

(2016) 08 CHH CK 0016
In the Chhattisgarh High Court
Case No : CR No. 19 of 2016

Abdul Rasheed Memon

APPELLANT

Vs

Chhattisgarh State Wakf Board

RESPONDENT

Date of Decision : 19-08-2016

Acts Referred:

Waqf Act, 1995 — Section 24(2), 83, 83(2)

Citation : (2016) 166 AIC 644 : (2016) AIRCC 3145

Hon'ble Judges : Sanjay K. Agrawal, J.

Bench : Single Bench

Advocate : Shri. B.P. Sharma, Advocate, for the Applicant; Shri. Prateek Sharma, Advocate, for the Respondent No. 1; Shri. Surfraj Khan, Advocate, for the Respondent No. 2

Final Decision : Dismissed

Judgement

Sanjay K. Agrawal, J.—Invoking revisional jurisdiction of this Court under Section 83 of the Waqf Act, 1995 (hereinafter referred to as "the Act, 1995"), the applicant herein has filed the instant revision questioning the order passed by the Chhattisgarh State Waqf Tribunal, Raipur (for short "the Tribunal") by which his application under Section 83(2) read with Section 94(2) of the Act, 1995 has been rejected by the learned Tribunal.

2. The applicant herein filed an application under Section 83 (2) read with Section 94(2) of the Act, 1995 stating inter-alia that non-applicant No.2 herein was elected on 20-05-2011 as Mutwalli of Hajrat Fateh Shah Majar & Masjid Trust Committee, as his period has already expired on 19-05-2014 and thereafter, the order has been passed by non-applicant No.1 on 19-05-2014 extending his tenure for a period of one year and thereafter, again the order was passed on 18-05-2015 extending the tenure of non-applicant No.2 for a period of two years. It was further claimed that both the orders are contrary to law and the orders dated 19-05-2014 and 18-05-2015 be set aside and the applicant be declared as Mutwalli.

3. Upon notice, respondent No.1 Chhattisgarh State Waqf Board filed its reply stating inter-alia that under Sections 18,60 & 63 of the Act,1995, Waqf Board has the power and jurisdiction to appoint Mutwalli and to appoint Committee. In exercise of power under Section 18,60 & 63 of the Act,1995, such Committee was constituted and the period of such committee was extended i.e. up to 17-05-2017. It was also pleaded that in relation to the said Waqf property, Civil Revision No.142/2011 was filed before the High Court. On 16-02-2012, the appointment of Mutwalli was upheld by this Court and as such the application deserves to be rejected.

4. Non-applicant No.2 filed reply in similar line with the reply filed by non-applicant No.1. Waqf Tribunal by its impugned order after appreciating oral and documentary evidence available on record, rejected the application holding that the orders dated 19-05-2014 and 18-05-2015 are in accordance with law. Questioning the legality, validity & correctness of the impugned order, this revision application, as stated above, has been filed.

5. Shri. B.P. Sharma, learned counsel for the applicant, would submit that the judgement and the finding recorded by the learned Waqf Tribunal is contrary to law. Non-applicant No.1, Chhattisgarh State Waqf Board, has no right, authority and jurisdiction to interfere with the administration and management of Hajrat Fateh Shah Majar & Masjid Trust Committee and there is no waqf. Therefore, the order passed by non-applicant No.1 to appoint Committee for administration and management in exercise of the power under Sections 18, 60 and 63 of the Act, 1995 is wholly without jurisdiction and without authority of law. He would further submit that the learned Tribunal has failed to exercise the jurisdiction vested in it by law and acted with material irregularity and the finding recorded by the learned Waqf Tribunal is perverse and contrary to the record and impugned order rejecting the application filed by the applicant deserves to be set-aside.

6. Shri. Prateek Sharma, learned counsel for non-applicant No.1 Chhattisgarh State Waqf Board, would submit that Hajrat Fateh Shah Majar & Masjid Trust Committee is a Waqf and Waqf property duly registered with the Waqf Board bearing registration No.92 Nasti No.9/33 and in relation to the said Waqf, the order appointing Mutwalli was challenged by Bashir Rizwi in C.R. No.142/2011 against an order dated 27-07-2011 passed by Waqf Tribunal which was dismissed by this Court finding no merit and as such there is no dispute that Hajrat Fateh Shah Majar & Masjid Trust Committee is a waqf and waqf property. Therefore, no interference is required in exercise of revisional jurisdiction of this Court and the revision deserves to be dismissed, as the Waqf Board has power and jurisdiction to appoint a committee for administration of the waqf/waqf property.

7. Shri. Surfaraj Khan, learned counsel for non-applicant No.2, would adopt the arguments of Mr. Prateek Sharma, made on his behalf.

8. I have heard learned counsel for the parties, considered their rival submissions and perused the record of the case with utmost circumspection.

9. The short question that arises for consideration is whether non-applicant No.1 is justified in appointing managing committee for administration and management of Hajrat Fateh Shah Majar & Masjid Trust Committee for the periods specified in the order dated 19-05-2014 and order dated 18-05-2015.

10. It is the stand taken by the applicant before this Court that the said Hajrat Fateh Shah Majar & Masjid Trust Committee is not subject to waqf and not a waqf property. Therefore, non-applicant No.1 C.G. State Waqf Board has no jurisdiction and authority to invoke the provisions of Waqf Act, 1995 to appoint managing committee for better administration. Therefore, the first question to be considered is whether Hajrat Fateh Shah Majar & Masjid Trust Committee is subject to Waqf and/or Waqf property governed by the provisions of the Act, 1995. In this regard, it would be expedient to refer to the application under Section 83(2) read with Section 94(2) of the Act, 1995.

11. A careful perusal would show that the applicant has not pleaded that Hajrat Fateh Shah Majar & Masjid Trust Committee is not Waqf and/or is not waqf property, therefore, it is not governed by the provisions of the Act, 1995, whereas it is the case of non-applicant No.1 that Hajrat Fateh Shah Majar & Masjid is subject to waqf registered under the provisions bearing registration No.92 Nasti Kra.9/33 and, therefore, the provisions of the Waqf Act is applicable and exercising the power under Sections 18,60 & 63 of the Waqf Act, such an order appointing managing committee has been passed. Firstly, the order dated 18-05-2014 was passed and thereafter, by order dated 18-05-2015, Managing Mutwalli Committee was appointed for two years up to 17-05-2017. Though the order clearly recites that the order is passed in exercise of power conferred under Sections 18 & 63 of the Waqf Act, 1995 but the applicant did not question the applicability of provisions of Waqf Act to the said Hajrat Fateh Shah Majar & Masjid (Trust Committee) in the original application filed before Waqf Tribunal and simply sought setting aside the orders dated 18-05-2014 and 18-05-2015 stating that the order passed by the Chhattisgarh State Waqf Board are illegal and contrary to law. Thus, non-applicants did not have any opportunity to contest the question that the said Hajrat Fateh Shah Majar & Masjid Trust Committee is not a matter of waqf and/or waqf property and the applicant has raised such a plea before this Court for the first time.

12. It is pertinent to mention here that the Waqf Tribunal passed an order dated 27-11-2011 appointing Mutwalli which was challenged in C.R. No.142/2011 (Bashir Rizwi v. Chhattisgarh State Waqf Board & another) which was dismissed by this Court on 16-02-2012 and it has been observed that the Madhya Pradesh Waqf Board appointed a managing committee by order dated 14-12-1999 and Shri. Bashir Rizwi was appointed on behalf of Managing Committee for managing the Hajrat Fateh Shah Majar & Masjid Trust Committee and again new managing committee of five persons including Bashir Rizwi was appointed by order dated 15-06-2012 for a period of six years which would show that the said Hajrat Fateh Shah Majar & Masjid Trust Committee is a subject matter of Waqf property being

managed earlier by M.P. Waqf Board and now after formation of new State of Chhattisgarh by C.G. Waqf Board, it cannot be held that the Hajrat Fateh Shah Majar & Masjid Trust Committee is not a subject matter of Waqf and it is not waqf property and arguments in this behalf raised by the applicant deserves to be and is hereby rejected.

13. At this stage it would be appropriate to notice the powers and functions of the Waqf Board, Section 32 of the Waqf Act, 1955 provides as under:-

"32. Powers and functions of the Board.-(1) Subject to any rules that may be made under this Act, the general superintendence of all [auqaf] in a State shall vest in the Board established or the State; and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the [auqaf] under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which such [auqaf] were created or intended:

Provided that in exercising its powers under this Act in respect of any [waqf], the Board shall act in conformity with the directions of the [waqf], the purposes of the [waqf] and any usage or custom of the [waqf] sanctioned by the school of Muslim law to which the [waqf] belongs."

Explanation.-For the removal of doubts, it is hereby declared that in this subsection, [waqf] includes a [waqf] in relation to which any scheme has been made by any court of law, whether before or after the commencement of this Act.

(2) Without prejudice to the generality of the foregoing power, the functions of the Board shall be-

(a) to (b) *****

(c) to give directions for the administration of [auqaf];

(d) to (f) *****

(g) to appoint and remove mutawallis in accordance with the provisions of this Act;

Thus, Section 32 of the Waqf Act, 1995 deals with powers and functions of the Waqf Board and confers powers on it to administer, control, supervise the Waqf and to regulate the powers of Mutawalli insofar as it relates to manage the waqf properties.

14. Likewise, Section 18 of the Act provides for constitution of the committees by the Board. Section 18 provides as under:-

"18. Committees of the Board.-(1)The Board may, whenever it considers necessary, establish either generally or for a particular purpose or for any specified area or areas committees for the supervision of [auqaf].

(2) The constitution, function and duties and the term of office of such

committees shall be determined from time to time by the Board:

Provided that it shall not be necessary for the members of such committees to be members of the Board."

Section 18 of the Act empowers the Waqf Board to constitute committees for "supervision of waqfs", the constitution, functions, duties and the term of the office for such committees has to be determined by the Board from time to time and while committee is so constituted, it is open to so provide a specific term of office during which it would function or make any such appointment subject to its pleasure.

15. Sections 60 & 63 of the Waqf Act provide as under:-

"60. Extension of time.- The Board may, if it is satisfied that it is necessary so to do, extend the time within which any act is required to be done by the mutawalli under this Act.

63. Power to appoint mutawallis in certain cases.- When there is a vacancy in the office of the mutawali of a [waqf] and there is no one to be appointed under the terms of the deed of the [waqf], or where the right of any person to act as mutawalli is disputed the Board may appoint any person to act as mutawalli for such period and on such conditions as it may think fit."

16. Keeping the above-stated provisions of Waqf Act, qua the powers of the Board in mind, coming back to the facts of the case, it is quite vivid that waqf deed was not filed before the Waqf Tribunal and as such it could not be gathered instructions contained in the waqf deed with regard to appointment of Mutawalli. However, it is an admitted fact that non-applicant No.2 was appointed in May, 2011 as Mutawalli unanimously, for a period of three years ending on 19.05.2014 and after completion of his original tenure of three years, non-applicant No.1/ Waqf Board by its order dated 19.05.2014 extended his tenure for a period of one year and thereafter exercising the powers conferred to the Board under Sections 18 & 63 of the Act of 1995 appointed Mutawalli Managing Committee for a period of two years that is from 18.05.2015 to 17.05.2017. It is pertinent to mention here that by order dated 18.05.2015, non-applicant No.2 was appointed as Mutawalli and ten other persons were appointed along with non-applicant No.2 as office bearers as well as members of the Committee.

17. Thus, the Waqf Board has exercised the power and jurisdiction conferred to him under the Act of 1995 for better management and administration of the waqf property. The learned Waqf Tribunal after careful appreciation of oral and documentary evidence on record has reached to a categorical conclusion that order passed by the Waqf Board extending the tenure of non-applicant No.1 as a Mutawalli by order dated 19.05.2014 and 18.05.2015 appointing Mutawalli Managing Committee is in accordance with law.

18. It is pertinent to notice that in the application filed before the Chhattisgarh Waqf Tribunal, the applicant herein only impleaded non-applicant No.2, who was

appointed Mutawalli. The applicant neither impleaded the Mutawalli Managing Committee as party respondent nor impleaded other office bearers/members as non-applicants who are also appointed by non-applicant No.1 by order dated 19.05.2015 along with non-applicant No.2 and therefore in absence of Mutawalli Managing Committee and other office bearers and members, the application itself was not maintainable before the Waqf Tribunal, as the Managing Committee as well as the other office bearers were necessary party, and in their absence the application has rightly been rejected by the learned Waqf Tribunal. I am of the considered opinion that the Waqf Tribunal has not committed any jurisdictional error in rejecting the application filed by the applicant herein upholding the order of the Waqf Board appointing managing committee for proper administration and management of Hajrat Fateh Shah Majar & Masjid Trust Committee and has rightly rejected the application filed by the applicant herein finding no merit.

19. As a fallout and consequence of the aforesaid discussion, the revision filed by applicant herein deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).