
(2000) 09 MP CK 0055
In the Madhya Pradesh High Court
Case No : C.R. No. 2529 of 1999 (J)

Akbar Ali Farooqi

APPELLANT

Vs

Mann Khan and Others

RESPONDENT

Date of Decision : 25-09-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Waqf Act, 1995 — Section 3(i), 32(g), 64, 67, 83

Citation : (2001) 2 MPJR 78

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : Mohd. Ali, for the Appellant; A.S. Usmani, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.

Invoking the revisional jurisdiction of this Court u/s 115 of the CPC (in short "the Code") the Petitioner/non-applicant has called in question the defensibility of the order dated 28.7.1999 passed in case No. 47/98 by the Presiding Officer of the M.P. Wakf Tribunal.

The facts as have been unfurled are that the M.P. Wakf Board by order dated 28.7.1998 appointed a Managing Committee for the Dargah Sayed Insan Ali situate at Lutra Sharif in the District of Bilaspur. Feeling aggrieved by such an appointment the non-applicants No. 1 and 2 preferred an application u/s 83 of the Wakf Act, 1995 (hereinafter referred to as "the Act") before the Wakf Tribunal, Bhopal. Before the Tribunal non-applicants No. 1 and 2 putforth that the "Dargah" situate in village Lutra Sharif belongs to Baba Insan Ali whose successor is Mann Khan. It was putforth that Basir Khan, Wajid Khan, Zakir Mohammad and Mohammad Sharif were "khadims" during the life span of Sayed Insan Ali. It was also stated that Mann Khan used to look after the properties of the "Dargah" as the head of "khadims". Baba Insan Ali expired on 9.10.1960

and thereafter a civil action was initiated being Suit No. 77B-62 in the Court of Civil Judge, Bilaspur wherein a decision was delivered in favour of the father of Mann Khan. It was further pleaded before the Tribunal that the Wakf Board in the year 1982 without following due procedure of law registered the "Dargah" situate at Lutra Sharif to be the Wakf property. This fact was not known to the non-applicants, as a result to which they could not take any action against it. They came to know about this aspect in the year 1993. It was further pleaded before the Tribunal that the Wakf Board on 28.7.1998 had constituted a Managing Committee and appointed Akbar Ali as Secretary of the Committee. It was further alleged the Wakf Board had passed the aforesaid order without following the provisions enshrined u/s 32(g) of the Act. It was put forth on 12.3.1996 the non-applicant No. 1 had filed an affidavit but the Board without conducting any inquiry had constituted the Committee. It was also set forth that there was no allegations against the present "Khadims" who were managing the "Dargah". With the aforesaid facts a prayer was made to set aside the order appointing the Managing Committee and to declare them as "Mutawallis".

Resisting the aforesaid stand it was contended by the members of the newly appointed Managing Committee that the property had already been declared to be the property of the Wakf Board by virtue of a Gazette Notification dated 25.8.89 and the same can not be brushed aside. It was also highlighted that the applicants before the Tribunal are only "Khadims" who are only servants (Sevakas) of the "Dargah" and they are supposed to work under the Managing Committee. It was set forth that in the year 1996 there was a compromise between the Managing Committee of the "Khadims" whereby the Khadims" had accepted to function as "Sevakas" of the "Dargah".

The Tribunal considering the cases of both the parties came to hold that the property had already become the Wakf Board's property and no dispute could be entertained in that regard. As far as constitution of new Managing Committee is concerned, the Tribunal came to hold that "Khadims" come under the category of "Mutawallis" and they have been managing the property in spite of the constitution of the Managing Committee and they could not have been removed without following the principles of natural justice and without removing them in accordance with law. The Tribunal further held that the order dated 28.7.1998 was unsustainable in the eye of law for the said reasons and accordingly set it aside. However, the Tribunal observed that it would be open to the Board to take appropriate steps in accordance with the Scheme of the Wakf and the prevalent usage and customs. The said order is the cause of grievance of the present revisionist.

As far as the finding of the Tribunal is concerned with regard to the status of the property of the institution there is no iota of doubt that the property in question is the "Wakf" property. The Tribunal on this score has recorded a correct finding and same does withstand close scrutiny.

The next question that arises for consideration is whether the non-applicants

alongwith others being "Khadims" are "Mutawallis" or not. In this context I may profitably refer to the definition of "Mutawalli" occurring in Section 3(i) of the Act. The said provision reads as under -

(1) "mutawalli" means any person appointed, either verbally or under any deed or instrument by which a wakf has been created or by a competent authority, to be the mutawalli of a wakf and includes any person who is a mutawalli of a wakf by virtue of any custom or who is a naib-mutawalli, khadim, mujawar, saj-jadanashin, amin or other person appointed by a mutawalli to perform the duties of a mutawalli and save as otherwise provided in this Act, any person, committee or corporation for the time being managing or administering any wakf property -

Provided that no member of a committee or corporation shall be deemed to be a mutawalli unless such member is an office bearer of such committee or corporation.

If the aforesaid provision is appreciated in proper perspective it can safely be concluded that "Khadims" are "Mutawallis". The Tribunal has taken note of the aforesaid definition and reached a finding in that regard. Submission of Mr. Mohd. Ali is that the non-applicants have never been recognised as Khadims" by "Wakf" Board nor any of them have ever been included in the Managing Committee of the "Wakf" Board. The aforesaid submission does not have force inasmuch as by letter No. 1722 dated 9.3.99 the "Wakf" Board has asked the Collector to take over charge from the non-applicants and to give to the Managing Committee. From the aforesaid it can be said that the non-applicants alongwith others were "Khadims" and thereby "Mutawallis".

The next question that falls for consideration is whether the non-applicants can be unsettled or dislodged without proper enquiry. The Tribunal has referred to certain provisions of the Act to come to the conclusion that there has been violation of principles of natural justice and that apart the appropriate proceeding was not initiated for removal of "Mutawallis". Section 32(g) of the Act authorises the Wakf Board to appoint and remove the Mutawallis in accordance with the provisions of the Act. Section 64 deals with the removal of "Mutawalli". Sub-Section 3 of the aforesaid Section reads as under:

(3). No action shall be taken by the Board under Sub-section (1), unless it has held an enquiry into the matter in a prescribed manner and the decision has been taken by a majority of not less than two-thirds of the members of the Board.

In this connection it is also apposite to refer to Sub-Section 2 and 3 of Section 67 of the Act. They read as under-

(2) Notwithstanding anything contained in this Act and in the deed of the wakf, the Board may, if it is satisfied, for reasons to be recorded in writing, that a committee, referred to in Sub-section (1) is not functioning properly and satisfactorily, or that the wakf is being mismanaged and that in the interest of its

proper management, it is necessary so to do, by an order, supersede such committee, and on such suppression any direction of the wakf, in so far as it relates to the constitution of the committee, shall cease to have any force-

Provided that the Board shall, before making any order superseding any committee, issue a notice setting forth therein the reasons for the proposed action and calling upon the Committee to show cause within such time, not being less than one month, as may be specified in the notice, as to why such action shall not be taken.

(3). Every order made by the Board under Sub-section (2) shall be published in the prescribed manner and on such publication shall be binding on the mutawalli and all persons having any interest in the wakf.

From the aforesaid provisions it is graphically clear that the Wakf Board has to be satisfied for the reasons to be recorded in writing that the Wakf property is mis-managed and in the interest of proper management the Committee has to be superseded. Sub-Section 3 of Section 64 stipulates for holding of an enquiry. In the case of Mohd. Amin and Ors. v. Madhya Pradesh Wakf Board and two others (W.P. No. 3201/94) this Court had held that without holding an enquiry and granting opportunity of hearing as contemplated in various provisions of this Act a Managing Committee cannot be substituted. In this connection I may profitably refer to the decision rendered in the case of Noor Mohammad Seth v. M.P. Wakf Board, Bhopal and others, 1969 J.L.J. Short Note 39 wherein it has been held that if a resolution passed by "Wakf" Board removing the "Mutawallis" without affording an opportunity of being heard action against "Mutawalli" is vitiated. In the said case certain guidelines have also been enumerated for removal of "Mutawalli". On a perusal of the order passed by the Tribunal I find that the Tribunal has considered all the aspects and come to the conclusion that the non-applicants have been improperly removed. In the said premises the Tribunal has set aside the order dated 28.7.98. On proper scrutiny of the order passed by the Tribunal I find that the same is impeccable and there is no justifiable reason to differ with the same. Accordingly, the order passed by the Tribunal is given the stamp of approval. Needless to emphasize here that "Wakf" Board will be at liberty to take appropriate action against non-applicants and other "Mutawallis" in accordance with law.

Consequently, the civil revision, being sans merit, stands dismissed. However, there shall be no order as to costs.