
(2014) 07 RAJ CK 0059

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3633 of 2014

Anwar Hussain

APPELLANT

Vs

Rajasthan Board of Muslim Waqf

RESPONDENT

Date of Decision : 18-07-2014

Acts Referred:

Waqf Act, 1995 — Section 18, 67

Citation : (2014) 4 RLW 3012

Hon'ble Judges : Pratap Krishna Lohra, J

Bench : Single Bench

Advocate : M.A. Siddiqui, Advocate for the Appellant; Zahir Abbasi and Sanjeet Purohit, Advocate for the Respondent

Judgement

Pratap Krishna Lohra, J.—Petitioner, Secretary of the Wakf Committee of Gram Dantala, Tehsil Siwana, District Barmer, has preferred this writ petition praying under-mentioned reliefs:

"It is, therefore, most respectfully prayed that this writ petition may kindly be allowed with costs and the impugned order dated 04.03.2014 (Annex. 2) may kindly be ordered to be quashed and set aside. Any other appropriate relief which this Hon"ble Court may deem just and proper may also be given."

The apposite facts, for the purpose of this writ petition, are that Chief Executive Officer of Rajasthan Board of Muslim Wakf (for short, "Board") vide its order dated 16th July 2013 constituted a Wakf Committee for managing the affairs of the properties of village Dantala, Tehsil Siwana, District Barmer, and the petitioner was appointed as Secretary of the Committee. As per the order the term of the Committee was specified as one year. In the order it was specifically mentioned that the Committee shall strictly adhered to the provisions of the Wakf Act 1995 (for short, "Act of 1995") and the Rules made thereunder. It is also clarified in the order that Committee shall be obliged to handover charge to the Board, Committee constituted by the Board, or any incumbent appointed by the Board. In pursuance of the order dated 16th July 2013, the Committee

assumed the charge and started functioning. On 4th of March 2014, the Chief Executive Officer, Wakf Board, passed an order superseding the Wakf Committee, which was appointed earlier by order dated 16th July 2013. Categorizing the said order as illegal, the petitioner has pleaded that the same has been issued in contravention of statutory provisions of law. For substantiating the grievances, the petitioner has also taken shelter of sub-sec. (2) of Section 67 of the Act of 1995. It is specifically pleaded in the writ petition that although petitioner has assailed the said order before the Rajasthan Wakf Tribunal (for short, "the Tribunal") by way of preferring an appeal but in want of Presiding Officer of the Tribunal the same is not functioning. The petitioner has specifically pleaded in the writ petition that since last more than a year no Presiding Officer is available in the Tribunal. It is in these circumstances, the petitioner has invoked the extraordinary jurisdiction of this Court to assail the impugned order.

2. At the threshold, notices were issued to the respondent. On 28.5.2014, counsel for the Wakf Board appeared and sought time to file reply. The learned counsel for the petitioner made a request to grant interim protection and therefore while deferring the matter for 7th July 2014, the impugned order dated 4th of March 2014 was kept in abeyance. The said order was further extended on 7th of July 2014 and it remained operative till 18th July 2014.

3. The learned counsel for the petitioner Mr. Siddiqui has submitted that the Committee which was constituted by the order dated 16th July 2013 had its tenure for a year but abruptly the Committee has been superseded by the impugned order and some other Committee has been appointed without assigning any reason, therefore, the said order is not sustainable. Mr. Siddiqui has further submitted that the remedy available to the petitioner before the learned Tribunal under the Wakf Act has become illusory because the Tribunal is not functioning since last more than a year, therefore, the afflictions of the petitioner are liable to be examined in exercise of extraordinary jurisdiction of this Court as no other remedy is available to the petitioner. Challenging the impugned order, Mr. Siddiqui would contend that proviso to sub-section (2) of Section 67 of the Act of 1995 clearly envisage that supersession of management of the Committee can be ordered by the Board after issuing notice and assigning reasons for the proposed action and in want of such notice and assigning reason, supersession of the earlier Committee is per-se illegal and contrary to the statutory provisions. Mr. Siddiqui further submits that even otherwise such a decision is in gross violation of principles of natural justice and as such the order impugned cannot be sustained.

4. Per contra, learned counsel for respondent Wakf Board has submitted that the order, whereby the Committee was appointed, clearly envisage that Board has reserved its right to supercede or substitute the Wakf Committee before expiry of the tenure and as such the contention of the learned counsel is not tenable. The learned counsel for the respondents further submits that in the new committee petitioner is retained as Joint Secretary and therefore at his behest this writ

petition is not tenable as he is not an aggrieved person.

5. Mr. Sanjeet Purohit, learned counsel for respondent No. 3 while reiterating the stand of the learned counsel for the Wakf Board has argued that the order impugned has been rightly passed by the Board, which requires no interference, more particularly, when appeal of the petitioner is pending before the Tribunal. In alternative, Mr. Purohit has argued that by afflux of time the tenure of the earlier Committee is also over and therefore after expiry of one year the Committee which was constituted by order dated 16th July 2013 has no legal right to continue and manage the affairs of the Wakf properties of village Dantala, Tehsil Siwana, District Barmer. Mr. Purohit submits that now in the changed scenario, by afflux of time, the petition has gone infructuous and even the appeal pending before the Tribunal has also gone redundant.

6. I have heard the learned counsel for the parties and perused the materials available on record.

7. The instant petition, at the threshold, was filed on 12th of May 2014 and taking cognizance of the subsisting grievance of the petitioner, notices were issued on 19th of May 2014. Taking into account, peculiar facts and circumstances of the case, even during the pendency of appeal before the learned Tribunal, the Court granted indulgence to the petitioner for the reason that Tribunal is not functioning since last more than a year as no Presiding Officer is available. Subsequently, on 28th May 2014, considering the fact that impugned order has not been given effect to, it was kept in abeyance facilitating continuance of the Wakf Committee established vide order dated 16th of July 2013 and the same is continuing till date. Section 18 of the Act of 1995 envisage provision for establishment of committees of the Board and by virtue of sub-sec. (2) of Section 18, Board is empowered to determine constitution, functions, duties and term of such committees. There is no quarrel in the factual position that at the threshold the committee was constituted for a period of one year and that term has come to an end and the Committee has lived its life for which it was established.

8. The argument of the learned counsel for the petitioner about violation of principles of natural justice and proviso to sub-sec. (2) of Section 67 of the Act of 1995 though required judicial scrutiny at the threshold before expiry of one year, but now in the changed scenario when the term of the Committee has come to an end by afflux of time, the issue has remained academic only. Therefore, in view of changed scenario, it is not worthwhile to examine and adjudicate this argument canvassed by the learned counsel for the petitioner.

9. As the Committee, which was established by the order dated 16th of July 2013 has completed its one year tenure, I deem it just and appropriate to dispose of this writ petition with a direction to give effect to the impugned order Annex. 2 dated 4th of March 2014 prospectively i.e. with effect from the date one year's tenure of the earlier committee established by order dated 16th July 2013 has

come to an end. In the alternative, the Chief Executive Officer of the Board is at liberty to pass order afresh in this behalf.

10. In view of completion of the tenure of the Committee established by order dated 16th July 2013, no further adjudication is required in the appeal preferred by the petitioner before the learned Tribunal and the said appeal may also be treated as infructuous.

11. Parties are left to bear their own costs. The writ petition is accordingly disposed of. Costs are made easy.