
(1972) 05 CAL CK 0018

In the Calcutta High Court

Case No : Appeal No. 318 of 1970 and Matter No. 625 of 1969

Abdul Alim

APPELLANT

Vs

Commissioner of Wakfs, West Bengal and Others

RESPONDENT

Date of Decision : 23-05-1972

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1973 Cal 117

Hon'ble Judges : P.B. Mukharji, C.J;B.C. Mitra, J

Bench : Division Bench

Advocate : Party in person, for the Appellant; Somnath Chatterjee and Aninda Mitter, for the Respondent

Final Decision : Dismissed

Judgement

Mitra, J.—The subject-matter of this appeal is the validity of an order appointing the appellant as Mutwalli u/s 40 of the Bengal Wakf Act, 1934 (sic). The appellant's father created a public Wakf in 1916 with regard to premises No. 13/1. H. M. M. Square and premises No. 37 North Range. Calcutta. It was provided in the deed of Wakf that upon the death of the appellant's father the Wakf would be managed by six members, one of whom was to be the appellant. Five of the members nominated are now dead and the appellant is the only surviving member. The appellant's father had appointed the second son, one Hakim as Mutwalli in his own place. Hakim continued to be the Mutwalli till 1952. when he left for Pakistan upon resigning this Mutwalliship. owing to disputes and differences between the appellant and his two other brothers. The Official Mutwalli was appointed in 1952 as the Mutwalli. The Official Mutwalli functioned as temporary Mutwalli upto February 2, 1967. On February 3. 1967 the appellant was appointed Mutwalli for a period of five years by the Commissioner of Wakf. The appellant's case is that since the date of his appointment he managed the Wakf estate to the best of his ability. In ordinary course, the appellant's Mutwalliship would have expired on the expiry of five years from February 2.

1967 that is to say on February 3, 1972. On November 27, 1969, however, the Commissioner of Wakf made an order whereby he vacated and cancelled the order dated February 3, 1967, by which the appellant was appointed Mutwalli. Being aggrieved by the order made on November 27, 1969 the appellant moved this Court and obtained a Rule Nisi which was discharged by a judgment and order dated September 21, 1970 against which this appeal has been preferred.

2. The first matter to be noticed is that although on the date the judgment was delivered by the trial Court namely, September 21, 1970 the appellant could have obtained an order from this Court against the orders dated November 27, 1969 and November 29, 1969. no relief can be granted to the appellant by this Court at this stage as the term of his appointment expired on February 3, 1972. The appellant's claim being that he should be restored to the Mutwalliship from which he has been removed, this Court cannot give any relief to the appellant as the term of his appointment has admittedly expired. On this ground alone, this appeal should be dismissed. But since other points have been raised by the appellant who appeared in person, we think we should deal with the contentions raised by the appellant. The principal contention of the appellant in the Court below and also before us was that the order of cancellation of the appellant's appointment was invalid on the ground of violation of the rules of natural justice. The appellant contended that no enquiry was held, no charge-sheet was given and there was no specific complaint against him or at any rate no such complaint was furnished to him. It appears, however, that on September 9, 1969 a written notice was given to the appellant directing him to appear before the Commissioner of Wakf, with oral and documentary evidence, regarding the state of affairs of the Wakf estate of Abdul Karim. A second notice in writing dated October 7, 1969 was served upon the appellant directing him to appear before the Commissioner of Wakf on December 2, 1969. This was followed by another notice dated November 1, 1969 directing the appellant to appear before the Commissioner on November 30, 1969. A similar notice was issued on November 15, 1969 asking the appellant to appear before the Commissioner on November 27, 1969. In paragraph 11 (d) of the affidavit in reply affirmed by the appellant on May 30, 1970 the appellant admitted that he knew that a case called Miscellaneous Case No. 34/53 was started against him and he was asked to attend at the hearing of the case. It appears that after the appointment of the appellant as a temporary Mutwalli several letters of complaint were received from the tenants of the wakf estate complaining that, the appellant did not repair the Wakf property at premises No. 13/1 H. M. M. Square and that the building was in a dilapidated condition. There were also charges against him that he had taken advance rent upon the assurance that the money would be utilised on repairs but no such repairs were carried out. There were also allegations against the appellant that the cash amount received by him from the Official Mutwalli had not been accounted for,

3. By his letter dated August 29, 1969 the appellant furnished some explanations with regard to the charges against him and stated that out of Rupees 11,000/-

received by him from the Official Mutwalli. Rs. 5,000/- had been deposited in & Bank in fixed deposit for five years, but failed to render any account of balance. Thereafter, an Inspector was appointed by the Commissioner to inspect the Wakf estate and to submit a report. This report was submitted by the Inspector and the Commissioner instituted an enquiry against the appellant. On September 12, 1969 the appellant wrote to the Commissioner of Wakf requesting that the enquiry be adjourned for a month. Again by his letter dated November 10, 1969, the appellant expressed his inability to attend the hearing before the Commissioner on November 13, 1969 and requested that the hearing be fixed after the Id. The Commissioner of Wakf fixed the hearing on November 27, 1969 and a notice in writing was given to the appellant of the date of hearing. The appellant "however, failed to appear before the Commissioner and thereafter the impugned order dated November 27, 1969 was passed and by another order dated November 29, 1969 the Official Mutwalli was appointed ad interim Mutwalli for a Period of three years. It is, therefore. clear to us that the appellant was duly informed of the enquiry that was held by the Commissioner of Wakf. He himself had applied for adjournment of the hearing to suit his convenience but failed to appear at the hearing and to show cause why the order terminating his Mutwalliship should not be made. By his letter dated August 29, 1969 the appellant purported to give his explanation with regard to the charges against him of the mismanagement of the properties. He has referred to various particulars regarding the tenants who are occupying the premises and also dealt with the charges for his failure to account for the monies which he had received from the Official Mutwalli. It is clear to us, therefore, that the appellant was fully aware of the charges against him and he did. In his own way try to explain away the charges. It seems to us. therefore, there is no substance in the appellant's contentions that in making the impugned order rules of natural justice had been violated. The appellant knew of the charges against him. He submitted his explanation to the same. He was given notice of the various dates of hearing but he failed to appear. In these facts, it is not open to the appellant to contend that he was condemned unheard.

4. Mr. A. Mitra counsel for the respondent drew our attention to a bench decision of this Court in Commissioner of Wakfs Vs. Munshi Abbas Ali and Others, . We do not. however, see the relevance of this decision to the facts of this case. Reliance was next placed on a decision of the Supreme Court in Hazrat Syed Shah Mastershid Ali Al Quadari Vs. The Commissioner of Wakfs, West Bengal, . In that case it was held that a temporary Mutwalli can be appointed either by the Board u/s 40 or if the powers and duties of the Board under that section be delegated to the Commissioner, then by the Commissioner and that where the Board had not delegated its functions to the Commissioner then under Rule 2 of the Rules framed under the Act, the Commissioner was bound to make his report and recommendation and the Board alone was empowered to appoint a temporary Mutwalli u/s 40 of the Act. This decision is again of no assistance to the appellant in this case in-, as much as the appointment of a temporary Mutwalli is not in

question and the appointment has not been challenged by either party.

5. Before concluding we should like to add that u/s 40 of the Bengal Wakf Act in the case of any Wakf of which there is no Mutwalli or where there appears to be an impediment to the appointment of a Mutwalli the Board may appoint for such period as it thinks fit a person to act as Mutwalli. In this case a Mutwalli has been appointed by the Commissioner of Wakf to whom the power to make appointment of a temporary Mutwalli has been delegated by the Board. The appellant contended that we should appoint a permanent Mutwalli by removing the temporary Mutwalli appointed by the Commissioner of Wakf. We do not think that we can go into that question in this appeal. The appellant also contended that this is not a case of there being no Mutwalli nor is it a case of there being any impediment to the appointment of a Mutwalli. It should be borne in mind that a Mutwalli cannot be appointed in a proceeding under Article 226 of the Constitution. The question of appointment has to be made in a properly constituted suit

6. For the reasons mentioned above, we are of the opinion that no grounds have been made out by the appellant to interfere with the order made by the trial Court. This appeal is, therefore, dismissed. We should however, add that in the interest of good management of the Wakf property it is desirable that in keeping with the wishes of the Wakif a committee of management should be constituted if possible and the appellant who is the only surviving son of the Wakif should be appointed a member of this committee of management so that he may have a say in the affairs of the Wakf estate. As the sole surviving member of the committee of management and as a person who has been associated with the management of the Wakf property for sometime, we have no doubt that it will be in the interest of good management of the Wakf property and also in accordance with the wishes of the Wakif that the appellant should be associated as one of the members of such a Committee of management.

7. There will be no order as to costs. The interim order is vacated.

Mukharji, C.J.

8. I agree.