of **Gunasekera Vs. Leelawathi**¹ it was held that “a compromise decree is a contract with a command of a Judge superseded to it and therefore can be set aside on any of the grounds, such as fraud, mistake, misrepresentation on which a contract may be set aside.” It is to be noted that none of the foregoing grounds have been established by the Petitioners of this appeal.

This Court declined to accept the submission of the learned Counsel for the Petitioners that the Consent Order of the Wakf Board is erroneous on the basis that the Petitioners have not placed their signatures on the case record. It is to be noted that the case record is the property of the Court and the parties cannot place their signatures on it unless and otherwise, the Court Ordered to do so. Signatures of the parties on the case record are not mandatory to pronounce a Consent Judgment. In the case of **Siva Vs. Fonseka**² it was observed that “*It is desirable that the Court, when a compromise is effected, should explain it to the parties and obtain their signatures to the compromise.*” Weerasekera, J. in **Wanigasekera Vs. Pathirana**³ observed that “*there has been a very pernicious practice among litigants to resile from Agreements merely because they have not subscribed their signature to the record. This pernicious practice in my view must be condemned and refuted with all the contempt it deserves.*”

In **Dhaarmadasa Vs. Piyadasa**⁴ Salam, J held that; “as long as a party to a case has an Attorney-at-Law on record, it is the Attorney-at-Law on record alone, who must take steps, and also whom the Court permits to take steps. It is a recognized principle in

¹ Sri-Kantha Law Report Vol-V page 86.

² 23 NLR 447.

³ 1997 (3) SLR 231.

⁴ CA. Appeal No. 1754/2004. CA. Minute of 19-03-2008.

Court proceedings that when there is an Attorney-at-Law appointed by a party, such party must take all steps in the case through such Attorney-at-Law. Further, the established principle is that a party, who is represented by an Attorney-at-Law, is not permitted to address the Court in person. All the submissions on his behalf should be made through the Attorney-at-Law who represents him."

In this appeal, the settlement was recorded before the Wakf Board in the presence of the Petitioners and their Counsel. The Counsel for the Petitioners, on instructions, informed the Wakf Board that the Petitioners are not objecting to the appointment of Special Trustees. Moreover, the Counsel for the Petitioners put forward a condition that the Respondents should not be appointed as Special Trustees. In these respects, it appears to this Court the said settlement was recorded with the full knowledge and consent of the Petitioners, and afterthought, the Petitioners decided to resile from the settlement which is bad in law and should not be allowed. Furthermore, the absence of the signatures of the Petitioners on the case record does not invalidate the settlement.

Furthermore, section 14 (1) (c) of the Muslim Mosques and Charitable Trust or Wakfs Act No. 51 of 1956 (as amended) empowered the Wakf Board to appoint Special Trustees soon after a Mosque is registered under section 13 of the said Act for a particular period for the proper administration of the Mosque, which reads thus;

"As soon as may be, after a Mosque has been registered under section 13, the Board....."

"May appoint a special Trustee or Trustees for a particular period if the board considers necessary for the proper administration of the Mosque".

In a situation where a Mosque is newly registered and there are no trustees appointed for the administration of the said Mosque, under

Section 14 (1) (c) of the Act, the Board can appoint a Special Trustee or Trustees for the administration of the said Mosque.

Under Section 29 of the Act, the Board has the authority to initiate an inquiry against the appointed trustees when complaints related to misfeasance, breach of trust, or neglect of duty are raised against them. The question that arises is whether it is permissible to appoint special trustees during the ongoing inquiry pursuant to Section 29. It is important to note that conducting a fair and proper inquiry under Section 29 becomes challenging when the existing trustees remain in office. In such a scenario, there is a compelling need to designate special trustees to oversee matters until the inquiry is concluded. The Act does not explicitly address this issue, creating a legal lacuna. However, it is the considered view of this court that the Wakf Board possesses the discretion to appoint special trustees for a mosque when an inquiry under Section 29 is in progress against the current mosque trustees, in the pursuit of justice.

In the instant appeal, it is manifestly clear that;

1. There are allegations levelled against the Petitioners under section 29 of the said Act.
2. The Wakf Board decided to hold an inquiry under section 29 of the said Act.
3. The Audit Report submitted to the Wakf Board is against the Petitioners.
4. The Petitioners, through their Counsel consented to the Board to appoint Special Trustees.
5. No prejudice will be caused to the Petitioners when special trustees are appointed until the inquiry against them is concluded.
6. To hold a fair and proper inquiry against the Petitioners, appointment of special Trustees is vital.

7. The said Act is silent and does not prohibit the Board from appointing special trustees when the Board is exercising its powers under section 29 of the Act.

In these circumstances, I hold that the impugned Orders of the Wakf Board and the Wakf Tribunal are within the perview of the provisions of the Said Act and justifiable in accordance with the facts and circumstances of this case.

For the foregoing reasons, the appeal is dismissed with costs fixed at Rs. 75,000/-. And the impugned Orders of the Wakf Board and the Wakf Tribunal are affirmed.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

KARALLIYADDE, J.

I agree.

JUDGE OF THE COURT OF APPEAL