

**(1973) 08 AP CK 0006**

**In the Andhra Pradesh High Court**

**Case No : Writ Appeal No. 553 of 1972**

Andhra Pradesh Wakf Board

APPELLANT

Vs

Mohd. Hidyathulla

RESPONDENT

**Date of Decision :** 07-08-1973

**Acts Referred:**

Waqf Act, 1954 — Section 16, 43, 43

**Citation :** AIR 1974 AP 287

**Hon'ble Judges :** Gopal Rao Ekbote, C.J.;Lakshmiah, J

**Bench :** Division Bench

**Advocate :** M.L. Ramakrishna Rao, for the Appellant; Syed Sadatullah Hussani, for the Respondent

## Judgement

Gopal Rao Ekbote, C.J.—This appeal is from the judgment of our learned brother A. D. V. Reddy, J. given in W. P. No. 4138 of 1971 on 15-9-1972 whereby the learned Judge allowed the writ petition holding that the petitioner has a right to act as Mutwalli and properties taken possession from him including account books etc, should therefore be returned to him to enable him to manage the properties as the Mutwalli.

2. The facts in outline are that the petitioner contends that a wakf was created through a deed of wakf executed by the father of the petitioner in 1350 fasli. A muntaquab was accordingly prepared, the father was the wakf Mutwalli himself. He looked after the wakf property for over 27 years.

3. In 1962 the father of the petitioner with the assistance of the wakf Board constituted a managing committee to assist him in looking after the affairs of the wakf property. On 21-8-1966, the father of the petitioner, who was the Mutwalli filed an application that the petitioner should be appointed as Mutwalli as the father had become very old and was not capable of managing the wakf property. The wakf Board recognised the petitioner as the Mutwalli by its letter dated 17-3-1967. The petitioner therefore claims that he has been managing the Wakf since he was appointed as Mutwalli.

4. The petitioner wanted the managing committee to hand over the records and papers of the mosque properties. The petitioner dissolved the managing committee and asked it to return the record. He also asked the Board to direct the Secretary of the Committee to hand over the record to the petitioner. Instead of directing the managing committee to hand over the records to the petitioner, the Board through its letter dated 27-5-1968 cancelled the petitioner's letter dissolving the committee and gave extension to the committee until further orders.

5. The petitioner therefore filed W. P. 1886 of 1968 for quashing the said letter of 27-3-1968 and an interim order was passed on 14--6-1968. The writ petition, however, was subsequently withdrawn.

6. The wakf Board by its letter dated 10-12-1968 directed the Secretary to the Managing Committee to comply with certain things. The wakf Board again issued another letter on 16-10-1971 asking the petitioner to immediately hand over charge of the articles to the Managing Committee headed by Sri Abdul Hameed Khan. It is to question the validity of this letter and to quash it that the present writ petition out of which this appeal arises was filed.

7. The petition was resisted by the wakf Board. The learned Judge held, as stated earlier, that the Mutwalli is competent to manage the property and therefore he is entitled to have the record and accordingly allow the writ petition.

8. In this writ appeal, the self-name question were argued before us. In order to effectively answer those questions, it is necessary to refer to a few provisions of the Wakf Act of 1954.

9. The term "mutwalli" is defined in Section 3 (f) of the Act. According to that definition. it means "any person appointed either verbally or under any deed of instrument by which a wakf has been created or by a competent authority to be the mutwalli of a wakf and includes naib-mutwalli khadim,mujawar, sajjadanishin, amin or other person appointed by a mutwalli to perform the duties of a mutwalli and, save as otherwise provided in the Act, any person or committee for the time being managing or administering any wakf property as such."

10. We need no go into the question as to whether this definition recognises the committee which existed on the day when the Act came into force and it would be proper for the person to appoint a committee consisting of several persons as mutwalli because it is not necessary for the disposal of this case.

11. Section 15 of the Act lays down the function of the wakf Board. According to clauses (c) and (d) of sub-section (2) of that section, the Board can give directions for the administration of wakfs. It can also settle schemes of management of a wakf.

12. And in accordance with section 16, the Board in general or for a particular purpose constitute committees for the supervision of wakfs. The Board can also

determine the constitution, functions and duties of such committee.

13. Then we go to Section 36 which defines the duties of mutwalli. One of the obligations of the mutwalli is to allow inspection of wakf properties, accounts or records or deeds documents relating thereto.

14. Section 41 sets out the penalties if a mutwalli fails to allow inspection of wakf properties, accounts or records or deeds and documents relating thereto.

15. We then come to Section 42 which relates to the power to appoint mutwallis in certain cases. The Board can appoint a mutwalli when there is a vacancy in the office of the mutwalli of a wakf and there is no one to be appointed under the terms of the deed of the wakf. Secondly, the Board can appoint a mutwalli in a case where right of any person to act as mutwalli is disputed.

Section 43 then concerns itself with the removal of mutwalli.

Section 43-A authorises the Board to assume direct management of wakf in certain circumstances. It says :----

"Where no suitable person is available for appointment as a mutwalli of a wakf u/s 42 or under sub-section (2) of S. 43 the Board may, by notification in the official gazette, assume direct management of the wakf for such period or periods, not exceeding in the aggregate five years, may be specified in the notification."

Section 43 (5) empowers the Board in a case where the mutwalli had been removed from his office to direct the mutwalli to deliver possession of the wakf property to the Board or any officer thereof duly authorised in that behalf or to any person or committee appointed to act as the mutwalli of the wakf property. The order is treated as a decree of the Civil Court.

16. There are the provisions on the basis of which we have to consider the questions arising in this appeal.

17. The first question is whether the so-called managing committee has been properly constituted. The managing committee, whether it is constituted by the previous mutwalli with the permission of the Board or it was constituted by the Board, can no more continue. After having recognised the petitioner as mutwalli, he can manage the properties of the wakf. The only power which the wakf Board has is to appoint a supervisory committee u/s 16 of the Act. The learned Advocate for the Wakf Board can appoint a managing committee even where a mutwalli is recognised by the Board without removing him. Both the committee as well as the mutwalli cannot simultaneously function is conceded. What then remains to be seen is whether the managing committee, which was continued by the wakf Board even after the appointment of mutwalli, was valid. In the absence of any express provision authorising the Board to appoint the managing committee in such a case. We do not think that after the mutwalli was appointed, the managing committee could have continued. The order continuing the

managing committee therefore is without jurisdiction and is ineffective. The managing committee therefore has to go.

18. The question then is whether the Board can direct the mutwalli to handover the records either to the committee or to the Board. We have already seen that it is only in a case where the mutwalli has been removed by a proper order or a mutwalli cannot be appointed in certain circumstances that the Board can either u/s 43 (5) or u/s 43-A direct the records to be handed over. As long as the mutwalli is effectively working in office and as long as there are no other proceedings pending against him, we do not think the Board has any power to direct the mutwalli to hand over the record to the committee or to the Board. No proceedings of whatever kind are pending against the mutwalli. The impugned order therefore directing the mutwalli to hand over the record is not in accordance with law and cannot be sustained.

19. The wakf Board, without assuming direct management of the wakf or removing the mutwalli, cannot keep back in its custody or possession the records relating to the wakf. It has to hand over the entire property belonging to the wakf to the mutwalli. It is true that the Board has special powers of supervision directly or indirectly through the committee constituted u/s 16 of the Act. But that does not mean that the Board can direct the mutwalli to hand over the entire property to the managing committee or to the Board without having any recourse to Section 43 or S, 43-A.

20. For the reasons which we have given, we are satisfied that the learned Judge was right in his conclusion that the mutwalli, who has been recognised as such, is the only person who can work and the Board therefore was rightly directed to hand over the papers which are with them on the mutwalli. We find no reason to interfere. The appeal therefore fails and is dismissed with costs. Advocate's fee Rs. 100/-.

21. Appeal dismissed.